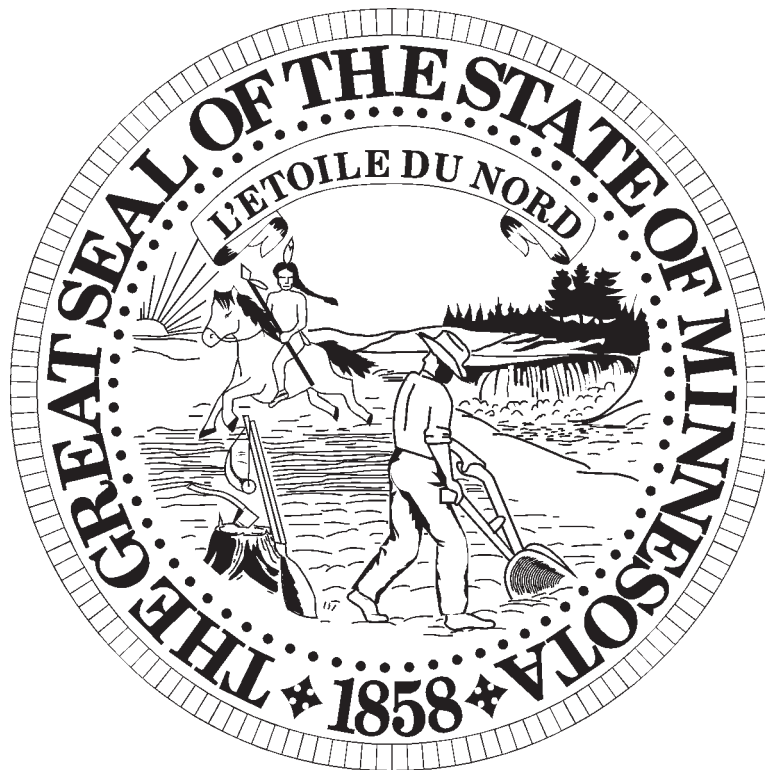


State of Minnesota

State Register



**Rules, Executive Orders, Appointments,
Commissioners' Orders, Revenue Notices, Official Notices, Grants,
State Contracts & Loans, Non-State Bids, Contracts & Grants**

Published every Monday (Tuesday when Monday is a holiday)

**Monday 15 October 2007
Volume 32, Number 16
Pages 689 - 748**

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:

- rules of state agencies
- commissioners' orders
- state grants and loans
- executive orders of the governor
- revenue notices
- contracts for professional, technical and consulting services
- non-state public bids, contracts and grants
- appointments
- official notices

PUBLISHING NOTICES: Submit ONE COPY of your notice, typed double-spaced. State agency submissions must include a "State Register Printing Order" form, and a "Certification/Internal Contract Negotiation" form with contracts for professional, technical and consulting services. Non-State Agencies should submit ONE COPY, with a letter on your letterhead stationery requesting publication and date to be published. **E-MAIL** submissions to: robin.panlener@state.mn.us, or **FAX** to: (651) 297-8260. Please follow FAX by sending originals and applicable forms or letters. The charge is \$14.40 per tenth of a page (columns are seven inches wide). One typewritten, double-spaced page is about 4/10s of a page in the *State Register*, or \$57.60. About 2-1/2 pages typed, double-spaced, on 8-1/2"x11" paper equal one typeset page in the *State Register*. Contact the editor if you have questions.

SUBSCRIPTION SERVICES:

Copies are available at Minnesota's Bookstore, 660 Olive Street, St. Paul, MN 55155. Order by phone: Metro area: (651) 297-3000 Toll free (800) 657-3757. TTY relay service phone number: (800) 627-3529. **NO REFUNDS.** E-mail subscriptions are available by contacting (651) 297-8777. Send address changes to Minnesota's Bookstore, 660 Olive Street, St. Paul, Minnesota 55155.

SEE THE *State Register* free at **website:** <http://www.minnesotasbookstore.com>

- **State Register: On-line subscription** – \$180, includes Early View, LINKS, INDEX, and Sidebar Table of Contents *sent to you via E-mail.*
- **Single issues** are available for a limited time: *State Register* \$5.00.
- "Affidavit of Publication" costs \$10.00 and includes a notarized "Affidavit" and a copy of the issue.

Printing Schedule and Submission Deadlines

Vol. 32 Issue Number	PUBLISH DATE (BOLDFACE shows altered publish date)	Deadline for: Emergency Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical-Consulting Contracts, Non-State Bids and Public Contracts	Deadline for Proposed, Adopted and Exempt RULES
# 16	Monday 15 October	Noon Tuesday 9 October	Noon Wednesday 3 October
# 17	Monday 22 October	Noon Tuesday 16 October	Noon Wednesday 10 October
# 18	Monday 29 October	Noon Tuesday 23 October	Noon Wednesday 17 October
# 19	Monday 5 November	Noon Tuesday 30 October	Noon Wednesday 24 October

Copyright © 2007 Materials Management Division, Department of Administration, State of Minnesota.

USPS Publication Number: 326-630 (ISSN: 0146-7751)

THE *STATE REGISTER* IS PUBLISHED by Materials Management Division, Department of Administration, State of Minnesota, pursuant to *Minnesota Statutes* § 14.46 and is available at main branch county libraries in Minnesota and all "State Depository Libraries:" State University and Community College libraries; University of Minnesota libraries; St. Paul, Minneapolis and Duluth Public Libraries; Legislative Reference Library; State Law Library; Minnesota Historical Society Library; and Library Development Service at the State Department of Education.

Tim Pawlenty, Governor	(651) 296-3391	Department of Administration:	<i>State Register:</i>	
Carol L. Molnau, Lt. Governor	(651) 296-3391	Dana B. Badgerow, Commissioner	Robin Panlener, editor	(651) 297-7963
Lori Swanson, Attorney General	(651) 297-4272	Materials Management Division:	John Mikes, assistant editor	(651) 297-4616
Rebecca Otto, State Auditor	(651) 297-3670	Kent Allin, Director	Cathy Hoekstra, subscriptions	(651) 297-8777
Mark Ritchie, Secretary of State	(651) 296-2079	Mary Mikes, Manager	Bonnie Karels, billing	(651) 296-4912

Minnesota Legislative Information

Senate Public Information Office (651) 296-0504
State Capitol, Room 231, St. Paul, MN 55155
Website: www.senate.leg.state.mn.us/departments/secretary/seninfo.htm

House Public Information Services (651) 296-2146
State Office Building, Room 175,
100 Rev. Dr. Martin Luther King Jr Blvd., St. Paul, MN 55155
Website: www.house.leg.state.mn.us/hinfo/hinfo.htm

Minnesota State Court System

Court Information Office (651) 296-6043
MN Judicial Center, Rm. 135, 25 Rev. Dr. Martin Luther King Jr Blvd.,
St. Paul, MN 55155 **Website:** www.courts.state.mn.us

Federal Register

Office of the Federal Register (202) 512-1530; or (888) 293-6498
U.S. Government Printing Office – Fax: (202) 512-1262
Website: http://www.access.gpo.gov/su_docs/aces/aces140.html

Minnesota Rules: Amendments & Additions		Saint Paul College:
Rules Index - Vol. 32, # 14-16, October 1 - October 15, 2007	692	Advertisement for Bids for Storm Water Damage Restoration..... 739
Proposed Rules		Historical Society
Chiropractic Examiners Board		Request for Bids for Wall Demolition, Construction, and Painting Services..... 740
Proposed Permanent Rules Relating to Patient Records.....	693	Request for Proposals for Digitization Services for the National Digital Newspaper Program..... 741
Education Department		Human Services Department
Division of Compliance and Assistance:		Child Support Enforcement Division: Availability of Contract for Business Process Redesign Analysis of Child Support Program Policy and Systems..... 741
Proposed Permanent Rules Relating to Special Education.....	695	
Adopted Rules		Transportation Department (Mn/DOT)
Natural Resources Department		Contracting Opportunities for a Variety of Highway Related Technical Activities (“Consultant Pre-Qualification Program”)..... 742
Adopted Permanent Rules Relating to Ecological Services.....	724	Professional/Technical Contract Opportunities..... 742
Commissioners' Orders		
Natural Resources Department		Non-State Bids, Contracts & Grants
Designation of Infested Waters.....	725	Metropolitan Council
		Invitation for Prequalification to Supply a Vehicle GPS Tracking and Diagnostic System..... 743
Revenue Notices		Metropolitan Council - Metro Transit
Department of Revenue		Request for Proposals for Travel Instruction Services..... 743
Revenue Notice # 07-12: Sales and Use Tax – Charitable Organization Exemption – Exempt Status Revocation After Adverse Property Tax Exemption Determination.....	735	Snow Removal at Ft. Snelling North & South Park and Ride.... 744
		Snow Removal at I-35W & 95 th Avenue Park and Ride..... 744
		Snow Removal at I-394 & CR 73 North & South Park and Ride..... 745
Official Notices		Minnehaha Creek Watershed District
Now That’s the Way You Like It !.....	735	Pond Excavation and Disposal of about 7,000 Cubic Yards, NE Corner of Leaf St. and Cygnet Pl., Orono, MN..... 745
Natural Resources Department		Nine Mile Creek Watershed District
Division of Ecological Resources: Regulations Applicable to Sport Gillnetting at Infested Waters Containing Spiny Waterfleas.....	736	Request for Proposals for Engineering and Accounting Services..... 746
		Request for Proposals for Legal Services..... 746
Secretary of State’s Office		University of Minnesota
Elections Division: Publication of Open Appointments Annual Compilation.....	736	Subscribe to Bid Information Service (BIS)..... 746
State Grants & Loans		Statement of Ownership, Management and Circulation 747
Employment and Economic Development Department (DEED)		
Announcement of Availability of “First” Grants.....	737	
State Contracts		
Jump to Links and Fast Service.....	738	
Administration Department		
Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP): Availability of Contract for Pharmaceutical Wholesaler Invoice Auditing Services.....	738	
Colleges and Universities, Minnesota State (MnSCU)		
Northwest Technical College:		
Request for Sealed Bids for Chassis Dynamometer Equipment.....	739	
Dakota County Technical College:		
Request for Bids for Solar Panel Installation.....	739	

Contracts information is available from the Materials Management Helpline (651) 296-2600, or Web site: www.mmd.admin.state.mn.us

State Register information is available from Minnesota’s Bookstore (651) 297-3000, or (800) 657-3757, Web site: www.minnesotasbookstore.com

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, 660 Olive Street (one block east of I-35E and one block north of University Ave), St. Paul, MN 55155 (612) 297-3000, or toll-free 1-800-657-3757.

Rules Index: Volume 32 - Issues # 14-16

Monday 1 October 2007 - Monday 15 October 2007

(For issues # 1 - 13, Monday 2 July 2007 - Monday 24 September 2007, SEE issue #13. Cumulative Index will next appear in issue #26, December 31, 2007)

Chiropractic Examiners Board

2500.5010 (proposed)..... 693

Education Department

3525.0210; .0300; .0400; .0550; .0700; .0750; .0755; .0800; .0850; .0855; .0860; .0865; .0870; .1100; .1310; .1325; .1327; .1329; .1331; .1333; .1335; .1337; .1339; .1341; .1343; .1345; .1348; .1350; .1352; .1354; .1400; .1550; .2325; .2335; .2340; .2350; .2440; .2445; .2450; .2455; .2550; .2720; .2810; .2900; .3010; .3100; .3600; .3700; .3900; .4010; .4110; .4420; .4700; .4750; .4770 (proposed)..... 695
 3525.0210 s. 2, 3, 5, 6, 7, 8, 9, 13, 17, 18, 26, 29, 30, 36, 38, 46, 47; .0800 s. 1, 3, 4, 6, 7, 8, 9; .2435; .2710; .2810 s. 3, 4, 5; .2900 s. 5; .3900 s. 3 (proposed repealer)..... 695
 3525.1350 (adopted)..... 653

Higher Education Services Office

4850.0011; .0012; .0014; .0018; .0020; .0021; .0022; .0024 (proposed)..... 603
 4850.0011, s. 27 (repealed)..... 603

Revenue Department

8130.2700 (adopted)..... 603

Board of Teaching Board

8710.4770 (proposed)..... 653

Transportation Department

8820.4090; .9920; .9981; .9995 (adopted)..... 608

Contracts information is available from the Materials Management Helpline (651) 296-2600, or Web site: www.mmd.admin.state.mn.us

State Register information is available from Minnesota's Bookstore (651) 297-3000, or (800) 657-3757, Web site: www.minnesotasbookstore.com

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*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Board of Chiropractic Examiners

Proposed Permanent Rules Relating to Patient Records

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed Amendment to Rules Governing Records Retention, *Minnesota Rules*, 2500.5010

Introduction. The Board of Chiropractic Examiners intends to adopt rules without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until November 16, 2007.

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: Micki King at The Minnesota Board of Chiropractic Examiners, 2829 University Ave SE, Suite 300, Minneapolis Minnesota, 55414, phone: (651) 201-2849 and e-mail: micki.king@state.mn.us. TTY users may call the Board at: 1-800-627-3529.

Subject of Rules and Statutory Authority. The proposed rules relate to the proper handling and disposition of patient records in the event the licensee is unavailable by reason of relocation, death, or other circumstances leading to the termination of the licensee's practice in Minnesota. The statutory authority to adopt the rules is *Minnesota Statutes*, section 148.08 (2004). A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed. A free copy of the rules is available upon request from the agency contact person listed above and downloadable from the Board's web page at www.mn-chiroboard.state.mn.us.

Comments. You have until 4:30 p.m. on Friday, November 16, 2007, 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 November 16, 2007. 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 when determining whether a public hearing must be held. You are also encouraged to state the reason for
(Cite 32 SR 693) *State Register*, Monday 15 October 2007 Page 693

Proposed Rules

the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid 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 the proposed rules, unless the procedure under *Minnesota Rules*, part 1400.2110, has been followed. 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 or downloaded for free from the Board's web page.

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, telephone (651) 296-5148 or 1-800-657-3889.

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: September 27, 2007

Larry A. Spicer, D.C.
Executive Director

2500.5010 RECORDS RETENTION AND ACCESS.

Subpart 1. Records retention plan. Licensees must prepare a plan for the maintenance of records and records disposition in the event the records are relocated or become otherwise not readily available.

A. The plan must be in writing and made available for the patient upon request. The plan must state how and where records are to be stored, and how patients may access these records, in the event the records are relocated or become otherwise not readily available.

B. The plan must be made available to a designee, such as the licensee's spouse, business partner, attorney, or other responsible party to be implemented in the event the licensee is unable to implement the records plan. The plan must be updated, or provided to a new responsible party, in the event the previous responsible party becomes unwilling, unable, or unacceptable in any manner to maintain the records plan.

C. If the custodianship of records is transferred to another licensee, the obligations in this subpart shall transfer to the new custodian of records.

Subp. 2. Access to records. If the records are relocated or are not readily available, the requirements in this subpart must be implemented.

A. The licensee or licensee's designee shall provide a notice to the board indicating the location of the records and the method by which patients may acquire their records.

B. The licensee or licensee's designee shall publish the location of the records and the method by which patients may acquire their records. The notice shall be published at least weekly for one month in a newspaper where circulation encompasses the major area of a practitioner's former practice. In the alternative, the licensee may mail the notice directly to all patients to whom services have been provided within seven years of this notice. The notice must be mailed to the patient's last known address.

C. The licensee shall make provisions to maintain a voice mail notice on the licensee's last known office telephone number which was effective at the time of cessation of practice. The message must be maintained for at least six months from the last date the practice

Proposed Rules

operated. The notice must advise patients of the location of the records and the method by which patients may acquire their records.

D. The licensee may maintain an active Web site that advises patients of the location of the records and the method by which patients may acquire their records.

E. All records must be provided according to *Minnesota Statutes*, section 144.335. In the event of the death of the licensee, the licensee's agent or designee may provide complete and accurate copies of the records or provide the original record. If the original record is provided, the licensee or licensee's designee may require receipt for the delivery of the records. Notwithstanding *Minnesota Statutes*, section 148.10, subdivision 1, paragraph (a), clause (18), health care records need not be maintained for longer than 18 months on behalf of any practitioner who is deceased.

Subp. 3. Storage or maintenance of records. The licensee or the licensee's designee may maintain or store records in one of the following manners:

A. appropriate transfer of the custodianship of the records to another actively licensed doctor of chiropractic;

B. storage at the original site of production, provided that the safety and confidentiality of the records is maintained;

C. storage at a professional records storage facility;

D. storage at any secure location under the direct control of the licensee or licensee's designee; or

E. use of electronic storage media including but not limited to scans, computer media, or other electronically acceptable media.

Subp. 4. Disposal. If the licensee or licensee's designee disposes of any patient records, the records must be disposed of in a manner that permanently obliterates any and all personally identifying information.

Hard copy information is information which exists in a reproduced manner, such as paper, microfilm, or any other medium which exists in a physical state. The information must be destroyed by shredding, burning, chemical destruction, or in a manner that renders recovery permanently impossible.

Soft information is information maintained in any software manner, such as computer hard drives, backups, discs, jump drives, cellular telephone storage, or other electronic information which may be accessed by computer or other technology. The information must be destroyed by forensically wiping a hard drive, USB drive, backup media, shredding DVD-R's or CD-R's, or in a manner that renders recovery permanently impossible.

Minnesota Department of Education Division of Compliance and Assistance Proposed Permanent Rules Relating to Special Education NOTICE OF HEARING

Proposed Amendment to Rules Governing Special Education, *Minnesota Rules*, Chapter 3525; Repeal of *Minnesota Rules* 3525.2435 and 3525.2710.

Public Hearing. The Department of Education intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold a public hearing on the above-named rules in Skjegstad Conference Room, Office of Administrative Hearings, Stassen Building, 600 North Robert Street, St. Paul, Minnesota, 55101, starting at 10 o'clock a.m. on November 20, 2007, and continuing until the hearing is completed. The agency will schedule additional days of hearing if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. Administrative Law Judge Barbara L. Neilson will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7845, and Fax: (651) 361-7936. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the administrative law judge.

Subject of Rules, Statutory Authority, and Agency Contact Person. The proposed rules make amendments to Minnesota's special education rules in order to remain in compliance with changes made to federal law following the reauthorization of the Individuals with Disabilities Education Act (IDEA), and to federal enacting regulations. Some of those federal changes have resulted in conflict between the new federal provisions and Minnesota's existing rules. The agency also has been directed by state legislation to consolidate its behavioral intervention rules, and to revise its care and treatment rule in conformance with recent changes to Minnesota statute. Finally, some

Proposed Rules

amendments to the special education rules are designed to eliminate existing conflict or confusion associated with certain rule provisions. The proposed rules are authorized by *Minnesota Statutes*, sections 125A.07, 121A.67, and 121A.515, subd. 10. A copy of the proposed rules is published in the *State Register*. It is also available on the agency's website at:

<http://education.state.mn.us/mde/Legislation/Rulemaking/index.html>,

or upon request from the agency contact person. The agency contact person is: Kathryn Olson at Minnesota Department of Education, 1500 Hwy 36 West, Roseville, Minnesota, 55113, Fax: (651) 582-8248, and email Kathryn.A.Olson@state.mn.us. TTY users may call the Department of Education at (651) 582-8201.

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency offices. A copy is also available on the Department of Education's website at <http://education.state.mn.us/mde/Legislation/Rulemaking/index.html>. 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. You may review or obtain copies at the cost of reproduction by contacting the agency contact person.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rules. You may also submit written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the administrative law judge may order this five-day comment period extended for a longer period, but for no more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the administrative law judge 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 views or data to the administrative law judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Alternative Format/Accommodation. Upon request, the agency can make this Notice 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 agency may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the rule hearing process. The adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the agency encourages you 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. You 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. You may also ask to be notified of the date that 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. You may 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. You should direct questions regarding this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 296-5148 or 1-800-657-3889.

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

Dated: October 15, 2007
Deputy Commissioner

Chas Anderson

3525.0210 DEFINITIONS.

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

Subp. 2. [See repealer.]

Subp. 3. [See repealer.]

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

Subp. 5. [See repealer.]

Subp. 6. [See repealer.]

Subp. 6a. **Child.** “Child” means child with a disability as defined in *Minnesota Statutes*, section 125A.02, subdivision 1.

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. **Cultural liaison.** “Cultural liaison” means a person who is of the same racial, cultural, socioeconomic, or linguistic background as the ~~pupil~~ child, and who:

A. provides information to the IEP team about the ~~pupil’s race~~ child’s racial, cultural, socioeconomic, and linguistic background;

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

C. facilitates the ~~pupil’s~~ child’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~~ child is not available, then a person who has knowledge of the ~~pupil’s~~ child’s racial, cultural, socioeconomic, and linguistic background may act as a cultural liaison.

Subp. 11. **Days Day.** “Days Day” means ~~business day, calendar day, or school day as defined in *Code of Federal Regulations*, title 34, section 300.9~~ unless otherwise indicated as a business day or school day.

A. “Business day” means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day.

B. “School day” means any day, including a partial day, that children are in attendance at school for instructional purposes. It has the same meaning for all children in school, including children with and without disabilities.

Subp. 12. **Department.** “Department” means the Minnesota Department of Education.

Subp. 13. [See repealer.]

[For text of subp 14, see M.R.]

Subp. 15. **District.** “District” means any local education agency, charter school, or state agency that provides education services to ~~pupils~~ children.

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

Subp. 17. [See repealer.]

Subp. 18. [See repealer.]

Subp. 19. **Extended school year (ESY) services.** “Extended school year (ESY) services” means special education instruction and related services for ~~pupils~~ children who demonstrate the need for continued service on days when school is not in session for all students as a necessary component of a free appropriate public education.

[For text of subps 20 to 25, see M.R.]

Subp. 26. [See repealer.]

Subp. 27. **Indirect services.** “Indirect services” means special education services which include ongoing progress reviews; cooperative planning; consultation; demonstration teaching; modification and adaptation of the environment, curriculum, materials, or equipment; and direct contact with the ~~pupil~~ child to monitor and observe. Indirect services may be provided by a teacher or related services professional to another regular education, special education teacher, related services professional, paraprofessional, support staff, parents, and public and nonpublic agencies to the extent that the services are written in the ~~pupil’s~~ child’s IEP and IFSP.

Subp. 28. **Individualized family service plan or IFSP.** “Individualized family service plan” or “IFSP” means a written plan for providing early intervention services to a ~~pupil and the pupil’s~~ child age birth to three years and to the ~~child’s~~ family ~~through interagency agreements. Procedural and program requirements for the IEP also apply to the educational components of the IFSP.~~

Subp. 29. [See repealer.]

Subp. 30. [See repealer.]

[For text of subp 31, see M.R.]

Subp. 32. **Nondiscrimination.** “Nondiscrimination” means a requirement that districts shall comply with chapter 3535 and *Minnesota Statutes*, chapter ~~363~~ 363A.

Subp. 33. **Paraprofessional.** “Paraprofessional” means a district employee who is primarily engaged in direct interaction with one or more ~~pupils~~ children for instructional activities, physical or behavior management, or other purposes under the direction of a regular education or special education teacher or related services provider.

Subp. 34. **Parent.** “Parent” means:

Proposed Rules

- A. a ~~natural~~ biological or adoptive parent of a child;
- B. a guardian generally authorized by a court or by delegation of parental power to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- C. ~~a person an individual~~ acting in the place of a biological or adoptive parent, such as including a grandparent or, stepparent, or other relative with whom the child lives, or ~~a person an individual~~ who is legally responsible for the child's welfare;
- D. a surrogate parent who has been appointed by the district in accordance with part 3525.2440; or
- E. a foster parent if:
 - (1) the natural biological or adoptive parents' authority to make educational decisions on the child's behalf has been extinguished under state law;

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

- (4) the foster parent has no interest that would conflict with the interests of the child.

Except as provided below, the biological or adoptive parent must be presumed to be the parent for purposes of this part when attempting to act as the parent under this part and when more than one party is qualified under items A to E to act as a parent, unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific party under items A to D to act as the "parent" of a child or to make educational decisions on behalf of a child, then that party shall be the "parent" for purposes of this part.

Subp. 35. **Providing district.** "Providing district" means a district with the responsibility of providing special education services to a ~~pupil child~~ according to part 3525.0800.

Subp. 36. [See repealer.]

Subp. 37. **Recognized professional standards.** "Recognized professional standards" means reasonable principles and concepts widely accepted by acknowledged experts that bear a direct relationship to the particular needs of the ~~pupil child~~.

Subp. 38. [See repealer.]

Subp. 39. **Resident district.** "Resident district" means the district in which the ~~pupil's child's~~ parent, as defined by ~~part 3525.0800, subpart 9, 34~~ and *Code of Federal Regulations*, title 34, section ~~300.20~~ 300.30, resides. It does not mean the district in which a surrogate parent resides. If the parents of the ~~pupil child~~ are legally separated or divorced and both maintain legal rights to determine the ~~pupil's child's~~ education, but are living in different districts, the child's district of residence is ~~the district in which the pupil primarily resides for the greater part of the school year determined by Minnesota Statutes, section 127A.47, subdivision 3.~~

In those situations when a ~~pupil child~~ 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 child'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 child~~ are separated or divorced and both maintain legal rights to determine the ~~pupil's child's~~ education, but are living in different districts, the district of residence is the district last responsible for education services when the ~~pupil child~~ resided with either parent.

The district of residence for a homeless child is as provided by Minnesota Statutes, section 127A.47, subdivision 2. A district must not deny free admission to a homeless child solely because the district cannot determine that the child is a resident of the district.

[For text of subp 40, see M.R.]

Subp. 41. **Significant change in program or placement.** "Significant change in program or placement" means:

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

- C. there is a change in the type of site or setting in which the ~~pupil child~~ receives special education;
- D. the amount of time a ~~pupil child~~ spends with nondisabled peers is changed;
- E. the amount of special education to accomplish the goals or objectives needs to be increased or decreased; or
- F. the team determines there is a need for a ~~conditional regulated~~ intervention procedure.

Subp. 42. **Special education.** "Special education" means any specially designed instruction and related services to meet the unique cognitive, academic, communicative, social and emotional, motor ability, vocational, sensory, physical, or behavioral and functional needs of a ~~pupil child~~ as stated in the IEP.

Subp. 42a. **Supplementary aids and services.** "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, or other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with Code of Federal Regulations, title 34, sections 300.114 to 300.116.

Subp. 43. **Surrogate parent.**

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

B. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters,

independent living programs, street outreach programs, and other programs for homeless youth may be appointed as temporary surrogate parents until a surrogate can be appointed that meets the requirements in item A.

Subp. 44. **Teacher.** “Teacher” means a person licensed under parts 8710.5100 to 8710.5800 by the Board of Teaching to instruct pupils provide specially designed instruction to children with specific disabling conditions. This includes highly qualified special education teachers, as determined by the Board of Teaching.

[For text of subp 45, see M.R.]

Subp. 46. [See repealer.]

Subp. 47. [See repealer.]

Subp. 48. **Vocational evaluation.** “Vocational evaluation” means an ongoing, comprehensive process used to assist the pupil child and the team to determine the pupil’s child’s strengths, interests, abilities, and needed support to be successful in a vocational setting paid or unpaid employment or for a career not requiring a four-year college degree or advanced degree. A vocational evaluation is one component of the ongoing special education multidisciplinary evaluation described in parts part 3525.2550 and ~~3525.2710~~ Code of Federal Regulations, title 34, sections 300.300 to 300.306.

3525.0300 PROVISION OF FULL SERVICES.

Pupils Children with disabilities who are eligible for special education services based on an appropriate individual 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, pupils children with disabilities shall be educated with children who do not have disabilities and shall attend regular classes. A regular education environment includes regular classes and participation in nonacademic and extracurricular services and activities. A pupil child with 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 child will be better served outside of the regular program. The needs of the pupil child 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 child’s IEP team as the pupil’s child’s IEP manager to coordinate the instruction and related services for the pupil child. The IEP manager’s responsibility shall be to coordinate the delivery of special education services in the pupil’s child’s IEP and to serve as the primary contact for the parent. A district may assign the following responsibilities to the pupil’s child’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 pupils children 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 child’s parents about the alternatives and methods of instruction as described in *Minnesota Statutes*, section 125A.05.

3525.0750 IDENTIFICATION OF PUPILS CHILDREN WITH DISABILITIES.

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

The district’s identification system shall be developed 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 child if the IEP team determines the services are necessary during a break in instruction in order to provide a free appropriate public education.

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

A. “Level of performance” means a pupil’s child’s progress toward annual IEP goals immediately prior to a break in instruction as seen in the progress measurements required by part 3525.2810, subpart 1, item ~~A, subitem (9) C.~~

Proposed Rules

B. "Recoupment" means a pupil's child's ability to regain the performance of a skill or acquired knowledge to approximately the same level of performance just prior to the break in instruction.

C. "Regression" means a significant decline in the performance of a skill or acquired knowledge, specified in the annual goals as stated in the pupil's child's IEP, that occurs during a break in instruction.

D. "Self-sufficiency" means the functional skills necessary for a pupil child to achieve a reasonable degree of personal independence as typically identified in the annual IEP goals for a pupil child requiring a functional curriculum. To attain self-sufficiency, a pupil child must maintain skills consistent with the pupil's child's IEP goals in any of these skill areas:

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

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

A. there will be significant regression of a skill or acquired knowledge from the pupil's child's level of performance on an annual goal that requires more than the length of the break in instruction to recoup unless the IEP team determines a shorter time for recoupment is more appropriate;

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

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

Subp. 4. **Sources of information for IEP team determination.** The IEP team must decide the basis for determining whether a pupil child is eligible for ESY services using information including:

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

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

C. experience with other pupils children with similar instructional needs.

Subp. 5. **Other factors to be considered.** In making its determination of ESY needs under subpart 3, item A, B, or C, the IEP team must consider the following factors, where relevant:

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

B. the pupil's child's degree of impairment;

C. the pupil's child's rate of progress;

D. the pupil's child's behavioral or physical problems;

E. the availability of alternative resources;

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

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

H. the pupil's child's vocational needs.

3525.0800 RESPONSIBILITY FOR ENSURING PROVISION OF INSTRUCTION AND PURCHASED SERVICES AND DIS-AGREEMENTS.

Subpart 1. [See repealer.]

Subp. 2. **Purchased services.** The district shall not purchase special educational services for a pupil child from a public or private agency when 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 children with disabilities who reside in the district, it continues to be the responsibility of the school district, consistent with Minnesota Statutes and parts 3525.0210 to 3525.4770, to assure and ascertain that ~~such pupils and youth~~ the children receive the education and related services and rights to which they are entitled.

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. **Responsibility for disagreements.** The resident district is responsible for resolving disagreements between the pupil's child's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day.

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

3525.0850 BEHAVIOR POSITIVE BEHAVIORAL INTERVENTIONS AND SUPPORTS.

Subpart 1. Scope. Parts 3525.0850 to 3525.0870 apply to staff, contracted personnel, and volunteers in all education programs serving children with a disability under United States Code, title 20, chapter 33, sections 400 et seq. In education programs in facilities licensed by the Department of Corrections, parts 3525.0850 to 3525.0870, must be implemented except in emergency situations or where other agency rules apply to serve a compelling penological interest.

Subp. 2. Purpose. ~~This policy is intended to encourage~~ The purpose of this part and parts 3525.0855 to 3525.0870 is to require districts to use of positive approaches to behavioral interventions. ~~The objective of any behavioral intervention must be that pupils and supports necessary for children to acquire appropriate behaviors and skills and to prevent the misuse of aversive and deprivation procedures. It is critical that behavioral intervention programs focus on skills acquisition rather than merely behavior reduction or elimination~~ When a behavioral intervention plan is necessary to address a child's behavior, the plan must be developed in consideration of the child's developmental, functional, communication, and academic needs, must promote the use of positive behavioral interventions and supports and must not encourage the use of aversive or deprivation procedures, and it must ensure the child's right to placement in the least restrictive environment. Regulated interventions may be included in the child's behavioral intervention plan only if the requirements of this part and parts 3525.0855 to 3525.0870 are followed. Behavioral intervention policies, programs, or procedures must be designed to enable ~~a pupil~~ children to benefit from an appropriate, individualized educational program as well as develop skills to enable them to function as independently as possible in their communities.

Subp. 3. Definitions.

A. "Contingent observation" means an unregulated intervention and involves instructing the child to leave the school activity during the school day and not participate for a period of time, but to observe the activity and listen to the discussion from a time-out area within the same setting. Contingent observation timeout is not governed by this chapter.

B. "Exclusionary time-out" means an unregulated intervention and involves instructing the child to leave the school activity during the school day and not participate in or observe the classroom activity, but to go to another area from which the child may leave. Exclusionary time-out is not governed by this chapter.

C. "Positive behavioral interventions and supports" means strategies used to improve the school environment and teach children skills likely to increase their ability to exhibit appropriate behaviors. Positive behavioral interventions and supports are evaluation-based, individualized behavioral interventions or supports for children with challenging behavior. Positive behavioral interventions and supports focus on proactive approaches to address a child's target behaviors by teaching appropriate replacement behaviors, making environmental modifications, increasing skill performance, and using positive consequences.

D. "Target behavior" means a behavior that is identified by the IEP team for change and described in observable and measurable terms.

Subp. 4. Training. The district must ensure that all district staff, contracted personnel, and volunteers who are permitted to use regulated interventions are trained in the use of positive behavioral interventions and supports; methods and techniques to prevent or de-escalate an emergency; and the use of regulated interventions. The training must comply with the district's behavioral management policy under part 3525.1100, subpart 2, item F.

Subp. 5. Registration. The district must register with the commissioner any room used for locked time-out or seclusion.

Subp. 6. Monitoring. The commissioner must monitor any room used for locked time-out or seclusion by making announced and unannounced on-site visits. The commissioner must provide a report to the district's superintendent and special education director on the department's monitoring activities following announced and unannounced visits. The commissioner must develop an annual report on the department's overall monitoring activities that outlines the number of locked time-out rooms and the number of seclusion rooms reported by each district.

Subp. 7. Oversight committee. The district or cooperative must establish an oversight committee composed of at least one member with training in behavioral analysis and other appropriate education personnel to annually review aggregate data regarding the use of aversive and deprivation procedures.

3525.0855 BEHAVIORAL INTERVENTION PLANS.

Subpart 1. Evaluation. A district must conduct an IEP meeting within five school days to review or revise a child's IEP and determine the need for a functional behavioral assessment, as defined in subpart 2, or other additional evaluation when:

A. the district continually or repeatedly uses any element of its discipline policy to respond to the child's behavior;

B. a regulated intervention is used in an emergency twice within 90 days or is considered for use or before inclusion in the IEP or is used as part of the program in which the child is placed; or

C. a peace officer restrains or removes the child from a classroom, school building, or school grounds at the request of a school administrator or a school staff person during the school day twice in a 30-day period.

Subp. 2. Functional behavioral assessment; reporting requirements. "Functional behavioral assessment" or "FBA" means a process for gathering information to develop and utilize positive behavioral interventions and supports and other strategies. When a district conducts a functional behavioral assessment, it must prepare a written report including the following information:

Proposed Rules

- A. a description of the target behaviors and their frequency, severity, and duration;
- B. a description of the events, times, and situations that predict the occurrence and nonoccurrence of the target behaviors;
- C. a description of the antecedents, consequences, and other reinforcers that maintain the target behaviors;
- D. a description of the apparent functions of the target behaviors and possible appropriate replacement behaviors;
- E. documentation that the team has considered other treatable causes for the target behaviors, including a mental or physical health condition;
- F. a description of positive behavioral interventions and supports and other strategies used in the past and the effectiveness of each;
- G. summary statements and hypotheses about the purposes of the target behaviors that will assist in the development of the child's behavioral intervention plan;
- H. a description of any other evaluation data, if available, that assists in the development of an appropriate behavioral intervention plan for the child; and
- I. an evaluation of any proposed regulated intervention to determine that it is not contraindicated for mental or physical health reasons. In this evaluation, the IEP team must consider the appropriateness of regulated interventions with regard to the severity of the target behavior, the effect of current medications, available medical and psychiatric history, the child's chronological and developmental age, physical size, and available personal history, including any history of physical or sexual abuse, in order to determine whether the regulated intervention is contraindicated.

Subp. 3. Behavioral intervention plan. "Behavioral intervention plan" means a written statement of the positive behavioral interventions and supports and other strategies a district will use to teach a child appropriate behaviors and skills and to respond to the child's target behaviors. Under the circumstances in part 3525.0855, subpart 1, or in the case of a child whose pattern of behavior impedes the child's learning or that of others, the child's IEP team must develop a behavioral intervention plan through the IEP process under *Code of Federal Regulations*, title 34, section 300.324. The behavioral intervention plan must:

- A. be in writing and included in the child's IEP;
- B. be based on the functional behavioral assessment report described in subpart 2 when the behavioral intervention plan is a result of a subpart 1 event;
- C. be based on the child's present levels of performance, needs, goals, and objectives;
- D. identify positive behavioral interventions and supports necessary for the child to acquire appropriate functional behaviors and skills;
- E. identify any reasonable modifications to the school discipline policy necessary for the child;
- F. monitor the effectiveness of the child's behavioral intervention plan at least as often as the progress monitoring required by part 3525.2810, subpart 1, item C;
- G. identify the regulated intervention, if any, to be used to address the child's target behavior;
- H. identify specific criteria for release from the regulated intervention and for returning the child to the child's routine activities and educational setting, including during a fire drill, lock down, tornado, or other building-wide emergency; and
- I. identify a method for informing the child's parent when the regulated intervention is used as part of the child's behavioral intervention plan including when the documentation required by part 3525.0860, subpart 3, will be provided to the child's parents.

Subp. 4. Consent. A district must obtain written parental consent prior to implementing a behavioral intervention plan that includes the use of any regulated intervention. The consent is valid until withdrawn. As a part of and prior to obtaining parental consent, the district must demonstrate the use of any mechanical restraint, show the parent the room used for locked time-out or seclusion, and if applicable, demonstrate the locking mechanism.

Subp. 5. Withdrawal of consent. A parent may withdraw consent for a regulated intervention at any time by submitting a written or oral statement to that effect to the district. Upon notification of the parent's withdrawal, the district must:

- A. immediately stop implementing the regulated intervention for which consent was withdrawn, and immediately notify the parent of its actions in writing;
- B. conduct an IEP team meeting to review the child's IEP and behavioral intervention plan within five school days; and
- C. continue implementing all other components of the child's IEP and behavioral intervention plan.

3525.0860 REGULATED INTERVENTIONS.

Subpart 1. In general.

A. "Regulated intervention" means the use of an aversive and deprivation procedure that is not prohibited. The use of regulated interventions is authorized only when included in the child's behavioral intervention plan or in response to an emergency.

B. Regulated interventions include:

- (1) manual restraint;
- (2) mechanical restraint consistent with a written order from a licensed physician;
- (3) locked timeout; and

(4) seclusion.

Subp. 2. Definitions.

A. “Aversive procedure” means the application of an aversive stimulus.

B. “Aversive stimulus” means an object that is used or an event or situation that occurs immediately after a target behavior in order to suppress that behavior.

C. “Deprivation procedure” means the delay or withdrawal of goods, services, or activities that the child would otherwise receive.

Subp. 3. Frequency; documentation. Each time a district uses a regulated intervention as part of a child’s behavioral intervention plan or in response to an emergency, the district must document:

A. the antecedent to the behavior that resulted in the use of the regulated intervention;

B. the behavior that resulted in the use of the regulated intervention, including a description of the positive behavioral interventions or supports that were implemented but were not effective, and whether law enforcement was contacted;

C. the consequence the child sought and a description of the regulated intervention used to address the behavior;

D. the length of time the regulated intervention was used, including the time the intervention began and the time it ended;

E. the number of times the regulated intervention was used in each school day and by whom;

F. the child’s response to the regulated intervention;

G. the procedure used to return the child to the child’s routine activities and educational setting;

H. a description of any physical injuries sustained by the child or staff; and

I. the date the parent was notified.

Subp. 4. Manual restraint. “Manual restraint” means an intervention intended to restrict a child’s movement by using physical contact as the only source of restraint. Manual restraint does not include physical contact or a physical prompt used to facilitate completion of a task or to redirect a child’s behavior when the child does not resist or the child’s resistance is minimal. When using manual restraint:

A. efforts to lessen or discontinue the restraint must be made at least every 15 minutes, unless contraindicated. The time each effort was made and the child’s response to the effort must be noted in the child’s record;

B. the child must be given an opportunity for release from the restraint and for motion and exercise of the restricted body parts for at least ten minutes of every 60 minutes; and

C. if manual restraint is imposed upon a child whose primary mode of communication is sign language or an augmentative mode, the child shall be permitted to have his or her hands free of restraint for brief periods, unless the trained individual determines that such freedom appears likely to result in harm to the child or others.

Subp. 5. Mechanical restraint. “Mechanical restraint” means an intervention intended to restrict a child’s movement by using devices as the source of restraint. Mechanical restraint does not include an adaptive or protective device recommended by a physician or therapist, or safety equipment used as intended, for example, seat belts. When using mechanical restraint:

A. the child must have a written order from a licensed physician that describes the restraint and its purpose and specifies the duration and circumstances under which the restraint may be used;

B. the child must be continuously observed by a trained individual who is not applying the restraint;

C. the trained individual must lessen or discontinue the restraint at least every 15 minutes to determine whether the child will stop or control the target behavior without the restraint or in accordance with the physician’s order; and

D. the child must be given an opportunity for release from the restraint for at least ten minutes out of every 60 minutes the restraint is used or in accordance with the physician’s order.

Subp. 6. Locked time-out. “Locked time-out” means a regulated intervention that involves removing the child involuntarily from the school activity during the school day and placing the child in a specially designed and continuously supervised isolation room that the child is prevented from leaving. A child is prevented from leaving by a locking mechanism which must be one that disengages automatically when not continuously engaged by school personnel.

Subp. 7. Seclusion. “Seclusion” means a regulated intervention that involves removing the child voluntarily or involuntarily from the school activity during the school day and placing the child in a specially designed isolation room or similar space that the child is prevented from leaving by means other than a locking mechanism.

Subp. 8. Requirements for locked time-out and seclusion. When using locked time-out or seclusion:

A. the child’s behavioral intervention plan must address the length of time the child may remain in locked timeout or seclusion;

B. the child must be released from locked time-out or seclusion as soon as the behavior ceases, but the length of time must not exceed 15 minutes. If the trained individual enforcing the regulated intervention reasonably believes that releasing the child will result in physical injury or serious property damage, then part 3525.0870 applies;

C. the child must be continuously monitored by a trained individual; and

D. the specially designed room or similar space must:

(1) be a clean, safe environment where all fixtures are tamper proof, the walls and floors are properly covered, and control switches are located immediately outside the room;

Proposed Rules

- (2) contain an observation window or other device to permit a trained individual to continuously monitor the child;
- (3) be at least five feet by six feet or substantially equivalent to these dimensions and large enough to allow the child to stand, stretch the child's arms, and lie down;
- (4) be well-lighted, well-ventilated, and adequately heated; and
- (5) comply with all applicable fire and building codes.

3525.0865 PROHIBITED PROCEDURES.

Subpart 1. **Definition.** "Prohibited procedures" means aversive and deprivation procedures that must not be used under any circumstances.

Subp. 2. **Prohibited procedures.** Prohibited procedures include:

- A. corporal punishment as defined in *Minnesota Statutes*, section 121A.58;
- B. requiring a child to assume and maintain a specific physical position, activity, or posture that induces physical pain;
- C. the presentation of intense sounds, lights, or other sensory stimuli;
- D. the use of smell, taste, substance, or spray as an aversive stimulus;
- E. restricting a child's access to equipment or devices, including hearing aids and communication boards, that facilitate the child's functioning except when access is temporarily restricted to prevent a child from destroying or damaging the equipment or devices;
- F. faradic skin shock;
- G. totally or partially restricting a child's auditory or visual sense, not including the use of study carrels as an academic intervention;
- H. withholding water or regularly scheduled meals;
- I. denying a child access to bathroom facilities;
- J. the use of mechanical restraint without, or contrary to, a written order from a licensed physician; and
- K. any regulated intervention that:
 - (1) places a child's face down or places pressure on the child's back;
 - (2) obstructs the airway of a child or otherwise impairs breathing.

Subp. 3. **Reporting.** The district must report any use of prohibited procedures pursuant to *Minnesota Statutes*, section 626.556.

3525.0870 EMERGENCY AND NOTICE OF PEACE OFFICER INVOLVEMENT.

Subpart 1. **Definition.** "Emergency" means any situation in which the immediate use of a regulated intervention or other procedure is necessary to protect a child or other individual from physical injury or to prevent serious property damage.

Subp. 2. **District responsibility.** If a district must use a regulated intervention to respond to a child's behavior in an emergency situation, the district must:

- A. use the least intrusive intervention possible to reasonably react to the emergency situation;
- B. use the intervention for no longer than is necessary to protect the child or other individual from physical injury or to prevent serious property damage;
- C. not exceed reasonable force as defined in *Minnesota Statutes*, section 121A.582;
- D. notify the child's parent or guardian of the use of the intervention on the same day the intervention is used or in writing within two school days if district personnel are unable to provide same-day notice; and
- E. conduct an IEP team meeting when a regulated intervention is used to respond to an emergency twice within 90 days.

Subp. 3. **Notice of peace officer involvement.** If a peace officer restrains or removes a child from a classroom, school building, or school grounds during the school day, the district must notify the child's parent or guardian on the same day the child is restrained or removed or in writing within two school days if district personnel are unable to provide sameday notice.

3525.1100 STATE AND DISTRICT RESPONSIBILITY FOR TOTAL SPECIAL EDUCATION SYSTEM.

Subpart 1. **State responsibility for all educational programs for pupils children.** The Department of Education 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 Education.

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

Subp. 2. **District responsibility.** A district shall submit to the commissioner the district's prepare and maintain a TSES plan for providing instruction and related services upon request for all pupils children as required by *Minnesota Statutes*, sections 125A.03 to 125A.24. The plan may be for a single district or for the member districts of a formal special education cooperative. The plan shall be

Proposed Rules

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~~ create a revised plan. ~~The new plan must be submitted before the beginning of the next school year.~~ The plan shall include among its other provisions descriptions of the district's:

A. Child study procedures for the identification and evaluation of students children 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 children. 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:

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

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

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.~~

F. Policy describing the district's procedures for implementing the use of ~~conditional~~ regulated interventions with pupils children. 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 children with disabilities that:

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

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

[For text of unit (e), see M.R.]

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

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 child identification;

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

C. evaluation, progress reporting, and IEP planning for individual pupils children;

D. instruction or related and support services to pupils children who have an IEP;

E. parental involvement and due process;

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

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

[For text of items H to J, see M.R.]

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 child'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. These core features may present themselves in a wide variety of combinations that range from mild to severe, and the number of behavioral indicators present 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.** A multidisciplinary team shall determine that pupil child is eligible and in need of special education instruction and related services if the pupil child meets the criteria in items A and 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). The team must document that the pupil child demonstrates patterns of behavior described in at least two of these subitems, one of which must be subitem (1).

The behavioral indicators demonstrated must be atypical for the pupil's child's developmental level. The team shall document behavioral indicators 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.

Proposed Rules

[For text of subitems (1) to (3), see M.R.]

B. The team shall document and summarize in an evaluation report that ASD adversely affects a pupil's child's performance and that the pupil child is in need of special education instruction and related services. Documentation must include:

- (1) an evaluation of the pupil's child's present levels of performance and educational needs in each of the core features identified by the team in item A. In addition, the team must consider all other areas of educational concern related to the suspected disability;
- (2) observations of the pupil child in two different settings, on two different days; and
- (3) a summary of the pupil's child's developmental history and behavior patterns.

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

Subp. 5. **Implementation.** Pupils Children with various educational profiles and related clinical diagnoses may meet the criteria of ASD under subpart 3. However, a clinical or medical diagnosis is not required for a pupil child to be eligible for special education services, and even with a clinical or medical diagnosis, a pupil child must meet the criteria in subpart 3 to be eligible.

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 child 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 Children at risk.** Pupils Children at risk of being deaf-blind include pupils children who:

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

3525.1329 EMOTIONAL OR BEHAVIORAL DISORDERS.

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

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

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

[For text of subitems (1) to (3), see M.R.]

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

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

C. The combined results of prior documented interventions and the evaluation data for the pupil child 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 child's or other students' educational performance;

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

Subp. 3. **Evaluation.**

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

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

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

[For text of subitems (6) to (8), see M.R.]

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

3525.1331 DEAF AND HARD OF HEARING.

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

Subp. 2. **Criteria.** A pupil child who is deaf or hard of hearing is eligible for special education instruction and related services if the pupil child meets one of the criteria in item A and one of the criteria in item B, C, or D.

A. There is audiological documentation provided by a certified audiologist that a pupil child has one of the following:

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

B. The pupil's child's hearing loss affects educational performance as demonstrated by:

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

Proposed Rules

C. The pupil's child's hearing loss affects the use or understanding of spoken English language as documented by one or both of the following:

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

(2) the pupil child uses American Sign Language or one or more alternative or augmentative systems of communication alone or in combination with oral language as documented by parent or teacher reports and language sampling conducted by a professional with knowledge in the area of communication with persons who are deaf or hard of hearing.

D. The pupil's child's hearing loss affects the adaptive behavior required for age-appropriate social functioning as supported by:

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

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

3525.1333 DEVELOPMENTAL COGNITIVE DISABILITY.

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

Subp. 2. **Criteria.** The team shall determine that a pupil child is eligible as having a DCD and is in need of special education instruction and related services if the pupil child meets the criteria in items A and B.

A. The pupil child demonstrates below average adaptive behavior in school and home, and, if appropriate, community environments. For the purposes of this item, "below average" means:

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

(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:

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

(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 child self-report.

B. The pupil child demonstrates significantly below average general intellectual functioning 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:

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

3525.1335 OTHER HEALTH DISABILITIES.

Subpart 1. **Definition.** "Other health disability" means having limited strength, endurance, vitality, or alertness, including a heightened or diminished alertness to environmental stimuli, with respect to the educational environment that is due to a broad range of medically diagnosed chronic or acute health conditions that adversely affect a pupil's child's educational performance.

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

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

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

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

Subp. 3. **Evaluation.** The health condition results in a pattern of unsatisfactory educational progress as determined by a comprehensive evaluation documenting the required components of subpart 2, items A and B. The eligibility findings must be supported by current or existing data from items A to E:

A. an individually administered, nationally normed standardized evaluation of the pupil's child's academic performance;

B. documented, systematic interviews conducted by a licensed special education teacher with classroom teachers and the pupil's child's parent or guardian;

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

D. a review of the pupil's child's health history, including the verification of a medical diagnosis of a health condition; and

E. records review.

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

Proposed Rules

3525.1337 PHYSICALLY IMPAIRED.

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

Subp. 2. **Criteria.** A pupil child is eligible and in need of special education instruction and services if the pupil child 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 child'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, nationally normed standardized evaluation of the pupil's child's academic achievement.

3525.1339 SEVERELY MULTIPLY IMPAIRED.

Subpart 1. **Definition.** "Severely multiply impaired" means a pupil child who has severe learning and developmental problems resulting from two or more disability conditions determined by an evaluation as defined by part 3525.2710 Code of Federal Regulations, title 34, sections 300.300 to 300.306.

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

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

3525.1341 SPECIFIC LEARNING DISABILITY.

Subpart 1. **Definition.** "Specific learning disability" means a condition within the pupil affecting learning, relative to potential and disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

The disorder is:

A. manifested by interference with the acquisition, organization, storage, retrieval, manipulation, or expression of information so that the pupil child does not learn at an adequate rate for the child's age or to meet state-approved grade-level standards when provided with the usual developmental opportunities and instruction from a regular school environment; and

B. demonstrated by a significant discrepancy between a pupil's general intellectual ability and academic achievement in one or more of the following areas: oral expression, listening comprehension, mathematical calculation or mathematics reasoning, basic reading skills, reading comprehension, and written expression; and

C. B. demonstrated primarily in academic functioning, but may also affect self-esteem, career development other developmental, functional, and life adjustment skills. A specific learning disability skill areas; and may occur with, but cannot be primarily the result of: visual, hearing, or motor impairment; cognitive impairment; emotional disorders; or environmental, cultural, economic influences, or a history of an inconsistent education program limited English proficiency or a lack of appropriate instruction in reading or math.

Subp. 2. **Criteria.** A pupil has a specific learning disability child is eligible and is in need of special education and related services for a specific learning disability when the pupil child meets the criteria in items A, B, and C or in items A, B, and D. Information about each item must be sought from the parent and must be included as part of the evaluation data. The child must receive two interventions prior to evaluation as defined in Minnesota Statutes, section 125A.56. The evaluation data must confirm that the disabling effects of the pupil's child's disability occur in a variety of settings.

A. The pupil must demonstrate severe underachievement child does not achieve adequately in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving, in response to usual appropriate 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, and either:

(1) evidence of low achievement from, 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 I and Assurance of Mastery; and the child does not make adequate progress to meet age or state-approved grade-level standards in one or more of the areas listed above when using a process based on the child's response to scientific, researchbased intervention; or

(2) at least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child served through an Early Childhood Special Education program or who is out of school, a team member shall observe the child in an environment appropriate for a child of that age the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability.

The performance measures used to verify this finding must be both representative of the child's curriculum and useful for developing

Proposed Rules

instructional goals and objectives. Documentation is required to verify this finding and may include evidence of low achievement from, for example, cumulative record reviews; classwork samples; anecdotal teacher records; statewide and districtwide assessments; formal, diagnostic, and informal tests; curriculum-based evaluation results; and results from targeted support programs in general education.

B. The pupil must demonstrate a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, mathematical calculation, or mathematical reasoning. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The team shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the pupil's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the pupil's chronological age level. The child has a disorder in one or more of the basic psychological processes and includes an information processing condition that is manifested in a variety of settings by behaviors such as: inadequate or lack of expected acquisition of information; lack of organizational skills, 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.

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, 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; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; or a history of inconsistent educational programming. The child demonstrates a severe discrepancy between general intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, reading fluency, mathematics calculation, or mathematical problem solving. The demonstration of a severe discrepancy shall not be based solely on the use of standardized tests. The group shall consider these standardized test results as only one component of the eligibility criteria. The instruments used to assess the child's general intellectual ability and achievement must be individually administered and interpreted by an appropriately licensed person using standardized procedures. For initial placement, the severe discrepancy must be equal to or greater than 1.75 standard deviations below the mean of the distribution of difference scores for the general population of individuals at the child's chronological age level.

D. The child demonstrates an inadequate rate of progress. Rate of progress is measured over time through progress monitoring while using intensive scientific, research-based interventions (SRBI), which may be used prior to a referral, or as part of an evaluation for special education. A minimum of 12 data points are required from a consistent intervention implemented over at least seven school weeks in order to establish the rate of progress. Rate of progress is inadequate when:

(1) rate of improvement is minimal and continued intervention will not likely result in reaching age or state-approved grade-level standards;

(2) progress will likely not be maintained when instructional supports are removed;

(3) the child's level of performance in repeated assessments of achievement falls below the child's age or state-approved grade-level standards; and

(4) the level of achievement must be at or below the fifth percentile on one or more valid and reliable achievement tests using either state or national comparisons. Local comparison data that is valid and reliable may be used in addition to either state or national data. If local comparison data is used and differs from either state or national data, the group must provide a rationale to explain the difference.

Subp. 3. Determination of specific learning disability. In order to determine that the criteria for eligibility in subpart 2 are met, documentation must include:

A. an observation of the child in the child's learning environment, including the regular classroom setting, that documents the child's academic performance and behavior in the areas of difficulty. For a child of less than school age or out of school, a group member must observe the child in an environment appropriate to the child's age. In determining whether a child has a specific learning disability, the group of qualified professionals, as provided by *Code of Federal Regulations*, title 34, section 300.308, must:

(1) use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for a special education evaluation; or

(2) conduct an observation of academic performance in the regular classroom after the child has been referred for a special education evaluation and appropriate parental consent has been obtained; and

(3) document the relevant behavior, if any, noted during the observation and the relationship of that behavior to the child's academic

Proposed Rules

functioning;

B. a statement of whether the child has a specific learning disability;

C. the group's basis for making the determination, including that:

(1) the child has a disorder, across multiple settings, that impacts one or more of the basic psychological processes described in subpart 1 documented by information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) the child's underachievement is not primarily the result of visual, hearing, or motor impairment; developmental cognitive disabilities; emotional or behavioral disorders; environmental, cultural, or economic influences; limited English proficiency; or a lack of appropriate instruction in reading or math, verified by:

(a) data that demonstrate that prior to, or as part of, the referral process, the child was provided appropriate instruction in regular education settings delivered by qualified personnel; and

(b) data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of the child's progress during instruction, which was provided to the child's parents;

D. educationally relevant medical findings, if any;

E. whether the child meets the criteria in subpart 2, either items A, B, and C or items A, B, and D; and

F. if the child has participated in a process that assesses the child's response to SRBI, the instructional strategies used and the child-centered data collected, the documentation that the parents were notified about the state's policies regarding the amount and nature of child performance data that would be collected and the general education services that would be provided, strategies for increasing the child's rate of learning, and the parent's right to request a special education evaluation.

Subp. 4. **Verification.** Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the member must submit a separate statement presenting the member's conclusions.

The district's plan for identifying a child with a specific learning disability consistent with this part must be included with its total special education system (TSES) plan. The district must implement its interventions consistent with that plan. The plan should detail the specific SRBI approach, including timelines for progression through the model; any SRBI that is used, by content area; the parent notification and consent policies for participation in SRBI; and a district staff training plan.

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

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

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

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

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

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

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

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

(3) a pupil child is nine years of age or older and a sound is consistently in error as documented by two three-minute conversational speech samples.

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

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

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

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

(2) an analysis of a language sample or documented observation of communicative interaction indicates the pupil's child's language behavior falls below or is different from what would be expected given consideration to chronological age, developmental level, or cognitive level; and

(3) the pupil child scores 2.0 standard deviations below the mean on at least two technically adequate, norm-referenced language tests if available; or

[For text of subitem (4), see M.R.]

3525.1345 BLIND OR VISUALLY IMPAIRED.

Subpart 1. **Definition.** “Blind or visually impaired” means a medically verified visual impairment accompanied by limitations in sight that interfere with acquiring information or interaction with the environment to the extent that special education instruction and related services may be needed.

Subp. 2. **Criteria.** A pupil child is eligible as ~~having a visual disability~~ and in need of special education and related services for blindness or visual impairment when the pupil child meets one of the criteria in item A and one of the criteria in item B:

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

(1) visual acuity of 20/60 or less in the better eye with the best conventional correction;

(a) estimation of acuity is acceptable for difficult-to-test pupils children; and

(b) for pupils children not yet enrolled in kindergarten, measured acuity must be significantly deviant from what is developmentally age-appropriate;

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

B. functional evaluation of visual abilities conducted by a licensed teacher of the blind or visually impaired that determines that the pupil child:

(1) has limited ability in visually accessing program-appropriate educational media and materials including, for example, textbooks, photocopies, ~~ditto copies, chalkboards~~ black boards, white boards, computers, or environmental signs, without modification;

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

3525.1348 TRAUMATIC BRAIN INJURY (TBI).

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 pupil's child'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 child is eligible and in need of special education and related services if the pupil child meets the criterion in item A and the criteria in items B and C as documented by the information gathered according to item D:

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

3525.1350 EARLY CHILDHOOD: SPECIAL EDUCATION.

Subpart 1. **Definition.** Early childhood special education must be available to pupils children from birth to seven years of age who have a substantial delay or disorder in development or have an identifiable sensory, physical, mental, or social/emotional condition or impairment known to hinder normal development and need special education.

[For text of subs 2 and 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 children with disabilities who have a substantial delay or disorder in physical development. Developmental adapted physical education: special education instruction for pupils children 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.

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

Proposed Rules

A. The pupil child 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, emotional or behavioral disorders, deaf or hard of hearing, specific learning disability, developmental cognitive disability, severely multiply impaired, other health disability, physically impaired, visually impaired, traumatic brain injury or part 3525.1350, subpart 3.

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

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

(2) the pupil's child's development or achievement and independence in school, home, and community settings is inadequate to allow the pupil child to succeed in the regular physical education program as supported by written documentation from two or more of the following: motor and skill checklists; informal tests; criterion-referenced measures; deficits in achievement related to the defined curriculum; medical history or reports; parent and staff interviews; systematic observations; and social, emotional, and behavioral assessments.

3525.1354 TEAM OVERRIDE ON ELIGIBILITY DECISIONS.

Subpart 1. **Documentation required.** The team may determine that a pupil child is eligible for special instruction and related services because the pupil child has a disability and needs special instruction even though the pupil child 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 child's special education record according to items A, B, C, and D.

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

B. The record must indicate what objective data were used to conclude that the pupil child has a disability and is in need of 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.

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

3525.1400 FACILITIES, EQUIPMENT AND MATERIALS.

Classrooms and other facilities in which pupils children receive instruction, related services, and supplementary aids and services shall be essentially equivalent to the regular education program; provide an atmosphere that is conducive to learning; and meet the pupils' children's special physical, sensory, and emotional needs.

The necessary special equipment and instructional materials shall be supplied to provide instruction, related services, and supplementary aids and services.

3525.1550 CONTRACTED SERVICES.

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

Subp. 2. **Community-based services.** A school district may provide direct or indirect special education services by district special education staff to a pupil child attending a community-based program. A school district may contract for special education services with a community-based program if the program meets Department of Education rules.

3525.2325 EDUCATION PROGRAMS FOR K-12 PUPILS CHILDREN WITH DISABILITIES AND REGULAR STUDENTS PLACED IN CENTERS OUTSIDE THE NORMAL SCHOOL SITE 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. All children with disabilities and regular education students in kindergarten through grade 12 who are placed for care and treatment in the student's home or in any facility, center, or program must receive regular education, special education, or both.~~

A. Education services must be provided to a pupil child with a disability or regular education student who is: whenever the child or student is either prevented from attending or predicted to be absent from the normal school site for 15 or more intermittent or consecutive school days according to the placing authority, such as a medical doctor, psychologist, psychiatrist, judge, or a court-appointed authority.

~~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 courtappointed authority; or~~

~~C. healthimpaired 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

Proposed Rules

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 9545.1480 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:

B. For purposes of this part, pupils children with disabilities and regular education students are considered to be placed for care and treatment when they are placed by a placing authority other than the district in one of the following facilities by someone other than the district are considered to be placed for care and treatment:

[For text of subitems (1) to (3), see M.R.]

- (4) hospitals;
- (5) day treatment centers;
- (6) correctional facilities;
- (7) residential treatment centers; ~~and~~
- (8) mental health programs; or
- (9) any other placement for medical care, treatment, or rehabilitation.

Subp. 1a. Responsibility for provision of education services. Responsibility for provision of education services for children with disabilities placed for care and treatment is as provided by Minnesota Statutes, section 125A.15 or 125A.515. For regular education students in kindergarten through grade 12 placed for care and treatment, Minnesota Statutes, section 125A.51 or 125A.515, govern the responsibility for provision of education services.

Subp. 2. Education programs for students and pupils children with disabilities 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 without delay to the pupil child with a disability or regular education student immediately after the pupil child or student ~~is enrolled in the education~~ enters the facility or program, unless medical or other treatment considerations, as determined by the medical or treatment provider, do not allow for the prompt delivery of education services, in which case education services should begin as soon as possible. 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.

A. If a ~~regular education student~~ child with a disability has been identified as disabled and has a current IEP:

Initial due process procedures for previously identified pupils children placed for care and treatment in a short-term facility may be accomplished by telephone; however, the required written documentation, including notices, consent forms, and HEP's IEPs, must follow immediately. If the pupil child has a current IEP in the home school, the home school must give the providing agency an oral review of the IEP goals and objectives and services provided. The providing agency must contact the parents and together an agreement must be reached about continuing or modifying special education services in accordance with the current IEP goals and objectives. If agreement is not reached over the phone, the providing district shall hold a team meeting as soon as possible. At least the following people shall receive written notice to attend: the person or agency placing the pupil child, the resident district, the appropriate teachers and related services staff from the providing district, the parents, and, when appropriate, the pupil child. This meeting may be held in conjunction with a meeting called by a placing agency. A copy of the documentation, including the modified IEP, must be provided to the parents with a copy of their rights, including a response form.

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:

(1) Regular education instruction must begin immediately without delay upon enrollment in the education entry into the care and treatment facility or program, unless medical or other treatment considerations, as determined by the medical or treatment provider, do not allow for the prompt delivery of education services, in which case education services should begin as soon as possible.

[For text of subitem (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 evaluation according to ~~parts part~~ 3525.2550 and 3525.2710 *Code of Federal Regulations, title 34, sections 300.300 to 300.306*. It is not required that an appropriate 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 children with disabilities 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 child with a disability or regular education student must receive educational services immediately upon enrollment in the

Proposed Rules

education without delay after the child or student enters the facility or program, unless medical or other treatment considerations, as determined by the medical or treatment provider, do not allow for the prompt delivery of education services, in which case education services should begin as soon as possible:

A. If the student child with a disability 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 of the child with a disability can be implemented while the pupil child 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 evaluation information or the pupil's child's current IEP cannot be fully implemented while the pupil child is placed for care and treatment, the education staff must:

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

(2) call a team meeting to revise the current IEP or develop an interim IEP while the pupil child with a disability is undergoing additional 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 evaluation. An 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 evaluation must be conducted according to parts part 3525.2550 and ~~3525.2710~~ *Code of Federal Regulations*, title 34, sections 300.300 to 300.306.

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 evaluated or was 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 child with a disability leaves the facility.** If a student or pupil child with a disability has received an 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 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 child with a disability, this report must include a summary of current levels of performance, progress, and any modifications made in the pupil's child'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 child with a disability 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:

A. the instruction necessary for the student or pupil child with a disability to make progress in the appropriate grade level for the successful completion of the courses, programs, or classes the student or pupil child would have been enrolled in if the student or pupil child were not placed for care and treatment;

B. preferably a normal school day in accordance with the pupil's IEP of the child with a disability, as defined in part 3525.2810, subpart 1, item A, and *Code of Federal Regulations*, title 34, section 300.320;

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 of the child with a disability 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 children with disabilities outside of the providing school district's regular calendar is optional unless the pupil child has an extended year IEP.

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

A. The IEP developed by the team must include the provisions of parts 3525.2900 and 3525.2810 and *Code of Federal Regulations*, title 34, sections 300.320, 300.321, and 300.324, 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.

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

C. If a pupil child with a disability is placed in a residential facility outside the resident district, the providing district must provide appropriate special education services. The placement of the pupil child with a disability 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 3525.4770. 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 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 of students and children with a disability and regular education students; aid for special education.** Special education services provided to ~~pupils children with disabilities~~ and regular education students who have been placed for care and treatment are reimbursable in accordance with ~~parts 3525.0800 and 3525.1310~~ *Minnesota Statutes*, section 125A.515.

A. ~~When regular education and special education services are provided, only the special education portion shall be reimbursed with special education aid.~~

B. ~~The special education services provided to pupils in accordance with an IEP are reimbursable.~~

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

D. ~~Regular education, including screening, provided to students, pupils, and regular education students are not reimbursable with special education categorical aids.~~

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 a ~~pupil child~~ must be determined on an individual basis. Choice of specific program alternatives must be based on the ~~pupil's child's~~ current levels of performance, ~~pupil child~~ 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 child~~ 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: direct and 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 child~~ and parent or relative, or a licensed family child care setting in which the ~~pupil child~~ is placed by the parent.

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

(3) Community-based programs include licensed public or private nonsectarian child care programs other than a family child care setting, licensed public or private nonsectarian early education programs, community cultural centers, Head Start programs, and hospitals. A school district must provide direct or indirect special education services by district special education staff to a ~~pupil child~~ attending a community-based program.

3525.2340 CASE LOADS.

Subp. 4. **Case loads for schoolage educational service alternatives.**

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

(1) for ~~pupils children~~ 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, autism spectrum disorders, developmental cognitive disability: severe-profound range, or severely multiply impaired, three ~~pupils children~~;

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

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

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

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

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

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

Proposed Rules

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

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

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

B. For pupils children 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 children's IEP plans.

Subp. 5. **Case loads for early childhood program alternatives.** A teacher's case load must be adjusted downward based on pupils children's severity of disability or delay, travel time necessary to serve pupils children in more than one program alternative, and if the pupils children on the teacher's case loads are receiving services in more than one program alternative or the pupils children are involved with other agencies. The maximum number of pupils children that can be assigned to a teacher in any early childhood program alternative is:

A. birth through two years: 12 pupils children per teacher;

B. three through six years: 16 pupils children per teacher; and

C. birth through six years: 14 pupils children per teacher.

District early childhood special education (ECSE) classes must have at least one paraprofessional employed while pupils children are in attendance. The maximum number of pupils children in an ECSE classroom at any one time with a teacher and a program support assistant is eight. The maximum number of pupils children in an ECSE classroom at any one time with an early childhood team is 16.

3525.2350 MULTIDISABILITY TEAM TEACHING MODELS.

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

Subp. 2. **License requirement.** There must be a teacher on the team who is licensed in the disability area of each pupil child served by the team.

Subp. 3. **Team member responsibility.** The team member licensed in a pupil's child's disability shall be responsible for conducting the pupil's child's evaluation and participating at team meetings when an IEP is developed, reviewed, or revised. Consultation and indirect services as defined in part 3525.0210 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.

Subp. 4. **Implementation.** Pupils Children may receive instruction and related services from any or all of the team members with appropriate skills. The special education provided by each team member shall be included in the IEP.

3525.2440 SURROGATE PARENT APPOINTMENT.

The district shall appoint ~~the~~ a surrogate parent when:

A. the parent, guardian, or conservator is unknown or unavailable;

B. the pupil child is a ward of the commissioner of human services; ~~or~~

C. the child is an unaccompanied homeless youth as defined by United States Code, title 42, chapter 119, subchapter VI, part B, section 11434a; or

D. the parent requests in writing the appointment of a surrogate parent. The request may be revoked in writing at any time.

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

The district shall make reasonable efforts to ensure the appointment of a surrogate parent not more than 30 days after determining that a child needs a surrogate parent.

3525.2445 CONSULTATION WITH COUNTY SOCIAL SERVICES.

The district shall consult the county social services office before appointing the surrogate parent when a pupil child is the ward of the commissioner of human services.

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:

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

B. conflict of interest as referenced in *Code of Federal Regulations*, title 34, section ~~300.515(e)(2)~~ 300.519(d)(ii);

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

- D. failure to appear to represent the pupil child; or
- E. the pupil child 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~~ ensure that a person selected as a surrogate parent who has all of the following:

- A. is not an employee of the department, the district itself, or any other agency that is involved in the education or care of the child;
- B. has no personal or professional interest that conflicts with the interests of the child;
- C. has knowledge and skills that ensure adequate representation of the child, or such information and training shall be made available by the district, including:

- ~~A: (1) a knowledge of state and federal requirements;~~
- ~~B: (2) a knowledge of district structure and procedures;~~
- ~~C: (3) an understanding of the nature of the pupil's child's disability and needs; and~~
- ~~D: (4) an ability to effectively advocate for an appropriate educational program for the pupil child. A person otherwise qualified to be a surrogate parent is not an employee of an agency solely because the agency pays the person to serve as a surrogate parent.~~

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, street outreach programs, and other programs for homeless youth may be appointed as temporary surrogate parents until a surrogate can be appointed who meets the requirements of item A.

3525.2550 CONDUCT BEFORE EVALUATION REPORT AND TIMELINE.

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

Subp. 3. Evaluation report. An evaluation report must be completed and delivered to the child's parents within the specified evaluation timeline in subpart 2. At a minimum, the evaluation report must include:

- A. a summary of all evaluation results;
- B. documentation of whether the child has a particular category of disability or, in the case of a reevaluation, whether the child continues to have a disability;
- C. the child's present levels of performance and educational needs that derive from the disability;
- D. whether the child needs special education and related services or, in the case of a reevaluation, whether the child continues to need special education and related services; and
- E. whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general curriculum.

3525.2720 CRITERIA UPON REEVALUATION.

Upon reevaluation, a child who continues to have a disability as provided by *Code of Federal Regulations*, title 34, section 300.8, and continues to demonstrate a need for special education and related services is eligible for special education and related services.

3525.2810 DEVELOPMENT OF INDIVIDUALIZED EDUCATION PROGRAM PLAN.

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

A: "Individualized education program" or "IEP" means a written statement for each pupil child that is developed, reviewed, and revised in a meeting in accordance with ~~this part~~ *Code of Federal Regulations*, title 34, section 300.320, and that includes:

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

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

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

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

Proposed Rules

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

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

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

(8) when a pupil reaches the age of 18, unless a guardian or conservator has been appointed for the pupil by a court of competent jurisdiction, the following shall occur and be documented in the pupil's IEP:

(a) the district shall provide any notice required under this chapter to the pupil and the pupil's parents; and

(b) all other rights accorded to the parents under this chapter and Part B of IDEA 1997, *Code of Federal Regulations*, title 34, chapter 300, transfer to the pupil, even if the pupil is incarcerated in an adult or juvenile state or local correctional institution.

Beginning at least one year before the pupil reaches the age of 18, the pupil and the pupil's parents must be informed of those rights under this chapter that will transfer to the pupil at age 18;

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

(10) D. a statement of the pupil's child's need for and the specific responsibilities of a paraprofessional; and

(11) any documentation required in part 3525.2900, subpart 5.

B. "Individualized education program team" or "IEP team" means a group of individuals that must include:

(1) the parents of the pupil;

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

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

(4) an administrative designee, as defined in part 3525.0210, subpart 2, who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of pupils with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the district;

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

(6) at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the pupil, according to *Code of Federal Regulations*, title 34, section 300.344(c), including related services personnel, as appropriate; and

(7) whenever appropriate, the pupil.

Subp. 2. Development of IEP.

A. In developing each pupil's IEP, the IEP team shall consider the strengths of the pupil and the concerns of the parents for enhancing the education of the pupil, the results of the initial evaluation or most recent evaluation of the pupil, and, as appropriate, the results of the pupil's performance on any general state or districtwide assessment program.

B. The IEP team shall:

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

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

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

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

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

C. If, in considering the special factors described in items A and B *Code of Federal Regulations*, title 34, section 300.324(a), the IEP team determines the pupil child needs a particular device or service, including an intervention, accommodation, or other program modification, in order for the pupil child to receive FAPE, the IEP team must include a statement to that effect in the pupil's child's IEP.

Proposed Rules

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

Subp. 3. [See repealer.]

Subp. 4. [See repealer.]

Subp. 5. [See repealer.]

3525.2900 TRANSITION AND BEHAVIORAL INTERVENTION PLANNING.

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

A. For each pupil child, the district shall conduct an evaluation of secondary transition needs and plan appropriate services to meet the pupil's child's transition needs. The areas of evaluation and planning must be relevant to the pupil's child's needs and may include work, recreation and leisure, home living, community participation, and postsecondary training and learning opportunities. To appropriately evaluate and plan for a pupil's child's secondary transition, additional IEP team members may be necessary and may include vocational education staff members and other community agency representatives as appropriate. The district must invite the child to attend any transition planning meeting, or if the child does not attend, the district must take steps to ensure that the child's preferences and interests are considered.

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

C. Beginning not later than one year before the child reaches the age of majority, the IEP must include a statement that the child has been informed that the parents' rights will transfer to the child on reaching the age of majority.

Subp. 5. [See repealer.]

3525.3010 EDUCATIONAL PLACEMENT.

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

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

Subp. 2. **General least restrictive environment requirements.** Each district must ensure that pupils children are placed in the least restrictive environment according to part 3525.0400 and *Code of Federal Regulations*, title 34, ~~section~~ sections 300.114 to 300.552.

Subp. 3. **Nonacademic settings.** In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in *Code of Federal Regulations*, title 34, section ~~300.306~~ 300.117, each district must ensure that each pupil child participates with nondisabled students children in those services and activities to the maximum extent appropriate to the needs of that pupil child.

Subp. 4. **Educational placement.** Each district shall ensure that the parents of each pupil child are members of any group that makes decisions on the educational placement of the pupil child and that placement determinations are documented in the IEP.

3525.3100 FOLLOW-UP REVIEW REQUIREMENTS.

Pupils A child who are is discontinued from all special education services may be reinstated within 12 months. If data on the pupil's child's present levels of performance are available and an evaluation had been conducted within three years pursuant to ~~part 3525.2710~~ *Code of Federal Regulations*, title 34, sections 300.300 to 300.306, the district is not required to document two prereferral interventions or conduct a new evaluation.

3525.3600 PRIOR WRITTEN NOTICE.

When a district proposes or refuses to initiate or change the identification, evaluation, or educational placement of a pupil child, or the provision of FAPE to the pupil child, the district must serve prior written notice on the parent. The district must serve the notice on the parent within a reasonable time, and in no case less than 14 calendar days before the proposed effective date of change or evaluation. If the notice only includes a refusal of a request, it must be served on the parent within 14 calendar days of the date the request was made.

The notice must meet the requirements of *Minnesota Statutes*, section 125A.091, subdivisions 3 and 4. The notice must also:

A. inform the parents that the school district will not proceed with the initial placement and provision of services ~~as defined in part 3525.0210~~ without prior written consent of the pupil's child's parents;

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

Proposed Rules

C. inform the parents that if they refuse to provide prior written consent for initial evaluation or initial placement or object in writing to any proposal, or if the district refuses to initiate or change the identification, evaluation, or educational placement or the provision of a free appropriate public education to the ~~pupil~~ child, the parent may request a conciliation conference.

The district must provide the parents with a copy of the proposed individual educational program plan as described in part 3525.2810, subpart 1, item A, and Code of Federal Regulations, title 34, section 300.320, whenever the district proposes to initiate or change the content of the IEP.

3525.3700 CONCILIATION CONFERENCE.

Subpart 1. ~~When a Conciliation conference must be offered.~~ “Conciliation conference” means a meeting held for the purpose of resolving a dispute between the parents and district over identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education (FAPE) to a child with a disability. A conciliation conference must have in attendance, at a minimum, a parent and a district staff person with authority to resolve the dispute. Parents must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parents object to any proposal or refusal of which the parents are notified under *Minnesota Statutes*, section 125A.091, subdivision 2. If the parent refuses efforts by the district to conciliate the dispute with the district, the district is deemed to have satisfied its requirement to offer a conciliation conference.

[For text of subs 1a and 3, see M.R.]

3525.3900 INITIATING A DUE PROCESS HEARING.

Subpart 1. **Request to be filed with department.** A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A request for a due process hearing must be in writing and filed with the department and a copy sent to the other party. The due process hearing request must allege a violation that occurred not more than two years before the date the parent or district knew or should have known about the action that provides the basis for the due process hearing complaint, unless the district specifically misrepresented that it had resolved the alleged violation or if the district withheld information required to be given to the parent. A school district administrator receiving a request for a due process hearing must immediately file the request with the department and in no case more than two business days following receipt of the request. If the request for a due process hearing is filed directly with the department, the department must notify the district of the request immediately and in no case more than two business days following receipt of the request. The department must not deny a request for hearing if it is incomplete. When a district is notified of a due process hearing request it must serve notice on the parent, within two business days, which includes the federally required procedural safeguards notice and the ~~information notice required under subpart 3, item J~~ upon hearing request, if it has not already done so as part of the pending dispute.

Subp. 2. **Parent request for hearing.** A parent request for hearing must include:

- A. a statement indicating the parents request a hearing;
- B. the name and address of the child involved; in the case of a homeless child, the available contact information for the child and the name and address of the school the child is attending;
- C. the name, address, and telephone number, if available, of the parent;
- D. the name and address of the school the child is attending at the time of the request;
- E. the name or number of the school district of the parent’s residence;
- F. a description of the nature of the problem about the provision of special education services to the ~~student~~ child, including facts relating to the problem; and
- G. a proposed resolution of the problem to the extent known and available to the parents at the time of the request.

Subp. 3. [See repealer.]

Subp. 4. ~~Requirements of basic procedures and safeguards~~ **District request for hearing and notice required upon hearing request.** The statement of the basic procedures and safeguards in subpart 3, item J, A district must serve written notice of hearing on the parents and file it with the department in order to initiate a hearing. In addition to the requirements in subpart 2, a district request for hearing must include a copy of the prior written notice, the federally required procedural safeguards notice, and the notice required upon hearing request which must include:

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

C. a statement that the parent will receive notice of the time, date, and place of the evidentiary hearing from the hearing officer at least ten calendar days in advance of the evidentiary hearing. This statement must also state that, ~~with the exception of an expedited hearing,~~ the evidentiary hearing must be held ~~within 30 calendar days from the date the hearing request was filed with the department,~~ at a location within the district responsible for ensuring a free appropriate public education is provided to the ~~student~~ child;

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

Proposed Rules

G. a statement that, with the exception of an expedited hearing for which a decision must be rendered within ten days, 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 date the hearing request was filed with the department following the expiration of the 30-day resolution period or following the date of mutual written waiver by both parties to the resolution meeting and that the proposed action or refusal will be upheld only upon showing by the school district by a preponderance of the evidence;

H. a statement that the parent or district may appeal a decision of the hearing officer to the Minnesota Court of Appeals within 60 calendar days of receipt of the decision or to the United States District Court for the District of Minnesota within 90 calendar days;

I. a statement that unless the district and parents agree otherwise, the pupil child shall not be denied initial admission to school and the pupil's child's education program shall not be changed;

J. a statement that the parents have the burden of proving, by a preponderance of the evidence, that services for which the parents are paying or have paid, and for which the parents are seeking public funds, are appropriate for the pupil. This statement must also indicate that in order for parents to prevail, the hearing officer must have found that the district has failed to provide a free appropriate public education in the least restrictive environment;

K. a statement that the parents may choose to have the pupil child, who is the subject of the hearing, present and that they may open the evidentiary hearing to the public;

L. ~~K.~~ a statement that the department will provide the parents with a written verbatim record of the hearing, at no cost, as well as the findings of fact and decision;

~~M. L.~~ a statement that parents prevailing at a hearing may be entitled to reasonable attorney fees at the discretion of the court; and

~~N. M.~~ a statement that the hearing officer may apply a statute of limitations that may limit the complaints that will be heard must not consider violations that occurred more than two years before the date the parent or district knew or should have known about the alleged violation unless the district specifically misrepresented that it had resolved the alleged violation or withheld required information from the parent.

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

3525.4010 HEARING OFFICERS.

Subpart 1. **Criteria for selection.** An individual must meet, at a minimum, the following criteria to be placed on the department's list of hearing officers. The individual must:

A. have at least five years of experience practicing law and hold a current license to practice law in the state of Minnesota; ~~and~~

B. ~~have litigation experience and an understanding of administrative law~~ knowledge of and ability to understand the provisions of the relevant state and federal law, and legal interpretations of the relevant law by federal and state courts; and

C. ~~have the knowledge and ability to conduct hearings and render written decisions in accordance with appropriate, standard legal practice; but~~

D. must not be an employee of the department or the district that is involved in the education or care of the child, nor have a personal or professional interest that conflicts with that individual's objectivity in the hearing.

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

Subp. 3. **Evaluation.** The department will collect and maintain data on the hearing system which must include, at a minimum: the number of hearing requests, the method of resolving hearings, and participant evaluation of the process and outcome and any data the federal special education agency, OSEP, requires that the department report in its annual performance report.

3525.4110 PREHEARING CONFERENCE.

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

Subp. 2. **Purpose.** The hearing officer has the following duties at a prehearing conference:

A. The hearing officer must establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition including, but not limited to:

(1) informing the parties of their rights should the dispute proceed;

(2) ensuring parents have been provided access to or copies of all education records and ensuring all required notices, information on the pupil's child's educational progress, and any information requested by the hearing officer has been shared between the parties with copies provided to the hearing officer;

[For text of subitems (3) to (5), see M.R.]

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

C. The hearing officer must set a scheduling order for the hearing and for any additional prehearing activities including requests for extensions to the 45-day timeline in which to dispose of the matter. The 45-day timeline for the due process hearing starts the day after one of the following events:

(1) both parties agree in writing to waive the resolution meeting;

Proposed Rules

(2) after either mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; or

(3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or the district withdraws from the mediation process.

A hearing officer may ~~only~~ grant an extension for a period of up to 30 calendar days if the requesting party shows good cause on the record. Extensions may last longer than 30 calendar days if both parties agree and the hearing officer approves. All written orders granting or denying motions must be filed with the department. All orders granting or denying motions to extend the 45-day timeline must be in writing. The hearing officer may require an independent education evaluation be conducted at district expense.

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

E. If the district has not resolved the due process complaint to the satisfaction of the parent during the resolution period, the due process hearing may occur. If the district fails to hold the resolution meeting under part 3525.3900 within 15 days of receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

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

3525.4420 DECISIONS OF HEARING OFFICER.

Subpart 1. Basis of decision. A hearing officer's determination of whether a child received FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that the child did not receive FAPE only if the procedural inadequacies:

A. impeded the child's rights to FAPE;

B. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of FAPE to the parent's child; or

C. caused a deprivation of educational benefit to the child.

Subp. 2. Form of decision. The hearing officer must issue a written decision or order after the hearing and serve the decision or order on all parties. This order must include information detailing the right to appeal the decision and the time in which to do so. The hearing officer must maintain the hearing record until the date of the final decision or order and send it to the department within one week of the issuance of the final decision or order. The record must include all pleadings, motions and orders; evidence offered or considered; offers of proof, objections, and rulings thereon; the hearing officer's final decision or order; all memoranda or data submitted by any party in connection with the case; and the transcripts of all proceedings. The hearing officer's decision is final on the date the decision is issued.

A decision must:

A. be in writing;

B. state the controlling and material facts to which the law is applied;

C. state the conclusions of law applied to the facts; and

D. be based on local standards, state statute, the rules of the department, and federal law. A summary disposition based upon stipulation, settlement, or withdrawal of a hearing request need not contain extensive findings or conclusions. An order, to be treated as a consent decree approved by the hearing officer, must expressly state it is a consent order.

3525.4700 ENFORCEMENT AND APPEALS.

If the district fails to implement the hearing officer's decision, the parent has the right to bring the failure to the attention of the department through the special education complaint process. The department must monitor final orders and ensure they are enforced. In accordance with *Minnesota Statutes*, section 127A.42, the commissioner may impose sanctions necessary to correct any failure. Once the hearing officer has issued a final decision, the hearing officer lacks authority to amend the decision except for clerical or mathematical errors. The parent or district may seek review of the hearing officer's decision in the Minnesota Court of Appeals within 60 calendar days or in the federal District Court, ~~consistent with federal law. A party must appeal to the Minnesota Court of Appeals within 60 90~~ calendar days of receiving the hearing officer's the decision.

3525.4750 EXPEDITED HEARINGS, WHO MAY REQUEST.

Subpart 1. Parent request for a hearing. A parent of a ~~pupil~~ child with a disability may request an expedited due process hearing if the ~~pupil's child's~~ parent disagrees:

A. with the determination that the ~~pupil's child's~~ behavior subject to disciplinary action was not a manifestation of the ~~pupil's child's~~ disability;

B. with any decision regarding a change of the ~~pupil's child's~~ placement to an interim alternative educational setting for a weapon, controlled substance, or drug violation; or

C. with any decision regarding a change of the ~~pupil's child's~~ placement under *Code of Federal Regulations*, title 34, sections 300.520 to 300.528, that is based upon a district contention that the move is for disciplinary or safety reasons.

Proposed Rules

Subp. 2. **Local education agency request for a hearing.** The local education agency may request an expedited hearing if school personnel maintain that the current placement of the pupil child is substantially likely to result in injury to the pupil child or to others.
[For text of subp 3, see M.R.]

3525.4770 EXPEDITED HEARINGS, TIMELINES.

Subpart 1. **When parents request hearing.** When requesting an expedited hearing the parents shall provide the district and department with: the information required by part 3525.3900, subpart 2. In addition, the parents should describe

- ~~A. a statement indicating the parents request an expedited hearing;~~
- ~~B. the name and address of the child involved;~~
- ~~C. the name, address, and telephone number, if available, of the parent;~~
- ~~D. the name of the school the child is attending at the time of the request;~~
- ~~E. the name or number of the school district of the parent's residence;~~
- ~~F. a description of the nature of the problem of the child relating to the manifestation determination, interim placement, or proposed interim placement, including facts relating to the problem; and~~
- ~~G. a proposed resolution of the problem to the extent known and available to the parents at the time.~~

~~The parent's right to an expedited hearing must not be denied or delayed for failure to provide the notice required here.~~

~~Immediately upon the district's receipt of the request for an expedited hearing or upon the initiation of an expedited hearing, the district shall serve the parents with a written notice of rights and procedures relative to the hearing, including the availability of free or lowcost legal services.~~

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

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

- ~~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. the information required by part 3525.3900, subpart 4.

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

Subp. 8. **Decision.** A written decision for an expedited hearing shall be rendered by the hearing officer in ten calendar days from the date the hearing was requested. An extension of up to five calendar 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 sections~~ 300.514 and 300.518. All regulations in this chapter apply to expedited due process hearings to the extent not modified by this part.

REPEALER. Minnesota Rules, parts 3525.0210, subparts 2, 3, 5, 6, 7, 8, 9, 13, 17, 18, 26, 29, 30, 36, 38, 46, and 47; 3525.0800, subparts 1, 3, 4, 6, 7, 8, and 9; 3525.2435; 3525.2710; 3525.2810, subparts 3, 4, and 5; 3525.2900, subpart 5; and 3525.3900, subpart 3, are repealed.

Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Department of Natural Resources

Adopted Permanent Rules Relating to Ecological Services

The rules proposed and published at *State Register*, Volume 31, Number 44, pages 1476-1496, April 30, 2007 (31 SR 1476), are adopted with the following modifications:

6136.0550 RESTRICTED USES AND ACTS.

Subpart 1. **General restrictions.** The following activities are prohibited in scientific and natural areas unless specifically authorized by written permit under subpart 5 or commissioner's designation order under subpart 6:

L. private events or group activities, including orienteering, geo-caching, and athletic or social events, which are advertised or organized for purposes other than nature observation, education, or research; ~~including orienteering, geocaching, and athletic or social events.~~

6136.0600 PENALTIES.

A person who violates part 6136.0400 or 6136.0550 is guilty of a petty misdemeanor and shall be punished by a fine of not more than \$300 per violation.

6238.0200 FALCONRY, RAPTOR, AND PROPAGATION PERMITS.

Subp. 1a. **Raptor permit requirements.** The commissioner may issue raptor permits to nonresidents. A nonresident must have a valid permit or other written documentation that authorizes the person to practice falconry in the country, state, province, or territory of the person's residence to be eligible for a raptor permit. A nonresident may not take, possess, or transport raptors or their eggs without a raptor permit, except as provided by subpart 2. Raptor permits may include conditions to prevent depletion of wild bird populations, including, but not limited to:

C. limits on the geographical area ~~that~~ in which raptors may be taken; and

6238.0400 RESTRICTIONS ON TAKING RAPTOR.

Subp. 6. **Raptors taken outside Minnesota.** Residents who obtain ~~raptors~~ a raptor outside this state must provide proof of lawful possession by submitting Federal Form 3-186A to the commissioner within five days after the raptor is brought into Minnesota.

Commissioners' Orders

Various agency commissioners are authorized to issue "commissioner's orders" on specified activities governed by their agency's enabling laws. See the *Minnesota Statutes* governing each agency to determine the specific applicable statutes. Commissioners' orders are approved by assistant attorneys general as to form and execution and published in the *State Register*. These commissioners orders are compiled in the year-end subject matter index for each volume of the *State Register*.

Department of Natural Resources

Designation of Infested Waters

Order No. INF-07-001

Pursuant to the provisions of *Minnesota Statutes*, section 84D.03, subdivision 1 the following described waters in the state meet the criteria established for designating infested waters. A lake in more than one county is listed under the county corresponding to its protected waters inventory number, but the designation applies to the entire lake. Lake Superior and designated portions of rivers that flow through more than one county are listed under the heading Multiple Counties. Ponds and wetlands that are not on the protected waters inventory are listed with "none" in the number column. Rivers and streams on the protected waters inventory are listed without a number in the number column.

Waters infested with brittle naiad.

The following water bodies are infested with brittle naiad (*Najas minor*).

Name	DNR Protected Waters Inventory Number
Dakota County	
Lac Lavon	19-0446

Waters infested with Brazillian elodea.

The following water bodies are infested with Brazillian elodea (*Egeria densa*).

Name	DNR Protected Waters Inventory Number
Hennepin County	
Powderhorn Lake	27-0014

Waters infested with Eurasian water milfoil.

The following water bodies are infested with Eurasian water milfoil (*Myriophyllum spicatum*) or its hybrids.

Name	DNR Protected Waters Inventory Number
Anoka County	
Cenaiko Lake	02-0654
Centerville Lake	02-0006
Coon Lake	02-0042
Crooked Lake	02-0084
Lake George	02-0091
Otter Lake	02-0003
Peltier Lake	02-0004
Unnamed lake (in Springbrook Nature Center)	02-0688
<u>Blue Earth County</u>	
Lura Lake	07-0079
<u>Carver County</u>	
Lake Ann	10-0012
Auburn Lake	10-0044
Bavaria Lake	10-0019
Burandt Lake	10-0084

Commissioner's Orders

Eagle Lake	10-0121
Firemen's Lake	10-0226
Lotus Lake	10-0006
Lucy Lake	10-0007
Lake Minnewashta	10-0009
Parley Lake	10-0042
Pierson Lake	10-0053
Riley Lake	10-0002
Schutz Lake	10-0018
Steiger Lake	10-0045
Stone Lake	10-0056
Susan Lake	10-0013
Lake Virginia	10-0015
Lake Waconia	10-0059
Wasserman Lake	10-0048
Lake Zumbra	10-0041

Cass County

Leech Lake	11-0203
------------	---------

Chisago County

Ellen Lake	13-0047
Fish Lake	13-0068
Green Lake	13-0041
North Lindstrom	13-0035
Rush Lake	13-0069

Crow Wing County

Bay Lake	18-0034
Kimball Lake	18-0361
Ossawinnamakee Lake	18-0352
Ripple River, between Bay Lake and Tame Fish Lake	
Ruth Lake	18-0212

Dakota County

Crystal Lake	19-0027
Early Lake	19-0033
Keller Lake	19-0025
Lac Lavon	19-0446
Lake Marion	19-0026
Quarry Lake	19-0128
Schultz Lake	19-0075
Sunset Pond	19-0451
Twin Lakes	19-0028
Unnamed pond in Valley Park	19-0348

Douglas County

Oscar Lake	21-0257
------------	---------

Hennepin County

Arbor Lake	none
(located in the south 1/2 of the SW 1/4 of Section 23, Township 119N Range 22W)	

Commissioner's Orders

Arbor Lake - North (located in the NW 1/4 of the SW 1/4 of Section 23, Township 119N Range 22W)	none
Arbor Lake - West (located in the SW 1/4 of Section 23, Township 119N Range 22W; DOW # 27-1130)	none
Arrowhead Lake	27-0045
Bass Lake	27-0098
Brownie Lake	27-0038
Bryant Lake	27-0067
Bush Lake	27-0047
Lake Calhoun	27-0031
Cedar Lake	27-0039
Christmas Lake	27-0137
Dutch Lake	27-0181
Eagle Lake	27-0111
Fish Lake	27-0118
Forest Lake	27-0139
Galpin Lake	27-0144
Gleason Lake	27-0095
Lake Harriet	27-0016
Hiawatha Lake	27-0018
Lake Independence	27-0176
Lake of the Isles	27-0040
Lakewood Cemetery	27-0017
Libbs Lake	27-0085
Little Long Lake	27-0179
Long Lake	27-0160
Medicine Lake	27-0104
Minnehaha Creek	
Lake Minnetonka	27-0133
Mitchell Lake	27-0070
Niccum's Pond (located in the NW 1/4 of the SW 1/4 of Section 10, Township 117N Range 24W)	none
Lake Nokomis	27-0019
Parker's Lake	27-0107
Peavy Lake	27-0138
Lake Rebecca	27-0192
Rice Lake	27-0116
Round Lake	27-0071
Lake Sarah	27-0191
Schmidt Lake	27-0102
Snelling Lake	27-0001
Swan Lake (located in the NW 1/4 of the NW 1/4 of Section 4, Township 117N Range 23W)	none
Tanager Lake	27-0141
Twin Lake	27-0042
Unnamed wetland	27-0900
Whaletail Lake	27-0184
Wirth Lake	27-0037
Wolfe Lake	27-0664

Commissioner's Orders

<u>Isanti County</u>	
Green Lake	30-0136
Long Lake	30-0072
Spectacle Lake	30-0135
<u>Itasca County</u>	
Ice Lake	31-0372
McKinney Lake	31-0370
North Twin Lake	31-0190
<u>Kanabec County</u>	
Knife Lake	33-0028
<u>Kandiyohi County</u>	
Green	34-0079
Norway	34-0251
<u>Le Sueur County</u>	
East Jefferson Lake	40-0092
German Lake	40-0063
<u>Meeker County</u>	
Lake Manuella	47-0050
Ripley Lake	47-0134
Stella Lake	47-0068
Lake Washington	47-0046
Wolf Lake	47-0016
<u>Mille Lacs County</u>	
Lake Mille Lacs	48-0002
Tributaries to Lake Mille Lacs, from their mouth upstream to the first public road	
<u>Morrison County</u>	
Lake Alexander	49-0079
<u>Olmsted County</u>	
George Lake	55-0008
<u>Pine County</u>	
Cross Lake	58-0119
Pokegama Lake	58-0142
Sand Lake	58-0081
Snake River, between Lake Pokegama and Cross Lake	
Unnamed gravel pit, (located in S 1/2 of Section 14, Township 41, Range 21W)	none
<u>Pope County</u>	
Gilchrist Lake	61-0072
Lake Minnewaska	61-0130
<u>Polk County</u>	
Union Lake	60-0217

Commissioner's Orders

Ramsey County

Bald Eagle Lake	62-0002
Beaver Lake	62-0016
Birch Lake	62-0024
Lake Gervais	62-0007
Island Lake	62-0075
Keller Lake	62-0010
Kohlmans Lake	62-0006
Loeb Lake	62-0231
McCarron Lake	62-0054
Lake Owasso	62-0056
Phalen Lake	62-0013
Pond Six	62-0271
Pond Three	none
(located in the SE 1/4 of the NE 1/4 of Section 4, Township 28N Range 22W)	
Round Lake	62-0012
Silver Lake	62-0001
Snail Lake	62-0073
Spoon Creek, between Keller and Phalen lakes	
Sucker Lake	62-0028
Turtle Lake	62-0061
Lake Vadnais	62-0038
Lake Wabasso	62-0082

Rice County

Cedar Lake	66-0052
------------	---------

St. Louis County

Gilbert Pit Lake	69-1306
Horseshoe Lake	69-0503

Scott County

Cate's Lake	70-0018
Lower Prior Lake	70-0026
McMahon Lake	70-0050
O'Dowd Lake	70-0095
Thole Lake	70-0120
Upper Prior Lake	70-0072

Sherburne County

Big Lake	71-0082
Eagle Lake	71-0067
Little Elk Lake	71-0055

Stearns County

Unnamed wetland along the Clearwater River	73-0312
--	---------

Todd County

Little Birch	77-0089
Sauk Lake	77-0150

Waseca County

Clear Lake	81-0014
------------	---------

Commissioner's Orders

Washington County

Big Marine Lake	82-0052
Bone Lake	82-0054
Camp Galilee Lake (DOW# 82-0502)	none
Clear Lake	82-0163
Lake Elmo	82-0106
Long Lake	82-0118
Mud Lake	82-0168
Powers Lake	82-0092
St. Croix River	
Sunset Lake	82-0153
White Bear Lake	82-0167
Wilmes Lake	82-0090

Winona County

Winona Lake	85-0011
-------------	---------

Wright County

Augusta Lake	86-0284
Beebe Lake	86-0023
Buffalo Lake	86-0090
Clearwater Lake	86-0252
Clearwater River, downstream of Clearwater Lake	
Deer Lake	86-0107
Emma Lake	86-0188
Fish Lake	86-0183
French Lake	86-0273
Goose Lake	86-0108
Howard Lake	86-0199
Indian Lake	86-0223
Lake Mary	86-0156
Little Mary Lake	86-0139
Maple Lake	86-0134
Mink Lake	86-0088
Little Waverly Lake	86-0106
Lake Pulaski	86-0053
Ramsey Lake	86-0120
Rock Lake	86-0182
Sugar Lake	86-0233
Waverly Lake	86-0114
Weigand Lake	86-0242

Multiple Counties

Mississippi River, downstream of St. Anthony Falls	
Lake Superior	16-0001

Waters infested with flowering rush.

The following water bodies are infested with flowering rush (*Butomus umbellatus*).

Name	DNR Protected Waters Inventory Number
<u>Anoka County</u>	
Unnamed wetland in the NE 1/2 of the NE 1/4 of S33, T31N, R22W	none

Commissioner's Orders

Becker County

Detroit Lake	3-0381
Curfman Lake (Deadshot Bay)	3-0363
Melissa Lake	3-0475
Muskrat Lake	3-0360
Pelican River, from Detroit Lake to Muskrat Lake	
Sallie Lake	3-0359

Dakota County

Unnamed lake	19-0064
--------------	---------

Itasca County

Hart Lake	31-0020
North Twin Lake	31-0190
South Twin Lake	31-0191

Rice County

Cannon Lake	66-0008
Cannon River, from Wells Lake to the confluence with the Straight River	
Wells Lake	66-0010

Todd County

Sauk River, from Juergens Lake to Mud Lake	
--	--

Washington County

Forest Lake	82-0159
-------------	---------

Waters infested with New Zealand mudsnail.

The following water bodies are infested with New Zealand mudsnail (*Potamopyrgus antipodarum*).

Name	DNR Protected Waters Inventory Number
<u>Multiple Counties</u>	
St. Louis River, downstream of the Fond du Lac dam	
Lake Superior	16-0001

Waters infested with round goby.

The following water bodies are infested with round goby (*Neogobius melanostomus*).

Name	DNR Protected Waters Inventory Number
<u>Multiple Counties</u>	
St. Louis River, downstream of the Fond du Lac dam	
Lake Superior	16-0001

Commissioner's Orders

Waters infested with ruffe.

The following water bodies are infested with ruffe (*Gymnocephalus cernuus*).

Name	DNR Protected Waters Inventory Number
<u>Multiple Counties</u>	
St. Louis River, downstream of the Fond du Lac dam	
Lake Superior	16-0001

Waters infested with spiny water flea.

The following water bodies are infested with spiny water flea (*Bythotrephes cederstroemi*).

Name	DNR Protected Waters Inventory Number
<u>Cook County</u>	
Caribou Lake (in the Boundary Waters Canoe Area, just west of Pine Lake)	16-0141
Flour Lake	16-0147
Greenwood Lake	16-0077
Gunflint Lake	16-0356
McFarland Lake	16-0027
Pine Lake	16-0041
Lake Saganaga	16-0633

Lake of the Woods County

Baudette River, from Highway 11 downstream to the Rainy River	
Hooper Creek, downstream of State Highway 172	
Johnson Creek, from the Rainy River upstream to the first road crossing	
Lake of the Woods, including the portions of Zipple Bay to Zipple Creek in Sections 9 and 10, Township 162 North, Range 33 West, and to Bostic Creek at County Highway 8	39-0002
Miller Creek, downstream of State Highway 172	
Rapid River, downstream of Highway 11 to Clementson Bay of the Rainy River	
Sensky Creek, downstream of State Highway 172	
Silver Creek, downstream of Highway 11	
Wabonica Creek, downstream of State Highway 172	
Winter Road River, downstream of State Highway 172	

Koochiching County

Big Fork River, from the public water access on Highway 11 downstream to the Rainy River	
Black River, the south branch downstream of Highway 11 and the west branch downstream of Highway 147	
Little Fork River, from 100 feet upstream of Highway 11 downstream to the Rainy River	

St. Louis County

Ash River, downstream of the northern section line of Section 8, Township 68 North, Range 19 West	
Crane Lake	69-0616

Commissioner's Orders

Fish Lake	69-0491
Island Lake	69-0372
Kabetogama Lake	690845
Little Vermilion Lake	690608
Namakan Lake	690693
Rainy Lake	690694
Sand Point Lake	690617

Multiple Counties

Lake Superior	160001
Cloquet River, from Island Lake to the St. Louis River	
Rainy River, from Rainy Lake to Lake of the Woods, including Baudette Bay/River up to County Highway 35 and Clementson Bay up to the rapids	
St. Louis River, downstream of the Cloquet River	
Warroad River, from State Highway 11 downstream to Lake of the Woods	

Waters infested with white perch.

The following water bodies are infested with white perch (*Morone americana*).

Name	DNR Protected Waters Inventory Number
<u>Multiple Counties</u>	
St. Louis River, downstream of the Fond du Lac dam	
Lake Superior	16-0001

Waters infested with zebra mussels.

The following water bodies are infested with zebra mussel (*Dreissena* spp.).

Name	DNR Protected Waters Inventory Number
Benton County	
Little Rock Channel	05-0012
Little Rock Lake	05-0013
Crow Wing County	
Black Bear Lake	18-0140
Boom Lake	18-0529
Half-Moon Lake	18-0238
Little Rabbit Lake	18-0139
Miller Lake	18-0133
Ossawinnamakee Lake	18-0352
Pelican Brook, from the source at Ossawinnamakee Lake to the Pine River	
Pickerel Lake	18-0232
Pine River, from the mouth of Pelican Brook to the Mississippi River	
Rice Lake	18-0145
Unnamed wetland	18-0235
Unnamed wetland (located in the NE 1/4 of the SW 1/4 of Section 3, Township 135N Range 27W)	none
Unnamed wetland	none

Commissioner's Orders

(located in the NE 1/4 of the SE 1/4 of
Section 2, Township 46N Range 30W)

Unnamed wetland none

(located in the NE 1/4 of the SW 1/4 of Section 2,
Township 46N Range 30W)

Unnamed wetland none

(located in the NE 1/4 of the NE 1/4 of Section 33,
Township 135N Range 27W)

Unnamed wetland none

(located in the NW 1/4 of the NE 1/4 of Section 33
of Township 46N Range 30W)

Mille Lacs County

Lake Mille Lacs 48-0002

Ogechie Lake 48-0014

Onamia Lake 48-0009

Shakopee Lake 48-0012

Tributaries to Lake Mille Lacs, from their mouth
upstream to the first public road

Olmsted County

Lake Zumbro 55-0004

Ramsey County

Charlie Lake 62-0062

Pleasant Lake 62-0046

Sucker Lake 62-0028

Lake Vadnais 62-0038

Washington County

St. Croix River, downstream of the St. Croix Boomsite
Recreation Area, at river mile 25.4

Wright County

Fish Lake 86-0183

Multiple Counties

Mississippi River, from the mouth of the
Pine River in Crow Wing County to the
Minnesota – Iowa border

Rum River

St. Louis River, downstream of the Fond du Lac dam

Lake Superior 160001

Zumbro River, downstream of Lake Zumbro

NOW THEREFORE, IT IS HEREBY ORDERED that the waters described above are designated as infested waters. This list of infested waters supercedes all designations previously done through rulemaking.

Dated: October 4, 2007

Mark Holsten, Commissioner
Department of Natural Resources

Revenue Notices

The Department of Revenue began issuing Revenue Notices in July of 1991. Revenue Notices are statements of policy made by the department that provide interpretation, detail, or supplementary information concerning a particular statute, rule, or departmental practice. The authority to issue Revenue Notices is found in *Minnesota Statutes*, Section 270C.07.

KEY: Underlining indicates additions to existing language. ~~Strikeouts~~ indicate deletions from existing language.

Department of Revenue

Revenue Notice # 07-12: Sales and Use Tax – Charitable Organization Exemption – Exempt Status Revocation After Adverse Property Tax Exemption Determination

Background

Minnesota Statutes §297A.70, subd. 4(a)(1) exempts certain sales to nonprofit organizations that are organized and operated exclusively for charitable purposes if the item purchased is used in the performance of its charitable function. To purchase items without paying sales tax, the organization must apply to the department for an exempt status number. This Revenue Notice explains the department's position when a nonprofit organization that has been given an exempt status number as a charitable organization for sales and use tax purposes is found not to be an exempt charitable organization for property tax purposes.

Department Position

As set out in *Mayo Foundation v. Commissioner of Revenue*, 306 Minn. 25, 236 N.W.2d 767 (1975) and *North Star Research Institute v. County of Hennepin*, 306 Minn. 1, 236 N.W.2d 754 (1975), the Minnesota courts have established the identical test for both property tax and sales tax purposes to determine whether a nonprofit organization qualifies as an exempt charitable organization. Therefore, if there is a final judicial determination that a nonprofit organization has failed to qualify as a charitable organization for property tax purposes it will also not qualify as an exempt charitable organization for sales tax purposes. The department will initiate revocation of an exempt status number that may have been given to the organization.

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.

Now That's the Way You Like It !

You will quickly find what you need when you SUBSCRIBE and use our LINKS. You receive MORE with a subscription to the *State Register*. Open the *State Register* and click on Bookmarks in the upper right corner. You also receive ALL the current rules, with an INDEX, and previous years' indices. And you receive a summarized "Contracts & Grants" section of Bids still open. Subscriptions cost \$180 a year (an \$80 savings). Here's what you'll get:

Official Notices

- WORD SEARCH Capability
- Early delivery, on Friday
- Indexes to Vols. 30, 29, 28 and 27
- LINKS, LINKS, LINKS
- “Contracts & Grants” Open for Bid
- E-mailed to you . . . its so easy
- Updates to Index to Vol. 31
- Easy Access to *State Register* Archives

It's all E-mailed to you, at end-of-day on Friday, instead of waiting for the non-subscriber's issue released on Monday. Contact Cathy Hoekstra, our subscriptions manager, at (651) 297-8777, or **Fax:** (651) 297-8260, or **E-mail:** cathy.hoekstra@state.mn.us

Comments will be accepted until 5 p.m., Tuesday, November 13, 2007. At the close of the public comment period, the Council will prepare a hearing summary. To request a copy of the hearing summary, call the Data Center at (651) 602-1140, or (651) 291-0904 (TTY).

Department of Natural Resources Division of Ecological Resources Notice of Regulations Applicable to Sport Gillnetting at Infested Waters Containing Spiny Waterfleas

NOTICE IS HEREBY GIVEN by the Minnesota Department of Natural Resources that, during the 2007 Sport Gillnet season for whitefish and tullibees there will be new regulations in effect at lakes that have been designated as infested with spiny waterfleas. As authorized by *Minnesota Rules*, part 6216.0400, subpart 2, the Minnesota Department of Natural Resources is requiring that all sport gillnets and related gear placed in the following infested waters may not be used in other waters open to sport gill netting: Greenwood Lake in Cook County; Lake of the Woods in Lake of the Woods and Roseau Counties; Namakan and Sand Point lakes in St. Louis County; and Rainy Lake in Koochiching and St. Louis Counties.

Dated: October 9, 2007

Mark Holsten, Commissioner
Department of Natural Resources

Office of the Secretary of State Elections Division Notice of Publication of Open Appointments Annual Compilation

NOTICE IS HEREBY GIVEN that the Office of the Secretary of State has published the Fiscal Year 2007 *Open Appointments Annual Compilation and Statistical Report*. The full publication is available on the OSS website at:

<http://www.sos.state.mn.us/home/index.asp?page=360>.

Vacancies are published one time per month. Current vacancies can be found on the OSS website at:

<http://www.sos.state.mn.us/home/index.asp?page=308>.

You may join our e-mail list-serve by visiting the OSS website at:

<http://www.sos.state.mn.us/home/index.asp?page=20>

or submitting your e-mail address to: open.appointments@state.mn.us.

For more information contact Nancy Breems at (651) 297-5845.

State Grants & Loans

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

Minnesota Department of Employment and Economic Development (DEED) Announcement of Availability of “First” Grants

The Minnesota Department of Employment and Economic Development (DEED) is soliciting proposals from organizations that will convene regional leaders to develop strategies to increase a region’s economic competitiveness. “Framework for Integrated Regional Strategies” (FIRST) grants will be awarded to a regional convener to create or enhance sustainable collaborations that devise market-driven strategies for education, talent and skills development, and economic development.

Approximately \$50,000 per region is available to fund up to eight FIRST grants. The grant recipients will act as conveners of “self-identified” regional collaborations. The convener (grant recipient) can be any local or regional entity that is engaged in workforce development, economic or business development, community development or education.

Detailed information with all requirements can be found on the web at:

www.deed.state.mn.us/workforce/first/

APPLICATION PROCESS AND DUE DATES

Applicants must submit an electronic copy of their application no later than 4:00 p.m. on November 30, 2007. Applicants must also submit one hard copy (with original signatures) either postmarked by November 30 or hand-delivered by the 4:00 deadline. Both electronic and hard copies should be submitted to:

Shelley Landgraf
Minnesota Department of Employment and Economic Development
332 Minnesota Street, Suite E200
St. Paul, MN 55101
Shelley.landgraf@state.mn.us

State Contracts

Informal Solicitations: Informal solicitations for professional/technical (consultant) contracts valued at over \$5,000 through \$50,000, may either be published in the *State Register* or posted on the Department of Administration, Materials Management Division's (MMD) Web site. Interested vendors are encouraged to monitor the P/T Contract Section of the MMD Web site at www.mmd.admin.state.mn.us for informal solicitation announcements.

Formal Solicitations: Department of Administration procedures require that formal solicitations (announcements for contracts with an estimated value over \$50,000) for professional/technical contracts must be published in the *State Register*. Certain quasi-state agency and Minnesota State College and University institutions are exempt from these requirements.

Requirements: There are no statutes or rules requiring contracts to be advertised for any specific length of time, but the Materials Management Division strongly recommends meeting the following requirements:

- \$0 - \$5000 does not need to be advertised. Contact the Materials Management Division: (651) 296-2600
- \$5,000 - \$25,000 should be advertised in the *State Register* for a period of at least seven calendar days;
- \$25,000 - \$50,000 should be advertised in the *State Register* for a period of at least 14 calendar days; and
- anything above \$50,000 should be advertised in the *State Register* for a minimum of at least 21 calendar days

Jump to Links and Fast Service

Obtain MORE and FASTER information with a SUBSCRIPTION to the *State Register*. Subscribe and receive LINKS to the *State Register*. Open the *State Register* and click on Bookmarks in the upper right corner. You will also receive ALL the current rules, with an INDEX, and previous years' indices. You also receive a summarized "Contracts & Grants" section to review. Subscriptions cost \$180 a year (an \$80 savings). Here's what you receive via e-mail:

- **Word Search Capability**
- **LINKS, LINKS, LINKS**
- **Easy Access to *State Register* Archives**
- **Updates to Index to Vol. 31**
- **"Contracts & Grants" Open for Bid**
- **Early delivery, on Friday**
- **E-mailed to you . . . its so easy**
- **Indexes to Vols. 31, 30, 29, 28 and 27**

It's all E-mailed to you, at end-of-day on Friday, instead of waiting for the non-subscriber's issue released on Monday. Contact Cathy Hoekstra, our subscriptions manager, at (651) 297-8777, or **Fax:** (651) 297-8260, or **E-mail:** cathy.hoekstra@state.mn.us

Department of Administration

Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) Notice of Availability of Contract for Pharmaceutical Wholesaler Invoice Auditing Services

The Department of Administration, on behalf of the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP), is requesting proposals in order to establish a contract for pharmaceutical wholesaler invoice auditing services to be used by MMCAP member facilities.

MMCAP is a voluntary group purchasing organization made up of governmental entities which contracts for pharmaceuticals and related products. MMCAP is currently made up of 45 participating states. For more information on MMCAP, go to www.mmcap.org (no password necessary).

The Request for Proposals (RFP) document may be found online at the web site referenced above. Copies of the RFP may also be requested by sending an e-mail to: mn.multistate@state.mn.us

Or write to:

MMCAP Pharmaceutical Wholesaler Invoice Auditing Servicees
Minnesota Department of Administration
Attn: Al Becicka
50 Sherburne Avenue, Room 112
St. Paul, MN 55155

Proposals submitted in response to the RFP must be received at the address specified in the RFP no later than 2:00 p.m. on **November 19, 2007**, per the instructions in the RFP. **Late proposals will not be considered.**

The State reserves the right to cancel this solicitation. All expenses incurred in responding to this notice are solely the responsibility of the responder.

Colleges and Universities, Minnesota State (MnSCU) Northwest Technical College Notice of Request for Sealed Bids for Chassis Dynamometer Equipment

NOTICE IS HEREBY GIVEN that Northwest Technical College will receive sealed bids for one Chassis Dynamometer for use in the Auto Mechanics program. Bid specifications will be available October 15, 2007, via email request to *Judy.Rinkenberger@ntcmn.edu* or telephone request to Judy Rinkenberger at (218) 333-6614. Sealed bids must be received by 2:00 PM, Thursday, October 29, 2007, at the following location:

Judy Rinkenberger, Business Manager
Northwest Technical College,
905 Grant Ave SE,
Bemidji, MN 56601

Northwest Technical College reserves the right to reject any or all proposals and to waive any irregularities or informalities in proposals received. The College further reserves the right to cancel the solicitation if it is considered to be in its best interest.

Minnesota State Colleges and Universities Dakota County Technical College Request for Bids for Solar Panel Installation

NOTICE IS HEREBY GIVEN that Dakota County Technical College will receive bids for Solar Panel Installation. Complete sets of bidding documents are available by contacting:

TKDA
Suite 1500
444 Cedar St.
St. Paul, MN 55101
Phone: (651) 292-4400

Deadline for submission of bids is 2:00 Tuesday, Oct 30, 2007, at which time bids will be opened and publicly read aloud.

Minnesota State Colleges and Universities (MnSCU) Saint Paul College Advertisement for Bids for Storm Water Damage Restoration

Sealed Bids for: **Storm Water Damage Restoration**
Saint Paul College
St. Paul, Minnesota

State Contracts

will be received by:

Jan Mahoney
Vice President, Finance and Operations
Business Office, room 137
Saint Paul College
235 Marshall Avenue
St. Paul, MN 55102

Until **2:00 PM, local time, Friday, October 26, 2007**, at which time the bids will be opened and publicly read aloud.

Project Scope: The Project consists of the repair and replacement of building components that have sustained water damage over an approximate area of 19,000 sq. ft on the first floor and 5000 sq. ft. on the ground floor level.

A pre-bid walk through will be held on Friday October 19, 2007 at 9:00 A.M. All bidders shall meet at the main south front entrance. Bid documents will be made available at the pre-bid walk through and as indicated below.

Bidding Documents as prepared by the Project Architect/Engineer, TKDA, will be available on Friday October 19, 2007 at the offices of the:

- 1) above named Project Architect/Engineer

Complete sets only of Bidding Documents for use by Bidders in submitting a bid may be obtained at the following address:

TKDA
Suite 1500
444 Cedar Street
St. Paul, MN 55101
Telephone: (651) 292-4400

A non-refundable deposit of \$25.00 is required for each set.

Each bid shall be accompanied by a certified check, payable to **Minnesota State Colleges and Universities**, in the sum of not less than 5% of the total base bid; or a corporate surety bond of a surety company duly authorized to do business in the state of Minnesota in the same amount; which is submitted as bid security, conditioned upon the Bidder entering into a contract with Minnesota State Colleges and Universities in accordance with the terms of the bid.

Minnesota Historical Society Notice of Request for Bids for Wall Demolition, Construction, and Painting Services

The Minnesota Historical Society is seeking bids from qualified and experienced vendors for wall demolition, construction, insulation, finishing and painting services for a new traveling exhibit. "*The Enemy Within: Terror in America from 1776 to Today*," created by the International Spy Museum in Washington, D.C., will open to the public in the Minnesota History Center's Gallery A on January 26, 2008.

The Request for Bids (which will also serve as the Project Manual) is available by calling or writing Mary Green-Toussaint, Purchasing Coordinator, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102. Telephone: (651) 259-3175; e-mail: mary.green-toussaint@mnhs.org.

Please note that there will be a MANDATORY PRE-BID MEETING for interested vendors. Details are included in the Request for Bids.

All proposals must be received no later than 2:00 P.M., Local Time, Tuesday, November 6, 2007. Late proposals will not be considered.

Dated: October 15, 2007

Minnesota Historical Society

Notice of Request for Proposals for Digitization Services for the National Digital Newspaper Program

(PLEASE NOTE: This notice replaces and updates the previous one published on September 17, 2007.)

The Minnesota Historical Society is seeking a qualified vendor to perform digitization services to support the digital conversion of newspaper collections on microfilm for the National Digital Newspaper Program (NDNP). The Society will select newspaper titles from its own microfilm collection published between 1880-1910. The successful vendor will perform the digital conversion of page images in several formats from microfilm, prepare optical character recognition (OCR) files, and create relevant metadata and documentation in conformity with the specified technical guidelines established by the Library of Congress, which are available at <http://www.loc.gov/ndnp>. The Society will subsequently deliver the content files and metadata to the Library of Congress.

The Request for Proposals and accompanying materials are available from Mary Green-Toussaint, Purchasing Coordinator, Minnesota Historical Society, 345 Kellogg Boulevard West, Saint Paul, Minnesota 55102. Telephone: 651-259-3175; e-mail: mary.green-toussaint@mnhs.org.

Proposals must be received no later than 2:00 p.m., Local Time, on Wednesday, November 7, 2007. A public bid opening will be conducted at that time. Late proposals will not be accepted.

Dated: October 15, 2007

Department of Human Services

Child Support Enforcement Division

Notice of Availability of Contract for Business Process Redesign Analysis of Child Support Program Policy and Systems

The Minnesota Department of Human Services (DHS), through its Child Support Enforcement Division (State) is seeking Proposals from qualified Responders to conduct a comprehensive business process analysis, with accompanying cost benefit and return on investment analyses, to simplify, enhance, and streamline existing policies processes both manually and through automation; and to consider how any potential change will impact Minnesota's automated mainframe child support system PRISM.

Work is proposed to start in April 2008.

A Request for Proposals will be available by e-mail (PDF) from this office through December 10, 2007. **A request (by direct mail or e-mail) is required to receive the Request for Proposal.**

The Request for Proposal can be obtained from:

Greg Poehling
Child Support Enforcement Division
444 Lafayette Rd. N.
St. Paul MN, 55155-0946
Phone: (651) 431-4276
E-mail: Gregory.Poehling@state.mn.us

Proposals submitted in response to the Request for Proposals in this advertisement must be received at the address above no later than December 11, 2007 at 3:00 p.m. CST. **Late proposals will not be considered.** Fax proposals will not be considered.

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

State Contracts

Department of Transportation (Mn/DOT)

Engineering Services Division

Notice of Potential Availability of Contracting Opportunities for a Variety of Highway Related Technical Activities (“Consultant Pre-Qualification Program”)

This document is available in alternative formats for persons with disabilities by calling Brad Hamilton at (651) 366-4626 for persons who are hearing or speech impaired by calling Minnesota Relay Service at (800) 627-3529.

Mn/DOT, worked in conjunction with the Consultant Reform Committee, the American Council of Engineering Companies of Minnesota (ACEC/MN), and the Department of Administration, to develop the Consultant Pre-Qualification Program as a new method of consultant selection. The ultimate goal of the Pre-Qualification Program is to streamline the process of contracting for highway related professional/technical services. Mn/DOT awards most of its consultant contracts for highway-related technical activities using this method, however, Mn/DOT also reserves the right to use Request for Proposal (RFP) or other selection processes for particular projects. Nothing in this solicitation requires Mn/DOT to use the Consultant Pre-Qualification Program.

Mn/DOT is currently requesting applications from consultants. Refer to Mn/DOT’s Consultant Services web site, indicated below, to see which highway related professional/technical services are available for application. Applications are accepted on a continual basis. All expenses incurred in responding to this notice will be borne by the responder. Response to this notice becomes public information under the Minnesota Government Data Practices.

Consultant Pre-Qualification Program information, application requirements and applications forms are available on Mn/DOT’s Consultant Services web site at: <http://www.dot.state.mn.us/consult>.

Send completed application material to:

Brad Hamilton
Consultant Services
Office of Technical Support
Minnesota Department of Transportation
395 John Ireland Blvd. Mail Stop 680
St. Paul Minnesota 55155

Note: DUE DATE: APPLICATION MATERIAL WILL BE ACCEPTED ON A CONTINUAL BASIS.

Department of Transportation (Mn/DOT)

Engineering Services Division

Notice Concerning Professional/Technical Contract Opportunities

NOTICE TO ALL: The Minnesota Department of Transportation (Mn/DOT) is now placing additional public notices for professional/technical contract opportunities on Mn/DOT’s Consultant Services **website** at: www.dot.state.mn.us/consult.

New public notices may be added to the website on a daily basis and be available for the time period as indicated within the public notice.

Non-State Bids, 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 commodity, project or tasks; 4) cost estimate; and 5) final submission date of completed contract proposal. Allow at least three weeks from publication date (four weeks from the date article is submitted for publication). Surveys show that subscribers are interested in hearing about contracts for estimates as low as \$1,000. Contact editor for further details.

Metropolitan Council

Invitation for Prequalification to Supply a Vehicle GPS Tracking and Diagnostic System

Prequalification Submittal Documents (PSDs) are solicited by the Metropolitan Council ("Council") for the purpose of establishing a list of qualified vendors to supply the Council with a Vehicle GPS Tracking and Diagnostic System. The Council intends to procure a Vehicle GPS Tracking System between June 2008 and December 2010. The Council intends to use a two-step process to procure this system. In this first step, vendors are invited to submit PSDs which will be evaluated based upon required specifications. In the second step, the Council will issue an Invitation for Bids only to Vendors whose PSD was determined to be acceptable, either initially or as a result of further discussions and investigation. Bids submitted by Vendors in the second step must be based on the vendor's approved PSD.

Vendors interested in obtaining an Invitation for Prequalification should contact:

Miriam Lopez Rieth
Administrative Assistant
Metropolitan Council
390 North Robert Street
St. Paul, Minnesota 55101
Phone: (651) 602-1095
Fax: (651) 602-1083
E-mail: Miriam.lopez-rieth@metc.state.mn.us

The tentative schedule for this procurement is as follows:

<i>Invitation for Prequalification Issued</i>	October 8, 2007
<i>Due date of Prequalification Submittal</i>	October 25, 2007
<i>Notification of Successful Prequalification</i>	November, 2007
<i>Invitation for Bids</i>	December, 2007
<i>Due Date of Bids</i>	January, 2008
<i>Award of Contract</i>	February 2008
<i>Complete Delivery of System</i>	June 2010

Metropolitan Council - Metro Transit

Request for Proposals for Travel Instruction Services Procurement Number 7522

The Metropolitan Council is seeking the services of a qualified firm for Metro Mobility Travel Instruction Services. The project includes services that will engage in several aspects of the Metro Mobility Travel Instruction Program during 2007-2011. These services include individual (one-on-one) travel instruction, group travel training, and educational outreach events. In addition, the Contract will conduct Orientation and Mobility evaluation as part of the Metro Mobility Certification process as requested by the Metro Mobility Service Center (MMSC).

The RFP will be issued on October 3, 2007.

Non-State Bids, Contracts & Grants

A Pre-Proposal Conference will be held at 2:00 PM on Monday, October 22, 2007 in the Lower Level A Conference Room, Metropolitan Council Regional Administration Office located at 390 Robert Street North, St. Paul, Minnesota 55101

Proposers are encouraged to attend and participate in the Pre-Proposal Conference.

Proposals are due by 2:00 p.m. on November 2, 2007.

Firms interested in receiving the Request for Proposals document should contact:

Metropolitan Council
Metro Transit Purchasing Department
Attn: Candace Osiecki
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
Fax: (612) 349-5069
E-mail: candace.osiecki@metc.state.mn.us

Metropolitan Council - Metro Transit Snow Removal at Ft. Snelling North & South Park and Ride

Metro Transit a service of the Metropolitan Council is soliciting sealed bids for Snow Removal service at the Ft. Snelling North and South Park and Ride for a period of one year with options for additional 24-months. Bids are due at 2:00 p.m. on October 22, 2007. Bids must be submitted in accordance with the Invitation for Bids document available from:

Metropolitan Council
Metro Transit Purchasing Department
Attn: Candace Osiecki
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
E-mail: candace.osiecki@metc.state.mn.us

Metropolitan Council - Metro Transit Snow Removal at I-35W & 95th Avenue Park and Ride

Metro Transit a service of the Metropolitan Council is soliciting sealed bids for Snow Removal service at the I-35W & 95th Avenue Park and Ride for a period of one year with options for additional 24-months. Bids are due at 2:00 p.m. on October 22, 2007. Bids must be submitted in accordance with the Invitation for Bids document available from:

Metropolitan Council
Metro Transit Purchasing Department
Attn: Candace Osiecki
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
E-mail: candace.osiecki@metc.state.mn.us

Non-State Bids, Contracts & Grants

Metropolitan Council - Metro Transit

Snow Removal at I-394 & CR 73 North & South Park and Ride

Metro Transit a service of the Metropolitan Council is soliciting sealed bids for Snow Removal service at the I-394 & County Road 73 North and South Park and Ride for a period of one year with options for additional 24-months. Bids are due at 2:00 p.m. on October 22, 2007. Bids must be submitted in accordance with the Invitation for Bids document available from:

Metropolitan Council
Metro Transit Purchasing Department
Attn: Candace Osiecki
515 N. Cleveland Avenue
St. Paul, MN 55114
Phone: (612) 349-5070
E-mail: candace.osiecki@metc.state.mn.us

Minnehaha Creek Watershed District

Pond Excavation and Disposal of about 7,000 Cubic Yards, NE Corner of Leaf St. and Cygnet Pl., Orono, MN

NOTICE IS HEREBY GIVEN that the Minnehaha Creek Watershed District (MCWD) is soliciting bids for pond excavation and disposal of approximately 7,000 cubic yards from that part of Classen Creek known as Swan Lake located south of Watertown Rd. between Leaf St. and Cygnet Pl within the City of Orono, Minnesota. Work is anticipated to begin in December 2007.

Sealed Bid Proposals for the furnishing of all labor, materials and all other items necessary to complete the work will be received by Minnehaha Creek Watershed District at its office, 18202 Minnetonka Boulevard, Deephaven, MN until 12:00 PM, November 14, 2007. Bid submittals must be clearly labeled "MCWD Swan Lake Excavation Bid Package" on the outside of the submittal package.

All communications relative to this project should be addressed to the Project Manager prior to opening of the Bid. Minnehaha Creek Watershed District: Attention Renae Clark, e-mail: rclark@minnehahacreek.org or phone (952) 471-0590 X208.

Contractors desiring a copy of the bid package, plans, specifications and proposal forms may obtain them from the office of Minnehaha Creek Watershed District; payment of a \$50.00 non-refundable fee for each bid package is required.

An optional pre-bid meeting will be held at the Minnehaha Creek Watershed District office at 12:00 PM on November 7, 2007.

Each bid proposal shall be submitted on forms furnished for that purpose. Each bid proposal shall be accompanied by a "Bid Security" in the form of a certified or cashier's check made payable to Minnehaha Creek Watershed District ("owner") in an amount not less than five percent (5%) of the total bid, or a surety bond in the same amount, running to the Owner, with a surety company duly authorized to do business in the state of Minnesota, such Bid Security to be a guarantee that the bidder, if awarded a contract, will enter into a contract with Minnehaha Creek Watershed District; and the amount of the certified check will be retained or the bond enforced by the Owner in case the bidder fails to do so. The Owner will retain the deposits for the three lowest bidders until the contract has been awarded and executed but not longer than sixty (60) days. No bid may be withdrawn for a period of sixty (60) days following the bid opening.

The bid of the lowest responsible bidder is intended to be accepted on or before the expiration of sixty (60) days after the date of the opening of bids. The Owner, however, reserves the right to reject any or all bids and to waive any minor irregularities, informalities or discrepancies, and further reserves the right to award the contract in the best interest of Minnehaha Creek Watershed District.

Non-State Bids, Contracts & Grants

Nine Mile Creek Watershed District

Request for Proposals for Engineering and Accounting Services

Pursuant to *Minnesota Statutes Section 103B.227, Subd. 5*, the Nine Mile Creek Watershed District is soliciting proposals for engineering and accounting services for remaining 2007 through 2009. Written proposals (five copies) should include background and profile information on the firm, along with the specific information as to expertise in watershed district matters, hourly billing rates for 2005-2006, and names and qualifications of personnel. Proposals should be sent to:

Nine Mile Creek Watershed District
Attn: Kevin Bigalke, Administrator
7710 Computer Avenue, Suite 135
Edina, MN 55435

Proposals must be submitted by Friday, November 2, 2007.

The Board of Managers will review proposals, reserves the right to reject any and all proposals, and otherwise take such action it deems in the best interest of the Nine Mile Creek Watershed District.

For further information about the Nine Mile Creek Watershed District, contact Kevin Bigalke, Administrator at (952) 835-2078 or visit: <http://www.ninemilecreek.org/>

Nine Mile Creek Watershed District

Request for Proposals for Legal Services

Pursuant to *MSA 103B.227, Subdivision 5*, Nine Mile Creek Watershed District hereby solicits proposals for a legal consultant for remaining 2007 through 2009.

Written proposals (five copies) setting forth the experience of the company/individual(s) who would be interested in providing legal services for the Nine Mile Creek Watershed District should be sent to:

Nine Mile Creek Watershed District
7710 Computer Avenue, Suite 135
Edina, MN 55435
Attention: Kevin Bigalke, District Administrator

Proposals shall be submitted on or before Friday, November 2, 2007.

Please set forth in your written proposal company experience and the experience of the individual(s) who proposes to perform services for the District and the resumes of staff who would assist the individual in providing the contractual services. Rates of individuals should be provided. The Board will review said proposals and reserves to itself the right to take such action as it deems in the best interest of Nine Mile Creek Watershed District.

For further information about the Nine Mile Creek Watershed District, contact Kevin Bigalke, Administrator at (952) 835-2078 or visit: <http://www.ninemilecreek.org/>

University of Minnesota

Subscribe to Bid Information Service (BIS)

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

Request for Bids/Proposals are also available to the public each business day from 8:00 a.m. to 4:30 p.m. in the Purchasing Services lobby, Suite 560, 1300 S. 2nd Street, Minneapolis, Minnesota 55454.

UNITED STATES POSTAL SERVICE® (All Periodicals Publications Except Requester Publications)
Statement of Ownership, Management, and Circulation

1. Publication Title: **STATE REGISTER**
 2. Publication Number: 0 1 4 6 - 7 7 5 1
 3. Filing Date: **October 2, 2007**
 4. Issue Frequency: **Weekly**
 5. Number of Issues Published Annually: **52**
 6. Annual Subscription Price: **180.00**

7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®):
**State of Minnesota, Department of Administration
 Materials Management Division, 660 Olive St., St. Paul, MN 55155**
 Contact Person: **Robin Paul Lerner**
 Telephone (include area code): **651-297-7963**

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer):
Same as #7

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank):
 Publisher (Name and complete mailing address):
Same as #7
 Editor (Name and complete mailing address):
**Robin Paul Lerner, State of Minnesota, Department of Administration
 Materials Management Division, 660 Olive St., St. Paul, MN 55155**
 Managing Editor (Name and complete mailing address):
Same as Editor

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)
 Full Name: **Complete Mailing Address**
State of Minnesota
660 Olive St.
Department of Administration
St. Paul, MN 55155
Materials Management Division

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box: None
 Full Name: **Complete Mailing Address**

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
 Has Not Changed During Preceding 12 Months
 Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

PS Form 3526, September 2007 (Page 1 of 3) Instructions Page 311 PSN 7530-01-000-8031 PREMIACY NOTICE: See our privacy policy on www.usps.com

13. Publication Title: **STATE REGISTER**
 14. Issue Date for Circulation Data Below: **10-08-07**

15. Extent and Nature of Circulation

a. Total Number of Copies (Net press run)		Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
(1) Mailed Outside-County Paid Subscriptions Shipped on PS Form 3841 (include paid distribution above nominal rate, advertiser's proof copies, env. mail/magazine copies)	70	70	70
(2) Mailed In-County Paid Subscriptions Shipped on PS Form 3841 (include paid distribution above nominal rate, advertiser's proof copies, env. mail/magazine copies)			
(3) Paid Distribution Outside the Mails (including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®)			
(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)			
e. Total Paid Circulation (Sum of 1b (1), (2), (3), and (4))	70	70	70

16. Publication of Statement of Ownership

If the publication is a general publication, publication of this statement is required. Will be printed in the **October 8, 2007** issue of this publication.

Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner

Robin Paul Lerner Date: **10-02-07**

18. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))

d. Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))		1,850	1,850
(1) Free or Nominal Rate In-County Copies Included on PS Form 3841	1,920	1,920	
(2) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail®)	20	20	
(3) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	1,940	1,940	
(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)			
f. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))	1,940	1,940	1,940

19. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))

f. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))		1,850	1,850
(1) Free or Nominal Rate In-County Copies Included on PS Form 3841	1,920	1,920	
(2) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail®)	20	20	
(3) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	1,940	1,940	
(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)			
g. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))	1,940	1,940	1,940

19. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))

1,850

1,920

20

1,940

1,850

1,920

20

1,940

19. Total Free or Nominal Rate Distribution (Sum of 1d (1), (2), (3), and (4))

1,850

1,920

20

1,940

1,850

1,920

20

1,940

