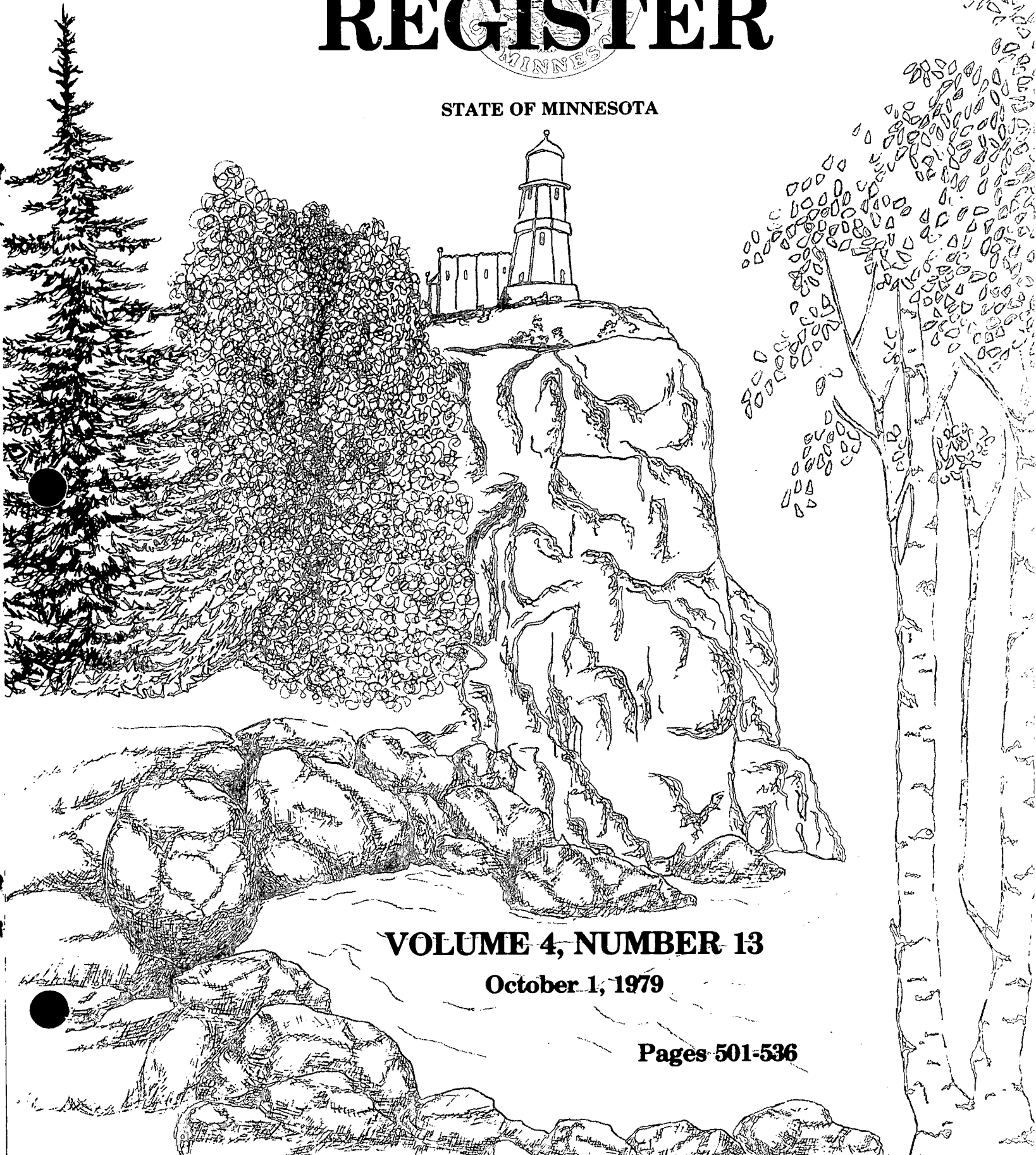


P18 234/13
79/10/1



STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 13

October 1, 1979

Pages 501-536



Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 4			
14	Monday Sept 24	Monday Oct 1	Monday Oct 8
15	Monday Oct 1	Monday Oct 8	Monday Oct 15
16	Monday Oct 8	Monday Oct 15	Monday Oct 22
17	Monday Oct 15	Monday Oct 22	Monday Oct 29

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

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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

Albert H. Quie
Governor

Carol Anderson Porter
Editor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener, Jean M. Walburg
Editorial Staff

Stephen A. Ordahl
Manager
Office of the State Register

Jack Richter
Information Officer

Roy Schmidtke
Circulation Manager

Cindy Riehm
Secretarial Staff

CONTENTS

MCAR AMENDMENTS AND ADDITIONS 504

RULES

Board of Education

School Management Services Division

Adopted Rules Governing Educational Aids for Pupils Attending Nonpublic Schools 505

State Board of Electricity

Adopted Rules for Contractors Licenses, Definition of On-The-Job Supervision, License Examination and Renewal Fees, and Reinstatement of Contractor's Licenses 506

Peace Officer Standards and Training Board

Adopted Rules Governing the Minimum Standards of Conduct of Peace Officers and Constables 507

Department of Personnel

Notice of Extension of Adopted Temporary Rules Governing Travel and Relocation Reimbursement, Probationary Period, Vacation Leave and Holidays 508

PROPOSED RULES

Calendar

Public Hearings on Agency Rules, October 8-12, 1979 508

Department of Education

School Management Services Division

Proposed Temporary Rules Governing Education Computer Systems 508

Department of Education

Proposed Temporary Rules Governing Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped 512

Department of Health

Proposed Rule Relating to the Collection of Information from Health-Related Manpower 523

Department of Public Welfare

Social Services Division

Proposed Temporary Rule Governing Child Day Care Sliding Fee 526

OFFICIAL NOTICES

Department of Personnel

Notice of Intent to Solicit Outside Opinion Regarding Special Expense Rules of the Department of Personnel 530

Department of State Planning Office of Local and Urban Affairs

Notice of Intent to Solicit Outside Opinion Concerning the Proposed Adoption of Rules Relating to the Administration of State Assistance to Regional Development Commissions 530

Department of Transportation

Notice of Intent to Solicit Outside Information and Opinion Regarding Designated Routes for Ten-ton Vehicles for Calendar Year 1980 531

Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Adoption of a Rule Governing the Licensure of Teachers of English as a Second Language 531

Notice of Intent to Solicit Outside Opinion Regarding Adoption of a Rule Governing the Licensure of Teachers of Bilingual/Bicultural Education 531

Notice of Intent to Solicit Outside Opinion Regarding Amendment of a Rule Governing the Licensure of Secondary Education Teachers 531

Notice of Intent to Solicit Outside Opinion Regarding Amendment and/or Adoption of a Rule Governing Continuing Education/Relicensure 532

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendment and/or Adoption of a Rule Governing the Licensure of Special Education Teachers 532

SUPREME COURT

Decisions Filed Friday, September 21, 1979 533

Order Filed Friday, September 14, 1979 533

STATE CONTRACTS

Housing Finance Agency

Home Improvement and Home Mortgage Division

Notice of Request for Proposals for Professional and Technical Services for Accessibility Improvement Assistance Program 534

Department of Natural Resources

Minerals Division

Notice of Request for Proposals for the Analysis of Industrial Chemical Potential of Minnesota's Peat Resource 534

Department of Public Welfare

Social Services Division

Notice of Request for Proposal to Develop Experimental Programs to Encourage Interagency Cooperation in the Identification, Prevention and Treatment of Child Abuse and Neglect 534

MCAR AMENDMENTS AND ADDITIONS ≡

All adopted rules published in the *State Register* and listed below amend rules contained in the Minnesota Code of Agency Rules (MCAR). Both proposed temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of all proposed and adopted rules on the following schedule: issues 1-13, inclusive; issues 14-25, inclusive; issue 26, cumulative for 1-26; issues 27-38, inclusive; issue 39, cumulative for 1-39; issues 40-51, inclusive; and issue 52, cumulative for 1-52. The listings are arranged in the same order as the table of contents of the MCAR.

TITLE 1 CONSTITUTIONAL OFFICES

Part 2 Secretary of State

1 MCAR §§ 2.506, 2.0512, 2.0601, 2.0604, 2.0608,
2.0902-2.0903, 2.1101, 2.2111-2.2113, 2.2115, 2.3103, 2.3702,
2.3801, 2.4101-2.4105, 2.4201-2.4205, 2.5101-2.5119 (proposed) . . .479

TITLE 2 ADMINISTRATION

Part 1 Administration Department—State Building Code

2 MCAR §§ 1.15530-1.15538 (adopted) 65
2 MCAR §§ 1.10101-1.10109, 1.10111-1.10112,
1.10303-1.10310, 1.10312, 1.10320-1.10321, 1.10325,
1.10334-1.10336, 1.15501-1.15517, 1.16005, 1.18601,
1.18701, 1.18803-1.18813, 1.18901 (proposed)233

Part 1 Administration Department—Telecommunications

2 MCAR §§ 1.6101-1.6105 (adopted)162

Part 2 Personnel Department

2 MCAR §§ 2.009-2.010, 2.018-2.019, 2.024, 2.029, 2.031,
2.039, 2.045-2.046, 2.061, 2.065, 2.067, 2.086-2.087, 2.091,
2.097, 2.099, 2.108-2.110, 2.118-2.119, 2.131, 2.133-2.136,
2.138, 2.141, 2.181-2.182, 2.201-2.203, 2.226, 2.240-2.241,
2.244 (proposed) 117
2 MCAR §§ 2.009-2.010, 2.018-2.019, 2.024, 2.029, 2.031,
2.039, 2.045-2.046, 2.061, 2.065, 2.067, 2.086-2.087, 2.091,
2.097, 2.099, 2.108-2.110, 2.118-2.119, 2.131, 2.133-2.136,
2.138, 2.141, 2.181-2.182, 2.201-2.203, 2.226, 2.240-2.241,
2.244 (extended temporary)508
2 MCAR §§ 2.097, 2.131, 2.135, 2.181-2.182 (adopted
temporary) 117

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0112-1.0113 (proposed temporary) 6
3 MCAR §§ 1.0112-1.0113 (adopted temporary) 413
3 MCAR §§ 1.1331-1.1334 (adopted)213

Part 2 Livestock Sanitary Board

3 MCAR §§ 2.013-2.014, 2.019, 2.024-2.025, 2.051, 2.060
(adopted)301

TITLE 4 COMMERCE

Part 3 Public Service Department

PSC 299 (proposed) 414

Part 6 Accountancy Board

4 MCAR § 6.100 (proposed temporary) 6

Part 11 Electricity Board

4 MCAR §§ 11.030, 11.032 (adopted)506

Part 13 Peace Officers Board

4 MCAR §§ 13.011-13.013 (adopted)507
4 MCAR § 13.011C (withdrawn)507

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR §§ 1.0104, 1.01051 (proposed temporary)215
5 MCAR §§ 1.0074, 1.0780-1.0798 (proposed)417
5 MCAR §§ 1.0120-1.0129, 1.0900-1.0904
(proposed temporary)509
5 MCAR §§ 1.0820-1.0823, 1.0860-1.0863, 1.0880-1.0883
(adopted)505
5 MCAR §§ 1.0840-1.0841, 1.0843 (withdrawn)505

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR §§ 1.0401-1.0407 (proposed)302

Part 2 Energy Agency

6 MCAR § 2.065 (adopted) 101

Part 4 Pollution Control Agency

6 MCAR §§ 4.0033, 4.0040 (proposed) 9
6 MCAR § 4.0039 (hearing rescheduled) 9

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR § 1.235 (proposed)523

Part 1 Health Department—Plumbing Code

MHD 122-123, 125, 130 (proposed)233

Part 1 Health Department—Merit System

7 MCAR §§ 1.238, 1.249-1.250 (proposed)170
7 MCAR §§ 1.239, 1.250, 1.260, 1.269, 1.314 (proposed)318

Part 2 Chiropractic Board

7 MCAR §2.005 (proposed) 66

Part 10 Psychology Board

Psych 6 (proposed) 23

TITLE 8 LABOR

Part 4 Economic Security Department

8 MCAR § 4.4010 (proposed temporary)164

TITLE 9 LAW

Part 1 Ethical Practices Board

9 MCAR §§ 1.0002, 1.0005, 1.0012, 1.0015, 1.0021, 1.0025,
1.0035, 1.0036, 1.0038, 1.0043 (adopted)477

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety—Merit System

11 MCAR §§ 1.2093-1.2094 (1.093-1.094) (proposed)176
11 MCAR §§ 1.090-1.094, 1.116-1.141 (renumbered)217
11 MCAR §§ 1.2094, 1.2116, 1.2140 (proposed)333

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.020 (proposed) 140
12 MCAR § 2.049 (adopted)163
12 MCAR § 2.163 (proposed temporary)
12 MCAR §§ 2.493, 2.503-2.504, 2.581, 2.586, 2.588,
2.592-2.593, 2.621-2.626, 2.640, 2.646, 2.654, 2.840
(proposed)178
12 MCAR § 2.047 E.2.t. (proposed temporary)218
12 MCAR §§ 2.516, 2.840, 2.494, 2.578-2.579, 2.619,
2.655-2.656, 2.693, 2.840 (proposed)343
Part 3 Housing Finance Agency
12 MCAR §§ 3.002, 3.034, 3.062, 3.065-3.066 (adopted)301
12 MCAR §§ 3.150-3.157 (temporary) 47

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR § 1.5032 I.1.a.(5) (suspended)413

RULES

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

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

If an adopted rule differs from its proposed form, language which has

been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

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

Board of Education School Management Services Division

Adopted Rules Governing Educational Aids for Pupils Attending Nonpublic Schools

The rules proposed and published at *State Register*, Volume 3, Number 38, pp. 1781-1789, March 26, 1979 (3 S.R. 1781) are adopted with the following amendments and with the exception of Chapter Forty-One A: Instructional Materials for Pupils Attending Nonsectarian Nonpublic Schools, which was withdrawn.

Rules as Adopted

Chapter Forty-One: Textbooks and Standardized Tests for Pupils Attending Nonpublic Schools

5 MCAR § 1.0821 A. "Textbook" means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program, which book or book substitute shall be limited to books, workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that pertain to religion or religious doctrine in an impartial manner.

5 MCAR § 1.0823 C.1. A count of the nonpublic school pupils, kindergarten through grade twelve, who are enrolled as of September 15 of the current school year and who have signed a separate pupil request forms for textbooks and standardized tests only.

Chapter Forty-One B: Health Services for Pupils Attending Nonpublic Schools

5 MCAR § 1.0861 E. Costs relating to the provision of health services shall include (1) the salaries of licensed health services personnel and their assistants and (2) expenses for supplies, equipment, and travel, and necessary inservice training and other eligible expenses that are associated with the provision of health services by the licensed health services personnel or their assistants.

5 MCAR § 1.0862 C. Computation of pupil allocation available. On or before March 1 the department of education shall determine from the most recent data available the allocation available per pupil for health services to be used for the following school year. The allocation per pupil for health services shall be the average expenditure per public school pupil in average daily membership for these services by those Minnesota public elementary and secondary schools which provide health services to public school pupils. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

5 MCAR § 1.0863 A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for health services beginning with the following school year. The preliminary application shall be on forms provided by the department of education and shall include an estimate of the nonpublic school pupils, kindergarten through grade twelve, who may be enrolled as of September 15 of the following school year and who may be signing pupil request forms for health services. The preliminary application may shall also include an assessment of the type and level of health services desired for the following school year.

C. Notification of services. On or before August 1 September 1 the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of health services that are to be made available to the nonpublic school students during the following school year.

D. Final application. On or before September 25 the nonpublic school shall make final application for health services

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

RULES

to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of September 15 and have signed a separate pupil request forms for health services only.

Chapter Forty-One C: Guidance and Counseling Services for Pupils Attending Nonpublic Schools

5 MCAR § 1.0881 E. Costs relating to the provision of guidance and counseling services shall only include (1) the salaries of licensed guidance and counseling services personnel and their assistants and (2) expenses for supplies, equipment, and travel, and other eligible expenses that are directly attributable to ~~The costs in (2) must be directly associated with~~ the provision of guidance and counseling services by the licensed guidance and counseling services personnel or their assistants.

F. Guidance and counseling services may only be provided to nonpublic school pupils only at a neutral site or at the public school.

5 MCAR § 1.0882 C. Computation of pupil allocation available. On or before March 1 the department of education shall determine from the most recent data available the allocation available per secondary pupil in average daily membership for guidance and counseling services to be used for the following school year. The allocation available per secondary pupil for guidance and counseling services shall be the average expenditure per public secondary school pupil for these services by those Minnesota public school districts which provide guidance and counseling services to public secondary school pupils. Pupils shall be counted as one pupil each.

5 MCAR § 1.0883 A. Preliminary application. On or before April 1 the nonpublic school shall submit to the district or intermediary service area a preliminary application for guidance and counseling services beginning with the following school year. The preliminary application shall be on forms provided by the department of education and shall include an estimate of the nonpublic secondary school pupils who may be enrolled as of September 15 of the following school year and who may be signing pupil request forms for guidance and counseling services. The preliminary application ~~may~~ shall also include an assessment of the type and level of guidance and counseling services desired for the following school year.

C. Notification of services. On or before ~~August 1~~ September 1 the public school district or intermediary service area shall inform the nonpublic school of the type, level, and location of guidance and counseling services that are to be made available during the following school year.

D. Final application. On or before September 25 the nonpublic school shall make final application for guidance and counseling services to the public school district or intermediary service area by or on behalf of each participating nonpublic school pupil. The final application shall indicate the number of nonpublic school pupils who are enrolled as of

September 15 and have signed a separate pupil request forms for guidance and counseling services only.

E.1. Projected guidance and counseling services expenditures for salaries, supplies, equipment and other eligible expenses, which expenditures shall not exceed the amount allocated for guidance and counseling services to the public school district or intermediary service area by the department of education. The allocation for guidance and counseling services is determined by multiplying the total number of participating secondary pupils by the allocation available per pupil for guidance and counseling services as set forth in § 1.0882 C. Pupils shall be counted as one pupil each.

State Board of Electricity

Adopted Rules for Contractors Licenses, Definition of On-The-Job Supervision, License Examination and Renewal Fees, and Reinstatement of Contractor's Licenses

The rules proposed and published at *State Register*, Volume 3, Number 22, pages 1192-1194, December 4, 1978 (3 S.R. 1192) are adopted with the following amendments:

Rules as Adopted

4 MCAR § 11.030 A. Each contractor shall designate the responsible electrician employed by him on his application for an electrical contractor's license. The Board shall not grant a new contractor's license if it appears that the responsible electrician so designated is also employed in the same capacity by any other electrical contractor. In the event that more than one previously licensed electrical contractor has designated the same responsible electrician on his application for a license renewal, the Board shall return the application to the contractors who shall have 15 days to resubmit their applications. If upon resubmission of the license application, it still appears that the same responsible electrician has been designated by more than one contractor, the Board ~~shall~~ may institute proceedings pursuant to Minn. Stat. § 326.242, subd. 9 of this section, for non-renewal of the ~~applications~~ licenses of each contractor by whom the same responsible electrician is employed.

B. In addition to all other requirements of Minn. Stat. § 326.242, subd. 6 the applicant for an electrical contractor's license shall supply the following information where required by law, before a contractor's license is issued:

1. Employer's Social Security account number.
2. Workers compensation insurance account number.
3. Unemployment insurance account number.
4. State withholding tax account number.

RULES

5. Federal withholding tax account number.
6. The name and address of:
 - a. Each Partner or Venturer, if the applicant is a partnership or joint venture.
 - b. The Owner, if the applicant is an individual proprietorship.
 - c. The corporate officers if the applicant is a corporation.

~~4 MCAR § 11.032 C. Apprentice electrician registration. An apprentice electrician shall register with the State Electrical Board of Electricity on or before his ninetieth calendar day of employment. The annual registration fee shall be \$5.00. He shall not be allowed to work on installations without personal on-the-job supervision of a licensed electrician.~~

~~C.D. Any Electrical Contractor's license that is reissued after being revoked or suspended for statutory deficiencies described in Elec. 26, Revocation, shall pay a reinstatement cost Contractor who seeks reissuance of his or her license after it has been revoked or suspended pursuant to rule Elec 26 shall submit a reissuance fee of \$100.00 before the license is reinstated by the Board.~~

Peace Officer Standards and Training Board

Adopted Rules Governing the Minimum Standards of Conduct of Peace Officers and Constables

The rules proposed and published at *State Register*, Volume 3, Number 28, pp. 1412-1413, January 15, 1979 (3 S.R. 1412) are now adopted with the amendments shown below, with the exception of rule 4 MCAR § 13.011 C., which has been withdrawn.

4 MCAR § 13.011 Standards of Conduct. Scope and purpose.

A. Scope. Authority. The rules promulgated in this section are adopted pursuant to the express legislative mandate of Minn. Stat. § 626.843, subd. 1(e)-, Minn. Stat. § 626.845, subd. 1(i), Minn. Stat. ch. 214.

B. Scope. Nothing in these rules shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing

rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct shall remain with the promulgating agency, political subdivision, commission or appointing authority.

~~B. C.~~ Statement of purpose. The board believes that in order for the public to have complete confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing authority and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

C. [Withdrawn.]

4 MCAR § 13.012 Standards of conduct. Violations of the following Standards of Conduct standards of conduct by a licensed peace officer shall be grounds for revocation or non-renewal of license:

A. 1. The ~~commission~~ conviction of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

B. 2. The use of deadly force when not authorized by Minn. Stat. § 609.066.

C. 3. To make a false material statement under oath to the ~~Board~~ board which the peace officer does not believe to be true.

D. 4. To have made a false material statement to the ~~Board~~ board while obtaining or renewing a license.

E. 5. Failure to comply with the ~~Board's~~ board's continuing education requirements as set forth in 4 MCAR § 13.008.

F. 6. Failure to pay the licensing fee as set forth in 4 MCAR § 13.007.

G. 7. Violation of ~~Board~~ board rules as set forth in 4 MCAR §§ 13.001-13.020.

4 MCAR § 13.013 B. Complaints: investigation and hearing. Complaints, investigations and hearings under rule § 13.012 shall be pursuant to Minn. Stat. §§ 214.10 and 214.11.

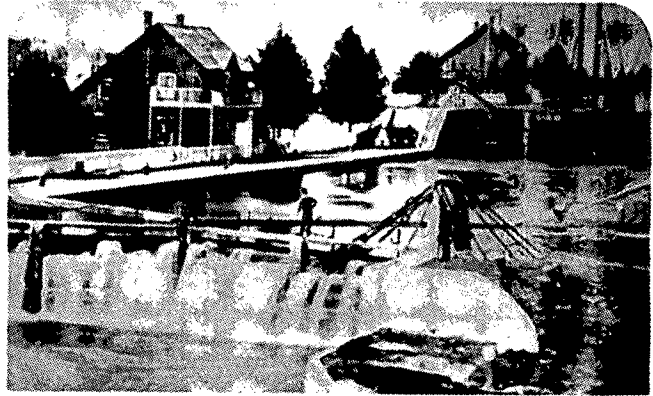
KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a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

RULES

Department of Personnel

Notice of Extension of Adopted Temporary Rules Governing Travel and Relocation Reimbursement, Probationary Period, Vacation Leave and Holidays

The temporary rules proposed at *State Register*, Volume 3, No. 48, pages 2106-2113, June 4, 1979 (3 S.R. 2106) and adopted at *State Register*, Volume 4, No. 6, page 117, August 13, 1979 (4 S.R. 117), are continued in effect until December 27, 1979.



The First Locks at Sault Ste. Marie opened Lake Superior to the lower lakes in 1855. (Courtesy of Port of Duluth Superior)

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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

Public Hearings on Agency Rules October 8-12, 1979

Date	Agency & Rule Matter	Time & Place
Oct. 9 & 10	Dept. of Administration Building Code Rules Hearing Examiner: Peter Erickson	9:30 a.m., Rm. 83, State Office Bldg., St. Paul, MN
Oct. 10	Dept. of Natural Resources Mineland Reclamation Hearing Examiner: Howard Kaibel	9:00 a.m., Rm. 135, Mesabi Community College, Virginia, MN

Department of Education School Management Services Division

Proposed Temporary Rules Governing Education Computer Systems

Request for Public Comment

Notice is hereby given that the Department of Education has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1979, ch. 334, Art. VI, § 1, Computerization by School Districts.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to:

Donald Thomas, Director
Education Data Systems Section
Department of Education
550 Cedar Street
St. Paul, Minnesota 55101

PROPOSED RULES

The temporary rules may be revised on the basis of comments received.

Any written material received shall become part of the record and the final adoption of the temporary rule.

September 10, 1979

Howard B. Casmev
Commissioner of Education

Temporary Rule as Proposed (all new material)

Chapter Forty-two: Computer Systems

5 MCAR § 1.0900 Definitions.

A. Definitions. For the purpose of these rules, the following definitions are used:

1. "Board" means the State Board of Education.
2. "Commissioner" refers to the Commissioner of Education.
3. "Department" refers to the Department of Education.
4. "District" is defined as any independent, special, or common school district.
5. "ESV" refers to the elementary, secondary, and vocational education system in Minnesota and includes all school districts as defined above.
6. "ESV-IS" is the Elementary Secondary and Vocational Information System which is sometimes referred to as the "State-wide software" and the "software developed by MECC for the Department of Education."
7. "ESV-FIN" is the financial accounting subsystems of the ESV-IS.
8. "ESV-PPS" is the personnel payroll subsystem of the ESV-IS.
9. "ESV-SSS" is student support subsystem of the ESV-IS.
10. "ESV-IMS" is the instructional management subsystem of the ESV-SSS.
11. "MECC" is the Minnesota Education Computing Consortium.
12. "Region" and "regional management information center" is the administrative organization created to provide computer services to the school districts within the region and designated as a regional management information center by the Department of Education.
13. "Data element" is any representation of information such as alphabetic characters, or numbers or signs to

which meaning may be assigned and which is suitable for communication, interpretation or processing by humans or by automated means.

14. "Data acquisition calendar" is the list of forms, applications, memoranda, or other instruments through which the districts are required to collect, record or report data, and indicates the date when such data is due to the Department.

15. "State computing plan" is the following collection of documents:

- a. "A proposed educational computing services organization: its facilities and services" revised edition February 15, 1973.
- b. "Minnesota educational computing consortium 'MECC' report — 1974" February, 1974.
- c. "MECC update" September, 1974.
- d. "Minnesota educational data processing to 1980" October, 1974.
- e. "Summary of Minnesota educational computing plans and budget for the 1977-79 biennium" November, 1976.
- f. "Summary of Minnesota educational computing plans and budgets for the 1979-81 biennium" November, 1978.
- g. "Minnesota area vocational-technical institutes state plan for instructional data processing" July 1, 1979.
- h. Such other documents as the State Board of Education may from time to time designate as an amendment to the State Plan.

16. "UFARS" is the Uniform Financial Accounting and Reporting System established in 5 MCAR §§ 1.0760-1.0769 adopted by the Board pursuant to Minn. Stat. §§ 121.90-121.928.

5 MCAR § 1.0901 Region plans and budgets.

A. By April 1 of each year, each regional management information center shall submit an annual plan and budget on behalf of its member districts to the Department of Education for its approval.

B. This plan and budget shall be on forms and in the format prescribed by the Commissioner.

C. The plan shall contain sufficient information so that it can be determined by the Department that:

1. The region has conducted a survey of each member district and has developed a statement of the needs for computer services for each of the member districts.

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

PROPOSED RULES

2. That each district will fully participate in the comprehensive financial reporting system utilizing the ESV-FIN system and that each district has an opportunity to fully participate or has an opportunity to participate to the extent of desired participation in the ESV-PPS, and/or ESV-SSS, and/or ESV-IMS through the availability of hardware, ESV-IS software, and staff specialists to operate these systems during the normal working hours of the regional computer centers.

3. There is sufficient staff, computer hardware and related equipment to meet the needs expressed by the member districts and that the hardware and related equipment is compatible with the hardware and communication equipment used by the ESV-IS.

4. There are sufficient funds to support the staff, hardware, communication and other related costs of the regional management information center.

5. The region has the ability to provide information required by the annual data acquisition calendar and by the Rules of the Board on behalf of its member districts by securing and operating such equipment using the software designed by, for, or on behalf of the Department as is necessary to produce computer tapes which are machine readable on the computer designated by the Department.

6. The region has a data base which it maintains for each school district which contains the data elements in the data element dictionary and the region has the necessary equipment and software to report to the Department, within 15 days, information based on these data elements using software designed by, for, or on behalf of the Department, on computer tape, which is machine readable on the computer designated by the Department.

7. The region has the ability to collect, store and report within 30 days, information requested by the Department, based on data elements not contained in the data element dictionary.

D. By February 1 of each year each district shall submit to the regional management information center a proposed budget and plan for computer services identifying the computer equipment, computer software, and staff it will use, the costs related to those items and any service fees or other computer related costs which will be incurred by the district and will not be provided by the region.

E. Each district shall collect, and shall store on the region computer, for reporting to the Department, the data elements contained in the data element dictionary. Each region shall maintain a database for each school district of data elements in the data element dictionary in the format according to the standards contained in 5 MCAR § 1.0903 C.

F. The region shall submit a proposed annual budget

approved by its governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

G. By April 1 of each even numbered year, each existing region and any proposed region shall submit a proposed biennial budget approved by its governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

H. The Commissioner shall review any proposed equipment acquisition to determine whether the services requested justify the expenditures; and will review all costs to determine whether they are justified by the level of services to be provided.

I. The Commissioner shall make a determination whether there are sufficient funds to implement the annual or biennial plan and budget as presented and shall notify the region of his decision. In the instance where the decision of the Commissioner is adverse to the desires of the region, the region may have the matter referred to the Minnesota Educational Computing Consortium for a final determination.

J. Any change in level of service provided by the region or proposed equipment or changes that occur after a plan and budget has been approved must be separately approved by the Commissioner.

K. During the course of any year, the Commissioner may revoke a previously granted approval of a plan and budget on the basis that:

1. There has been an amendment to the plan or budget which materially affects the provision of services to members of the region and which has not been reported to or approved by the Department.

2. The region no longer has the ability to provide services according to the standards established in 5 MCAR § 1.0901 and 5 MCAR § 1.0902 necessary for the creation of a region.

5 MCAR § 1.0902 Creation of regions.

A. Criteria for new regions. Two or more districts which desire to establish a new regional management information center shall submit to the Commissioner the following information:

1. Names and addresses of the districts who desire to operate the new region.

2. A plan and budget which meets the requirements of 5 MCAR § 1.0901.

3. A statement showing how the proposed region conforms to the state computing plan in that:

a. The hardware and its operating software proposed for the region is compatible to the hardware and operating software specified in the plan.

PROPOSED RULES

b. The software used is the ESV-IS software.

c. The staff is or will be trained on the ESV-IS and will be able to provide user coordination and data control services to the districts.

d. Services to AVTI schools located within the region are included in the proposed region plan and budget.

e. Communication networks are configured in the least costly manner.

f. The governance structure of the proposed region conforms to Minn. Stat. § 471.59.

4. The determination of whether the proposed region is cost effective will be based upon the following information:

a. The cost for data communications, hardware, staff, space rental, and other associated costs compared with projected costs if instead the member districts were to belong to existing regions that are in proximity to the member districts. Where the level and types of services in the proposed region differ from those which have been provided by regions in proximity to the member districts, those differences along with the costs associated with those differences must be documented.

b. Any continuing financial obligations where member districts are withdrawing from a previously existing region.

c. Any additional cost to other districts where a member district withdraws from an existing region, and the ability of the existing region to reduce those costs by the utilization of different hardware, and staff while still meeting its obligations under 5 MCAR § 1.0901. If the existing region cannot continue in a cost effective manner, the ability of the remaining member districts to join different regions who will meet their needs as specified in the existing plan filed pursuant to 5 MCAR § 1.0901, and the costs related to such a change.

d. The anticipated membership and service fees for the member districts compared with the membership and service fees if instead the member districts were to belong to existing regions that are in proximity to the member districts. Any difference in level of service between the proposed region and the regions in proximity must be documented.

B. Upon examination of the evidence presented in support of the creation of a new region, and after consultation with the Elementary Secondary and Vocational Computer Services Advisory Task Force, the Commissioner shall make recommendation to the Board for its determination.

C. Any new region which is approved pursuant to this rule shall come into existence on the July 1 of the next odd numbered year after its creation or when the Legislature makes

express appropriations of regional subsidies for the region, whichever occurs first.

D. Any district which seeks to terminate membership in an existing region and affiliate with another existing region must file the same documentation and complete the same process as provided for the creation of a new region.

5 MCAR § 1.0903 Data element dictionary.

A. The purpose of the data element dictionary is to provide a standardized table of data elements which districts are required to collect, store and report either directly to the Department or through the regional management information center.

B. The criteria for inclusion of a data element in the data element dictionary are:

1. The data is needed in order for the Department to properly disburse funds in support of the elementary, secondary and vocational educational system in Minnesota; or

2. The data is needed to make reports defined or required by state or federal statute, rules, or regulations; or

3. The data is needed for the planning of educational programs; or

4. The data is needed for the evaluation of educational programs; or

5. The data is needed for adequate management of the Department; or

6. The data is needed for the implementation of research or special projects in education, and which have been approved by the Commissioner.

C. Each data element in the data element dictionary shall contain:

1. The standard names of the data element.

2. The description of the physical characteristics of the data element.

3. The definition of the data element.

4. The purpose for which the data element is collected.

D. Data elements proposed for inclusion in, or deletion from, the data element dictionary shall be reviewed and approved by the Commissioner. At least 90 days notice to the region shall be given prior to the collection of any new data element.

5 MCAR § 1.0904 Data acquisition plan.

A. By June 1 of each year, the Department shall transmit to each district and region an annual data acquisition calendar specifying the reports which school districts are required to

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

PROPOSED RULES

submit either directly to the Department or through the regional management information center. Amendments may be made to the calendar each quarter thereafter.

B. The data acquisition calendar shall contain, at a minimum, the name and description of the form and the date when it is due to the Department.

C. Only data elements contained in the data element dictionary shall be included in the form and shall be used according to the standards established in the data element dictionary.

D. Proposed forms to be included or deleted from the data acquisition calendar shall be approved only after each data element has been approved by the Commissioner as provided in 5 MCAR § 1.0903.

Department of Education

Proposed Temporary Rules Governing Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

Request for Public Comment

Notice is hereby given that the Department of Education has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1979, ch. 334, Article III, subd. 3b., Procedures For Decisions.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rules for 20 days immediately following publication of this material in the *State Register* by writing to Wilfred Antell, Ed.D., Assistant Commissioner, Division of Special and Compensatory Education, Department of Education, 550 Cedar Street, St. Paul, Minnesota 55101. The temporary rules may be revised on the basis of the comments received. Any written material received shall become part of the record in the final adoption of the temporary rules.

September 10, 1979

Howard B. Casmev, Secretary
State Board of Education

Temporary Rules as Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0120 ~~EDU 120~~ Policies and definitions.

A. Policies.

1. Provision of full services. All children and youth

who are handicapped and who are eligible for special education services shall have access to free appropriate public education, as that term is defined by applicable law, suited to each child's individual needs including the special education appropriate to his or her development. All school districts shall provide for such education suitable to students' individual needs regardless of the severity of the child's mental, physical or emotional disability, or other impairment or handicap. The responsibility of the school district is not diminished by the availability of nonpublic schools or other services which may be located within the district.

2. Least restrictive alternative. To the extent that there are no detrimental effects, children who are handicapped shall be educated with children who do not have handicaps and shall attend regular classes. A handicapped person shall be removed from a regular educational program only when the nature or severity of the handicap is such that education in a regular educational program cannot be accomplished satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. The needs of the person shall determine the type and amount of services needed.

3. Individualized programs. All children who are handicapped must be afforded special education services based on an individual educational plan. Such programs need to include an assessment of the student's performance utilizing licensed personnel, a determination of the student's needs in a team process, an identification of appropriate goals and objectives, a selection of teaching strategies designed to enhance learning, delivery of services in an environment which is conducive to learning, and periodic review and evaluation of the performance of the student.

4. Procedural safeguards. When a change in the educational placement or special education service of a child is proposed, including the assessment and program planning processes, procedural safeguards must be assured by the school district. Parents and guardians, and students when appropriate, have the right to be informed of all significant educational decisions. When a child's parents or legal guardians are not available, the school district shall contact the local county welfare department and request the public welfare system intervene on behalf of the child.

5. Parental involvement. Parents of handicapped children have a right to be involved by the school district in the education decision making process. Only by consistent and direct involvement of parents will the school receive sufficient input to design and implement an effective program for the handicapped student. Parents and schools are encouraged to cooperate in an open and objective manner, utilizing periodic conferences when possible so that formal hearings are necessary only when substantive disagreements exist between the parties.

6. Accountability for instruction and services. As provided in Minn. Stat. § 120.17, subd. 2, the district of residence is responsible for maintaining an appropriate pro-

PROPOSED RULES

gram for all eligible handicapped persons regardless of the method or location of instruction utilized. However, if the handicapped person lives outside of his district of residence under the provisions of Minn. Stat. § 120.17, subs. 6 & 7, the district where the child lives is responsible for providing an appropriate program for the child as set forth in state statutes and these rules ~~regulations~~ including the notice and hearing provisions. In such cases the district of residence is responsible for assuming the cost of the educational program. If the districts do not agree on the tuition rate, either district may appeal to the commissioner as provided in Minn. Stat. § 120.17, subd. 4. The district shall not purchase special educational services for a child from ~~from~~ a public or private agency when such service is available or can be made available ~~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 children who are handicapped and who reside in the district, it continues to be the responsibility of the school district, consistent with the provisions of Minnesota statutes and these rules, to assure and ascertain that such children and youth receive the education and related services and rights to which they are entitled.

7. Exclusion and expulsion from school. If it is determined in a pupil fair dismissal act proceeding (Minn. Stat. § 127.26) that the child, by reason of an emotional disturbance or a special behavior problem needs special instruction and services as defined in Minn. Stat. § 120.03, subd. 3, these rules shall apply.

8. Physical facilities. Physical aspects and specification of schools, classrooms, and other facilities which will be used by handicapped children, shall be designed to meet their special physical, educational and emotional needs. To this end, responsible school districts constructing, renovating, or repairing facilities which are intended for or are likely to be used by handicapped children, shall plan, locate, design, construct, equip ~~equi~~, and maintain them with due regard for the special capabilities, handicaps, and requirements of the handicapped children to be accommodated therein.

B. Definitions.

The following terms used throughout these rules shall have the following meanings ascribed to them.

1. "Education" includes the terms "educational service," "educational program," "special education services," and "regular education program" as they are defined and used herein, and means any appropriate training, instruction, and aids and services designed to further the intellectual, academic, verbal, physical, emotional, cultural, adaptive behavior, sensory, or social development of the student.

2. "Regular education program" means the normal elementary or secondary education environment, including the instruction, training, aids, and services in the classroom or other appropriate places.

3. "Special education services" means any specially designed instruction to meet the unique needs of a handicapped person, including classroom instruction or instruction in the home, hospital, institution, residential facility or other public or private facility providing special instruction and services pursuant to Minn. Stat. §§ 120.17 and 124.32. This term includes, but not by way of limitation, the education, instruction, training, aids and services and/or ancillary or supplementary and supportive aids and services necessary for the education of handicapped persons. This term also includes, but not by way of limitation, related services such as transportation, and developmental, corrective, and other supportive services including medical and counseling services, except that such medical services shall be for diagnostic or assessment purposes only, as may be required to assist a handicapped person to benefit from special education services. For purposes of this rule the term also means and includes a "primary placement in a special education program" as that term is defined and used herein; and "special instruction and services," "supplementary services," and "special education program" as those terms are defined and used in Minn. Stat. § 120.17.

4. "Primary placement in a regular education program" means an educational program wherein a regular classroom teacher(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where special education staff member(s) play no daily role in the education of the student or where they are providing part-time supporting instruction or services for the student.

5. "Primary placement in a special education program" means an educational program wherein a special education staff member(s) has the primary responsibility for the student's daily program planning, for parent conferences, and for curriculum content; and where regular classroom teacher(s) play no role in the education of the student or where they are providing part-time supporting instruction or services for the student.

6. "Providing school district" means a school district as that term is defined and used under Minn. Stat. § 120.02 which maintains an educational program for the handicapped person.

7. "Resident school district" means the district where the handicapped person's parent or guardian resides or the district designated by the commissioner as provided in Minn. Stat. § 120.17, subs. 6 and 8a.

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

PROPOSED RULES

8. "Special education facility" means a school or any portion thereof, supplemental facility, or any other building or structure or part thereof, intended for use of or likely to be used in meeting the educational and related needs of handicapped children.

9. "Handicapped persons" includes the term "student," and "child" or "person" and means those "handicapped children" as defined by Minn. Stat. § 120.03 and amendments or supplements thereto. Determination of a handicapping condition shall be made by qualified personnel in accordance with recognized professional standards and consistent with the provisions of 5 MCAR § 1.0124 ~~EDU 424~~ and 5 MCAR § 1.0125 ~~425~~. These rules shall not apply to persons receiving home or hospital instruction unless they have a presenting handicapping condition as described above.

10. "School age" means the age of four to twenty-one years for all handicapped children as defined in Minn. Stat. § 120.03 and shall not extend beyond secondary school or its equivalent. ~~for persons who are deaf, blind, crippled, or have speech defects and ages five to twenty-one years for other handicapped persons, in accordance with Minn. Stat. § 120.17 subd. 4 and amendments or supplements thereto. As of August 15, 1977 school age shall mean ages four to twenty one for all handicapped children.~~

11. "Least restrictive alternative" means the principle that to the maximum extent appropriate, handicapped persons, including those in public or private institutions or other care facilities, are educated with persons who are not handicapped, and that special classes, separate schooling or other removal of handicapped persons from the regular educational environment shall occur only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of special education services cannot be achieved satisfactorily. Furthermore, there must be an indication that the person will be better served outside of the regular program. For the purposes set forth therein this principle shall include the following "Continuum of Placement Model."

"Continuum of Placement Model"

Level 1. Students in regular classrooms functioning appropriately without any special education services. This level includes assessment services, monitoring, observation and follow-up.

Level 2. Students with handicaps functioning appropriately in the regular education program with the assistance of special education supportive services being provided to the classroom teacher.

Level 3. Students with handicaps functioning appropriately in a primary placement in a regular education program, but needing direct service assistance from special education personnel.

Level 4. Students with handicaps functioning appropriately with a primary placement in a special education program.

Level 5. Students with handicaps functioning appropriately in a primary placement in a special education program at a nonresidential school for children and youth who are handicapped.

Level 6. Students with handicaps functioning appropriately in a primary placement in a special education program at a residential facility for children and youth who are handicapped.

12. "Formal educational assessment," referred to in these rules also as an "assessment," is defined as an individual evaluation, conducted in accordance with recognized professional standards and the provisions of 5 MCAR § 1.0124 ~~EDU 424~~, of a person's performance and/or development for the purpose of determining the need for initiation or change in his or her educational program including special education services.

13. "Parent" or "parents" include a biological mother or father, an adoptive mother or father, a legally appointed guardian, or such agency or other person appointed pursuant to 5 MCAR § 1.0123 ~~EDU 423~~. All rights and responsibilities as provided herein belong to a person when the person is 18 years of age, unless the person is under legal guardianship.

14. "Recognized professional standards" means reasonable principles and concepts accepted by acknowledged experts that bear a direct relation to the particular needs of the student.

15. "Days" ~~and "months"~~ shall be construed to exclude Saturdays, and Sundays, and days school is not in session unless otherwise provided herein.

16. Nondiscrimination for purposes of this rule means the requirement that school districts shall:

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

b. provide procedures that insure that in accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of identification, assessment, classification, educational program plan development, educational placement including special education services, program implementation, review and evaluation, notice and hearing are selected and administered so as not to be discriminatory including cultural discrimination. All such procedures and materials shall take into account the special limitations of handicapped persons and the racial or cultural differences presented by persons and must be justified on the basis of their usefulness in making educational program decisions which will serve the individual student.

17. "Proposed action" for purposes of this rule shall be construed to mean a providing school district's proposed

PROPOSED RULES

initiation or change or refusal to initiate or change a child's educational placement or special education services as set forth in 5 MCAR § 1.0125 E. ~~EDU 125 E.~~ or an educational assessment or reassessment as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~

18. "Individual educational program plan" referred to in these rules also as a "program plan" means a written statement for each handicapped person setting forth the person's educational needs and the educational program, including special education services, to be provided to such person. The program plan shall be developed in accordance with and contain the information required by 5 MCAR § 1.0125 ~~EDU 125.~~

19. "Public, private or voluntary agencies" for purposes of this rule includes organizations which provide services to preschool and/or school age children. Public schools are not included in this definition.

20. "Initial formal assessment" means the first formal assessment of a child provided by the district.

21. "Initial placement and provision of service(s)" means the first special education placement and provision of special education service(s) by the district.

EDU 121 Renumber as 5 MCAR § 1.0121.

EDU 122 Renumber as 5 MCAR § 1.0122.

EDU 123 Renumber as 5 MCAR § 1.0123.

5 MCAR § 1.0124 ~~EDU 124~~ Identification and assessment procedures.

A. Identification of handicapped children.

1. School districts shall develop systems for locating all children residing within their jurisdiction who may be handicapped. Those systems shall be designed to identify:

- a. preschool age handicapped children;
- b. handicapped persons attending school;
- c. handicapped persons of school age who are not attending any school.

2. The districts identification system shall be developed in accordance with the requirement of non-discrimination.

B. Formal educational assessment.

1. An assessment:

a. must be conducted when because of a person's performance in the present educational placement or presenting handicapping conditions, he or she is thought by the school district to be in need of possible initiation or change in the student's educational placement or program or special

education services as set forth in 5 MCAR § 1.0125 E. ~~EDU 125 E~~ which will provide an educational program, including special education services appropriately suited to the person's needs;

b. must be conducted at least every two years as required by 5 MCAR § 1.0126 B.; ~~EDU 126 B.~~

c. may be conducted if the parent requests.

2. Prior to conducting an assessment the district shall:

a. review the screening, referral or other data about the person and select licensed special education personnel and others as appropriate to conduct the assessment;

b. include on the assessment team licensed special education personnel and others who may have the responsibility for implementing the education program for the person;

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

d. conduct the assessment within a reasonable period of time not to exceed 30 days after the need for an assessment is determined by the district unless a conciliation conference or hearing is requested ~~by the parent.~~

3. The assessment must reflect the person's current level of performance and shall:

a. be appropriate to the presenting problem and may include observation, evaluation, and testing of the person's intellectual, academic, verbal, emotional, adaptive behavior, sensory, physical, and social development;

b. include a review of the person's learning environment and learning modes. When the team determines it to be necessary because of racial, cultural, or other differences presented by the person or due to the nature of the student's presenting handicapping condition they shall make reasonable efforts to obtain information from the parents relating to the student's functioning in his or her total environment;

c. be provided and administered in the person's primary language or mode of communication unless it clearly is not feasible to do so;

d. be performed in accordance with recognized professional standards which include recognition or accommodation for persons whose differences or conditions cause standardized instruments to be invalid and otherwise in accordance with the requirements of nondiscrimination.

4. Notice before assessment:

a. must be provided in accordance with the provi-

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

PROPOSED RULES

sions of 5 MCAR § 1.0127 B. ~~127 B.~~ prior to conducting a formal educational assessment or reassessment or when the district refuses a parent's request to conduct a formal educational assessment or reassessment. In case of refusal the notice shall be served within ten days after the refusal;

b. is not required for actions which are components of the district's identification system including large group screening, individual student observation within the regular classroom, informal inventories, and consultation between regular and special education personnel.

5 MCAR § 1.0125 EDU 125 Team determination and program needs determination. Development and content of the individual education program plan.

A. Team and program needs determination. Following the assessment, in order to determine if the person is in need of special education services, the district shall:

1. designate a team of persons responsible for determining the educational needs of the student which, at a minimum, shall include a school administrator or designee, the student's regular classroom teacher, appropriate special education personnel, other support personnel, the parent, and when appropriate, the student;

2. organize the assessment data and other relevant information and reports, including information supplied by the parents, review that data and determine the student's educational needs;

3. interpret the data consistent with the requirement of nondiscrimination;

4. upon request of the parent, determine whether it is appropriate to involve additional staff or other persons on the team including someone who is a member of the same minority, as that term is defined in Minn. Stat. § 126.021, or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

5. schedule the student staffing at a time and place that is mutually acceptable to the school and parents; the district shall proceed if the parents do not respond to the request to participate;

B. Development and content of the individual education program plan. The development of the program plan must:

1. be prepared, in writing, by the providing district for each person in need of special education services; when the providing district is not the resident district, a copy of the program plan shall be sent to the resident district;

2. be developed in accordance with the requirement of nondiscrimination, the principle of the least restrictive alternative, and recognized professional standards;

3. be based on the assessment data and other relevant reports and information;

4. be prepared, in writing, by the resident district when contracting for special education services from a public, private or voluntary agency.

C. Content of the individual education program plan. The program plan must be based on the assessment data and other information and be consistent with the requirement of nondiscrimination and the principle of least restrictive alternative and must include:

1. a description of the special education service needs of the student as determined by the staffing team and the names of the persons on the team;

2. a statement of annual goals and periodic review objectives for the special education services including the criteria for attainment;

3. the plan for, location of, and frequency of periodic review of the progress in reaching the prescribed educational goals and objectives;

4. the reasons for the type of education placement and program including type of special education services to be provided, the location, amount of time, starting date, anticipated special education service duration, names and school telephone numbers of those personnel responsible for providing the special education services. In accordance with the principle of least restrictive alternatives, substantiate why the proposed action is the most appropriate in terms of the person's educational needs;

5. the changes in staffing, transportation, facilities, curriculum, methods, materials, and equipment and other educational services that will be made to permit successful accommodation and education of the student in the least restrictive alternative;

6. a description of the educational activities in which the student will participate in environments which include non-handicapped students. This provision must be included in the plan only when the student's primary placement will be in a special education program.

D. At the request of the parent, the district shall schedule an individual conference with a knowledgeable school employee for the purpose of receiving interpretations of the assessment or reassessment data or procedures or for the purpose of explaining the individual educational plan or its development.

E. Notice to parents after completion of the program plan and prior to placement. Notice in accordance with the provisions of 5 MCAR § 1.0127 C. ~~EDU 127 C.~~ is required whenever the providing school district purposes to initiate or change or refuses to initiate or change the level of educational placement as defined in the Continuum of Placement Model, or proposes to initiate or significantly change or refuses to initiate or significantly change the special education services for the child. For the purposes of this rule the terms initiate or change shall be construed to include the proposals set forth in Minn. Stat. § 120.17, subd. 3b (c) (2), (3), (4), and (5). The notice shall be served prior to the initiation or change or refusal to initiate or change the educational placement or special education services for the child. The notice shall be served within ten days after completion of the program plan and/or the refusal to initiate or change.

EDU 126 Renumber as 5 MCAR § 1.0126.

5 MCAR § 1.0127 EDU 127 Formal notice to parents.

PROPOSED RULES

A. General notice provisions.

1. The notice shall be in writing and shall be served on the parent.

2. Every effort shall be made by the providing school district to assure that no person's rights are denied for lack of a parent, or surrogate parent, or duly appointed guardian.

3. The notice shall be written in the primary language of the home and in English, and the district shall make reasonable provisions for such notice to non-readers and non-English speaking persons necessary to insure that the information contained in the notice is understood.

4. For parents who are handicapped persons because of a hearing, speech, or other communication disorder, or because of the inability to speak or comprehend the English language as provided in Minn. Stat. § 546.42 the school district shall cause all pertinent proceedings, including but not limited to the conciliation conference, the pre-hearing review, the hearing, and any appeal to be interpreted in a language the handicapped person understands by a qualified interpreter as provided in Minn. Stat. § 546.42.

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

6. The resident school district, if different from the providing school district, shall receive notice of and may be a party to any hearings or appeals provided herein if the district notifies the parent and the providing school district of its intention to be a party within seven days of receipt of notice of the hearing from the providing school district.

B. Prior to the performance of or refusal to perform a formal educational assessment or reassessment as provided for 5 MCAR § 1.0124 B. ~~EDU 124 B.~~, the providing school district shall prepare and serve a notice which meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include the reasons for assessment or the refusal to assess and how the results may be used;

2. include a general description of the procedures to be used;

3. state where and by whom the assessment will be conducted;

4. inform the parents of their right to review and receive copies of all records or other written information regarding their child in the school's possession;

5. inform the parents of their right and the procedure and time for them to participate as a team member in developing and determining their child's educational program, including special education services and/or to provide information relative to his or her assessment and the development of the program plan;

6. inform the parents of their right and the procedure and time to receive interpretations of assessment or reassessment procedures, instruments and data or results and of the program plan from a knowledgeable school employee and for that conference to be held in private;

7. inform the parents of their right and the procedure and time to have included on the team that interprets the assessment data and/or develops the individual program plans, such person(s) described in 5 MCAR § 1.0125 A. ~~EDU 125 A.~~ including a person who is a member of the same minority (as defined in Minn. Stat. § 126.021) or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

8. inform the parents that they may obtain an independent assessment at their own expense-;

9. inform the parents that the district will not proceed with the initial formal assessment proposed action of a child, as defined in 5 MCAR § 1.0120 B., without prior written consent of the child's parent; unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

10. inform the parents that except for the initial formal assessment, the district shall proceed with the proposed assessment unless the parent objects on the enclosed "response form" or otherwise in writing within ten days after receipt of the notice;

11. ~~10.~~ inform the parents that if they object to the proposed assessment ~~action~~ in writing a conciliation conference will be held at a mutually convenient time and place, but that if the parent refuses to attend the conference and the proposed assessment is not the initial formal assessment, the district will proceed with the proposed action;

12. ~~11.~~ inform the parents that if the parent ~~still~~ objects to the proposed action during or after the initial final conciliation conference they have a right to voice that objection at an impartial ~~informal~~ due process hearing-;

13. ~~12.~~ inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference or the impartial ~~informal~~ due process hearing-;

14. ~~13.~~ a statement assuring that their child's educational program will not be changed as long as the parent objects to the proposed action, in the manner prescribed by these rules-;

15. ~~14.~~ include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed-;

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

PROPOSED RULES

C. Prior to the initiation or change or the refusal to initiate or change a child's educational placement or special education services, as set forth in 5 MCAR § 1.0125 E. EDU 425 E. the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. and shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C. EDU 425 C.;

2. inform the parents of their right and time and procedure to request and to receive interpretations of assessment or reassessment procedures, instruments and data and of the program plan from a knowledgeable school district employee and for that conference to be held in private;

3. inform the parents that they may obtain an independent educational assessment at their own expense;

4. inform the parents that the school district will not proceed with the initial placement and provision of service(s) proposed action as defined in 5 MCAR § 1.0120 B. without prior written consent of the child's parent; unless the parent objects in writing on the enclosed "response form" or otherwise to the proposed action within ten days after receipt of the notice.

5. inform the parents that except for the initial placement and provision of service(s), the district will proceed with the proposed placement and provision of service(s) unless the parent objects in writing on the enclosed "response form" or otherwise in writing within ten days after the receipt of the notice;

6. ~~5.~~ inform the parents that if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place but that if the parent refuses to attend the conciliation conference and the proposed placement and provision of service(s) is not the initial placement and provision of service(s), the school district will proceed with the proposed action;

7. ~~6.~~ inform the parents that if they still object to the proposed action at anytime after the first conciliation conference is convened, that they have a right to voice that objection at an impartial informal due process hearing;

8. ~~7.~~ include a statement assuring that the student's educational program will not be changed as long as the parents object to the proposed action in the manner prescribed by these rules;

9. ~~8.~~ include a "response form" on which the parent may indicate their approval of or objection to the proposed action and identify the district employee to whom the "response form" should be mailed or given and to whom questions may be directed.

5 MCAR § 1.0128 EDU 428 Conciliation conference.

A. When a conciliation conference must occur:

1. If the parent does not object in writing, to a proposed action as set forth in 5 MCAR § 1.0124B. EDU 424 B. or

5 MCAR § 1.0125 E. EDU 425 E., within fourteen ten days after receipt of the notice and the proposed action is not an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4., the proposed action shall take place. If such written objection is made, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and the school district representative and shall be held within ten days after receipt of the written objection. There may be more than one such conference and the parent may ~~not~~ request a hearing under 5 MCAR § 1.0129 A. EDU 429 A. at anytime after the first conciliation conference is convened. ~~until at least one conciliation conference has been held.~~

2. If the parent refuses to provide prior written consent as set forth in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. within ten days after the receipt of the notice and response form, the providing school district shall arrange for a conference with the parent for the purpose of reviewing the reasons for the proposed action and conciliating the matter. The conference shall be held at a time and place mutually convenient to the parent and school district representatives and shall be held within ten days after the expiration of the ten day period for parent response.

B. Memorandum. Within seven days of the final conciliation conference the providing district shall serve the parent with a written memorandum which shall inform the parent:

1. of the school districts proposed action following the conference;

2. that if they continue to object to the proposed action they have a right to object to the proposed action at an impartial informal due process hearing and the procedure and time in which to do so, including a "request form" on which the parent may request the hearing, and the identification of the district employee to whom the written request form or other written request for hearing should be mailed, and to whom questions and legal documents or requests relating to the hearing may be directed;

3. that if they do not request a hearing on the written "request form" or otherwise in writing pursuant to 5 MCAR § 1.0129 A. EDU 429 A. within seven days after receipt of the notice, the district will proceed with the proposed action; unless the proposed action is an initial action as defined in 5 MCAR § 1.0127 B.9. and 5 MCAR § 1.0127 C.4. In cases of such proposed initial actions, when a parent continues to refuse to provide written permission, the district shall schedule a hearing within seven days after the expiration of the seven days allowed for parent response;

4. that if a hearing is scheduled they request a hearing on the written "request form" or otherwise in writing the district shall send that they will receive a notice describing the rights and procedures available to the parents them relative to the hearing.

PROPOSED RULES

C. "Days" when used in 5 MCAR § 1.0128 means calendar days. ~~If no such written request is made after the final conciliation meeting, the proposed action shall take place.~~

5 MCAR § 1.0129 ~~EDU 129~~ The hearing.

A. When a hearing must be held.

1. A hearing regarding a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ or 5 MCAR § 1.0125 E. ~~EDU 125 E.~~ shall be held not later than 30 days, unless continued pursuant to the mutual agreement of the parent and school district(s) whenever after the providing district receives the parents' request for a hearing. This request must be in writing and must be made within seven days after the parents' receipt of the written memorandum pursuant to 5 MCAR § 1.0128 B. ~~EDU 128 B.~~ Provided, however, that no parent shall have a right to request a hearing unless at least one conciliation conference has been held pursuant to 5 MCAR § 1.0128 A. ~~EDU 128 A.~~

2. A district shall conduct a hearing whenever a parent refuses to provide written permission for the initial formal assessment of a child, initial placement of a child in a special education program, or the initial provision of special education services, provided the district has made at least one attempt to obtain this written consent through at least one conciliation conference.

B. Notice.

1. Written notice of the time, date and place of all hearings shall be given to all parties by the providing district at least ten days in advance of such hearings; and the hearing shall be held at a time, date, and place mutually convenient to all parties.

2. Within five days of receipt of the parent's written request for a hearing the providing school district shall serve the parent with a written notice of rights and procedures relative to the hearing which shall inform the parent:

a. that at the option of the school board, the hearing shall take place (1) before the school board or its designee; an impartial hearing officer (2) a person mutually agreed to by the school board and the parent; or (3) a person appointed by the commissioner; If the school board and parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.

b. that they will receive notice of the time, date and place of the hearing at least ten days in advance of the hearing which will be held within thirty days after the written request;

c. inform the parent of their right or responsibility:

(1) to be represented in preparation of and at the hearing by legal counsel or other representative of their choice;

(2) in accordance with laws relating to confidentiality to examine and receive copies of the child's school records before the hearing, including tests, assessments, reports, or other information concerning the educational assessment or reassessment upon which the proposed action may be based;

(3) to call their own witnesses and to present evidence, including expert medical, psychological, and educational testimony and relevant records, tests, assessments, reports, or other information;

(4) to request the attendance of any official or employee of the providing or resident school district or any other person, who may have evidence relating to the proposed action and the manner and time in which to do so;

(5) to cross-examine any employee of the school district(s) or other persons who present evidence at the hearing;

(6) within five days after written request to receive from either the school district(s) a list of persons who will testify on behalf of the district concerning the proposed action;

(7) within five days after written request by the school district(s) to provide to the district(s) a list of persons who will testify on the parent's behalf concerning the proposed action;

(8) at least five days prior to the hearing, to receive from the providing or resident school district, a brief resume of "additional material allegations" referring to conduct, situations, or conditions which are discovered to be relevant and which were not contained in the original notice or memorandum; and that if such material allegations are not so disclosed, it shall be left to the discretion of the person conducting the hearing to determine if those material allegations may be introduced or considered.

d. that at the hearing the burden of proof is on the school district to show that the proposed action is justified on the basis of the child's educational needs or his or her current educational performance, or presenting handicapping conditions taking into account the presumption that placement in a regular public school class with special education services is preferable to removal from the regular classroom;

e. that a record will be kept of the hearing and will be made available at cost to the parent if the decision is appealed by the parent;

f. that the hearing officer person conducting the hearing will make a written decision based only on evidence received and introduced into the record at the hearing not more than 45 days from the receipt of the request for the hearing within five days following the hearing and that the

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

PROPOSED RULES

proposed action will be upheld only upon showing by the school district by a preponderance of the evidence. A proposed action that would result in the child being removed from regular education program may be sustained only when, and to the extent the nature or severity of the handicap is such that a regular education program would not be satisfactory and the child would be better served in an alternative program. Consideration of alternative educational programs must also be given;

g. that the decision of the hearing officer ~~person conducting the hearing~~ is binding on all parties unless appealed to the commissioner by the parent or the providing district; ~~may be reviewed by the school board, at its option, within ten days following the hearing officer's decision;~~

h. that the written review decision of the school board ~~must occur within five days of the review and must be based on the standards set forth in d. and f.;~~

i. that the decision of the hearing officer ~~may be appealed to the commissioner;~~

h. j. ~~that unless the district and parent agree otherwise, the student shall not be denied initial admission to school and that the student's education program shall not be changed as long as the parents object to the proposed action in the manner prescribed by these rules.~~

C. Hearing officers.

1. ~~At the option of the school board, the hearing shall take place either before the school board; or (1) its designee, (2) a person an impartial hearing officer mutually agreed to by the school board and the parents; or (3) a person appointed by the commissioner. The school board shall exercise its option and a person to conduct the hearing must be selected at least ten days prior to the hearing. The parties by agreement may continue the time and date of the hearing for not more than ten days for the purpose of mutually agreeing to a person to conduct the hearing.~~

2. ~~If the school board and the parent are unable to agree on a hearing officer, the school board shall request the commissioner to appoint a hearing officer.~~

3. ~~The hearing officer shall not be a school board member or employee of the school district where the child resides or of the child's school district of residence, an employee of any other public agency involved in the education or care of the child, or any person with a personal or professional interest which would conflict with his objectivity at the hearing. A person who otherwise qualified as a hearing officer is not an employee of the district solely because the person is paid by the district to serve as a hearing officer.~~

4. ~~If a hearing officer requests an independent educational assessment of a child, the cost of the assessment shall be at district expense. All expenses of the hearing, except for the parents' and resident school district's attorney's fees or other expenses incidental to the parents or resident school district participation in the hearing, shall be paid by the providing school district.~~

D. Prehearing review by the hearing officer.

1. Five days prior to the hearing, the person(s) conducting the hearing shall receive copies of:

a. the providing school district's notice(s) and memorandum prepared pursuant to 5 MCAR § 1.0128 B. ~~EDU 128 B.~~ to the parents;

b. written information concerning the providing school district's educational assessment or reassessment and copies of any parties' tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment, or the proposed action;

c. a copy of the student's current and proposed individual educational program plan; and

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

e. the provisions of b. and c. need not apply when the hearing concerns a proposed action as set forth in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~

2. Upon receipt of the information set forth in 1. above, the ~~person conducting the hearing;~~ hearing officer:

a. shall review the same for compliance with these rules;

b. may at his or her discretion, meet with the parties together prior to the hearing;

c. may require the providing school district to perform an additional educational assessment or reassessment;

d. may require the providing school district to propose an alternative individual educational program plan;

e. may require the providing school district to send additional notice to the parents;

f. may do such additional things necessary to achieve compliance with these rules;

g. may postpone the hearing for up to 15 days to achieve the purposes of this paragraph.

h. may grant specific extensions of time beyond the 45 day period at the request of either party.

E. Hearing rights of the respective parties.

1. The hearing shall be closed unless the parent requests an open hearing ~~or if the hearing takes place before the school board.~~

2. The parties shall have the right to representatives of their own choosing, including legal counsel.

3. At a reasonable time prior to the hearing, the parent or their representative(s), as the case may be, shall be given access to all of the providing and resident school districts' records and such other records pertaining to the child that are authorized by law to be disclosed, including but not limited to

PROPOSED RULES

all tests, evaluations, assessments, reports, and other written information concerning the educational assessment or re-assessment, conducted pursuant to 5 MCAR § 1.0124 B. EDU 124 B. upon which the proposed action may be based.

4. At least five days prior to the hearing the parents shall receive from the school districts, who are parties of the hearing, a brief resume of "additional material allegations" referring to conduct, situations or conditions which are discovered and found to be relevant to the issues to be contested at the hearing and which are not contained in the original notice or memorandum provided pursuant to 5 MCAR § 1.0127 B. or C. or 5 MCAR § 1.0128 B. EDU 127 B. or C. or 128 B. And that if such material allegation or information relating thereto are not so disclosed, it shall be left to the person conducting the hearing to determine if those material allegations may be introduced or considered.

5. Within five days after written request any party shall receive from the other parties a list of witnesses who may be called to testify at the hearing. Such list must be filed with the person(s) conducting the hearing. Such lists may be modified at any time but each party should be notified immediately if possible.

6. All parties or their representatives, as the case may be, shall have the right to request the attendance of any employee of the school district(s), or any other person who may have evidence relating to the proposed action, and to confront, and to cross examine any such witness. Any such request must be made to the appropriate school district or to the person whose attendance is requested at least five days in advance of the hearing. Such written requests shall also be filed with the person(s) conducting the hearing at the time of hearing.

~~7. Evidentiary standards regarding contested cases as specified pursuant to Minn. Stat. ch. 15 shall apply.~~

~~7. 8.~~ If the person conducting the hearing determines at the conclusion of the hearing that there remain disputes of fact which, in the interest of fairness and the child's educational needs, require the testimony of additional witnesses, or if the hearing officer concludes that alternative educational programs and opportunities have not been sufficiently considered, he or she may continue the hearing for not more than ten days, for the purpose of obtaining the attendance of such witnesses or considering such alternative programs and opportunities. The parties' right to cross examination and confrontation and other applicable rights and procedures set forth herein shall continue and be given full force and effect.

F. Hearing procedures.

1. The hearing officer person conducting the hearing shall preside over and conduct the hearing and shall rule on procedural and evidentiary matters, and his or her decision

shall be based solely upon the evidence introduced and received into the record.

2. The school district(s) shall bear the burden of proof as to all facts and as to grounds for the proposed action.

3. One purpose of the hearing is to develop evidence of specific facts concerning the educational needs, current educational performance, or presenting handicapping conditions of the person as it relates to the needs for the proposed action. Consistent with the rights and procedures set forth herein, nothing in the rules shall limit the right of the hearing officer person conducting the hearing to question witnesses or request information.

4. A tape recording, stenographic record, or other record of the hearing shall be made, and if an appeal is filed pursuant to 5 MCAR § 1.0129 H. EDU 129 H., the hearing shall be transcribed by the providing school district and shall be accessible to the parties involved within five days of the filing of the appeal. ~~Provided however, for appeals of local decisions issued by school boards or their designees concerning proposed actions as set forth in EDU 129 H.2.a., no written transcript shall be made if the parent requests a chapter 15 due process hearing pursuant to EDU 129 H. The record or transcription, as the case may be, shall, upon request, be made available to the parent or their representative.~~

G. The ~~local decision of the hearing officer.~~ Within five days after the hearing, Not more than 45 days from the receipt of the request for a hearing, the hearing officer person(s) conducting the hearing shall prepare a written decision based on evidence received and introduced into the record at the hearing. Such decision shall address itself to the following:

1. Decisions regarding assessment or reassessment.

a. The hearing officer person conducting the hearing may sustain a proposed assessment or reassessment of the person as set forth in 5 MCAR § 1.0124 B. EDU 124 B. upon a showing by the school district(s) by a preponderance of the evidence which demonstrates that there are facts, relating to the person's performance in his or her present education placement or presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified, as a step toward the possible initiation of or change in the person's educational placement or program, including special education services, which will provide an educational program, including special education services, appropriately suited to the person's needs.

b. Consistent with the standards, requirements, and principles set forth in statute and these rules, the hearing officer person conducting the hearing shall have the authority, based on all the evidence received at the hearing, to modify the proposed assessment or reassessment instruments

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

PROPOSED RULES

or procedures in order to insure compliance with the requirement of nondiscrimination.

2. Decisions regarding educational placement.

a. Based on an application of the standards, requirements and principles set forth in Minn. Stat. § 120.17, subd. 3a, and in these rules, the proposed action regarding the person's educational placement or special education services as set forth in 5 MCAR § 1.0125 C. ~~EDU 125 C.~~ shall be sustained in whole or in part by the hearing officer ~~person conducting the hearing~~ only upon a showing of need by the school district(s) by a preponderance of the evidence.

b. In deciding if the proposed action is to be sustained, in whole or part, the educational needs of the child shall be determinative. However, there shall be a presumption that among alternative programs of education, that to the maximum extent appropriate, a primary placement in a regular public school class and program with appropriate special education services, is preferable to removal from the regular classroom.

c. The hearing officer ~~person(s) conducting the hearing~~ may sustain proposed action that would result in the child being removed from a regular education program only when, and to the extent that the nature or severity of the handicap is such that education in the program with the use of special education services cannot be accomplished satisfactorily, and there is indication that the child will be better served with an alternative program or services. This decision shall be made in accordance with the principle of least restrictive alternatives.

d. The hearing officer ~~person(s) conducting the hearing~~ shall also determine whether the school district(s) sufficiently considered alternative educational programs including special education services and opportunities and at the hearing, may receive any additional evidence presented by any interested party or person as to the availability and suitability of reasonable and viable educational alternatives. If the hearing officer ~~person conducting the hearing~~ concludes that there are no reasonable or viable educational alternatives the findings shall so state.

~~3. Except when the hearing is conducted by the school board, the local decision of the person conducting the hearing may be reviewed by the school board at its option within ten days after receipt of the proposed decision. Within five days of the review the school board shall issue a local written decision.~~

3. ~~4.~~ All local hearing officer decisions shall:

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

b. state whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district;

c. state the amount and source of any additional district expenditures necessary to implement the decision; and

d. be based on the standards and principles set forth in Minn. Stat. § 120.17, subd. 3a, and 5 MCAR § 1.0129 G.1. and 2. ~~EDU 129 G.1. and 2.~~

~~4. 5.~~ All decisions shall be filed with the Commissioner of Education and shall be sent by mail to the parties. ~~The decision of the person conducting the hearing shall not be served until after expiration of the time for school board review.~~ The decision(s) shall also include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which the parent may identify which appeal option, as set forth in 5 MCAR § 1.0129 H.2. ~~EDU 129 H.2.~~, they request.

H. Effective date of the action and appeals.

1. The decision of the hearing officer ~~person conducting the hearing, or in case of school board review, the board's decision,~~ shall be binding on all parties unless appealed to the commissioner by the parent or the school board where the child resides; and shall become effective 15 days after service of the decision unless the decision is appealed.

2. The hearing officer's ~~binding local~~ decision issued pursuant to 5 MCAR § 1.0129 G.1., 2., or 3., ~~EDU 129 G.1., 2., or 3.,~~ may be appealed by the parent or the school board where the child resides to the Commissioner of Education within 15 days of receipt of that written decision(s) in the following manner:

a. If the parent is appealing a local decision of the school board or their designee regarding a proposed education assessment or reassessment as set forth in EDU 124 B., or a proposed action regarding the placement of their child in, transfer to, or the proposed provision or addition of special education program or services as set forth in Minn. Stat. § 120.17, subd. 3b (e) (2) and (4) the appeal decision, at the option of the parent may:

(1) be based on a review of the local decision(s) and the entire record; or

(2) be based, after a new due process hearing conducted pursuant to the provisions of Minn. Stat. ch. 15 on the report of the impartial hearing examiner, and not on the local decision(s) or record. Provided, however, if the parent wants a chapter 15 due process hearing, the parent must make this request as part of the written appeal notice, or the appeal decision will be based solely on a review of the local decision(s) and the entire record.

a. b. If the parent is appealing any other local decision(s) The the appeal decision shall be based on a review of the local decision(s) and the entire record.

b. e. All notices of appeal shall be on the appeal form or otherwise in writing and shall be sent by the parent by mail to all parties to the hearing at the time the appeal is filed.

3. The school board shall be a party to any appeal. The

PROPOSED RULES

commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 days after receipt of the local decision(s) and the transcript. ~~However, in appeals of local decisions wherein the parent has properly requested a chapter 15 due process hearing, the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing examiner.~~ The commissioner shall seek additional evidence if necessary and may afford the parties an opportunity for written or oral argument; provided any hearing held to seek additional evidence shall be an impartial due process hearing but shall be deemed not to be a contested case hearing. The commissioner may grant specific extensions of time beyond the 30 day period at the request of any party.

4. The commissioner's final decision shall:

- a. be in writing;
- b. include findings and conclusions; and
- c. be based on the standards set forth in Minn. Stat. § 120.17, subd. 3a and the standards, requirements, and principles set forth in 5 MCAR § 1.0129 G.1. and 2. EDU G.1. and 2. and these rules.

5. The decision of the commissioner shall be final unless appealed by the parent or the school board to the district court of the county in which the providing school districts, in whole or part, are located. The scope of judicial review shall be as provided in chapter 15.

6. ~~Except in case of school board decision pursuant to EDU 129 E. If if the providing school district fails to implement the person conducting the hearing's officer's local decision, the parent shall have the right to bring such failure to the attention of the commissioner. In accordance with the provisions of Minn. Stat. § 124.15, the state Board of Education may impose such sanctions necessary to correct any such failure.~~

1. "Days" when used in 5 MCAR § 1.0129 means calendar days.

Department of Health Proposed Rule Relating to the Collection of Information from Health-Related Manpower

Notice of Hearing

Notice is hereby given that a public hearing regarding the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1978) in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minne-

apolis, Minnesota, on November 5, 1979, commencing at 9:00 a.m.

All interested or affected persons will have an opportunity to participate concerning the adoption of the proposed rule captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted by mail to Harry S. Crump, Hearing Examiner, at Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8111, either before the hearing or within five (5) working days after the close of the hearing or for a longer period not to exceed 20 calendar days if ordered by the hearing examiner. All such statements will be entered into and become part of the record.

Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Hearing Examiners.

The statutory authority of the Commissioner to promulgate and adopt the above-captioned rule is contained in Minn. Stat. §§ 15.0412, subd. 3; 144.05; 144.051 and 144.052 (1973). If adopted, the proposed rule would enable the Commissioner of Health to collect information pertaining to the numbers, distribution and characteristics of individuals licensed or registered by the Commissioner or the health-related licensing boards which are the Board of Medical Examiners, the Board of Dentistry, the Board of Nursing, the Board of Pharmacy, the Board of Examiners of Nursing Home Administrators, the Board of Chiropractic Examiners, the Board of Optometry, the Board of Psychology, the Board of Veterinary Medicine, and the Board of Podiatry. The rule identifies, in addition to that already specified in Section 144.052, the specific types of information that will be collected from licensees and registrants. This information is necessary in order to establish an informational system which will constitute a resource for making decisions pertaining to health-related manpower. The rule also specifies the types of forms on which such information shall be collected from licensees and registrants and how parties other than the Commissioner may collect data for health-related manpower planning purposes through the system established by Minn. Stat. §§ 114.051 and 144.052 and this proposed rule.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to the Minnesota Department of Health, Division of Health Manpower, Atten-

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

PROPOSED RULES

tion: Mary Volk, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

The proposed rule is subject to change as a result of the rule hearing process. The Commissioner therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. Additional copies will also be available in the hearing room on the day of the hearing.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1978) as amended by Laws of 1979, ch. 59 § 3, as any individual:

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

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

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

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

September 5, 1979

George R. Pettersen, M.D.
Commissioner of Health

Rule as Proposed (all new material)

7 MCAR § 1.235 Collection of information from health-related manpower.

A. General.

1. Authority and purpose. 7 MCAR § 1.235 has been developed as required by Minn. Stat. §§ 15.0412, subd. 3; 144.05; 144.051 and 144.052. The rule pertains to:

a. The types of information relating to numbers, distribution, and characteristics of health-related manpower which the Commissioner of Health deems necessary to collect as specified in this rule from individuals licensed or registered by the Commissioner or the Boards for the purpose of establishing an adequate information resource at the state level for making informed and reasonable decisions pertaining to health manpower; and

b. The forms which shall be used to collect the information.

2. Definitions. For the purposes of this rule, the words, terms, and phrases listed below shall have the meaning stated herein, unless the language or context clearly indicates that a different meaning is intended.

a. "Boards" means the health-related licensing Boards as defined in Minn. Stat. § 214.01, subd. 2.

b. "Commissioner" means the Commissioner of Health.

c. "Form of employment" means whether self-employed, working as employee, or other.

d. "Individual" means a natural person.

e. "Licensed" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3(d).

f. "Licensure or registration status" means the status of the individual license or registration as active or inactive under the regulatory authority of the Commissioner or the Boards. An active status means the individual is duly authorized to engage in the practice of activities for which he or she is licensed or registered. An inactive licensure or registration status means that the license or registration is not in effect.

g. "Locality" means city, state or foreign country, county and zip code.

h. "Occupation" means the health-related occupation for which an individual is licensed or registered by the Commissioner or a Board.

i. "Occupational specialty" means the area emphasized, such as clinical, teaching or specialty practice, in the activities the licensee or registrant performs in the health-related occupation for which he or she is licensed or registered.

j. "Permanent license or registration number" means the number assigned to each licensee or registrant by

PROPOSED RULES

the Commissioner or a Board upon initial licensure or registration and retained by the licensee or registrant over the period of his/her licensure or registration. The permanent number may differ from a number the individual may receive upon periodic renewal of his/her license or registration.

k. "Professional activity status" means the licensee's or registrant's participation or potential participation in the practice of activities in the occupation for which he/she is licensed or registered. The individual's activity status may be identified as either active or inactive. If active, the extent to which the licensee or registrant is active is indicated by factors such as the duration over time of work in the occupation, whether currently working in the occupation, and by the average number of hours worked per week. If inactive, the potential for participation in the occupational labor force is indicated by the licensee's or registrant's status as retired, working in another occupation, disabled, or other employment statuses such as unemployed but seeking employment in the health-related occupation for which the individual is licensed or registered.

l. "Professional title" means the title which designates the position held by a licensee or registrant in his/her work setting in the health-related occupation for which he/she is licensed or registered.

m. "Registered" means the state government regulation of an occupation as defined in Minn. Stat. § 214.001, subd. 3(c).

n. "Type of setting" means the physical environment which may be institutional, such as a hospital, or non-institutional, such as the patients' homes, in which the individual engages in the occupation for which he or she is licensed or registered.

B. Types of Information.

1. Individuals who are licensed or registered by the Commissioner or the Boards shall submit to the Commissioner, on forms provided by him/her, the following types of information.*

- a. Permanent license or registration number.
- b. Race or ethnicity.
- c. Locality of principal residence.
- d. Educational background which shall include:

(1) Name and locality of school from which graduated with educational degree required for licensure or registration, and year degree was received.

*In addition to the types of information listed in this rule, name, current (mailing) address, licensure or registration status (at the time of data collection), birth date, sex, professional activity status, and educational background shall be included in the required information, as specified in Minn. Stat. § 144.052, subd. 1.

(2) Name and locality of school from which post-secondary educational preparation was received if a specific type of educational degree is not required for licensure or registration, and year preparation completed.

(3) Degrees received from educational institutions.

(4) Professional training beyond first degree received.

e. Professional activity status in the occupation which shall include:

(1) Number of weeks worked in the occupation during the 12 months preceding data collection survey period.

(2) Whether currently working in the occupation.

(3) Average number of hours per week currently working in the occupation for which licensed or registered, apportioned by categories of activities in the occupation.

(4) If not currently working in the occupation, status as a member of the potential labor force for the occupation.

f. Locality where currently working in the occupation.

g. Type of setting where currently working in the occupation.

h. Category of current form of employment in the occupation.

i. Occupational specialty.

j. Current active licensure or registration held in other states.

2. The following types of information shall be collected only from the licensees or registrants in occupations for which the information is applicable given the practice characteristics of the occupation.

a. The approximate number of patients treated in the course of the licensee's or registrant's currently active practice during a specified period.

b. The range of employment of auxiliary personnel in the practice setting.

c. Professional title of licensee or registrant.

C. Types of forms for collection of information.

1. Information shall be collected on forms designed by the Commissioner which shall contain a statement of the statutory authority for collecting the information. The exact form and wording of the questions may vary depending upon the specific occupation surveyed:

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

PROPOSED RULES

a. So that the questions will be specific and relevant to the characteristics of each occupation; and

b. May change in form and wording over time so that a question can be classified or its emphasis modified.

2. When resources available to the Commissioner permit, the form may include questions in addition to the types of information specified in 7 MCAR § 1.235 B.1. and B.2. Such questions may solicit:

a. Information sought by the Commissioner for the purpose of making decisions pertaining to health manpower, but to be provided by the licensee or registrant on a voluntary basis;

b. Information sought by parties other than the Commissioner for purposes of making decisions pertaining to health manpower. In these instances:

(1) The proposed additional questions may be included only if the Commissioner determines that:

(a) The additional questions are relevant to making decisions pertaining to health manpower;

(b) Resources permit the inclusion of additional questions on the form;

(c) The information collection required by 7 MCAR § 1.235 B.1. and B.2. would not be delayed or otherwise inconvenienced by the inclusion of additional questions on the form.

(2) The form shall clearly identify the party requesting the additional information, the specific questions asked by the party, whether or not it is mandatory for the licensee or registrant to supply the information, and if mandatory, the citation to the mandating legal authority.

Department of Public Welfare Social Services Division

Proposed Temporary Rule Governing Child Day Care Sliding Fee

Request for Public Comment

Notice is hereby given that the following proposed Rule 163 (12 MCAR § 2.163) governing administration of Child Day Care Sliding Fee, is proposed for adoption as a temporary rule as authorized by Minn. Stat. § 15.0412, subd. 5 (1977), pending completion of a full hearing and adoption of a permanent rule. Comments from interested and affected persons are requested. Comments must be received at the address given below within 20 days of the date of this publication to be considered. The temporary rule may be revised on the basis of comments received.

Comments on the proposed rule should be sent to:

Jerry Ferguson
Service Plan Administration
Division of Social Services
Department of Public Welfare
4th Floor, Centennial Office Building
St. Paul, Mn 55155

Temporary Rule as Proposed (all new material)

12 MCAR § 2.163 Child day care sliding fee.

A. Introduction.

1. Pursuant to Minn. Stat. §§ 245.83 through 245.87, this rule governs the administration of the experimental child day care sliding fee program for reducing, according to a sliding fee schedule, the costs of child care for eligible families whose income ranges from 60-70% of the state median income.

2. Definitions.

a. Child day care service. The less than 24-hour a day service which provides care for children as a substitute for or supplement to parental care for a planned period of time.

b. Eligible child day care provider. A family day care home, group family day care home or group day care center holding a current and valid license issued by the commissioner, or exempt from licensure by the Commissioner, or an in-home attendant certified by the Commissioner.

c. Commissioner. Minnesota Commissioner of Public Welfare.

d. County. The board of County Commissioners.

e. State Advisory Council. The Minnesota Child Care and Development Advisory Council, appointed by the Commissioner for the purpose of advising the Commissioner on child day care issues.

f. Administering agency. The agency designated by the county to administer the child day care sliding fee program, which may be the county welfare department or any public or nonpublic agency.

g. Title XX. The title of the Social Security Act known as "Grants to States for Services," established by P.L. 93-647, as amended.

h. Comprehensive Annual Services Program Plan (CASP PLAN). The State Social Services plan, which is a compilation of all the local social services plans, and which meets the state plan requirements of Title XX of the Social Security Act.

i. Family. Parents and their dependent children under age 18 years including children temporarily absent from the household in settings such as schools, foster care, and residential treatment facilities.

PROPOSED RULES

j. Area. Either the Governor's Economic Development Region Eleven or the Governor's Economic Development Regions one through ten.

k. Program Year. The state fiscal year, July 1 through June 30.

l. Program Costs. The provider charge plus the administrative costs.

m. Net Program Costs. The provider charge plus the administrative costs minus the parent fee.

B. Eligibility for grant.

1. Applicant. Pursuant to Minn. Stat. chs. 393 and 402, the applicant for a grant shall be a county or group of counties. The applicant may designate any public or nonpublic agency to administer the program.

2. Title XX child day care services. To qualify for the sliding fee program the county shall offer fully subsidized child day care services to eligible persons with incomes below 60 percent of the state median income as set forth in the CASP PLAN.

3. Local share match. The county shall provide a local share match equal to five percent of the program cost during the first grant year and 15 percent of such cost during the second grant year. For purposes of determining the local match, administrative costs shall be considered to be the provider charge times seven percent. The local match shall not include the amount of minimum fee payments made by families but may include in-kind materials and services, furnished by the county, required for the administration of the program.

4. Because of the experimental nature of the program no county will be allowed to enter for the second year only.

C. Application for grant.

1. All counties shall select one of the following options regarding the experimental child day care sliding fee program:

a. Decide not to participate and notify the Commissioner of its reasons for the decision.

b. Participate using only state sliding fee funds and the required local match, serving families with an income of 60 to 70% of the state median income.

c. Participate using state sliding fee funds, the required local match, and Title XX funds, serving families with an income of 60 to 70% of the state median income.

d. Participate using state sliding fee funds and the required local match to serve families with an income of 60 to 70% of the state median income and use Title XX and/or other funds to serve families with an income of 70 to 115% of the state median income.

2. The application procedures for grants are as follows:

a. The county shall make application on forms provided by the Commissioner.

b. A county may propose an alternate fee schedule if it meets the following criteria:

(1) Use of the state sliding fee schedule would impose a hardship on families already participating in a sliding fee program (e.g., raising their fees substantially);

(2) The county can demonstrate how the use of their proposed fee schedule would reduce the incidence of lower income families remaining or becoming welfare recipients, increase the incentive for economic independence and provide other benefits;

(3) The county program serves a large enough population to demonstrate the impact of the program; and

(4) The fee charged does not exceed the fee allowed in the state fee schedule. Participating counties may only use one fee schedule for all eligible fee paying income groups receiving child day care services.

c. The county shall submit two copies of the application to the Commissioner by the deadlines established by the Commissioner.

d. The Commissioner shall submit a copy of each application to the state advisory council for their review and comment.

e. The Commissioner shall inform the county of the approval or denial of the application within the 30 days of the submission deadline.

D. Award of grant.

1. The Commissioner shall award grants to counties which meet the eligibility requirements and for which applications have been approved, subject to the limits described below:

a. Thirty-five percent of the appropriation shall be awarded the first program year and sixty-five percent of the appropriation shall be awarded the second program year.

b. Area limits. Fifty percent of the funds as determined in a. above shall be distributed to each area.

c. County limits within an area. The amount, based on b. above, to be granted a county within an area, shall be equal to the sum of the following:

(1) Fifty percent of the area distribution times a ratio consisting of the number of working parent families with a child under six years of age in the county against the total number of working-parent families with a child under six years of age in all counties in the area; and

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

PROPOSED RULES

(2) Fifty percent of the area distribution times a ratio consisting of the number of children receiving AFDC grants in the county against the total number of children receiving AFDC grants in all counties in the area.

d. Notwithstanding other provisions of this rule, grant awards shall not exceed ninety-five percent of the net program costs during the county's first grant year nor eighty-five percent of the net program costs during the county's second grant year.

2. The Commissioner shall reallocate unused first year funds after December 31, 1979, and shall reallocate unused second year funds after December 31, 1980, on the basis of need without regard to the limits described in D.1. above.

E. Family application.

1. The administering agency shall inform parents on an on-going basis, through the news media and child day care providers, of the availability of child day care sliding fee assistance as well as the procedures for applying for such assistance.

2. The application procedures for assistance shall be:

a. Application for assistance shall be on forms prescribed by the Commissioner.

b. The administering agency shall make information about the program and application requirements available to all persons requesting this information.

c. Assistance in making application shall be available from the administering agency upon request.

d. The county shall use its current Title XX practice in verifying sources and amounts of income and reasons for needing child day care services.

e. The administering agency shall inform each applicant of the approval or denial of his/her application within 30 days of receipt of a completed application in writing.

f. Eligibility for assistance will be from the date of application.

3. The administering agency shall redetermine eligibility at least every six months.

4. The administering agency shall inform each applicant of the availability of all types of child day care services, the limits on available assistance, the reporting procedures and periods, and other policies or actions which have a direct effect on the applicant.

F. Family eligibility for assistance.

1. Income. The family's income shall be above the maximum allowable for Title XX fully subsidized child care services but less than 70 percent of the state median income as set forth in the current CASP PLAN. Income shall be defined, as in the Title XX program, to mean all monthly income before deductions received by all family members age 14 or over.

2. Reasons for needing care. Families eligible for assistance are those needing child day care services for the following reasons only: employment, school attendance, or other circumstances related to employment and school attendance.

3. Age. Only children 14 years of age or younger may be eligible for assistance.

4. Residence. Application shall be made in the family's county of residence.

G. Family fee payment schedule.

1. The Commissioner shall establish a monthly family fee schedule based upon income and family size.

2. In setting the fee schedule, the following computations shall be made for family sizes 2 to 10:

a. The federal, state and Social Security taxes are computed at the 60%, 70%, 80%, 90%, 100%, 110% and 115% of the state median income levels (Federal Income Tax Table, Family size 2-Table D-Unmarried Head of Household Family size 3-10, Table B-Married filing Joint Return and the Minnesota Income Tax Table-tax computed on gross income). The computation of the state and federal taxes includes a child care credit. (The child care credit is determined by using 20% of the estimated annual cost of child care as directed in the Income Tax Tables. Estimated annual cost of child care by family size: 2-\$840, 3-\$936, 4-\$1,080, 5-\$1,200, 6-\$1,380, 7-\$1,500, 8-\$1,860, 10-\$1,980).

b. The federal, state and Social Security taxes are added together at each income level.

c. The difference in the tax total between the 60% income level and the tax total of each subsequent income level is determined.

d. The difference in the gross annual income at the 60% income level and the gross annual income for each subsequent income level is determined.

e. The difference in the taxes at each income level is subtracted from the difference in income at each level.

f. The net income at the 70% level is multiplied by 75% to determine the annual child care fee. The net income at the subsequent income levels is multiplied by 55% to determine the annual child care fee.

g. At each income level, the annual child care fee is divided by 12 to determine the monthly child care fee. (For a family of 6, at the 70% income level the fee calculated is \$125. Since this is a higher fee than at the 70% income level for a family of 7-\$117-, the fee is reduced to \$110 to produce for a continual increase in the fee schedule as the family size increases).

h. The fee for income increments between each income level computed is determined by evenly dividing the difference in the fee between the income levels by the number of income increments between the levels. For family size 2-10, there are 10 income increments between 61-71% of the

PROPOSED RULES

state median income with each increment representing a 1% increase in income and between 71-80%, 81-90%, 91-100% and 101-110%, there are 4 income increments with each representing a 2.5% increase in income. Between 111-115% there are 2 income increments with each representing a 2.5% increase in income. More increments are allowed between the 61-70% income level as the primary users of the sliding fee program will be dealing with this income range.

3. The total fee payment for a family shall not exceed 75 percent of the income determined available in G.2.a. above.

4. Only a single fee shall be charged regardless of the number of services a family receives. The fee charged shall be in the highest fee.

5. Eligible families shall be responsible for reimbursing the county making payments for child day care costs. The monthly amount to be paid by the family shall be fixed by the following fee schedule.

6. The Commissioner shall publish a fee schedule, coordinated with the state CASP Plan.

H. Provision of service.

1. The Commissioner shall determine the median service charge for each type of child day care service for each of the Governor's economic regions.

2. The county shall not make payment for that part of any child day care service charge in excess of 125% of the median charge for that service.

3. The county may limit the number of families to whom assistance is provided because of insufficient grant funds. However, counties using Title XX funds must amend their CASP Plan.

I. Payment of assistance.

1. The administering agency shall make payment in either of the following ways:

a. An eligible family may be reimbursed for expenses incurred up to the limits specified in H. above.

b. The child day care provider may be reimbursed for charges up to the limits described in H. above.

2. The administering agency shall inform the family and/or child day care provider, who will receive payment as well as how and when it will be received.

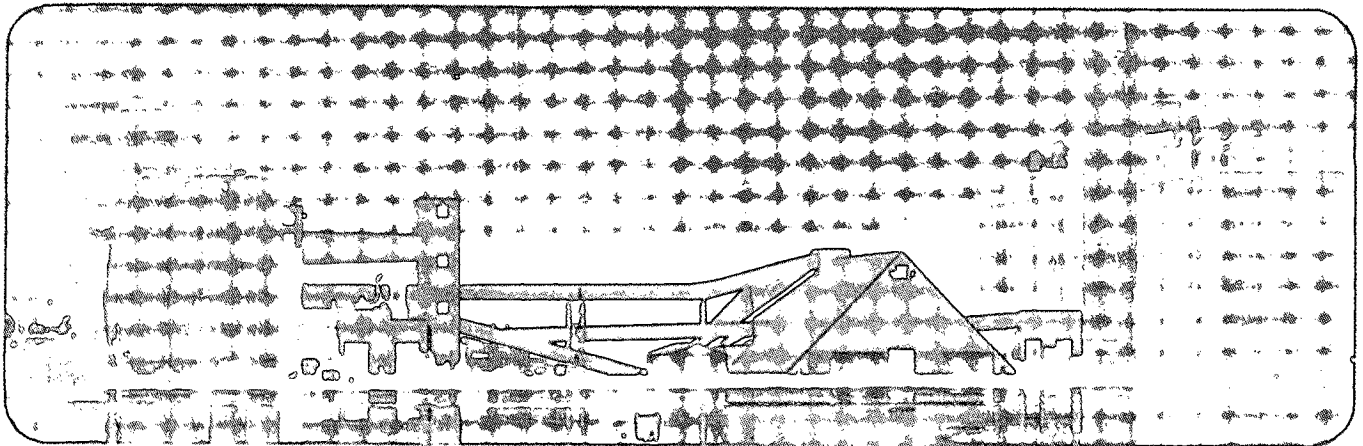
3. The administering agency shall make payments at least monthly.

4. The administering agency shall inform the family of the method in which its monthly family fee payment was computed.

J. Evaluation.

1. The Commissioner shall collect data and evaluate the program for the purpose of demonstrating the effectiveness of the program in preventing and reducing the dependence of participants on public assistance and in providing other benefits.

2. The administering agency shall collect data and prepare periodic reports as required by the Commissioner.



A \$33 Million Expansion to Cargill, Inc. grain terminal in Duluth was assisted by Port Authority revenue bond financing. (Courtesy of Port of Duluth Superior)

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

OFFICIAL NOTICES

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

the subject, either orally or in writing.

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

Department of Personnel Notice of Intent to Solicit Outside Opinion Regarding Special Expense Rules of the Department of Personnel

The Department of Personnel is drafting rules to implement Minn. Stat. 1978 § 43.327, subds. 2 and 3, as amended by Laws of 1979, ch. 332 §§ 49 and 50, which requires the promulgation of rules regarding special expenses.

The subjects covered by the proposed special expense rules include the following: definitions; procedures; eligibility for reimbursement of extraordinary meal and lodging expenses, registration fees, and other expenses related to participation in conferences, seminars and workshops.

The Department also intends to revise the training standards in 2 MCAR § 2.161; the military leave provisions of 2 MCAR §§ 2.137 and 2.139 and the restoration of seniority as provided by 2 MCAR § 2.119.

The Department invites interested persons or groups to provide written information, comments and advice on these subjects to Donn Escher, Minnesota Department of Personnel, 3rd floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record and must be submitted by October 12, 1979 to be considered in the original rules draft.

Barbara L. Sundquist
Commissioner of Personnel

Department of State Planning Office of Local and Urban Affairs

Notice of Intent to Solicit Outside Opinion Concerning the Proposed Adoption of Rules Relating to the Administration of State Assistance to Regional Development Commissions

Notice is hereby given that the State Planning Agency is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the administration of state assistance to regional development commissions. Any interested persons may submit data or views on this subject in writing or orally to:

Jane Stevenson
Office of Local & Urban Affairs
State Planning Agency
200 Capitol Square
St. Paul, MN 55101
612/296-2386

Any written material received by the agency shall become a part of the hearing record in the event rules governing this subject are promulgated.

September 21, 1979

Leland Newman, Director
Office of Local and Urban Affairs

Department of Transportation

Notice of Intent to Solicit Outside Information and Opinion Regarding Designated Routes for Ten-ton Vehicles for Calendar Year 1980

Notice is hereby given that the Commissioner of Transportation is seeking information or opinions from sources outside the agency in preparing to propose the amendment and adoption of rules governing "Designated Routes for Ten-ton Vehicles for Calendar Year 1980." These rules are being developed pursuant to Minn. Stat. § 169.832, subd. 11. Please be advised that current rules as amended for calendar year 1979, designating routes for ten-ton vehicles, appear in the *State Register* at 3 S.R. 535 as proposed and at 3 S.R. 1381 as adopted. Any interested person is invited to submit data or views on this subject in writing or orally to:

F. C. Marshall, Assistant Commissioner
for Technical Support Services
Minnesota Department of Transportation
413 Transportation Building
St. Paul, Minnesota 55155
Telephone: (612) 296-3420

Any written material received by the Department of Transportation shall become a part of the hearing record.

September 21, 1979

Richard P. Braun
Commissioner of Transportation

Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Adoption of a Rule Governing the Licensure of Teachers of English As A Second Language

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the adoption of a rule governing the licensure of teachers of english as a second language. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

September 14, 1979

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Adoption of a Rule Governing the Licensure of Teachers of Bilingual/Bicultural Education

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the adoption of a rule governing the licensure of teachers of bilingual/bicultural education. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

September 14, 1979

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Amendment of a Rule Governing the Licensure of Secondary Education Teachers

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the amendment and/or adoption of a rule governing the licensure of secondary education teachers. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

OFFICIAL NOTICES

Any written material received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

September 14, 1979

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Amendment and/or Adoption of a Rule Governing Continuing Education/Relicensure

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the amendment and/or adoption of a rule governing continuing education/relicensure. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

September 14, 1979

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

Board of Teaching

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendment and/or Adoption of A Rule Governing the Licensure of Special Education Teachers

Notice is hereby given that the Board of Teaching is seeking information or opinions from sources outside the Board in preparing to propose the amendment and/or adoption of a rule governing the licensure of special education teachers. Any interested persons may submit data or views on this subject in writing or orally to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Any written material received by the Board shall become part of the hearing record in the event that the rule governing this subject is promulgated.

September 14, 1979

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching

SUPREME COURT

Decisions Filed Friday, September 21, 1979

Compiled by John McCarthy, Clerk

48818/205 **State of Minnesota vs. Jean Beverly Link, Appellant.
Hennepin County.**

Though evidence of other crimes should not have been admitted because defendant's participation was not shown clearly and convincingly, it did not prejudice the verdict, and reversal is not called for.

Innocuous police questioning and a second Miranda warning after defendant's initial refusal to answer questions did not violate her Fifth Amendment rights.

The trial court's instruction on duress is not reversible error.

Prosecutor's closing argument emphasizing defendant's incredibility was not improper.

Affirmed. Sheran, C. J. Dissenting, Wahl, J.

49412/255 **Mary Brunner, Appellant vs. State of Minnesota Department of Public Welfare and Hennepin County Welfare Board. Hennepin County.**

When two children of family receiving Aid to Families with Dependent Children are enrolled at county expense in a long-term residential treatment center for severe behavioral problems, they are not dependent upon the family home for shelter despite alternate weekend visits, and they are not looking to the center for the purpose of obtaining an education, but as a treatment for their larger mental and emotional problems. Accordingly, in the absence of any other significant costs imposed by the treatment program, reduction of the mother's grant proportionate to the smaller number of persons at home was proper.

Affirmed. Otis, J. Dissenting, Sheran, C. J., Wahl and Kelly, JJ.

49020/195 **Gary Marlow, Appellant vs. City of Columbia Heights. Anoka County.**

Plaintiff's claim of negligence against the city was not barred by the "discretionary function or duty" exception to the municipal tort liability statute, Minn. St. 466.03, subd. 6.

The trial court properly granted a directed verdict for defendant where plaintiff's evidence failed to establish that defendant's conduct was the actual cause of plaintiff's injury.

Affirmed. Maxwell, J. Took no part, Otis, J.

Order Filed September 14, 1979

48029/SP **In re Application for the Discipline of William Roy Nordstrom, an Attorney at Law of the State of Minnesota. Supreme Court.**

An attorney subject to disciplinary proceedings, having complied with the conditions outlined in an opinion filed February 24, 1978. 264 N. W. 2d 629 (Minn. 1978), may continue to practice law in the state of Minnesota for a probationary period of five years, subject to terms of probation.

Five year probation period ordered. Sheran, C. J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any

consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Housing Finance Agency Home Improvement and Home Mortgage Division

Notice of Request for Proposals for Professional and Technical Services for Accessibility Improvement Assistance Program

The Minnesota Housing Finance Agency is requesting proposals for professional and technical services consisting of the review and approval of construction drawings and specifications, and the inspection of construction work in connection with the demonstration phase of the Agency's Accessibility Improvement Assistance Program. The demonstration phase of the Program will be in operation from October 1, 1979 through May 1, 1980. The Agency expects to receive 40-60 applications which will require review and approval during the demonstration phase.

Maximum compensation for services provided during the demonstration phase will be \$15,000. The Agency will give consideration to all proposals received by it on or before October 12, 1979.

Copies of the complete Request for Proposals may be obtained from:

Mary Tingerthal
Minnesota Housing Finance Agency
333 Sibley Street, Suite 200
St. Paul, MN 55101
(612) 296-8844

Department of Natural Resources Minerals Division

Notice of Request for Proposals for the Analysis of Industrial Chemical Potential of Minnesota's Peat Resource

Notice is hereby given that the Department of Natural Resources intends to engage the services of a consultant to

prepare the above captioned report which will also include other related studies. Proposals must be submitted no later than October 22, 1979. The estimated amount of the contract is \$18,000. This contract will be a continuation of a study conducted by Bemidji State University, Bemidji.

Direct Inquiries to:

Department of Natural Resources
Division of Minerals
Box 45, Centennial Office Building
St. Paul, Minnesota 55155
ATTN: Norman Aaseng
(612) 296-4807

Department of Public Welfare Social Services Division

Notice of Request for Proposal to Develop Experimental Programs to Encourage Interagency Cooperation In the Identification, Prevention and Treatment of Child Abuse and Neglect.

Notice is hereby given that the Social Services Division, Department of Public Welfare, will be issuing grants to public and private non-profit organizations for funding experimental programs to encourage interagency cooperation in the identification, prevention and treatment of child abuse and neglect. The funds, totalling \$200,000, were made available by the 1979 Minnesota State Legislature. The amount of the grants will be from \$5,000 and will not exceed \$40,000. Responses must be received by November 2, 1979.

Direct inquiries to:

Paul Spears
Division of Social Services
Department of Public Welfare
4th Floor, Centennial Building
St. Paul, MN 55155

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
(612) 296-8239

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules, notices and executive orders.

- _____ Annual subscription \$110.00
- _____ Additional Subscription \$85.00
- _____ Single Copy \$2.25 each

Minnesota Code of Agency Rules (MCAR). The permanent, 15 volume set of state agency rules. An indispensable reference work for the practice of administrative law.

- _____ 15 volume set \$325.00, includes the annual update service subscription for the year of order (a \$105.00 value) and a set of MCAR binders.

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

- _____ *State Register* Binder \$5.00 + \$.20 (sales tax) = \$5.20* each

MCAR Binders. A set of 15 sturdy, three inch, three-ring binders in attractive forest green, imprinted with the MCAR logo.

- _____ 15 volume set \$35.00 + \$1.40 (sales tax) = \$36.40*

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to "Minnesota State Register."

Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

Legislative Reference Library
Room 111 Capitol
Interoffice

