2/13/89 (1)

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

In the Matter of the Proposed Rules
Governing Special Education, Minn.
Rules Parts 3525.0200-3525.7500

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

Initial rules for special education were developed in 1976. Revisions, additions and amendments were made in 1979 and 1983. As the field of special education has evolved, the need for the special education proposed rules has been prompted by a number of factors including: (1) changes in state statutes and federal laws relating to special education, (2) monitoring citations by the federal Office of Special Education (OSEP) requiring changes in order to continue receiving federal funds, (3) the Department's resulting corrective action plan submitted to the federal office as a result of the monitoring report, (4) increased amount of district data from the department's monitoring of local district programs and formally filed complaints, and (4) State Board of Education (SBE) policies relating to special education that have been discussed and passed.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

Minnesota Statute 120.17, Subdivision 3 charges the Board with the responsibility to promulgate rules that will provide standards and procedures appropriate for the implementation of special education services for students with disabilities by all school districts.

III. STATEMENT OF NEED

Several basic issues must be cited as the underlying need for the proposed regulations.

1. Direction from the 1985, 1986, 1987 and 1988 Legislature.

2. The need for more clarity of standards and expectations of school districts and parents, and

3. Compliance with the federal act (Education of All Handicapped Act of 1975 as amended, commonly referred to as P.L. 94-142.) and regulations (CFR, Title 34, Chap. III).

These three needs will be addressed in order. The first issue is that the 1985 through 1988 Legislatures have directed the State Board to promulgate rules to assure that children who are handicapped are afforded an appropriate education.

Minnesota Stat. 120.17 Subd. 3a requires all school districts to insure that: (a) all handicapped children are provided the special education instruction and related services appropriate to their needs according to an individual education plan that includes the student's need to develop skills to live and work independently as possible within the community,

(b) handicapped children, under age 5, and their families receive instruction and services appropriate to their needs, (c) handicapped children and their parents are afforded procedural safeguards and the right to participate in decisions regarding identification, assessment and placement of handicapped children, (d) that to the maximum extent appropriate, handicapped children will be educated with children who are not handicapped and that children will be removed from the regular educational environment only when and to the extent that education in regular classes with the use of supplementary services cannot be achieved satisfactorily, (e) that testing and evaluation materials utilized for the assessment and placement procedures will be selected and administered so as not to be racially or culturally discriminatory, and (f) that the rights of the child are protected when the parent is not known. Minn. Stat. 120.17 Subd. 3b provides that districts will afford procedural safeguards to parents or guardians of handicapped children including: (a) written notice prior to conducting formal educational assessments, prior to placing a child in, transfering from or denying placement in a special education program, or prior to the proposed provision, addition, denial or removal of special education services; (b) an opportunity for parents to have at least one conciliation conference with the district: (c) the opportunity to obtain an informal due process hearing initiated and conducted at the local level; (d) the opportunity to appeal that decision to the Commissioner; and (e) the opportunity to appeal the Commissioner's decision to the courts.

Recently passed legislation requires the State Board of Education (SBE) to be responsible for promulgating rules in the following specific areas:

(1) the appropriate instruction and services for children under age five and their families including defining the eligible population for special education. (Minn. Stat. 120.03 and 120.17, Subd. 2 and 3a); and

(2) an assessment to determine the need for braille instruction for blind students (Minn. Stat. 126.071).

Additional legislation was also passed requiring standards and procedures appropriate for their implementation by local school districts. Legislation includes (1) the establishment of local early childhood and secondary transition interagency committees, (2) parental involvement and notification requirements, (3) educational programs when a student is placed for care and treatment; (4) conciliation conferences, (5) requirements for a high school diploma, and (6) assessment to determine student's need and serve as the basis for the Individual Education Plan (IEP), (7) the transition from secondary services to post secondary education and training, employment and community living, (8) development of a transition plan for students beginning by grade nine or age 14 (Minn. Stat. 120.17, Subd. 3a).

In addition there is a need for technical changes throughout the current rule to assure uniformity in the implementation of current statute and rules. These major areas include: district's responsibility in the

provision of special education, length of school day, and the duplicative rules regarding the Minnesota Academies for Deaf and Blind. Therefore, the Legislature has clearly directed that rules be developed and has provided direction as to the terms of those rules.

While legislative direction is by far the most significant reason for promulgating these rules, the second issue relates to the need to set comprehensive standards so that both the schools and the parents can identify what is expected. Although Minnesota has had minimal litigation in education, there is currently an increase in the number of due process hearings and the potential for court proceedings and litigation to follow. To act now would aid districts by establishing clear policy and direction in their provision of special education services and possibly have the outcome of detering litigation.

The third issue relates to the Education of All Handicapped Act of 1975 as amended. The federal act has served, to a degree, as an impetus for the development of more comprehensive rules. Currently, Minnesota is required to implement several procedural changes in order to insure full compliance with the federal act. This is specifically documented in the latest federal monitoring report (1986). Unless the state fully implements the federal corrective action plan, the Department and local school districts could be deprived of in excess of 25 million dollars annually in revenue by 1990. The state has a responsibility to assure compliance with all state and federal laws and regulations and to assure that its citizens are not deprived of this revenue and the programs and services which it can generate.

IV. STATEMENT OF REASONABLENESS

In preparing these proposed rules, the Department of Education, Special Education Units has sought advice and input from school officials and staff from Minnesota's public schools, the Attorney General's Office and from parents and parent advocate organizations. In addition to specific small working committees made up of both practitioners and parents and in an effort to gain a broad base of input, the Department conducted 12 regional meetings during the last week of August and first week of September, 1988. The purpose of these meetings was to provide an opportunity to examine the content of the proposed rule and gather response for its modification prior to presentation to the State Board. More than 200 persons attended the regional meetings and an additional 65 letters were received representing another 200 persons, districts and organizations. It is with this vast amount of input and feedback from more than 400 persons, districts and organizations that these rules were developed.

In summary, these rules provide a basis from which Minnesota public schools will need to deliver special education services to children who are handicapped. It is the state's purpose to assure that all children who are handicapped are provided the education to which they are entitled.

The following discussion addresses the specific provisions of the proposed rules section by section.

3525.0200 Definitions

Subpart 1a Administrator or Administrative Designee.

An administrator or administrative designee must be present at all IEP meetings in accordance with federal regulations and 3525.2900 of this part. Confusion has existed regarding which school personnel can serve as the administrator or administrative designee so clarification is needed. The proposed definition is reasonable because it is consistent with the federal standard and allows the district a significant number of options currently in practice. A professional licensed either to provide or supervise special education may serve as designee including the following professionals: the district superintendent, principal, vice principal, counselor, special education teacher or related support services provider other than the service provider, special education coordinator or director. It is important that the administrator or administrative designee be licensed to provide or supervise special education because there must be present at the team meeting a person who can make the ultimate decision for the district regarding the appropriateness of the program and the ability to commit resources to implement the program.

Subpart 1b Assessment.

The current definition for assessment requires revision because it does not clearly state the standards by which to judge the comprehensiveness of an assessment nor the fact that those standards apply to both assessments and reassessment. The proposed revision is reasonable because it states that complete assessments and reassessments must be done by appropriately licensed personnel who have been trained in the area of the individual student's suspected disability as well as in appropriate assessment techniques to be used in a comprehensive assessment of individual student needs. Specific assessment requirements are included in parts 3525.2800 and 3525.2850.

Subpart 3a Functional Skills Assessment

A definition of functional skills assessment is needed because it is referred to in part 3525.2800 and because it is a relatively new term used in the field of special education. The definition provided is reasonable beause it stresses what needs to be included in a functional skills assessment but leaves to the district and the multidisciplinary team the decision about how to complete the assignment.

Subpart 4a Functional Skills

The current SBE rules do not address the recent advances in programming for pupils by concentrating on the functional skills needed to live and work in the home, school and community. This addition in the rules is necessary because it is a main component of transition services as required by M.S. 120.17 Subd. 1b and is needed to clarify the term used

in part 3525.2800 Subp. 2. The definition is reasonable because it provides adequate direction without being overly prescriptive about what procedures districts may employ.

Subpart 6a Individual Education Program Plan or IEP.

The current definition for IEP requires revision because the current text is confusing and awkward. The current definition does not reflect advances in the field relative to providing services to the student that are based upon the functional skills needed to perform in various settings such as home, school and community. The proposed changes are reasonable because they clarify that the IEP shall be based on the assessment which includes a determination of the impact of the presenting problem on the student's ability to learn in appropriate settings. The phrase "a selection of teaching strategies" was deleted because current practice is to include instructional strategies and techniques in the teacher's daily lesson plans where they can be easily modified if appropriate, rather than in the annual IEP.

Subpart 7a Initial Formal Assessment.

Questions have frequently arisen regarding a district's obligation to secure prior written consent for the assessment of a student who is currently receiving service in one disability area when the district wishes to conduct an assessment in a different disability area. The proposed rule is reasonable because based upon the principle of informed consent, the district is obligated to receive prior written consent before assessing the pupil in another area of disability.

Subpart 8a Initial Placement.

The amendment proposal is needed to reduce redundant language. It is reasonable because there is no change in meaning or intent.

Subpart 9a Program/Pupil Support Assistant.

Currently management aides are limited to providing only incidental instruction while primarily being responsible for the physical or behavior management of the pupil while in the mainstream. In addition, there are currently aides in early childhood special education classrooms and in Level 4 or 5 classrooms according to Part 3525.2340. There has often been confusion about when an aide is required, when use of an aide is permissive and when the use of an aide must be justified on a pupil's IEP. This revision is needed to provide local districts the flexibility to employ support assistants to aid the special education teacher in the provision of instruction to pupils. This rule changes the name of this person from aide to support assistant and describes the distinction between a program support assistant and a pupil support assistant.

This revision will allow a district to assign a pupil support assistant to provide supplemental instruction to an individual pupil in accordance with the pupil's IEP. This is a reasonable proposal because the pupil support assistant will at no time replace instruction that must be provided by a teacher, but allows the pupil support assistants to provide follow-up instruction, behavior or physical management programs, and transition and integration activities under the supervision of a teacher.

This proposal also clarifies the role of program support assistants who currently work in special education settings. When a program support assistant is used in a special education classroom, the activities of a program support assistant is not required to be tied directly to an individual pupil's IEP. Like the pupil support assistant, the program support assistant may provide supplemental instruction to pupils under the supervision of a teacher. Having a program support assistant in a pupil's special education classroom does not preclude having a pupil support assistant assigned to a pupil if it is written on the pupil's IEP.

A program or pupil support assistant reimbursed with state special education aids shall only provide assistance to regular and special education teachers when meeting the multiplicity of needs of pupils with handicaps in regular education, special education or community-based settings. These definitions of a program or pupil support assistant allows for the use of categorical special education funds to pay for these functions.

Subpart 10 Nondiscrimination

Changes in this subpart are made at the Revisor's Office suggestion.

Subpart 11a. Parent

Confusion currently exists over how a district determines which parent has the right to make educational decisions for the child, when the parents are separated or divorced. Minnesota Statutes 518.003 subd. 3(a) through (d) and 518.17 subd. 3 define the rights of separated and divorced parents by the granting of legal custody and clarification of the rights of a parent who has not been granted legal custody of the child. This rule revision is reasonable because it provides clarification of the issue in accordance with the aforementioned statutes. It also clarifies those persons who are entitled to "act as parents" for the purposes of making educational decisions.

Subpart 15a Providing District.

Changes in this subpart are made at the Revisor's Office suggestion.

Subpart 16a. Pupil

"Person first" language is preferred by professionals, advocates and consumers alike. The definition of pupil needs to be changed to reflect these reasonable preferences.

Subpart 19a. Resident District

The current rule needs revision because it is not specific enough to allow a determination of the resident district in those situations in which the parents are separated or divorced and both maintain legal rights to determine the pupil's education, but who are living in different districts. The additional language in this proposal is reasonable because it is consistent with the standard for all pupils in that the resident district will be the parent's district in which the pupil resides for the greater portion of the school year or in cases of placement for care and treatment, the parent's district in which the pupil previously resided.

Subpart 23 Support Services.

Changes in this subpart are made at the Revisor's Office suggestion.

Subpart 24 Teacher.

Changes in this subpart are made at the Revisor's Office suggestion.

Subpart 25 Technically Adequate Instrument

A definition of technically adequate instrument is needed because it is referred to in part 3525.2335 and because pupils suspected of being handicapped have the right to be evaluated using tests which are reliable and valid. The proposed definition is reasonable because it is consistent with recognized professional standards, including those established by the American Psychological Association. The proposed definition is also consistent with the definition of nondiscriminatory testing found in part 3525.0200 Subp. 10.

Subpart 26 Vocational Assessment

A definition of vocational assessment is needed because it is part of the transition planning and confusion exists in the field about whether or not the term is synonymous with a vocational education assessment. The definition is reasonable because it states the general parameters which must be included in the assessment, but it is not the only type of vocational assessment that is available or that may be appropriate for any given pupil.

3525.0300 Provision of Full Services

This section remains unchanged except for references that services be based on full and individual assessment. Minnesota Statute 120.17 Subd. 2 was amended in 1987 to emphasize the need for services and individual education plans being based on assessment. This section reflects that intent.

3525.0550 Pupil IEP Manager

There is a need for this rule in order to identify a primary contact person for the parents and to serve as the coordinator of all special education services which may include instruction, related or support services, assessment, transportation and other appropriate services. Currently, many districts use a person called a "case manager" to perform many of these functions. The term "case" is offensive to many consumer and advocacy organizations and is used by other agencies such as the Department of Human Services. It is confusing to parents to have a "case manager" from the county and a "case manager" from the schools. The IEP manager will assure that the delivery of special education instructional, related and support services for the pupil is coordinated as well as serve as the primary contact for the parent regarding their child's educational program. While necessary for all pupils, the identification of an IEP manager has particular importance for those pupils served by a multi-disciplinary team where a team of teachers may serve a heterogeneous group of pupils and the IEP manager will serve as the facilitator for the team to coordinate all of the assessment and instruction to the pupil.

This section continues to give districts the flexibility of providing services using a multi-disciplinary team but assures the pupil and parent that the assessment, instruction, and related and support services will be coordinated by a licensed teacher familiar with assessment and instructional strategies and who is a member of the pupil's team. This rule is written to have a teacher defined in Part 3525.0200, Subp. 24, licensed by the Board of Teaching rules serve as the pupil's IEP manager because of their training and demonstrated ability in the areas of instruction and assessment. Teachers licensed by the Board of Teaching must also have completed a minimum care skill area 8700.5500. Persons licensed by the Board of Education are not required to have training in these care skills and often have little or no training in instruction and/or assessment. While professionals, such as counselors and school nurses are essential members of some pupils' team and serve an important support role, they would not be eligible to serve as the pupil's IEP manager for the activities described in this rule because they have not had the training specified in the special education core skill rule to adequately coordinate a special education program.

Other responsibilities such as assuring compliance with procedural requirements, communication and coordination among home, school and other agencies, regular and special education programs and scheduling team meetings may be provided by the IEP manager or may be provided by another teacher on the team or staff person from the school district. This flexible use of staff is available to local districts.

3525.0650 Interagency Committees

According to Minnesota Statute 120.17 Subd. 12 passed in 1985 and 120.17 Subd. 16 passed in 1987, districts must establish or participate in the established local interagency committees for the purposes of planning and implementing coordinated comprehensive services for 1) children under age five who are handicapped and their families and 2) youth, beginning at grade nine or age equivalent, who are handicapped who may require services for successful transition into the community. These committees have been established throughout the state but there have been many requests for direction and Departmental expectations.

This rule allows for the necessary flexibility by local committees regarding the operations and functions of each of the committee but sets forth minimum requirements for meetings, reporting and documenting the committees operating procedures and progress. These requirements are reasonable because they are perscribed in one or the other statutory description. By requiring that the operating procedures and progress be included in the district's total special education system plan (TSES) it is consistant with the Minnesota Administrators of Special Education (MASE), document "Developing and Improving Your Total Special Education System" and does not require a separate or additional documenting system beyond what is already required in part 3525.1100.

3525.0700 Parental Involvement

Much of the current language in this section was a policy recommendation in nature and did not require any action on the part of the district or parent. The language proposed in this section is reasonable because it clarifies the specific responsibilities of the district in providing parents with the level of involvement to which parents are entitled. This part is consistant with requirements in federal regulation (34 CFR, Chapter III, 300.345) and state statute (M.S. 120.17, Subd. 2).

3525.0800 Accountability for Instruction and Services

Changes are needed in this section because inconsistencies exist between this section and other sections of the rules which deal with the accountability of the resident and providing districts when pupils are served outside their district of residence. For example, Minnesota Statute 120.17, Subd. 2 and this section currently state that the resident district is responsible to assure that a pupil receives a free appropriate public education (FAPE) regardless of the method of instruction selected by the resident district. This includes the resident district's option of providing service in another district. This section of the current rules goes on to state that this responsibility extends to the notice and hearing provisions of these rules. However, the notice and hearing sections of the current rules, i.e. parts 3525.3400, 3525.3900 and 3525.4000-.4700 indicate that the providing district is responsible for implementing various portions of the notice and hearing procedures. The current rules need to be revised to eliminate this confusion.

The proposed rule is reasonable because it keeps intact all portions of the current rule and maintains the basic premise that the resident district is responsible for the pupil's program regardless of the method or location of instruction selected by the district. It also provides clarity by creating subparts which specify the roles of the resident and providing district in each of two situations. First, where the resident district has placed the pupil in another district or program such as the Minnesota Academies for the Deaf or Blind (Subparts 3-5) and secondary, those situations in which the pupil is placed for care and treatment by someone other than the school district (Subpart 7). This part has also been expanded to clarify the role of the resident and providing district in those cases in which the parents are excercising their right to have the pupil attend school in another district under one of the parent choice options such as "open enrollment" (Subpart 8).

District placements remain the responsibility of the resident district to assure that a free appropriate public education is provided. This is reasonable because the district of residence is actually making the placement and paying for the placement so it is reasonable that they are responsible to see that a FAPE is provided.

In the case of placements made under a parent choice option, the resident district is statutorily still responsible to pay for the cost of the education of the pupil at the new district which the parents have selected. The intent of this provision was to insure that the resident district does not totally abdicate its responsibility to provide a FAPE to the pupil and to insure that districts participating in the parent choice option are not penalized for having high quality programs by having to absorb the costs of serving "high cost" students from neighboring districts. The legislation did not, however, contemplate the need for involvement of the resident district in determining the pupil's program in the new district. Like those placements made for care and treatment, the resident district is not ultimately responsible to insure that a FAPE is provided to students placed outside their resident district under the various parent option choices. Therefore, it is reasonable that the providing district be the responsible district for both insuring that a FAPE is available to these pupils and to defend this program and pay for any costs for conciliation conferences or due process hearings.

The situation in which pupils are placed for care and treatment raises a different set of issues. Again, statutorily the resident district is still responsible to pay for the cost of the education of students placed for care and treatment to insure that the providing district is not over burdened having to serve a large number of non-resident students because a facility is located within the district. The current rule, however, contemplates that the resident district is in no way responsible for the appropriateness of the placements of these students. Therefore, it is reasonable that the providing district (the district in which the facility is located if different from the resident district) shall be responsible for insuring that a FAPE is provided to the pupil including, if necessary, the defense of the program at any conciliation and due process hearings including the cost of such proceedings. The proposed rule does not include any revision in this regard.

Subpart 1

This subpart is reasonable because it is a restatement of the current rule.

Subpart 2

This subpart is reasonable because it is a restatement of the current rule.

Subpart 3

This subpart is reasonable because it clarifies what actions the resident district is responsible for prior to placing a pupil in another district or program outside of the resident district. It includes a provision for including a representative of the outside district or program on the initial IEP planning team so that an appropriate program can be developed and to insure that the proposed placement can meet the needs of the pupil as outlined on the IEP.

Subpart 4

This subpart is reasonable because it clarifies what actions the providing district is responsible for once a pupil from another district has been placed in one of their programs. It includes a provision that all future IEPs must be jointly developed by the resident and providing district/program to insure an opportunity for the involvement of the resident district who is ultimately responsible to insure the provision of FAPE. This proposal is also reasonable because it may not always be necessary for the resident district to actually send an administrator or administrative designee to the IEP meeting in the outside district. In these cases the resident district, if it so chooses, may formally appoint a member of the outside district/program to serve as an administrative designee for the resident district thereby eliminating the need for additional staff travel time which may be a burden on the resident district. Certainly phone or written communication can occur between the resident district administration and the appointed administrative designee from the outside district/program so that the resident district may be fully apprised of the pupil's progress and any program or placement decisions which may need to be made.

Subpart 5

This subpart is reasonable because it simply restates the current standard and adds clarification that if a parent sends a request for conciliation or due process hearing to the providing district/program, the providing district/program must notify the resident district immediately so that arrangements can be made within the appropriate timelines.

Subpart 6

This subpart is reasonable because it is a restatement of the current rule.

Subpart 7

This subpart is reasonable because it is a restatement of the current rule. A reference to a statutory notification requirement is included. A clarification that pupils served in day treatment centers would remain the responsibility of the resident district as per M.S. 120.17 Subds. 6 and 7 is also included.

According to M.S. 120.17 Subd. 6, the resident district has the option of how to serve pupils placed for day treatment outside the district of residence. If the resident district chooses to serve the pupil at the pupil's home or at another location within the resident district, then the resident district is responsible for insuring the provision of a FAPE to the pupil including all costs for the program, transportation, and any due process proceedings. If the resident district chooses to have the pupil served by the district in which the day treatment program is located, then this is in fact a resident district decision and the resident district is responsible for insuring the provision of a FAPE to the pupil including all costs for the program, and any due process proceedings, and transportation to and from the treatment center. The fact that the resident district retains responsibility for an appropriate program is consistent with all other district placements and current practice but it has not been clarified in rule.

However, when the pupil is placed for care and treatment at a residential facility, the resident district does not have the option of how to serve the student (method or location of services) and therefore should not be responsible for the provision of FAPE or of any possible due process requirements including hearings. This is the current standard and it is reasonable to leave it unchanged. The providing district would be responsible for providing an appropriate program for the pupil including notice and hearing provisions. The resident district would only be responsible for assuming the costs of the educational program.

Subpart 8

This subpart is reasonable because it clarifies how the current standard set forth in this section applies to new legislation regarding various parent choice options. The specific choice options are not referenced because they are newly emerging and frequently changing programs. The standard set forth in this new subpart is based upon the concept that because the resident district is not making the placement, they do not retain ultimate responsibility to assure that a FAPE is available for the pupil nor would they would be ultimately responsible for defending the program and assuming the costs of any legal proceedings. Consistent with placements made by persons or agencies other than the resident

school district, the new district would be responsible for providing an appropriate program for the pupil including the notice and hearing provisions. The resident district would only be responsible for assuming the cost of the educational program as outlined in Minnesota Statutes 120.062 and 126.22 regarding the High School Incentive Program on Open Enrollment.

Subpart 9

Consistant with current practice, the district where the pupil's parent(s), guardian or conservator lives, when the pupil is over age 18, is responsible for assuming the cost of the educational program. This subpart does not deny the pupil's right to be his/her own "parent" according to part 3525.0200 subpart 11a for due process purposes. It is reasonable as with other subparts in this section, that when a pupil is his/her own parent and lives by either the pupil's choice or through placement by another agency, in a different district than the pupil's parent(s), guardian or conservator to acknowledge that the resident district did not make the placement and that the providing district shall be responsible for providing FAPE, defending the program and assuming the costs of any legal proceedings. It is reasonable to bill back the costs for the education program to the resident district because of the potential financial burden on any one district where a group home or supervised living program may be located over which they have no control for placements. As more individuals decide to move from their parent's homes into community based independent living situations this clarification allows for the cost of providing the educational program to remaining with the parent's district of residence while the district responsible for making the educational decisions be responsible for defending the program.

3525.1100 State and District Responsibility for Total Special Education System (TSES)

Subpart 1 is necessary because of federal regulation requiring the Department of Education to have general supervisory authority for all programs for eligible pupils. The federal Office of Special Education Programs requires this authority to be formally adopted. While this has been accepted policy and practice, the Department's corrective action plan to the federal office guarantees that it shall be included in the rules governing all special education programs. It is reasonable because it clarifies current policy and is consistant with federal requirements.

Subpart 2 has additional language that is needed because of statutory changes relating to serving children who are handicapped beginning at birth and the operating procedures and interagency agreements of the local interagency committees described in part 3525.0650. Deletion of the reference to date is reasonable because the date has passed and is no longer relevant or needed in rule.

3525.1310 State Aid for Special Education Personnel

This section is needed to summarize which activities are reimburseable with special education catagorical state aids. It is reasonable because it provides more flexibility for district use of staff for indirect or consultation services that are provided in consultation with regular educator's increasing use of pre-referral activities, yet remains consistant with statutes governing the use of special education state aids. The clarification of reimbursement for school psychological, social worker and other related services is a technical clarification that is needed to remain consistant with the statutory requirements for reimburseable services to be on the IEP or part of the assessment process. It is reasonable because of the increased flexibility in B of this section allowing special education staff, including psychologists and social workers, related and other support services staff to provide short term indirect or consultative services in conjunction with regular education pre-referral activities to an individual suspected of having a handicapping condition.

3525.1550 Contracted Services

The changes in this section are of a technical nature and a recommendation by the Revisor's Office.

3525.2310 Length of School Day

This section replaces the repealed Part 3525.2300. Changes and clarifications in this section are needed because of the confusion in local districts about whether length of school day means number of total hours an eligible pupil is in school, or the actual starting and ending times for all students in the same site. District personnel have requested clarification of the meaning of length of school day and the approval conditions and procedures for deviations from the school day.

This rule is reasonable because it clearly describes length of school day as being the same for pupils who are handicapped as those who are not. It allows for flexibility within the school day to provide those special education services to eligible pupils. This would allow an eligible pupil who required transportation as a related service, during the school day to accomplish an instructional objective if it was determined by the team to be appropriate and written on the IEP.

3525.2320 Education Programs for Learners and Pupils Placed for Care and Treatment

In 1981 the Legislature amended M.S. 120.03 to specify that children and youth with short term or temporary physical or emotional illness or disability are not handicapped. Prior to this time all students placed for care and treatment were considered to be handicapped and were provided special education. The 1983 State Board of Education rule revision process was the first attempt to give guidance to districts on how to provide appropriate special education services to students who are not handicapped, hereafter referred to as students and students who have been identified as handicapped and eligible for special education, hereafter referrd to as pupils, when they have been placed for care and treatment. The current rules for care and treatment need to be revised because confusion still exists about how local districts can: (1) meet all the due process requirements for pupils placed for care and treatment; (2) determine which students have been identified as handicapped and which have not; (3) implement an appropriate program for non handicapped students and pupils who have a handicap given the short time frame and difficulty of speedy interdistrict record transfers; and (4) provide staff and programs for students and pupils in a cost efficient and effective manner.

In 1985 the Department of Education at the request of the Legislative Audit Commission began to monitor education programs for pupils placed at centers for care and treatment to determine if the programs were in compliance with all state and federal laws regulating the provision of special education. The results of this monitoring effort indicated that local districts were having significant problems in the four areas listed above. The Department at the request of the districts involved convened a task force to develop procedures to resolve the four major areas of concern. The task force developed and recommended to the Department a set of guidelines to resolve these and other concerns. The Department accepted and disseminated these guidelines to all local school districts and appropriate agencies including treatment centers. The guidelines were adopted by many local school districts and have been used by the Department as the monitoring standard for determining compliance with state and federal laws, rules and regulations relating to providing special education instruction and related and support services.

The proposed rules are based upon the guidelines that were developed by the task force and revised by the Assistant Attorney General. These rules are reasonable because they are based upon the following assumptions:

1. students may or may not have been identified as handicapped and in need of special education prior to placement for care and treatment;

2. learners placed for care and treatment may or may not be handicapped and in need of special education instruction and services;

3. students placed for care and treatment have been placed primarily for care and treatment and while education is an essential component of a care and treatment program, - they were not placed primarily for education purposes;

4. state and federal special education laws and rules were designed with educational placements in mind and did not contemplate the impact of these same regulations on agencies providing educational programming for students placed on a temporary basis in centers for care and or treatment;

5. students placed for care and treatment have unique individual needs regardless of whether they are handicapped and special education instructional personnel have been trained to meet the unique individual needs of students.

6. the short term nature of most of these placements often require alternative procedures for meeting the unique needs of students and pupils and for meeting special education legal requirements;

7. the enrollment of the student or pupil in the treatment program may not be synonymous with the enrollment of the pupil in the education program because of treatment considerations; and

8. to insure a consistent and effective program for the student or pupil, the treatment and education program must be coordinated.

Subpart 1

The addition of the term student to acknowledge that districts must provide education to nonhandicapped learners placed for care and treatment as well as to pupils is a change needed to assure education for all students who are unable to attend the regular school or special education program. This is consistent with current practice in many locations but it is not specified in rule. Although this section might better be included in the regular education rules, because of the historical pattern of service delivery and because many of the personnel who serve these students are special education personnel, it is reasonable to address services for both students and pupils who are placed for care and treatment in the same section of rules. Also added to this section is a listing of the types of facilities that are considered as placements for care and treatment. Again, this is consistent with current practice but it is not stated in rule and some confusion does exist.

Subparts 2 and 3

These sections are entirely new and are based upon the guidelines developed by the task force. Both sections are reasonable because they provide a set of practical procedures that will allow districts to meet the procedural due process requirements for special education. The procedures set out in subpart 2 relate specifically to education

programs for students and pupils who are placed for 30 school days or less. Subpart 3 relates to procedures to be followed for those students and pupils who are placed for care and treatment for more than 30 school days. The 30 day figure is used because most short term placements are for less than 30 days and 30 days is also the amount of time given to a district to conduct a special education assessment. It is not reasonable for a district to be required to complete a screening, pre-referral interventions and a full assessment of students suspected of being handicapped and in need of special education in less than 30 days. It is necessary to put the guidelines in rule because not all districts have adopted these procedures voluntarily, and those who have not adopted these procedures continue to have difficulties maintaining compliance with state and federal special education laws. This inconsistency has led to inequity of service for students and pupils placed for care and treatment across the state.

Subpart 2

Subpart 2A. and 2B. outline different procedures depending upon whether the student placed for care and treatment has previously been identified as handicapped. This is reasonable because the district must adhere to all due process requirements for pupils but it not bound to these same procedures for other students.

Subpart 2A.

The procedures outlined in this new subpart are reasonable because they allow for immediate programming for the pupil without delays caused by interdistrict record transfers. The rights and involvement of the pupil's parent(s) are protected, including those previously included in the current subpart 5, so that the district is in compliance with all notice and procedural safeguards.

Subpart 2B.

The procedures outlined in this new subpart are reasonable because they require a brief screening of students to: a) get some minimal understanding of the student's level of performance, and b) to determine the possible need for pre-referral interventions and, if necessary, a full special education assessment. Students are often placed in these programs for less than 30 days, the time provided for a district to conduct a full educational assessment, so it is not recommended that an assessment be started if it cannot be finished. In the same way that a student should not be inappropriately identified as handicapped in order to get the educational service needed, a student should not have to undergo a full assessment if it is not necessary. These procedures would replace the current subpart 9 which is difficult to comply with given the short time that these students are at any given facility. The procedures are also reasonable because the district has the option of completing an assessment if appropriate. These procedures also allow for the prompt provision of regular education service and still

appropriately utilize the skills of the special education personnel to provide indirect and consultative services in conjunction with regular education pre-referral interventions if a screening indicates that the student is having some educational difficulties. The results of these pre-referral interventions can then be shared with the resident school district.

Subpart 3

The procedures outlined in this new subpart are reasonable because they allow for immediate programming for the pupil without delays caused by interdistrict record transfers. The rights and involvement of the pupil's parent are protected so that the district is in compliance with all notice and procedural safeguards. The procedure requiring at a minimum a screening to determine the possible need for a special education assessment is reasonable because the students have a presenting problem of such significant severity as to require a long term placement for care and treatment and it is important to determine what if any complications may be related to a concomitant educational handicap. This is consistent with current subpart 9 of the rules. Again, no student should be identified as handicapped in order to get the service to which they are entitled; therefore, the district must make available regular education services to those students who do not meet the district's eligibility criteria for special education. In accordance with Section 504 of the Rehabilitative Services Act of 1973 all students who have a handicap (including students who are chemically dependent) have a right to an educational plan even if the student is not eligible for special education services in accordance with M.S. 120.03 or 34 CFR 300.5.

Subpart 4

This new subpart is reasonable because it provides for the sharing of information between the providing district and resident district or other receiving agency. The providing district is not required to send a follow-up report unless the student has been in the educational program at least 15 days. It is felt that only after about 2 or 3 weeks, would the providing district have enough valuable information to share with the resident district. This does not preclude the providing district from sending information collected on students served less than 15 days, but it does not require it. This requirement to share information regarding the student or pupil's educational program would replace the current requirement (subpart 7) for the providing district to send advance notice to the resident district anticipating a student's return. This requirement has been very difficult for districts to comply with because the decision regarding release from the care and treatment facility is made by the treatment staff, and district personnel often are not notified until after the student has already left the facility.

Subpart 5

The current rules relating to the minimum amount of service available to pupils (subp. 2) are amended in this proposal by extending to all students placed for care and treatment, the same guarantees regarding a minimum level of service availability that pupils have been granted. This rule also clarifies the current standard regarding the minimum level of service which a district must make available to learners and pupils. Amendments are needed because of the extreme inequity of educational services available for students placed for care and treatment in the various districts across the state. One of the largest districts providing education services for students placed for short term care and treatment provides only one hour of education per day for many students and that one hour is usually in a group of five to eight students. Another large district providing education services for learners and pupils placed for care and treatment provides a full day program for most of the students, again in a group of five to eight. This type of inequity is particularly devastating for students who often are having educational difficulties as well as needing care and treatment. One hour of small group instruction per day often means that in addition to the students' other problems they will probably return to school significantly behind their peers.

The solution proposed is reasonable because it requires a higher level of service for those students and pupils placed for more than a whole school year. The proposal is also reasonable because the resident district collects full foundation aid formula allowance for each learner and pupil placed for care and treatment regardless of the number of hours of service received. This policy decision was made many years ago by the Department and was based upon the principle that perhaps one hour of one to one instruction could be roughly equivalent to a full day of group instruction. Because this policy has been used inappropriately by some districts, more specific rules are needed. Districts providing services to non-resident learners and pupils placed for care and treatment bill back the cost of those services to the resident district. The providing district may also collect special education state aid for personnel providing special education instruction and services.

Care and treatment facilities operate on a year round basis. Confusion exists regarding the responsibility of local school districts to provide education to students and pupils during the summer and on holidays. The proposed rule is reasonable because it provides a minimum standard based on state and federal law and regulations and allows districts the flexibility to provide summer service as a local option to students who do not require extended year services as part of their IEP.

Subpart 6

This proposed subpart combines current subparts 3 and 6 and and expands upon current subpart 4 to provide alternative procedures to achieve compliance with the due process regulations of state and federal special education law. This subpart relates only to pupils who are handicapped and in need of special education. It is reasonable because it clarifies

the responsibility of the resident and providing district and sets a standard which states that local eligibility criteria, placement and discipline policies and procedures must be modified to include alternative procedures to achieve compliance. It is not so prescriptive as to tell districts what those alternative procedures must be and allows for flexibility in this area. It also makes it clear that the district is responsible for implementing all state and federal special education laws and an inability to implement the normal operating procedures established for school based programs is not an excuse for noncompliance in education programs for pupils placed for care and treatment - alternative procedures must be developed and implemented to insure compliance.

Subpart 7

This proposed subpart is an expansion of the current subpart 8. It is reasonable because it provides clarity in reimbursement policies for services provided by special education personnel to students and pupils placed for care and treatment consistent with the revised sections 3525.0800 and 3525.1310. Special education categorical aids are specifically targeted to benefit pupils who are handicapped and cannot be used to meet the needs of other students who may have special needs.

3525.2330 Requirement for Early Childhood Services

There is a need for this rule because of the change in Minnesota Statute 120.17, Subd. 1 mandating school districts to provide special education to children who are handicapped beginning at birth. The change from allowing early childhood alternatives to pupils until age seven to age six is needed for consistency with Public Law 99-457, Public Law 94-142, and Minnesota Statutes 120.03 and 120.17.

It is reasonable to change the age in this section from age seven to age six because it permits conformity and eliminates current confusion over differences in requirements by state and federal policy. Age appropriate placement (education) with non-handicapped peers is recommended so that children can have membership in peer groups, develop relationships, learn generalized problem solving skills, participate in age-appropriate routines which will serve them in developing appropriate skills. This rule allows for necessary and appropriate flexibility in serving pupils who are five years of age in either an early childhood program alternative or a school age level of service. Pupils who are six and seven years of age are often served in first grade and an early childhood special education program alternative would be inappropriate for pupils of this age. According to the December, 1987 child count only 360 six year old children were identified using the non catagorical Early Childhood Special Education Criteria. This is less than 8% of all six year olds identified as needing special education. All other children were identified under the catagorical criteria. It would be inappropriate to promote the use of early childhood program alternatives for children who are statutorily school aged. It is the Board's belief that appropriate educational programs can and must be provided for children by age six in age appropriate programs.

3525.2335 Early Childhood Criteria for Eligibility and Program Alternatives

There is a need for this rule in order to be consistent with Minnesota Statutes 120.03 and 120.17 Subdivision 1. Furthermore, very young pupils have different educational needs than school-age pupils and can more appropriately be served in specially designed models of service as found in this rule. Also, there is a need for specific criteria as written in this part for consistency across the state so that a similar population will be served and to conform with the legislative directive to develop uniform eligibility criteria.

Subpart 1

This section is reasonable because it is based on statutory language and describes in general terms the population eligible for early childhood special education.

The State Board of Education was directed to write a definition of the population to be served and eligibility criteria. Because of the non-categorical nature of the statutory language, there is a need for specific definition and quantifiable eligibility criteria to facilitate consistent implementation.

The eligibility criteria are divided into two age categories. This is reasonable because of the different characteristics and varying degree of change in young children even within the birth through five age range.

In addition, the criteria are reasonable because each age category is comprised of three criterion: 1) condition or measured delay, 2) need for special education, and 3) verification of delay. This is consistant with the federal regulation stating a child must be handicapped and in need of special education in order to be eligible.

The criteria were developed over a four year period that has included development by a working committee, two rounds of field responses, field team reviews and revisions. The criteria are currently Minnesota Department of Education recommended criteria and are used by approximately 80% of the school districts in the state.

Subpart 2

This section is needed because current rule only provides a limited description of alternatives. In addition, it allows the flexible use of community-based and home-based alternatives considered to be best practices in the field for young children. This section is reasonable because it will allow for flexibility and program determination for each individual child. In addition, defines and clarifies the components of a program alternative. It defines the type of instruction, definition of each allowed setting and sets a minimum for the amount and frequency a student must receive instruction.

As written in this rule, direct and indirect instruction are consistent with the school-aged rules in part 3525.2340.

A legal family day care setting is consistent with the Department of Human Services Rule 3, as is a licensed public or private nonsectarian child care program other than a family day-care setting. The inclusion of home as the preferred setting for pupils under age three is consistent with Minnesota Statute 120.17. The allowance of the use of community-based programs is also consistent with Minnesota Statute 120.17, Subd. 2 (j) and (k).

A pupil who would qualify under the criteria outlined in Subpart 1 would require a minimum of one hour a week of services and would not be considered eligible if he or she did not require special education and related services at this minimal level. This does not preclude a district from monitoring those children suspected of being handicapped on a less frequent basis as this is allowable under Minnesota State Board Rules part 3525.1100 Subpart 2a and part 3525.1310A.

Subpart 3

This section is needed to allow school districts to use community-based settings as a program alternative for early childhood pupils.

It is reasonable because it is consistent with Minnesota Statute 120.17. Furthermore, it specifies school district responsibility for placement in a community-based setting.

Subpart 4

This section is needed to clarify which case loads apply to early childhood services. This need is based on recommended practices in the field and current rule. These case load maximums were recommended by a committee comprised of more than 10 districts including both the major metropolitan districts and rural districts and cooperatives. It is reasonable because it is consistent with current caseloads with the addition of a birth to five years category when a teacher has responsibility for this broad age range. This section provides flexibility yet assures minimum standards for appropriate programming.

Subpart 5

This section is needed to clarify the use of early childhood teams referenced in Subpart 2. It is reasonable because it expands the current composition of an early childhood team to allow the use of two related services professional whose combined assignment is equal to the teachers. This flexibility has been requested by districts because of the availability of specialized staff and child need. The use of teams is optional for school districts and provides flexibility for district use of staff in early childhood special education.

3525.2350 Multidisability Team Teaching Models

The changes in this rule are needed to allow for the necessary flexibility when providing special education services to school-age students with disabilities. The Multidisability Team Teaching rule currently permits two or more full-time teachers and an equal number of full-time related services staff members to share instruction and related services for specific classes. By eliminating "full-time" from the rule the districts are allowed more flexibility in providing services to pupils yet assures the assignment of equal time teachers or a teacher and a related services staff professional when a team teaching model is used and pupils are assured of having at least one team member licensed in the pupils disability on the multi-disability team. This teacher would be involved in any assessment and the development of the pupil's IEP as well as at least weekly contact about the pupil's program with the teacher providing the direct service. This rule is reasonable in that it allows increased flexibility while requiring a minimum contact by those teachers specifically licensed in the pupil's primary area of disability.

3525.2430 Definition of Surrogate Parents

The change is needed because of the inconsistancy between current rule and the federal regulations governing surrogate parents. A surrogate parent can not be a person who receives public funds to educate the child. This is a technical ammendment that is reasonable because it is consistant with federal requirements and current practice.

3525.2440 Surrogate Parent Appointment

These changes are needed because this language is the proper reference for when a pupil requires a surrogate parent. It is reasonable because by deleting current language in "B" and "C" and adding the phrase "the pupil is a ward of the commissioner of human services" the reference is proper and consistant with 3525.0200, Subp. 11a.

3525.2445 Consultation with County Social Services

This change is technical and changes the reference to "social services" office rather than "welfare" office. It is reasonable as this term social service is current statute.

3525.2450 Removal of Surrogate Parent

The change clarifies the need to remove a surrogate parent when a pupil no longer requires special education. Current language to be deleted requiring a surrogate parent be removed if there is a change in eligibility would require that a surrogate parent be removed if the pupil were re-classified under a different category but still eligible for special education and likely still in need of a surrogate parent. This change is reasonable because it clarifies the true intent of the section.

3525.2470 Suspension, Exclusion and Expulsion

There is a need for clarifying the difference between an in-school suspension and an out-of-school suspension for this section. In local district monitoring visits, many districts were found to have policies that allowed for an in-school suspension to occur. It has been unclear whether an in-school suspension of an eligible pupil required a team meeting. This section clarifies the definition of suspension by referring to the statutory language and requires a team meeting for an in-school suspension as defined by local district policy under the specific conditions listed. Subparts 1 and 2 are reasonable because it references the Pupil Fair Dismissal Act in Minnesota Statute 127.26 to 127.39 and allows the district policy to define "in-school" suspension status. The requirements for a team meeting are reasonable because of the pupil's need to be in class and participating. When this cannot occur because of extensive or repeated in-school suspensions, the team shall be convened to determine whether the misconduct is related to the pupil's handicap, the need for further assessment based on an assessment review whether there needs to be changes in the IEP. This provision does not preclude the district's need to discipline a pupil immediately or needing to take action in an emergency situation but sets a standard for when a team meeting must be held. The change in Subpart 3, deleting references to program and placements is needed because this language is duplicative of language in parts 3525.2900 and 3525.3600. It is reasonable to exclude this language from this subpart because it may be read to imply a recommended outcome rather than the process described in the other sections. By deleting this language, this section specifically describes the standards that apply when a pupil is excluded or expelled and not a potential outcome.

3525.2500 Identification of Children who are Handicapped.

The changes are needed and reasonable because it clarifies that a district's identification system shall be designed to include children, beginning at birth, because of a change in state statute (M.S. 120.17 Subd. 1). Part 3525.1100 requires that the identification system be included in the district's TSES. The additional language in this section makes this section consistent with the current requirement. The change in the title of this section is consistent with the person-first language preferences.

3525.2550 Conduct Before Assessment

This part is currently numbered 3525.2700. The change in numbering is needed and reasonable because it more accurately reflects the sequence that will occur in the evaluation process. Evaluation is a process that includes both screening and assessment activities. The changes in this section reflect the emerging practice of regular education and special education programs working together and recognize the value and need for regular education-based screening and intervention to occur before a referral is made to special education. Once the referral for special

education is made, the team shall review the person's performance in the areas listed. These areas are consistant with the definition of a full assessment and with recommended practices by the field and the committees preparing a model IEP. This section describes a process that the team will follow to assure that a full and individual assessment is conducted that will assess the person in all areas of suspected disability. The process described in this section is reasonable because it reflects research that shows that some students can be accomodated in the regular education program when strategies or curriculum can be modified. This process provides useful curriculum based information in those cases where a full and individual assessment must be completed. This section is consistant with Part 3525.1310 in its support for pre-referral interventions as part of a district's identification system. Subpart 2a states a preference for assessment to occur in natural settings. This is a recommended practice particularly for persons with more severe disabilities, because the person often performs best in natural settings and it is usually the most appropriate setting to assess functional skills, Subpart 2b describes the consideration district teams must give to outside evaluations, and this requirement is consistent with federal requirements for P.L. 94-142 and the Rehabilitation Act of 1973, Section 504.

3525.2650 Notice Before Assessment

This part is currently numbered 3525.2800. The change in numbering is needed and reasonable because it more accurately reflects the sequence that occurs in the assessment process. Changes in this section are needed and reasonable because of Revisor's Office recommendations. The changes are editorial in nature and intent has remained unchanged.

3525.2750 Educational Assessment

This part is currently numbered 3525.2600. The change in numbering is needed and reasonable because it more accurately reflects the sequence that occurs in the assessment process. There has been confusion among local districts regarding what constitutes an adequate or comprehensive educational assessment. This section sets forth the components of a comprehensive assessment, standards which clarify when an assessment is conducted, the function of the assessment and the procedure to summarize the assessment results. This section is reasonable because it describes the process and components of a comprehensive assessment, but does not limit districts to specific published tests or procedures. This section allows a great deal of flexibility in which a district would provide an educational assessment for each child while setting minimum standards that would assure that all areas were considered for the person and that a full and individual assessment is conducted. The choice of specific procedures and instruments can only be determined individually, based on the person's needs and the teams review of those needs.

Subpart 1

Clarifies when an assessment must be conducted and is based on the person's academic and/or acquisition of functional skills. It is reasonable because it is consistant with current field recommended practice, state statutes and federal requirements.

Subpart 2

Describes the function of the assessment and requires that the assessment be conducted by a multidisciplinary team. Federal regulations requires assessments be conducted by more than one person so that no one person or single procedure determines the presence of a handicap. The areas described in 2A are consistent with the recommended IEP and considered basic to a full educational assessment for eligibility and program planning purposes. It is important to address all of these areas so that a full range of services can be provided to meet all instructional needs. This section is reasonable because it allows flexibility for districts to determine which specific procedures and instruments are needed. A more restrictive approach to assessment has been found to overlook contributing factors, underlying causes or effects of handicapping conditions such as sensory acuity, expressive langage or motor ability. Without the requirement to review all of the basic areas outlined in this rule, a team may overlook important components of the person's specific learning problems. Districts may address areas such as sensory status, physical status, and communication status by screening procedures.

Subpart 2B

This subpart sets forth the environmental observation which the Board believes is an essential component of a full assessment. This observation is not a new requirement but a clarification of what is already required for students suspected of having a learning disability. This rule now requires an environmental observation for all persons referred to special education. For most persons referred for special education, this will mean an observation of the student's functioning in the regular education classroom. However, for persons with severe disabilities or who are under kindergarten age, it may require an observation in the child's home or care setting to determine the effects of a handicapping condition on his/her functioning. For pupils who have more substantial handicaps, or who have reached an age where secondary transition planning is required by state statute, the team would be required for to look at what may be appropriate now, and what will be required for the person to function appropriately in the future. Research shows that improvements are needed in special education programs for the preparation of pupils for home living in the community and post-secondary employment opportunities. The purpose of the environmental assessment is to aid a team in determining a person's current level of performance and identifying a person's needs as required in part 3525.2900 and the federal law.

Subpart 2C

Requires the team to make reasonable efforts to obtain information about persons who are from different ethnic or cultural backgrounds. This is consistant with the principle of non-discriminatory assessment in Part 3525.0200, Subp. 10.

Subpart 3

Requires an assessment summary report be completed on persons who have been assessed by the district. There is a need for this requirement because of the findings from local district monitoring visits that assessment results are not reported in a manner that is available or informative to parents or others. Assessment information is typically scattered among multiple reports or forms and often leaves the reader to draw their own conclusion from the raw data, even though they may not be qualified to do so. Rarely do monitors find assessment reports from assessments done by teachers or related servies staff other than the school psychologist. Federal regulations require that assessment "information obtained from all of these sources is documented and carefully considered." The components listed in this section are minimal components of an acceptable assessment summary report. Because assessment findings are the basis for all future planning and for the IEP, it is a reasonable expectation for the assessor to summarize his/her findings and conclusions in a report. Districts may design their own forms or procedures to meet this requirement. They may have one report form where all assessment results are reported or have each teacher or related services professional complete a separate report.

3525.2850 Reading and Writing Assessment for Pupils who are Blind

This rule is needed because of specific legislation (M.S. 126.071) directing the Board to write rules about the critieria to determine the need for braille instruction.

This rule is reasonable because it requires a functional reading and writing assessment be completed by a multidisciplinary team at least every three years for pupils who are blind to determine whether braille instruction shall be continued or commensed. The federal law (Education of All Handicapped Children's Act of 1975 and P.L. 94-142 Rules and Regulations) requires that individual student needs are identified and special education services are provided to meet each of thise individual needs. Due process procedures are specific to ensure that this remains an individual student process and that parents have rights to agree/disagree at each step of the process. Because of these rights and requirements, it would be inappropriate and not legal to require IEP goals for reading and writing or a specific instructional strategy (e.g. braille instruction or large print) for a group of pupils (e.g. students who are blind). The process described in this rule including recommendations of when instruction of braille reading and writing shall occur is a fair and reasonable process that allows the individual needs of pupils and their families to be addressed. This process is

consistant with and somewhat duplicative of the current IEP rule part 3529.2900. In addition to the assessment requirements and criteria for determining a need for braille are requirements for the district to inform parents and other teachers about resources and advocacy organizations for consumers who are blind. This section is reasonable as recommendations from a working task force of parents, blind adults, representative organizations, higher education and school districts were incorporated.

3525.2950 Secondary Transition Planning

This section is needed because of M.S. 120.17 which mandates that transition needs to be addressed starting in grade nine or age 14. The standard proposed in this rule support the law.

The multidisciplinary approach to planning and assessment constitutes the recommended practice in the field. It is necessary and reasonable to include the key adult service agencies when planning for transition from school to work and community involvement. In one aspect of transition planning, Vocational education is specifically highlighted in the education amendment of 1976 (P.L. 94-482) as needing to be involved in a cooperative fashion with the IEP planning process. In assessing an individual's transition needs, the rule proposed a framework by which to plan. By including the results in the assessment summary insures minimally that goals and objectives will be developed to support the individual's needs.

3525.3000 Periodic Reviews

There is a need for this rule to insure that the periodic review be conducted at a time other than the annual IEP meeting. Districts frequently conduct a periodic review once a year to coincide with the annual review of the IEP. This was not the intent of the current rule. This change is reasonable because it clarifies the original intent that at least one periodic review, in addition to the annual review, is necessary to evaluate the progress of specialized instruction designed to meet individualized needs of students who are handicapped. The remainder of this section include changes suggested by the Revisor's Office.

3525.3100 Requirements for Follow-up Review

The paragraph in this section requiring districts to conduct an educational reassessment at least every three years duplicates language in part 3525.2750. Eliminating this language from this section makes this section specifically address follow-up review. It is reasonable because it is a restatement of what is already in current rule.

3525.3150 Requirements for a High School Diploma

Minnesota Statute Section 120.17, Subd. 1b requires districts to grant a high school diploma identical with those conferred upon regular education students to pupils who are handicapped and who have satisfactorily attained the objectives in the pupil's IEP. The statute does not specify a process or standard for determining an appropriate IEP or successful achievement of IEP objectives. This rule is needed because it describes a process for districts and parents to use during the IEP process to determine, on an individual basis, what must be addressed and included on the IEP in order for the pupil to meet the statutory requirements and receive a high school diploma. This rule is reasonable because it requires teams to address each step in sequence, thus allowing the individual determination of a pupil's (a) instructional needs, (b) needs for modifications of the regular education program and (c) a standard for the attainment of a high school diploma by a student who is handicapped. By requiring this process be used beginning at grade nine or age 14, it is consistent with the planning process for secondary transition and avoids last minute decisions about whether the pupil should graduate which have occured in the past. The Board believes this rule to be consistent with the statute and it's intent.

3525.3300 Contents of Notice

The need for this rule is twofold. The first reason is because of federal legislation that allows for parents to be awarded attorney's fees by the courts. The second reason is because of the need to clarify the district responsibilities regarding procedural safeguards particularly as it pertains to the occurance of a conciliation conference. This rule is reasonable because it eliminates duplicative language and clarifies the circumstances when a conciliation conference may be held. Additional changes in the rules are a result of suggestions from the Assistant Attorney General and the Revisor's Office.

3525.3400, 3900, 4000-4700 Notice to Resident School District, Notice of Hearing, and Rules Relating to Hearings and Hearing Procedures

The changes in these sections deleting "resident" or "providing school" as clarifiers for "district" is necessary because of the changes in section 3525.0800 Accountability for Instruction & Services. The responsibility for ensuring a free and appropriate public education (FAPE)to a pupil is clearly described in part 3525.0800 including which district, providing or resident, is responsible for the due process provisions. Therefore, the "district" used in these sections would be the district responsible according to section 3525.0800 and not necessarily the resident or providing district according to current rule. The current rules need to be revised to eliminate this confusion. These changes are reasonable because it clarifies each district's responsibilities for the the district(s) and the parents according to the statutory language and intent. It is consistent that when a

district makes a decision that district is then responsible for that decision should there be a disagreement. This would hold true, that even if the district making the educational decisions is not the district responsible for paying for the special education as in the example of a child being placed in foster care or a residential care and treatment facility. Other changes in these sections have been recommended by the Revisor's Office.

3525.3500 Notice of Performance or Refusal to Perform Assessment

Changes in this section are necessary because of number changes in the sections relating to assessment. Changes made reflect the new section references.

3525.3600 Notice of Change or Refusal to Change Educational Placement or Program

This section is necessary because of the need to clarify when a change in program or placement is significant and warrants a notice to the parent and a revision in the pupil's IEP according to Section 3529.2900, Subp. 5. The criteria for determining if a change is significant thus requiring notice to parents and an IEP revision is outlined in this section. It is reasonable because it is specific to the specific components of an IEP and how each component relates to the individual pupil. These criteria set the standard of when notice must be served and an IEP must be revised but allows flexibility in meeting the unique needs of each individual pupil.

3525.3700 Conciliation Conference

Changes in this section are needed because of the federal monitoring report which required both legislative and rule clarification regarding when a conciliation conference may be offered and that a conciliation conference may not be used to deter or delay a parent's right to request a due process hearing. This rule is reasonable because it allows for a conciliation conference to be held when both the parent and the district agree to use this process to try and come to an agreement. This rule requires the district to offer a conciliation conference but is clear that when a parent refuses to conciliate the dispute, the district must provide the parent with the necessary information to go to an impartial due process hearing.

3525.3800 When a Hearing Must be Held

The changes in this section are necessary to make it consistent with federal requirements, state statutes and part 3525.3700. It is reaasonable because of changes made in these areas.

REPEALERS

Part 3525.0200, Subpart 9a. Management Aide or Aide

This subpart is repealed and replaced with subpart 9b of this part because the new language offers more flexibility for local districts to use staff when meeting the needs of students eligible for special education. The need and reasonableness of this subpart is addressed in 3525.0200, subp. 9b.

Part 3525.1600 Staff for Special and Vocational Education

There is a need to repeal this rule because it is outdated and is duplicative of a more recently passed rule 3517.1500-3517.1600. Qualifications for staff for special and vocational education shall be licensed according to the vocational education rules and not according to this rule. This rule was originally written in the 1970's when there were no other rules appropriate to this license. It is reasonable to delete the rule from this section because it is adequately and appropriately referenced in another section and to keep it would be confusing to districts.

Part 3525.2300 School Day

This part needs to be repealed because it is replaced by 3525.2310, Length of School Day which more clearly describes the expectation and process for determining the appropriate length of a school day for pupils.

Part 3525.2320 Pupils Placed for Care and Treatment

This part needs to be repealed because of the new part 3525.2325 Education Programs for K-12 Pupils and Regular Education Students Placed for Care and Treatment. The Statement of Need and Reasonableness for this new part is written in 3525.2325.

Part 3525.2330, Subp. 2, 3 and 4 Early Childhood Program Alternatives

These subparts are repealed because new part 3525.2335 subparts 2 through 5 have been added to reflect changes in statute and Board policy. The Statement of Need and Reasonableness is found in the section-by-section discussion of this part.

Part 3525.2360 Single Disability Case Management Services

This part is repealed and replaced by Part 3525.0550 Pupil IEP Manager. The Statement of Need and Reasonableness in the section-by-section discussion of this part.

Part 3525.4800 through 3525.7500

The repeal of these rules is needed because some of the parts of the special education rules were updated in 1984, while most of the rules governing the academies were written in the mid 1970's and confusion

currently exists about which rules apply when a pupil attends the Minnesota Academies. There are rules in the Academies part (3525.4800-3525.7500) that are inconsistent with those rules in the special education section. This inconsistancy is most apparent in the due process rules which have caused confusion regarding the district's role in the process. This repeal is reasonable because of the statewide need and support for one set of rules to cover all special education services and due process procedures in the state. The special education rules have been revised to accomodate all specific procedures and responsibilities when a pupil is placed at the academy. The major change occurs in part 3525.0800 where the resident district is responsible for it's pupils and continues to be responsible even in those cases where the district places a pupil at the Academy. The rule requires involvement of Academy personnel and coordination when developing the IEP. This change should increase the communication between the resident district and the Academies and ultimately result in more appropriate services provided to pupils placed at the Academies. This rule was developed jointly by staff from the Department and administrators and staff from the Academies under the specific direction of the State Board of Education (SBE).