



# STATE REGISTER

STATE OF MINNESOTA



**VOLUME 4, NUMBER 33**

**February 18, 1980**

**Pages 1285-1312**



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#### 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			
34	Monday Feb 11	Friday Feb 15	Monday Feb 25
35	Friday Feb 15	Monday Feb 25	Monday Mar 3
36	Monday Feb 25	Monday Mar 3	Monday Mar 10
37	Monday Mar 3	Monday Mar 10	Monday Mar 17

\*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.

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

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## NOTICE

### How to Follow State Agency Rulemaking Action in the *State Register*

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

#### The **PROPOSED RULES** section contains:

- Proposed new rules (including Notice of Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

#### The **ADOPTED RULES** section contains:

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

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

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Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issue 27-38, inclusive

Issue 39, cumulative for 1-39

Issues 40-51, inclusive

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# PROPOSED RULES

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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.

## Department of Education Special and Compensatory Division

### Proposed Rules Governing Standards and Procedures of Special Education Instruction and Services for Children and Youth Who Are Handicapped (5 MCAR §§ 1.0120-1.0129)

#### Notice of Hearing

A public hearing concerning the proposed rules will be held in the School Administration Building, Auditorium A & B, 360 Colborne Street, St. Paul, Minnesota 55102, on April 3, 1980, commencing at 8:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.



The Jacoby portrait of Cyrus Northrop taken shortly after he had been made president of the University of Minnesota in 1884.

CYRUS NORTHROP (1834-1922) was a Connecticut scholar and editor before becoming second president of the University of Minnesota 1884. Northrop received his A.B. and LL.D. degrees from Yale and was Professor of Rhetoric and English Literature there from 1863-1884. In 1862 he edited the *Newhaven Daily Palladium*, and was the Republican candidate for Congress from Newhaven in 1867. During his U of M presidency, 20 new buildings were added to the campus and enrollment increased from 300 to nearly 4,000. He retired in 1911. (Photograph originally printed in the *Minneapolis Journal*, May 10, 1936. Reprinted courtesy of the Minneapolis Star and Tribune Co.)

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not

**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

an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8118 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five 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 minimum charge.

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

The board estimates that there will be no cost to local bodies in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1978).

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Will Antell, Ed.D., Assistant Commissioner, 802 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rule, contact Jeanne Dorle, Ph.D., Special Education Section, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101 (296-1793).

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

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

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one month or more than \$250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to

influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

January 15, 1980

Howard B. Casmey, Secretary  
State Board of Education

### Amendments 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 program 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, subds. 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 ~~equip~~, 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

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## PROPOSED RULES

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, subds. ~~68~~ and 8a.

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-124~~ and 5 MCAR § 1.0125 ~~125~~. 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. ~~persons who are deaf, blind, crippled, or have speech defects and the ages of five to twenty-one years for other handicapped persons, in accordance with Minn. Stat. § 120.17, subd. 1 and amendments or supplements thereto. As of August 15, 1977 school age shall mean ages four to twenty-one years for all handicapped persons.~~

11. "~~Least~~ 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-124~~, 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" includes 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-123~~. 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, 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 de-



velopment, 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 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.

#### **5 MCAR § 1.0121 ~~EDU-121~~ Application.**

A. District special education plan. On or before September 1, 1977, each district shall submit to the commissioner the district's plan for providing special instruction and services for all handicapped pupils as required by Minn. Stat. § 120.17. The plan may represent the plan of a single district or a plan for all of the member districts of a formal special education cooperative. The plan shall be considered as part of the annual school district application for program review, but will not be required to be resubmitted annually. The plan shall include descriptions of:

1. the district's study procedures for the identification and assessment of handicapped pupils.
2. the district's methods of providing the special instruction and services for the identified handicapped pupils.
3. the district's administration and management plan to assure effective and efficient results of 1. and 2. above.

4. procedures to assure compliance with state statutes and rules relating to the education of handicapped pupils.

B. On or before January 1, 1978, the commissioner shall approve or implement appropriate procedures for modification of the district plan. The commissioner may grant the district a reasonable period of time to make necessary modifications of the plan provided that the commissioner has satisfactory assurances of compliance with standards for the education of handicapped pupils.

C. Annual application for programs and budget.

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

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

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

D. A district may request a variance from the standards provided in 5 MCAR § 1.0122 ~~EDU-122~~ by submitting supportive rationale in the application. The commissioner shall review this request for variance from standards in accordance with recognized professional standards and shall inform the district of the decision.

#### **5 MCAR § 1.0122 ~~EDU-122~~ Facilities, staff and supervision.**

A. Facilities.

1. Housing space. Housing space for each class shall be adequate.

2. Equipment and materials. Each special class and group shall be supplied with the necessary special equipment and instructional materials.

B. Staff.

1. Teachers. Every teacher who teaches a special class must hold a special class license appropriate to the type of handicapped children she or he is teaching. Until the requirement to hold an early childhood special education license becomes

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effective in accordance with board of teaching rules, special class teachers licensed to teach kindergarten age handicapped children shall be considered qualified to teach pre-kindergarten handicapped children.

2. Administrators and supervisors. Every administrator and supervisor of any special education program shall hold appropriate licensure.

3. Other professional or essential personnel. The qualifications of other professional or essential personnel who are not licensed teachers, administrators or supervisors shall be based upon recognized professional standards and documented by the school district in their application as provided for in 5 MCAR § 1.0121 ~~EDU-121~~. The commissioner or his designee shall review requests for approval of such personnel assigned to programs for handicapped children.

4. Special and vocational education. Staff responsible for vocational training of handicapped students shall meet the following criteria if the program is to qualify for special education approval.

a. Coordinator of special needs.

(1) Licensure in special education.

(2) Licensed as a coordinator of special needs in vocational education.

b. Support service manager.

(1) Licensure in any special education disability area.

(2) Licensed as a support service manager in vocational education.

c. Vocational instructor of special needs students.

(1) Licensure in the appropriate disability area of special education or have a plan for working toward licensure.

(2) Licensed as a vocational instructor of special needs students in vocational education.

d. Teacher/coordinator of work experience.

(1) A special education license appropriate for the type of handicapped students being taught.

(2) Licensed as an instructor/coordinator for work experience in vocational education.

e. Teacher/coordinator of vocational education work experience.

(1) Must be coordinated with a special education director or coordinator/lead teacher licensed for the type of handicapped students being taught.

(2) Must be working cooperatively with a special education licensed teacher who is responsible for the nonvocational instruction.

(3) Licensed as an instructor/coordinator for work experience in vocational education.

f. Vocational evaluator.

(1) Licensed as a vocational evaluator in vocational education.

(2) Working cooperatively with special education licensed personnel to insure that special considerations related to the students handicapped condition are included in the evaluation and program plan.

g. Vocational technical tutor.

(1) Licensed as a technical tutor in vocational education.

(2) Working cooperatively with a special education licensed teacher who is responsible for the nonvocational academic area of instruction.

C. Staff to student ratios.

1. When persons are in need of special education services in level 5 or 6 of the "Continuum of Placement" model where the primary placement is in a special education program such as a full-time class, special station, special school or residential school, the staff to student ratio shall not exceed:

a. one teacher for each eight handicapped persons for all categories except as provided in b.

b. one teacher for six handicapped persons who are autistic or who are deaf/blind providing that two management aides are employed to assist the teacher.

2. When persons are in need of special education services in level 4 of the "Continuum of Placement" model where the primary placement is in a special education program such as a resource room or part-time special class the staff to student ratio shall not exceed:

a. one teacher for every 15 handicapped persons for all categories except as provided in b.

b. one teacher for every eight handicapped persons who are trainable mentally retarded or visually impaired.

3. When persons are in need of special education services in level 3 of the "Continuum of Placement" model where the primary placement is in a regular education program, such as a resource room or special class, the staff to student ratio shall not exceed:

a. one teacher for every 15 persons for all categories except as provided in b.

Each person must receive special education service for a minimum of one hour per day. When the needs of the student warrants such action, persons may receive less than one hour per day during the initial or phase out stages.

b. one teacher for every 40 persons who are speech and/or language impaired.

4. When persons are in need of special education services in level 1 or 2 of the "Continuum of Placement" model where the student is full-time in a regular education program and the special education teacher provides consultation and indirect service to the regular classroom teacher and/or assessment, monitoring or follow-up of the student, the staff to student ratio shall not exceed:

a. one teacher for every 30 persons who are handicapped except as provided in b.

b. one teacher for every 60 persons who are speech impaired.

5. Whenever a professional is serving children representing a range of severity of problems, is providing more than one level of service, or is providing service at more than one site, the staff to student ratios shall be adjusted accordingly.

6. When persons are receiving services from vocational staff involved in "special and vocational" programs except as provided in 5 MCAR § 1.0122 B.4.d. ~~EDU 122 B.4.d.~~, the staff to student ratios of the "Continuum of Placement" model do not apply to that staff.

D. Supervision. Supervision consistent with the commissioner's recommendations and meeting the following standards shall be provided for each type of special education program.

1. Overall supervision.

a. Full-time supervision. The school board in every district with an enrollment of 15,000 or more pupils, and in every district in which 20 or more full-time professional personnel are employed in the special education program, shall employ or designate a qualified person, under an appropriate title, to devote full-time to directing the special education program.

b. Part-time supervision. The school board shall employ or designate a qualified person to devote part-time to directing the special education program when (a) the enrollment in the school district is 7,500 or more pupils but less than 15,000 pupils; or (b) the number of full-time personnel employed in the special education program is at least 10 but less than 20.

This position shall be reimbursable when the person directing the program on a part-time basis spends the remainder of his time in some area of special education.

School authorities of districts that are required to meet the standard for part-time supervision shall consult periodically with the special education section in regard to full-time supervision.

c. Other. School boards of districts not required to have full-time or part-time supervision as outlined above shall study the feasibility of cooperative interdistrict sharing of special education supervisory personnel or some other approach aimed at providing direction to the program. See item 4 following.

2. Individual program supervision.

a. For the following disability categories or areas: (1) deaf and hard of hearing, (2) crippled, (3) visually impaired, (4) emotional disturbance, learning disability, or special behavior problems.

The board of every school district in which 15 or more full-

time professional personnel are employed in any one of the above disability areas shall employ or designate a full-time person to supervise the program in that area.

The board of every school district in which less than 15 but 5 or more professional personnel are employed in any one of the above disability areas shall consult with the special education section and make provisions for supervision of the program in that area.

b. For the mentally retarded.

The school board in every district in which 30 or more full-time professional personnel are employed in the above disability area shall employ or designate a full-time supervisor of the program in that area.

The school board in every district in which less than 30 but 10 or more professional personnel are employed in the above disability areas shall consult with the special education section and make provisions for supervision of the program.

c. The school board in every district in which speech therapists are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

d. For the following service areas: (1) school social work, and (2) school psychology:

(1) The school board in every district in which level 1 personnel in either the social work or psychology program are employed for special education programs shall submit a plan which will describe and provide appropriate amounts of time for each level 1 person for individual observation, performance evaluation, consultation, and in-service training by a licensed level 2 person from the respective field.

(2) The school board in every school district in which level 2 personnel in either the social work or psychology area are employed in the special education program shall submit a plan which will describe and provide appropriate amounts of time for program development, program coordination, program evaluation, in-service training, and individual supervision.

e. The school boards of two or more districts may cooperatively employ and share supervisory personnel. See item 4 following.

f. Supervision of programs in any of the aforementioned disability areas shall be provided at both the elementary and secondary level.

3. Cooperative inter-district agreements.

a. Two or more school districts may enter into an agreement to provide supervision of programs for handicapped

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children, provided that none of the participating districts is required, as outlined in items 1. and 2. above, to employ such supervisory personnel on a full-time basis.

b. When a group of districts enter into such cooperative agreement, one of the participating districts shall serve as the employing unit.

Each participating district shall pay to the employing district a pro rata amount of the net cost of providing such supervisory services. The net cost to be prorated shall be the actual cost less state reimbursement.

State reimbursement for the cost of such services shall be paid to the employing district.

4. The school board of any district unable to comply with the above rules shall consult with the special education section.

E. School day. Deviations from the normal school day for any type of handicapped children shall be approved by the commissioner of education.

**5 MCAR § 1.0123 ~~EDU-123~~ Surrogate parents.** When a child is the ward of the commissioner of public welfare, when the parent or guardian is unknown or unavailable, or when parental rights have been terminated, the district shall insure that the rights of the child to a free and appropriate education are protected by contacting the local county welfare department and requesting that the public welfare system intervene on behalf of the child. The district shall suggest to the local county welfare system that a contact with the county attorneys office be made to determine whether a guardian ad litem should be appointed.

### **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 nondiscrimination.

#### **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 educational 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~~ from (1) the date the district receives parental permission to conduct the assessment or (2) the expiration of the ten day parental response time in cases other than initial assessment, 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 persons 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 provisions of 5 MCAR §§ 1.0127 A. and B. ~~127B.~~ prior to conducting a formal educational assessment or reassessment or when the district receives ~~refuses~~ a parent's written request to conduct a formal educational assessment or reassessment. In cases ~~of refusal the notice shall be served within ten days after the refusal~~ where a district receives a parent's written request to

conduct a formal assessment or reassessment, the district shall serve notice of their decision within ten days of their receipt of the written request;

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 the 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 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 service; ~~When~~ 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 educational 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 nonhandicapped 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 proposes ~~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

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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, subds. 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.

### **5 MCAR § 1.0126 ~~EDU 126~~ Periodic reviews, reassessment and follow-up.**

#### **A. Periodic reviews.**

1. The providing school district shall conduct periodic reviews of the program plan and shall determine:

a. the degree to which the periodic review objectives as identified in the educational program plan are being achieved.

b. the appropriateness of the educational program plan as it relates to the student's current needs.

c. what modifications, if any, need to be made in the program plan.

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

3. These periodic reviews shall be made by those persons directly responsible for implementing the educational program and by other school district agents as may be needed to insure an informed and adequate review.

4. The results of such periodic reviews shall be included in the student's school records and a copy sent to the parent and to the resident district if different from the providing district. This copy shall inform the parents or the resident district that they may request a conference to review the student's program plan at any time and the procedure to do so.

5. The reviews shall be made in accordance with the requirements for nondiscrimination and recognized professional standards.

**B. Requirements for reassessment.** When a student is continued in his or her primary placement in a special education program, the providing district shall conduct an educational reassessment according to the procedures specified in 5 MCAR § 1.0124 B. ~~EDU 124 B.~~ at least once every two years.

**C. Requirements for follow-up review.** The responsible school district shall conduct a follow-up review of the student's current performance no later than twelve calendar months after special education services are discontinued to determine if progress is satisfactory.

### **5 MCAR § 1.0127 ~~EDU 127~~ Formal notice to parents.**

#### **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. All notices must:

a. 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;

b. 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;

c. 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;

d. 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. including a person who is a member of the same minority or cultural background or who is knowledgeable concerning the racial, cultural, or handicapping differences of the student;

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

f. inform the parents that the district will not proceed with proposed actions defined in 5 MCAR §§ 1.0120 B. 20. and 21. without prior written consent.

g. inform the parents that if they object to the proposed 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 action is not an initial action as defined in 5 MCAR §§ 1.0120 B. 20 and 21, the school district will proceed with the proposed action;

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

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

j. 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;

k. 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;

l. inform the parents of their right to be represented in preparation of and at the hearing by legal counsel or other representative of their choice;

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

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

o. inform the parents of their right 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;

p. inform the parents of their right to present evidence and cross examine any employee of the school district(s) or other persons who present evidence at the hearing;

q. inform the parents of any free or low cost legal services available in the area;

r. inform the parents of their right to have the child who is the subject of the hearing present at the hearing;

s. inform the parents that the hearing shall be closed unless the parent requests an open hearing;

t. inform the parents that they have a right to obtain a record of the hearing including the written findings of fact and decisions.

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 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 in 5 MCAR § 1.0124 B. EDU 124 B., the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. The portion of the notice which is specific to assessment or reassessment 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. 9. inform the parents that the district will not proceed with the initial formal assessment proposed action 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 receipt of the notice;

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 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;

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 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;

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8. Inform the parents that they may obtain an independent assessment at their own expense.

10. Inform the parents that if they object to the proposed 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 the school district will proceed with the proposed action;

11. Inform the parents that if the parent still objects to the proposed action after the final conciliation conference they have a right to voice that objection at an informal due process hearing.

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 informal due process hearing.

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.

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;

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-125 E. the providing school district shall prepare and serve a notice which shall meet the requirements of 5 MCAR § 1.0127 A. The portion of the notice which is specific to the educational placement and provision of services shall:

1. include a copy of the individual educational program plan as described in 5 MCAR § 1.0125 C. EDU-125 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.;

2. 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;

3. 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;

3. 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 the school district will proceed with the proposed action;

6. Inform the parents that if they still object to the proposed action after the final conciliation conference that they have a right to voice that objection at an informal due process hearing.

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;

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-128 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 § 1.0124 B. EDU-124 B. or 5 MCAR § 1.0125 E. EDU-125 E., within 14 ten days after receipt of the notice, and the proposed action is not an initial action as defined in 5 MCAR § 1.0120 B. 20 and 21, 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 representatives 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-129 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.4. and 5 MCAR § 1.0127 C.2. 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 purposes of reviewing the reasons for the proposed action, reviewing the parent's suggestions and concerns and conciliating the matter. Each conference shall be held at a time and place mutually convenient to the parent and school district representatives and the initial conference shall be held within ten days after the expiration of the ten day period for parent response. In cases where the parents fail to attend the initial conciliation conference, the district may choose to schedule additional conciliation conferences.

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 129 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 § 1.0120 B.20. and 21. 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 hearings.

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 convened ~~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 or the initial placement and 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 an impartial hearing officer the school board or its designee; (2) a person mutually agreed to by the school board and the parents; 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 30 days after the written request;

c. inform the parent of ~~their~~ the following rights or and responsibilities:

(1) of their right to receive from the school district(s), within five days of the district's receipt of the parent's written request for a hearing, a list of persons who will testify on behalf of the district concerning the proposed action;

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

(2) of their responsibility, 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;

(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) of their right, 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.

(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;~~

**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

~~(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;~~

~~e. 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 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;~~

~~f. 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, as 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;~~

~~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 ~~will~~ not be changed, as long as the parents object to the proposed action in the manner prescribed by these rules, ~~or until after the decision is finally made at the hearing; or an appeal.~~

### 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. 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.

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 128B 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.~~

1. ~~2-~~ The parties shall have the right to representatives of their own choosing, including legal counsel.

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

3. ~~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 A., B. or

C. or 5 MCAR § 1.0128 B. EDU 127 B. or C. or 128 B. And that ~~if~~ 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.

4. ~~5-~~ Within five days after the written request is received, 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.

5. ~~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.~~

6. ~~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 need for the proposed action. Consistent with the rights and procedures set forth herein, nothing in these rules shall limit the right of the hearing officer ~~person conducting the hearing~~ to question witnesses or request information.

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## PROPOSED RULES

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 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 a 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 on the person conducting the hearing may be reviewed by the school board and 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 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 to indicate the desire to appeal 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 (c) (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. ~~c.~~ 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 commissioner shall issue a final decision based on a review of the local decision(s) and the entire records within 30 calendar days after receipt of the local decision(s) and the transcript, the filing of the appeal. A written transcript of the hearing shall be made by the district; the transcript and entire record shall be accessible to the parties and provided to the commissioner

within five calendar days after the filing of the appeal. If the transcript and record is not provided to the commissioner within five days of the filing of the appeal, the district shall request an extension of the time beyond the 30 day period equal to the number of days which exceeded the five day period for filing the transcript and entire record. ~~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 129 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, is 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.

**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."

# ADOPTED RULES

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

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

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

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

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

## Department of Public Welfare Social Services Bureau

### Notice of Extension of Adopted Temporary Rule Governing Child Day Care Sliding Fee (12 MCAR § 2.163)

Notice is hereby given that temporary rule 12 MCAR § 2.163 governing child day care sliding fee is extended for 90 days through May 3, 1980. The rule was proposed and published at *State Register* Volume 4, Number 13, pp. 526-529, on October 1, 1979; approved by the Office of the Attorney General on November 5, 1979; filed with the Office of the Secretary of State on November 7, 1979; and amendments were published at *State Register*, Volume 4, Number 21, p. 848, on November 26, 1979.

# SUPREME COURT

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## Decisions Filed Friday, February 8, 1980

### Compiled by John McCarthy, Clerk

**49790/51** In the Matter of the Welfare of Donald Francis Roybal. Hennepin County.

Juvenile court did not clearly err in finding that juvenile was not suitable for treatment and therefore court's decision to grant reference motion pursuant to Minn. Stat. § 260.125 (1978) is affirmed.

Affirmed. Todd, J.

**49886, 49967/1** Pauline J. DiLuzio, trustee for the heirs of Robert C. DiLuzio, decedent, vs. Home Mutual Insurance Company, Appellant (49967), American Family Mutual Insurance Company, Appellant (49886). Hennepin County.

An "uninsured" motor vehicle is one that does not carry insurance meeting the minimum legal requirements. In the instant case the automobiles involved were insured under a policy meeting legal requirements. Therefore, according to statute, uninsured motorist coverage was not applicable.

Reversed and remanded. Scott, J.

# TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the attorney general in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the attorney general, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

Carol Lynne Newbauer,

-vs-

The Commissioner of Revenue,  
Docket No. 2831

Appellant,

Appellee.

Order dated February 8, 1980.

Taxpayer appeals the Order of the Commissioner of Revenue dated January 3, 1979. Said Order ruled that the transfer to appellant by appellant's deceased husband of a \$20,000 term life insurance policy was in contemplation of death by decedent and thus increased appellant's inheritance tax liability.

Carol Lynne Newbauer, appeared pro se,  
James W. Neher, Special Assistant Attorney General, for appellee.

## Decision

The Order of the Commissioner of Revenue is hereby reversed.

## Findings of Fact

### John Knapp

The findings of fact have been stipulated by the parties and appear as follows:

1. On May 3, 1974, Ronald E. Newbauer assigned all incidents of ownership in a group term life insurance policy (Union Central Policy No. 314-G-3609) to his wife, Carol Lynne Newbauer.
2. On April 23, 1977, within three years of the assignment of the policy, Ronald E. Newbauer died, an apparent suicide.
3. The proceeds payable to Carol Lynne Newbauer, as beneficiary of the policy, were \$20,000. The assets in decedent's estate totaled \$173,090.00.
4. On February 7, 1978 an inheritance tax return and schedule of non-probate assets for decedent's estate were filed with the Commissioner of Revenue. The schedule of nonprobate assets reported the aforementioned insurance policy as not taxable in decedent's estate.
5. Following receipt of additional information pertaining to the insurance policy pursuant to a request for documents issued on March 8, 1978, the commissioner, on October 3, 1978, issued an objection to the inheritance tax return, asserting that the proceeds of the policy were taxable in decedent's estate as a transfer in contemplation of death within the meaning of Minn. Stat. § 291.01, subd. 1(3).
6. Following an administrative hearing on the question of taxability of the insurance proceeds, the hearing examiner, on December 4, 1978, recommended that the commissioner dismiss his objection and accept the inheritance tax return and schedule of non-probate assets as filed.
7. On January 3, 1979 the commissioner issued his Order assessing additional inheritance tax on the assignment of the insurance policy in question, as a taxable transfer in contemplation of death within the meaning of Minn. Stat. § 291.01, subd. 1(3).
8. On February 12, 1979 appellant filed a timely notice of appeal from said Order.

## Conclusion of Law

The evidence taken as a whole rebuts the statutory presumption that the assignment by Ronald E. Newbauer to appellant of a group term life insurance policy was in contemplation of death.

## Memorandum

Under Minn. Stat. § 291.01, subd. 1(3) when there is a transfer of a material part of the property of a deceased, in the nature of a final disposition, within three years prior to death and without adequate consideration, there is a rebuttable presumption that the transfer was in contemplation of death. Ronald E. Newbauer assigned the proceeds of a \$20,000 term life insurance policy to appellant on May 3, 1974. Mr. Newbauer died on April 23, 1977, 10 days within the presumption period of the statute. Thus, at first glance the transfer appears to satisfy the statutory test for a transfer in contemplation of death.

The presumption that the transfer was in contemplation of death can be rebutted by proof that thoughts which are commonly associated with life, rather than death, prompted the transfer. Rule Inh. Tax 14. Appellant submitted to the Court two pieces of evidence in her attempt to rebut the presumption. They were: a copy of a subscription to *Sports Illustrated* magazine and a copy of an estimate for home insulation given to the deceased.

## TAX COURT

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The deceased ordered his magazine subscription in November of 1976. That order paid for issues which would be delivered through the first week of November 1979. Mr. Newbauer died on April 23, 1977, before his subscription terminated.

The estimate of insulation cost was given on March 21, 1977. A month and 2 days later Mr. Newbauer died. The court grants that it is customary for people to enter into such transactions with an expectation to carry them out. However, according to rule Inh. Tax 14, what is needed to rebut the presumption is proof that thoughts commonly associated with life *prompted the transfer*. Though in these transactions the deceased may have contemplated seeing them through, the Court cannot stretch this reasoning to mean that Mr. Newbauer had such thoughts when he transferred the insurance policy to appellant, nearly three years earlier.

Appellant testified that she requested the deceased make the transfer. Appellant's desire for such a transfer was prompted by knowledge obtained at an estate planning class held at a local community college. Rule Inh. Tax 14 recognizes that a transfer with the desire to avoid inheritance and estate taxes is an example of a motive associated with death. However, appellant also testified that she attempted to have the deceased transfer his other insurance policies as well. According to appellant's testimony, the deceased's reason for not transferring all three of his insurance policies was that he realized that if a divorce occurred, he would have no interest in the policies. The deceased's reason for not transferring all of the policies is unquestionably a life motive and outweighs the presumption the estate planning concept gives the transfer of the one policy. Therefore, due to the non-transfer of deceased's two other policies, the Court finds that the transfer of the one policy to appellant did not carry a death motive and therefore was not in contemplation of death.

Since the transfer was not in contemplation of death, the Court need not determine whether the \$20,000 insurance policy constituted a material part of decedent's \$173,090.00 estate. It must be remembered, however, that the ratio the gift bears to the entire estate, though important, is not determinative. Rule Inh. Tax 13(a). In such a case, other factors are also considered.

John Knapp  
Chief Judge

## OFFICIAL NOTICES

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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 Commerce Insurance Division

#### Notice of Meetings

##### Board of Directors Minnesota Comprehensive Health Association

Tuesday, April 22, 1980  
11:00 a.m.

Prudential Insurance Company  
3701 Wayzata Boulevard  
Minneapolis, Minnesota

Changes in any scheduled meetings and notice of any additional meetings will be posted or otherwise available upon inquiry at the offices of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.

### Nominating Committee Minnesota Comprehensive Health Association

Tuesday, April 22, 1980  
10:45 a.m.

Prudential Insurance Company of America  
3701 Wayzata Boulevard  
Minneapolis, Minnesota

Changes in any scheduled meetings and notice of any additional meetings will be posted or otherwise available upon inquiry at the offices of the Insurance Division, and may also be obtained by telephone from the Life and Health Section, telephone (612) 296-2202.



## **Office of Hearing Examiners**

### **Notice of Intent to Solicit**

#### **Information or Opinions Relating to Amendments to the Rules of the Office of Hearing Examiners Relating to Rulemaking and Contested Cases**

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Office of Hearing Examiners is soliciting information and opinions from sources outside of the agency for the purpose of preparing amendments to the existing procedural rules of the office relating to both rulemaking and contested cases.

Any persons desiring to submit data or views on the subjects may do so either orally or in writing. All written submissions will become part of the record in any subsequent hearing. Persons submitting proposals which are accepted by the office may be called upon to present oral or written testimony in support of the proposals at any subsequent hearing.

The office intends to proceed to hearing immediately following adjournment of the 1980 regular legislative session. Therefore, all submissions must be received by the office no later than 4:30 p.m., five working days after the legislature adjourns sine die.

Comments should be submitted to:

Duane R. Harves  
Chief Hearing Examiner  
Office of Hearing Examiner  
Room 300  
1745 University Avenue  
St. Paul, Minnesota 55104  
Telephone: (612) 296-8100

## **Department of Public Safety Driver and Vehicle Services Division**

### **Notice of Intent to Solicit Outside Opinion Regarding Proposed Revisions to Rules on Driver Training, Vehicles, Instruction, Instructors and Schools**

Notice is hereby given that the Department of Public Safety is seeking information, comments and opinions from sources outside the department in preparing to draft revisions to rules relating to commercial driver training schools. Such rules are

authorized by Minn. Stat. §§ 171.33 and 171.34. The department is proposing to incorporate rules concerning truck driver training and to update the existing rules, Driver License 31-38.

All interested or affected persons or groups are invited to provide information on this subject until March 18, 1980 by contacting:

Mr. Rollis Odendahl  
Driver Training Supervisor  
314 Transportation Building  
St. Paul, MN 55155

Written statements will be made part of the public hearing record.

## **Secretary of State**

### **Notice of Vacancies in Multi-Member State Agency**

Notice is hereby given to the public that vacancies have occurred in a multi-member state agency, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-2805. Application deadline is Tuesday, March 4, 1980.

**Department of Economic Security Advisory Council** has two vacancies open immediately: one for a public member and one for a labor representative. Members are appointed by the Commissioner of Economic Security. The council advises the commissioner on the policies and programs of the Department of Economic Security. Meetings are held monthly. Members receive \$35 per diem. For specific information, contact Dave Newman, (612) 296-6073.

## **Department of Transportation Technical Services Division**

### **Notice of Intent to Solicit Outside Opinions Concerning the Possible Adoption, Amendment, Suspension or Repeal of Rules Relating to Minn. Stat. chs. 161 and 162 (State-Aid Roadway Operations), 14 MCAR § 1.5032**

Notice is hereby given that the Commissioner of Transportation is soliciting opinions and comments pertaining to the adoption, amendment, suspension or repeal of rules promulgated pursuant to or authorized by Minn. Stat., chs. 161 and 162 relating to State-Aid Roadway Operations.

## OFFICIAL NOTICES

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Please be advised the Commissioner of Transportation has met in the last 60 days with those county and municipal officials, through his authorized agent, as required and established in Minn. Stat. § 162.01, subd. 2.

All other interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing and must be received by March 11, 1980. Written statements of information and comment may be addressed to:

Mr. Gordon M. Fay  
State-Aid Engineer  
Technical Services Division  
Minnesota Department of Transportation  
Room 420 Transportation Building  
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-3011 and in person at the above address. Any written material received by the above date will become a part of the record of any rules hearing which might be held.

February 11, 1980

Richard P. Braun  
Commissioner

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

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

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