

**Minnesota Department of Education**  
**Proposed Permanent Rules Relating to**  
**Graduation-Required Assessment for Diploma,**  
***Minnesota Rules, Chapter 3501***

**Introduction**

Minnesota has developed a standardized assessment system that fulfills the requirements of both state and federal law. These rules guide the provision of the state graduation exams.

In 1996, Minnesota legislation established the Basic Skills Tests (BST) as a graduation exam in reading, mathematics and writing. In this law, the state legislature granted the Department rulemaking authority to determine the administration and test design of the assessments. In the 2006 and 2007 legislative sessions, the state legislature revised the exam requirements for students graduating from a Minnesota public high school. In 2006, the Basic Skills Test (BST) was eliminated and replaced with the Minnesota Comprehensive Assessments (MCA). In 2007, the statute was further clarified and revised to establish the Graduation-Required Assessment for Diploma (GRAD) as a retest option to satisfy graduation requirements. In this legislation, the Department also was granted rulemaking authority to establish passing requirements for students in special circumstances. Therefore, the Department is proposing revisions to Minnesota's graduation exam rules to fulfill these statutory responsibilities.

The proposed rules are a product of the Department's intensive drafting work, and based on the significant discussions and contributions of public stakeholders during the review period. Secondly, they also reflect the Department's incorporation of comments received from interested community members. Thirdly, they reflect the Department's review of state graduation exam policy from many of the 26 states that have graduation exams as of 2007. In addition, the Department presented these rules to numerous stakeholder committees including the Local Assessment and Accountability Advisory Committee, the National Technical Advisory Committee, the Commissioner's Assessment and Accountability Stakeholder Committee, the Assessment Advisory Committee and the Limited English Proficiency Assessment Advisory Committee. Throughout the rule-drafting process, updated provisional drafts of the proposed rules were posted to the Department's Website for interested parties to access and comment on; these comments also were considered and incorporated into the final proposed rules to the extent possible.

This rule process has resulted in revision of Chapter 3501, Minnesota's graduation exam rules. These rules deal with two major areas: 1) a description of administrative procedures necessary to maintain security of the assessments and 2) the manner in which students in unique circumstances may satisfy the state graduation exam requirements, as required by Minn. Stat. § 120B.31.

## **Statutory Authority**

The Department's authority to adopt the rules is set forth in 2007 *Minnesota Laws*, chapter 146, article 2, section 36, which provides:

The commissioner of education shall adopt rules for implementing and administering the graduation-required assessment for diploma (GRAD) in reading and mathematics and in writing, consistent with Minnesota Statutes, section 120B.30, subdivision 1, and for public review of the GRAD test. The rules must specify the GRAD requirements that apply to students in unique circumstances including dual enrolled students, English language learners, foreign exchange students, home school students, open enrollment students, Minnesota postsecondary enrollment options students, shared-time students, transfer students from other states, and district-placed students and students attending school under a tuition agreement. The rules must establish the criteria for determining individualized GRAD passing scores for students with an individual education plan or a Section 504 plan and for using an alternative assessment when a student's individual education plan team decides to replace the GRAD test.

This instruction was signed into law on May 30, 2007. The Department published its Dual Notice: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received before November 30, 2008, which is within the 18-month time limit set forth in Minn. Stat. § 14.125.

This session law provides the Department with the necessary authority to adopt the proposed rules.

## **Alternative Format**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format. To make a request, contact Sage Van Voorhis at the Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN, 55113; phone: 651.582.8571; FAX: 651.582.8248. TTY users may call the Department at 651.582.8201.

## Regulatory Analysis

*Minnesota Statutes*, section 14.131, sets out seven factors for regulatory analysis that must be included in the SONAR. Paragraphs (1) through (7) below quote these factors and then give the agency's response.

**(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

The classes of persons affected by this rule include: Minnesota students graduating from high school in the year 2010 and beyond; Minnesota school districts; Minnesota charter schools, and employers that hire Minnesota public high school graduates. Districts and charter schools will bear the costs of the proposed rule in implementing the tests. The Department will also bear some costs in auditing the testing programs set up by districts and charter schools, as well as reviewing out-of-state graduation tests and reports regarding test security. Minnesota public high school students and students in unique situations, as well as school staff and administrators, will benefit from the proposed rule because it clearly spells out their rights and responsibilities regarding the GRAD requirement. Institutes of higher education are potential beneficiaries, as the rule will result in greater uniformity and higher standards for Minnesota high school graduates. Employers will potentially gain a better educated and more prepared workforce resulting in heightened productivity and improved consistency.

**(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The proposed rules do not create any additional costs to the Department. The Department is already staffed to provide training and support regarding the proposed rules, and staff assignments and resources will be reallocated accordingly, as necessary.

**(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

There are no less costly methods for achieving the purposes of the proposed rules. These proposed rules are required in order to conform Minnesota Rules with recent changes in Minnesota Statutes. The Department has the responsibility to ensure that Minnesota complies with state laws regarding the graduation exams, so it is necessary to maintain and revise these rules to ensure the implementation of state statutes. For all of those reasons, amending the proposed rules through the formal rulemaking process is the most appropriate method to satisfy those responsibilities and requirements.

**(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.**

The Department does not believe there are alternatives to the proposed rules. The rules ensure implementation of the state law and they prescribe how school districts can demonstrate compliance with state law. These rules need to be revised due to changes in state statute.

The Department did not consider drafting the proposed rules without utilizing the knowledge and practical experience of many stakeholders with different viewpoints. The Department did not consider other alternative methods for drafting the proposed rules.

**(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.**

The proposed rules are cost-neutral. School districts will not face increased costs to implement the rules. Districts will continue to implement the revised rules, as they do now with the current rules governing the Basic Skills Tests (BST) and Minnesota Comprehensive Assessments (MCA), and provide appropriate graduation exams. Any costs created by the implementation of these rules are already being borne by all entities involved. The proposed rules do not impose restrictions or have a direct impact on the fundamental aspects of businesses or separate classes of individuals.

**(6) The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.**

The proposed changes in the rules reflect state statutory requirements for students in unique circumstances; therefore, the rule changes are necessary to bring Minnesota Rules into compliance with state statute. There may be costs associated with not adopting the rules. For example, if students in unique situations do not have access to an alternative method of satisfying the graduation exam requirement, there will likely be costs associated with any resulting litigation.

**(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.**

The goal of this rulemaking process is to revise Minnesota's current BST rules to bring them into alignment with revised state requirements for the GRAD. The SONAR provides a step-by-step analysis which addresses any applicable federal law.

### **Cost to Small Businesses and Small Cities**

As required by Minn. Stat. § 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city.

The Department has made this determination because the proposed rules will not result in additional costs to small businesses or small cities.

### **Consult with Finance on Local Government Impact**

As required by Minn. Stat. § 14.131, the Department has consulted with the Commissioner of Finance. On July 3, 2008, prior to publishing the Dual Notice, the Department sent the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval. The documents included: the Governor's Office Proposed Rule and SONAR Form; final proposed rules approved as to form by the Office of the Revisor; and near-final SONAR. In a July 8, 2008, memorandum, the Department of Finance stated that the proposed rule could have some impact on local units of government, but that at this time it is difficult to estimate the degree to which costs will be incurred. The Department of Finance further stated that the public has been made aware of the rule change and local units of government will also be notified, therefore the Department of Education has provided adequate notification of the proposed rule changes and has considered local government costs in the analysis.

### **Performance-Based Rules**

Throughout the development of the proposed rules and this SONAR, the Department made every effort to develop rules that will be understandable for practitioners and families and ensure efficient and effective administration of the graduation exams. Further, the Department proposes these revisions to make the rules clear in purpose and intent, flexible, and not overly prescriptive.

### **Additional Notice**

A Request for Comments was published in the *State Register* on July 30, 2007. The proposed rules and the Dual Notice will be published in the *State Register* on July 21, 2008. At that time, the Department will also make the proposed rules available and send the Dual Notice to the following parties:

- Individuals and organizations on the Department's registered rulemaking list;
- Education organizations list maintained by the Department;
- Educational service cooperatives list maintained by the Department;
- Adequate yearly progress coordinators list maintained by the Department;
- Limited English proficiency advisory group list maintained by the Department;
- Local Accountability and Assessment Advisory Committee;
- National Technical Advisory Committee;
- Advocacy organizations and disability-specific organizations;
- Chairs of legislative committees with oversight of the Department;
- Minnesota superintendents, via the Department's weekly superintendents informational email;
- Charter school directors, via email lists maintained by the Department;
- Minnesota directors of special education, via the Department's special education directors listserv;

Minnesota Association of Colleges of Teacher Education;  
Department of Corrections superintendent and special education director;  
Other interested parties; and  
Posting on the Department's Website.

The Department will also send a press release outlining the date, time, and location of the public hearing and a description of the proposed rules to news outlets, including radio, television, and newspapers throughout the state.

The scheduled hearings, additional notices, and opportunities for comment comply with 34 C.F.R. § 300.100 and 300.165, which state:

A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions... Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

The Additional Notice Plan also includes giving notice required by statute. The Department has mailed the rules and Dual Notice to everyone who has registered to be on the Department's rulemaking mailing list, which is required by *Minnesota Statutes*, section 14.14, subdivision 1a. We will also give notice to the legislature per *Minnesota Statutes*, section 14.116.

#### List of Witnesses

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Dirk Mattson, Director, Assessments and Testing, Minnesota Department of Education, will testify about the agency's rule development process and will provide an overview of the rules.
2. Linda Sams, Program Management Manager, Assessments and Testing, Minnesota Department of Education, will testify about the agency's rule development process and will provide an overview of the rules.
3. Sage Van Voorhis, Rulemaking Coordinator, Minnesota Department of Education, will facilitate the Department's hearing process.

## Rule-by-Rule Analysis

### **3501.1000 PURPOSE.**

The purpose of parts 3501.1000 to 3501.1190 is to establish statewide graduation test standards and rules for administration and implementation of the Graduation-required assessment for diploma (GRAD).

This purpose statement is needed to state clearly that these proposed rules are for the purpose of establishing the requirement that the proposed statewide standards must be offered in every Minnesota public school district and must be completed by all students before a diploma can be awarded by a district.

This provision is reasonable because it gives clear direction to districts that state level standards are established, must be offered and are minimum criteria to be used for awarding a local high school diploma.

### **3501.1020 SCOPE.**

Parts 3501.1000 to 3501.1190 govern the graduation standards that Minnesota public schools must require for a high school diploma for all students enrolled in grade 8 in the 2005-2006 school year and later.

This statement of scope is needed to specify which students are included in the proposed rules and when and for whom the rules become effective.

The *Debra P. v. Turlington* case is one of the seminal cases laying the groundwork for the ways in which courts might assess high stakes exams. 730 F.2d 1405 (11th Cir. 1984). It was predicated in large part on a finding that a testing program was implemented in such a way as to deprive a student of property interests without due process. The Fifth Circuit Court of Appeals found unconstitutional a Florida law requiring students to pass a statewide minimum competency test in order to receive a diploma. The court held that the state's compulsory education law and student education program gave children a constitutionally protected expectation that they would receive a high school diploma if they successfully completed high school. This property interest effectively prevented the state from imposing new criteria without adequate notice and sufficient educational opportunities to prepare for such tests. Notice allows children to prepare for the test, allows school districts time to develop and implement the test, and allows schools the chance to correct any deficiencies in the test and to set a passing score. The court in *Debra P.* was persuaded by expert evidence indicating that at least four to six years of preparation time is required in order for children to adequately prepare for a high stakes exam. *Debra P.* has been widely followed and stands as persuasive precedent.

This provision is reasonable because it provides four year's notice from the time that the statute was passed by the Legislature to 2005-2006 eighth grade students who must complete these requirements

to earn a high school diploma. This four-year prior notice is consistent with the period of notice that was given when the basic requirements in reading, mathematics and written composition were adopted, and provides adequate notice to and opportunity for students to complete the requirements by their graduation date.

### **3501.1030 DEFINITIONS.**

**Subpart 1. Scope.** The terms used in parts 3501.1000 to 3501.1190 have the meanings given them in this part.

**Subp. 2. Accommodation.** "Accommodation" means an adjustment in a testing condition, such as the setting for or scheduling of the test, or a change in the method of administering a test. An accommodation does not compromise the security or the confidentiality of the test, does not alter the meaning of the score, or render the student's score incomparable to the scores of those students who took the test under standard conditions.

**Subp. 3. Department.** "Department" means the Department of Education.

**Subp. 4. District.** "District" means a school district.

**Subp. 5. Graduation-required assessment for diploma (GRAD).** "Graduation-required assessment for diploma" or "GRAD" means the assessment that measures the reading, writing, and mathematics proficiency of high school students.

**Subp. 6. Individualized education program or IEP.** "Individualized education program" or "IEP" means a written statement developed for a student eligible for special education and services pursuant to Minnesota Statutes, sections 125A.03 to 125A.24, and the Individuals with Disabilities Education Act, as amended in 2004, Public Law 108-446.

**Subp. 7. Modification.** "Modification" means an adjustment of a test that results in changing the standard for a particular student.

**Subp. 8. Parent.** "Parent" means, for a student under age 18, the mother, father, guardian, person acting as the parent of the student, conservator, or surrogate parent who has been appointed in accordance with parts 3525.2435 to 3525.2455. For a student age 18 or over, parent also includes the student unless a guardian or conservator has been appointed, in which case it means the guardian or conservator. When the parents are separated or divorced, it means



the parent who has the legal right, by court decree or agreement, to determine the student's education, even though the student may be living with the other parent.

Subp. 9. Public schools. "Public schools" means all public schools as defined in Minnesota Statutes, section 120A.05, and includes, but is not limited to, public school districts, charter schools, the state academies for the deaf and the blind and the Center for Arts Education.

Subp. 10. Section 504 accommodation plan. "Section 504 accommodation plan" means the defined appropriate accommodations or modifications that must be made in the school environment to address the needs of an individual student with disabilities. This section of the federal Rehabilitation Act of 1973, Public Law 91-230, as amended in Public Law 101-476, extends protection to a much broader student population than just those students with IEPs.

Subp. 11. Statewide graduation standards. "Statewide graduation standards" means statements of what a student should know and be able to do as described by Minnesota Statutes, sections 120B.02 and 120B.021.

Subp. 12. Student. "Student" means a person admitted to a public school as defined in Minnesota Statutes, section 120A.05, in accordance with Minnesota Statutes, section 120A.20.

Subp. 13. Test specifications. "Test specifications" means statements of the requirements that tests must include and how tests are designed. The specifications define the required content, format, level of difficulty, types of items and length of the tests.

These definitions are necessary because they clarify the meaning of terms specific to the proposed rules. The definitions are reasonable because they have been used effectively for previous statewide graduations standards tests and are generally know in the assessments and education fields.

### **3501.1040 GRAD REQUIREMENTS.**

The GRAD requirements for reading, mathematics, and writing are established in this chapter.

To qualify for a high school diploma, a student must demonstrate competency in the statewide standards for reading, mathematics, and writing by fulfilling the graduation test requirements established by Minnesota Statutes, sections 120B.02 and 120B.30.

The provisions of this section are required by Minnesota law. A graduation requirement in mathematics, reading, and writing is required under Minnesota Statutes § 120B.30, subd. 1. The statute provides the following:

(b) For students enrolled in grade 8 in the 2005-2006 school year and later, only the following options shall fulfill students' state graduation test requirements:

(1) for reading and mathematics:

(i) obtaining an achievement level equivalent to or greater than proficient as determined through a standard setting process on the Minnesota comprehensive assessments in grade 10 for reading and grade 11 for mathematics or achieving a passing score as determined through a standard setting process on the graduation-required assessment for diploma in grade 10 for reading and grade 11 for mathematics or subsequent retests;

(ii) achieving a passing score as determined through a standard setting process on the state-identified language proficiency test in reading and the mathematics test for English language learners or the graduation-required assessment for diploma equivalent of those assessments for students designated as English language learners;

(iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan;

(iv) obtaining achievement level equivalent to or greater than proficient as determined through a standard setting process on the state-identified alternate assessment or assessments in grade 10 for reading and grade 11 for mathematics for students with an individual education plan; or

(v) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan; and

(2) for writing:

(i) achieving a passing score on the graduation-required assessment for diploma;

(ii) achieving a passing score as determined through a standard setting process on the state-identified language proficiency test in writing for students designated as English language learners;

(iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan; or

(iv) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan.

### **3501.1050 TESTING FOR STATEWIDE GRAD STANDARDS.**

**Subpart 1. District testing. A district must test for proficiency in statewide graduation standards by using the graduation-required assessment for diploma.**

Subp. 2. Offering GRAD. A district must not offer the GRAD before the grade of its first census administration. Once the test has first been offered to a group of students, the district must continue to offer the GRAD to that group of students at least once a year.

This provision ensures that students have sufficient opportunity to learn the content assessed on the exam prior to administration. The GRAD shall not be administered to students before the grade level defined in Minnesota Statutes. The exams are aligned to Minnesota's academic content standards.

It is reasonable to begin testing at these grade levels because it provides a minimum of five testing opportunities for a student to pass the tests before graduation. It also allows time for remediation before graduation for those students who do not pass.

Standard 13.6 of the *Standards for Educational and Psychological Testing* states that multiple opportunities to take the assessments should be provided:

Students who must demonstrate mastery of certain skills or knowledge before being promoted or granted a diploma should have a reasonable number of opportunities to succeed on equivalent forms of the test or be provided with construct-equivalent testing alternatives of equal difficulty to demonstrate the skills or knowledge. In most circumstances, when students are provided with multiple opportunities to demonstrate mastery, the time interval between the opportunities should allow for students to have the opportunity to obtain the relevant instructional experiences. (AERA, 146).

Consistent with Standard 13.6, under the proposed rules each student will have a minimum of five opportunities to pass the GRAD. Districts may provide more opportunities than the minimum. Multiple opportunities are necessary to ensure that students who have not passed the GRAD will be identified, remediated and provided with an opportunity to pass the tests. The proposed rules are reasonable because they allow students a sufficient number of opportunities to pass the tests. The Department wants to ensure that children are well-educated and can demonstrate certain minimum competencies, as well as ensure that all children have a similar opportunity to pass the required exams, graduate and move on to successful adulthoods.

### **3501.1110 OPPORTUNITIES TO LEARN AND REMEDIATION.**

A district's curriculum must include opportunities for all students to learn the GRAD requirements and subject matter. The district must develop a plan for remediation for a student who, after two retest opportunities, has not passed a specific GRAD.

The proposed rules require that districts increase the emphasis on individual achievement of the GRAD requirements. While districts routinely include essential skills instruction and remediation of

individual students in their elementary curricula, most have not insisted that these skills be verified for individual students before graduation from high school.

This requirement is consistent with the current practice of other states. Thirteen states that employ high-stakes minimum competency testing report that their local districts offer an individual academic plan to learn the content covered by the test (CEP, 2007). In this report, Florida, Nevada, and Washington require this type of remediation by law.

This provision of the proposed rule fits well with the Minnesota law that prohibits the establishment of a single statewide curriculum. *See* Minn. Stat. § 120B.02. While guiding the eventual results, the state allows districts to have full latitude to decide the issues traditionally contained within a curriculum, i.e., how the topics will be taught, the materials to be used and how students will access the instruction.

For example, in mathematics, materials to teach the topics are readily available because the content consists of easily recognized parts of published mathematics textbooks that are used widely across the state. Methods of teaching the topics and particular strategies are included in the *Principles and Standards for School Mathematics* published by the National Council of Teachers of Mathematics (National Council of Teachers of Mathematics, 2000) as well as numerous other sources. The reading objectives encompass only reading comprehension, without delineation of the particular strategies or methods used to teach students. This allows for district selection of a preferred philosophy and approach to teaching reading. Whatever method is used, the ability to understand what has been read is a universally accepted result. It is supported by all widely used methods and commonly purchased materials for the teaching of reading. The writing exam requires only essential composition skills commonly taught in district curricula. Methods of teaching the topics and particular strategies are included in the *Standards for the English Language Arts*, published by the National Council of Teachers of English (National Council of Teachers of English, 1996) as well as numerous other sources.

“Opportunities for all students” means that the methods and frequency of opportunities granted to students to receive instruction are geared to the needs of the students. The district curriculum and its instructions to teachers need to show that teachers have been directed to address the needs of all students and that materials and time have been provided for them to do so. This directive is needed because individual students are held responsible for passing the GRAD and individual students learn at different rates and through different methods. This emphasis on building the knowledge required by the topics of the state test should be evident from kindergarten through the time when the student has passed the test.

The provision requires a plan for remediation, but it does not require individualized instruction to be part of the plan. When the objectives which have been the primary focus of schooling have not been achieved, it is reasonable to expect a district to employ a process of focused decision-making to determine how the needs of the student can be met. This provision is necessary to determine what might be done using the existing resources of the district to improve achievement.

### **3501.1120 REQUIRED NOTIFICATION TO PARENTS AND STUDENTS.**

**Subpart 1. Written notice. A district must establish and maintain a system to provide written notice to parents and students about graduation requirements.**

It is necessary for local school districts to establish and maintain a process to provide written notice to parents and students about graduation requirements. In order to actively participate in the educational process, parents and students need to be properly informed about graduation requirements.

Federal law requires that parents and students be informed of factors influencing high-stakes decisions such as graduation requirements. Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act mandate that all students be given equal opportunity and access to public education. It is reasonable to give students and parents adequate notice of high-stakes test requirements that determine whether a high school diploma is awarded.

In order to meet the requirements of federal legislation and ensure educational opportunity for all students, both students and parents must be given adequate notice in writing of the graduation requirements. Since these requirements determine whether a student receives a diploma, they qualify as high-stakes decisions and require sufficient notice.

Notification to parents and students is consistent with Minnesota legislation and general practice in school districts. Minnesota law currently requires school districts to inform parents and guardians in a timely way about school programs. *See* Minn. Stat. § 124D.895. The proposed rule builds upon current Minnesota legislation and represents a continuation of current practice in Minnesota school districts.

It is reasonable to require school districts to provide written notice in order to fulfill the requirements of recordkeeping. This requirement is an extension of the current district practice and ensures that a student will not be deprived of a diploma without procedural due process.

**Subp. 2. Notice of graduation requirements. Beginning in the 2008-2009 school year and each subsequent year the district must provide to parents and students written notice of:**

**A. the graduation requirements; and**

**B. the grade in which the student will have the first opportunity to take a GRAD.**

Notification of the graduation requirement, the GRAD, must be given within a reasonable amount of time prior to graduation in order to allow students to prepare for the test. Students must be provided written notice of the GRAD requirement and the date of the student's first opportunity to take that test.

**Subp. 3. Notice of test results and remediation opportunities. The district must provide written notice to parents and the student of GRAD results no later than 60 days after a**

student takes a GRAD. After the date of receiving test results, students must have a minimum of six weeks for remediation before the next testing opportunity.

Notification of the GRAD results and remediation opportunities to students and parents is necessary. The ultimate goal of the assessment is to determine the basic skills level of the individual student and, if needed, to help the student acquire the appropriate level of basic skills necessary to function as an independent adult. In order to achieve this goal, students must be informed of their progress in a timely manner and afforded learning opportunities. It is imperative to inform parents and students in a timely manner of the GRAD results, in order to make informed decisions for the student. Without notice of the GRAD results, parents cannot direct the education of their children and assist them in learning basic skills (Phillips, 1993).

Standard 13.6 of the *Standards for Educational and Psychological Testing* states that remediation opportunities should be available:

Students who must demonstrate mastery of certain skills or knowledge before being promoted or granted a diploma should have a reasonable number of opportunities to succeed on equivalent forms of the test or be provided with construct-equivalent testing alternatives of equal difficulty to demonstrate the skills or knowledge. In most circumstances, when students are provided with multiple opportunities to demonstrate mastery, the time interval between the opportunities should allow for students to have the opportunity to obtain the relevant instructional experiences. (AERA, 146).

It is reasonable to require the school district to provide written notice to the students and parents within 60 days after a student takes a GRAD because students who do not pass the GRAD must be given adequate time to obtain relevant instructional experiences. Ninety days is a reasonable amount of time that gives the school district an opportunity to process and disseminate the test results.

### **3501.1130 STUDENT RECORD KEEPING.**

Under the present credit-based system, records of credits attempted and earned, class grades achieved, and individual standardized test scores are kept on an individual student record. During the student's school years, this record provides information about the student to counselors and other school professionals who will assist the student's educational pursuits. The records may also be used after graduation to provide information for post-high school admissions and employment. If the student moves, these records are transferred from school to school so that previous accomplishments can be credited to the student. The record also verifies that a student being denied a diploma has had more than one opportunity to take the test, as was found to be an important criterion in the *Debra P. v. Turlington* decision. See *Debra P. v. Turlington*, 730 F.2d 1405 (11<sup>th</sup> Cir. 1984).

Subpart 1. Test results. The district must keep a record on each student that includes:

A. the GRAD taken; and

B. the results of the most recent GRAD given.

This information will provide evidence of each test taken and will assist the district in evaluating the student's situation. If a diploma is denied, documentation showing that the student has had different types of assessments strengthens the decision to deny a diploma because the student has been unable to demonstrate the required ability. The Department will keep the official record of the student's passing status. The district shall be responsible for keeping documentation of this official record in the student's data record.

**Subp. 2. Student progress. Individual student progress must be reported on a student record as described in items A and B.**

This section explains how the record for each student will indicate the status of the student. The state recognizes that special circumstances require exceptions to be made for individual students regarding any state standard. It is possible to allow students to pass the GRAD requirement under different conditions so long as the record accurately indicates the differences in the conditions. Therefore, the record of students who have passed under conditions that alter the standard will have a notation on their record. This maintains the integrity of the record for the use of school officials, employers, and postsecondary admissions personnel.

This provision will improve the situation created by the current record-keeping system in which the same grades can be given for widely different levels of achievement. To make this system results-oriented, the state must require that results are reported accurately. This requirement is necessary to ensure that the record will convey accurate information.

**A. "Pass-state level" or "PS" must be noted on the record of a student who passes a GRAD under standard conditions or with an accommodation. The records for students passing with an accommodation must not differ from the records of students passing the test under standard conditions.**

"Pass-State" indicates that the student has passed at or above the level required by the state for the achievement of the standard. This test can be taken either under standard conditions or with accommodations that do not alter the standard. The important part of a PS notation is that the statewide standard is not altered.

**B. "Pass-individual level" or "PI" must be noted on the record of a student who passes a GRAD with a modification established in the IEP or section 504 accommodation plan in accordance with part 3501.1190. This notation is also used as a GRAD notation for any other modified or alternate assessment used for accountability purposes for students with disabilities.**

"Pass-Individual" shows that the student has passed a standard that has been modified through an IEP or 504 plan. The standard may be very different from the state standard. The record will not

show what the specific difference is, but the user of the student record will know that some alteration was made to the state standard. The Department will keep the official record of the student's passing status. The district shall be responsible for keeping documentation of this official record in the student's data record.

### **3501.1140 TEST ADMINISTRATION.**

The district must administer the GRAD under standard testing conditions defined by the developer of the particular test. The district must use the directions provided with the test. Test administration with accommodations or modifications to standard testing conditions must occur only in accordance with part 3501.1190.

This provision is needed to ensure that appropriate directions are followed for each type of test being given.

A test administrator's manual will be provided by the distributor of the state test. These procedures must be followed whenever the state test is used. However, when other tests are used, it is reasonable for districts to use the directions developed specifically for that test. Variations may occur, such as the amount of time allowed for the test, the use of calculators in the mathematics test, or the instructions about how to record the answers.

The directions of the test manual constitute standard testing conditions, which are required for students to achieve the status of "Pass-state level." All changes in that procedure should come through IEPs or 504 plans or the provision for LEP students. The provision is needed because it notifies districts about the importance of administering tests properly in order to maintain the integrity of the standard.

### **3501.1150 TEST SECURITY.**

Subpart 1. Security requirements. When administering GRAD, the district must observe the following test security measures:

The security of the GRAD is crucial to maintain fairness in the testing process and reliability and validity of test results. The purpose of test security is to ensure that no student will have an advantage over any other student taking the test.

Standard 8.7 of the *Standards for Educational and Psychological Testing* states that a requirement of equity be made known to test takers:

Test takers should be made aware that having someone else take the test for them, disclosing confidential test material, or any other form of cheating is inappropriate and that such behavior may result in sanctions. (AERA, 88).



These test security procedures are consistent with those of the Minnesota Assessment System as outlined in the annual publication of the *Procedures Manual for the Minnesota Assessments*.

A. all test materials must be secured, either physically or electronically, before and after the test administration;

This precaution is needed because schools have not been required to observe stringent security for state tests as described in the Procedures Manual. It is reasonable to expect school staff to find safe, locked places to store the tests. If test materials are in electronic format, it is reasonable for school staff to observe customary computer security measures.

B. all testing materials are nonpublic data under Minnesota Statutes, section 13.34;

The Minnesota Data Practices Act states that districts are not required to provide copies of completed exams or answer keys to any individual who has completed the GRAD. This provision of the rule provides a standard answer and statutory reference to anyone who asks to see a GRAD. Without a court order, district staff should not show the testing or exam materials, or scoring keys used to administer this academic exam to anyone. Test security is very important in high-stakes exams and such disclosure would compromise the objectivity and fairness of the GRAD. District staff may exhibit test specifications and sample test items as needed. The actual tests, completed or not, are not available for inspection at any time.

C. a student is required to present a valid photo ID before being admitted to the testing site if:

(1) the student is not enrolled in the testing district; or

(2) the student is unknown to the test proctor when testing in the enrolled district; and

This provision is needed to ensure appropriate identification of the student taking the exam. It is expected that the vast majority of students will be participating in the exams in their home school district, where district staff are familiar with the identity of their enrolled students.

To provide geographic flexibility to students, the Department anticipates allowing students taking the exam in a district that is not their home district (e.g., summer vacation travel within the state or when a home district does not offer the exam during a particular administration window). To maintain test security, it is reasonable for students unknown to the test proctors to identify themselves through an acceptable form of identification (e.g., student identification card, state-issued ID card or driver's license).

This provision is needed to maintain test security and lessen the chance that another individual takes an exam on behalf of the student.

D. districts must report any known violations of test security to the department.

The department must accept reports of violations of test security from anyone with knowledge of such an incident.

This provision requires districts to inform the Department of security violations rather than simply address the matter themselves. The Department may also receive such reports from anyone in the community. If a citizen reports a violation and the district also reports it, the Department can make a more informed judgment about the integrity of the testing cycle in question. This provision is necessary to ensure that district personnel appropriately address security violations when they arise and report them to the Department. This requirement is necessary to promote district policy improvement that results from policy changes due to security violations.

D. districts must report any known violations of test security to the department. The department must accept reports of violations of test security from anyone with knowledge of such an incident.

The Department's response to reported violations is detailed in this provision. The Department does not have the option of ignoring a reported violation; every violation must be investigated. It is necessary to include this provision in the rule to validate the Department's role when a violation occurs. It also ensures that the Department treats districts with fairness and impartiality.

A. the invalidation of test scores if a violation is found to justify serious questions about the integrity of the results of the test administration; or

A logical consequence of many security violations is that some students have an unfair advantage over other students in taking the test. Since it may be difficult to sort out which students have this advantage, one of the Department's options must be to invalidate an entire set of scores. This means that none of the students who took the test during the administration when the violation occurred will have passed. The provision limits the discretion of the Department to invoke this consequence by stating that this can occur only when there are serious questions about the integrity of the results of the group taking the test.

B. other reasonable sanctions that are necessary to preserve the security and confidentiality of future tests and test administrations.

This provision is needed to allow the Department to adjust the consequences of a violation to fit the nature and severity of the violation. The purpose of the consequence is the future protection of the integrity of testing situations. Punishment is not the spirit of this provision, nor is it the purpose. Rather, the provision focuses on achieving an improved situation in the district where the violation occurred.

### **3501.1160 REQUIRED DOCUMENTATION FOR PROGRAM AUDIT.**

The district must maintain records necessary for program audits conducted by the department. The records must include documentation that:

Local school districts are currently audited annually for compliance with state laws and effective use regarding school funds. *See* Minn. Stat. § 123B.10. In addition, periodic audits are done in each local district to assess compliance with federal programs including nutrition, special education and other discrete initiatives. *See* Minn. Stat. §§ 127A.45 and 125A.75. These audits do not assess student achievement, but rather audit the expenditures and programs of each local system. Since 1976, when the Minnesota Legislature endorsed and encouraged all school districts to develop a curriculum review process which involves the community, leads to program improvement, and provides accountability to the public, an annual report to the public has been a staple of Minnesota public education. *See* Minn. Stat. § 120B.11.

School districts submit an annual report consisting of their curriculum review, testing results, and plans for improvement, both to their local communities and to the Department. This report is entitled the "Annual Report on Curriculum, Instruction, and Student Achievement." In addition, many schools involve themselves in accreditation processes or other external reviews such as the North Central accreditation process. These studies and reports provide information of ongoing study and planning and allow state and local authorities to know that the schools have been in compliance with report legislation.

The audit, a results-oriented extension of the Annual Report process, focuses on data gathered and recorded by the local district, demonstrating compliance with all aspects of these rules. The proposed rule requires that districts must "maintain records necessary for program audits" and that audits will be "conducted by the department." Site visits by the state to monitor for compliance with the proposed rules provides assurance that assessment is being done consistently and effectively, that learning opportunities are being provided to students, and that schools are fulfilling their roles by providing accountable, results-oriented policies and procedures which serve all students. By means of these audits and the data they examine, students, parents, and the public are assured that the intent and integrity of the system are upheld consistently despite local variations in the methods and assessments selected.

Critical to realizing the benefits of this audit are the requirements that schools keep all necessary records for effective state review.

In order for schools throughout the state to be held accountable to individual students for consistent learning and assessment opportunities, it follows that local districts must be held accountable by the state for consistent program standards and assessment. This is reasonably accomplished through an audit of local programs by the state. The requirement of local documentation for these program audits provides assurance of consistent implementation of the required standards throughout the state, because each district must provide the same evidence during an audit.

- A. remediation plans for students are developed consistent with part 3501.1110;
- B. the district's curriculum and instruction provides appropriate learning opportunities in the state graduation requirements in compliance with part 3501.1110;
- C. notifications to parents and students meet the requirements of part 3501.1120;
- D. student records meet the requirements of part 3501.1130;
- E. the GRAD administration plan complies with part 3501.1140;
- F. test security procedures comply with part 3501.1150;
- G. the district's process for testing considerations for LEP students complies with part 3501.1180;
- H. the documentation for students granted accommodations for testing complies with part 3501.1190; and
- I. the assessments and documentation of performance for students granted modifications of statewide standards comply with part 3501.1190.

Evidence of a district's remediation program (Item A) will verify that individual students have received the attention and assistance they need to qualify for graduation. Without this data, the state could not assure that students who have difficulty meeting the standards have received adequate opportunities to learn and to meet the standards.

Requiring districts to maintain data about learning opportunities (Item B) is a continuation of the alignment of curriculum that has been mandated by Minn. Stat. § 120B.11. Failure to gather this data would endanger the assurance of fair practice, as required in court decisions regarding enforcement of basic requirements, such as the 11<sup>th</sup> Circuit's *Debra P. v. Turlington* decision.

Documentation of notice requirements (Item C) ensure knowledge of graduation requirements and adequate time for students to meet the required performance standards by their anticipated graduation dates as a condition for fair enforcement of graduation requirements.

Without accurate student recordkeeping by districts (Item D), the state cannot effectively examine trends in student achievement or verify that local schools are assessing individual student achievement. The state will also use this data to assure continuous improvement but also to assure that the performance standards are reasonable in comparison to actual student performance.

Without documentation that a district's test administration plan complies with these proposed rules (Item E), the state cannot assure fair notice of testing opportunities to all students. A district's failure to comply with these rules could result in students being unfairly deprived of a diploma.

Without test security (Item F), test results are neither valid nor reliable, so an accurate assessment of student achievement is not possible. Lacking verification of test security, schools cannot accurately determine whether or not a student has met the standards required for graduation.

Without documentation of a district's process for testing considerations for LEP students (Item G), the Department cannot verify that the district has complied with the provisions for limited English proficient students.

Without documentation of accommodations (Item H), the Department cannot verify that local policies, programs, and procedures comply with these and other state and federal provisions for students with special needs.

Without records for students who were allowed modifications of statewide standards (Item I), the Department cannot ensure that the district has complied with the federal requirements as well as proposed part 3501.1190.

Without gathering the data for these nine aspects of the audit, the Department could not determine that local district policies and procedures comply with the rule and provide uniform and consistent implementation of the basic requirements, the standards, and the testing provisions throughout the state. The process of a district gathering data and the Department examining it during an audit, ensures that statewide accountability to students and the public can be demonstrated.

Schools already keep records of their systems and of their individual students because annual reporting processes exist and schools are accustomed to audit visits for other fiscal and special programs. The audit proposed in these rules will provide convenient and effective monitoring and compliance data as well as achievement data needed for continuous decision-making to improve each local school and the statewide system as a whole through procedures which simply extend processes already in place.

The requirements for the proposed audit rule are reasonable because they are comparable with Annual Report processes of Minn. Stat. § 120B.11, which local schools have already successfully implemented. The requirements are also consistent with regional, state, and federal school monitoring and compliance methods.

### **3501.1170 PASSING SCORES FOR GRAD.**

**Subpart 1. Passing scores. Passing scores for purposes of this part reflect an achievement level equivalent to or greater than the level determined through a standard setting process.**

Standard setting is a method of determining cut scores that correspond to performance levels. The standard setting process is usually implemented with a committee of educators because educators understand the state's content standards and the performance of students at each grade level and in each subject area. During the standard setting, participants set cut scores by engaging in

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a structured conversation that includes discussion of content standards, performance levels, the test, and expectations for students.

Subp. 2. Reading and mathematics. The passing scores for the GRAD in reading and mathematics are as provided by Minnesota Statutes, section 120B.30, subdivision 1, for students enrolled in grade 8 in the 2005-2006 school year and later.

Subp. 3. Writing. The passing score for the GRAD in writing is as provided by Minnesota Statutes, section 120B.30, subdivision 2, for students enrolled in grade 8 in the 2005-2006 school year and later.

The standard setting process is required by Minn. Stat. § 120B.30, subd. 1, which provides that:

- (1) for reading and mathematics:
  - (i) obtaining an achievement level equivalent to or greater than proficient as determined through a standard setting process on the Minnesota comprehensive assessments in grade 10 for reading and grade 11 for mathematics or achieving a passing score as determined through a standard setting process on the graduation-required assessment for diploma in grade 10 for reading and grade 11 for mathematics or subsequent retests;
  - (ii) achieving a passing score as determined through a standard setting process on the state-identified language proficiency test in reading and the mathematics test for English language learners or the graduation-required assessment for diploma equivalent of those assessments for students designated as English language learners;
  - (iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan;
  - (iv) obtaining achievement level equivalent to or greater than proficient as determined through a standard setting process on the state-identified alternate assessment or assessments in grade 10 for reading and grade 11 for mathematics for students with an individual education plan; or
  - (v) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan; and
- (2) for writing:
  - (i) achieving a passing score on the graduation-required assessment for diploma;
  - (ii) achieving a passing score as determined through a standard setting process on the state-identified language proficiency test in writing for students designated as English language learners;
  - (iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan; or
  - (iv) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan.

### **3501.1180 STUDENTS IN UNIQUE SITUATIONS.**

This part is necessary because the authorizing legislation requires the Department to adopt rules that address the graduation requirements for students in unique situations. *See* 2007 *Minnesota Laws*, chapter 146, article 2, section 36. The categories of students addressed by these proposed rules are listed in the authorizing legislation.

In general, students who are public school students and wish to earn a Minnesota public high school diploma must pass the GRAD. This requirement is reasonable because it is mandated by Minnesota law. *See* Minn. Stat. § 120B.30. Students who are not public school students are not required to take the GRAD to earn a high school diploma. This is reasonable because nonpublic school students who do not wish to earn a public high school diploma are not subject to the same requirements as those students who do wish to graduate from a Minnesota public high school.

Public school students with limited English proficiency are granted more time to learn English before being required to pass the GRAD to earn a public high school diploma. Specific requirements and exceptions are detailed in the subparts of this proposed rule.

**Subpart 1. Dual enrolled students. Dual enrolled students are public school students. To graduate from a Minnesota public high school, a dual enrolled student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.**

This provision is reasonable and clearly states that dual-enrolled students are public school students and are subject to the requirements of Minnesota graduation exams.

**Subp. 2. English language learners (ELL). English language learners (ELL) who are public school students and are designated in the Minnesota Automated Reporting Student System (MARSS) as Limited English Proficiency (LEP) are not required to pass the GRAD for up to four years from their date of enrollment in any school in which the primary language of instruction is English. An ELL student who enrolls in grade 9 or above at or after the start of the academic year and who completes the course work and any other state and district requirements to graduate within a four-year period is not required to pass the GRAD.**

This provision is necessary to allow English language learners sufficient time to learn enough academic English to perform successfully on the exams. The current Basic Skills Test rules allow a three-year exemption from the graduation exam requirements. *See* Minn. R. 3501.0100. This provision extends that exemption to four years.

This provision is reasonable for several reasons:

1. A four-year provision better matches the structure of educational settings in Minnesota, where most high schools are structured in a 9-12 grade level configuration. Allowing for English language learners to waive this requirement starting in ninth grade will alleviate unintended consequences of districts considering placement of English language learners into tenth grade when academically they should be in grade nine – primarily to avoid the testing requirement during their high school career.
2. A four-year provision better matches the revision of the administration schedule of the graduation exams. The writing exam previously was administered in grade 10. To balance the testing demand with other assessments in Minnesota, the writing exam was moved to grade 9. This provision will allow for the spirit of the BST exemption to remain while English language learners have time to build their English writing skills during their high school years.
3. A four-year provision better matches current research regarding how English language learners become proficient in a second language. Research has shown that English language learners need 5 to 7 years to acquire academic language skills, including writing skills, in order to perform at the 50<sup>th</sup> percentile or 50<sup>th</sup> normal curve equivalent on measures of academic achievement. Hakuta, Butler & Witt found, in a study that excluded students who arrived after kindergarten and who were not continually enrolled, that students needed from 4 to 7 years to acquire academic English skills. A four-year provision for the GRAD is not unreasonably generous in light of these studies. This provision allows these English language learners who have demonstrated proficiency in all other areas to earn a high school diploma.

Subp. 3. Foreign exchange students. To graduate from a Minnesota public high school, a foreign exchange student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30. If a foreign exchange student will not receive a diploma from a Minnesota public high school, the student is not required to fulfill the graduation test requirements.

This provision is required by statute and affirms that foreign exchange students are not subject to the requirements of Minnesota graduation exams unless they desire a diploma from a Minnesota public high school.

Subp. 4. Home school students. Home school students are not public school students and passing the GRAD is not required. To graduate from a Minnesota public high school, a home school student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.



This provision is reasonable and states that home school students, as nonpublic school students, are not subject to the requirements of Minnesota graduation exams unless they desire a diploma from a Minnesota public high school.

**Subp. 5. Open enrollment students.** Open enrollment students are public school students. To graduate from a Minnesota public high school, an open enrollment student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.

This provision is reasonable and states that open-enrolled students are public school students and are subject to the requirements of Minnesota graduation exams.

**Subp. 6. Postsecondary enrollment option (PSEO) students.** Postsecondary enrollment option (PSEO) students are public school students. To graduate from a Minnesota public high school, a PSEO student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.

A PSEO student who is present on the day of testing should participate in the current series Minnesota Comprehensive Assessments (MCA). A PSEO student who is not present for the current series MCA must take the GRAD at a later date.

This provision is reasonable and states that postsecondary enrollment students are public school students and are subject to the requirements of Minnesota graduation exams.

**Subp. 7. Shared-time students.** Shared-time students are private school students attending a public school class; these students are not public school students and passing the GRAD is not required. To graduate from a Minnesota public high school, a shared-time student must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.

This provision is reasonable and states that shared-time students, as nonpublic school students, are not subject to the requirements of Minnesota graduation exams unless they desire a diploma from a Minnesota public high school.

**Subp. 8. Transfer students who passed a graduation exam in another state.** A district may submit a passing score report for a transfer student and a copy of the test

specifications to the department for review. As graduation exams from other states are submitted, the department will maintain a list of states with acceptable substitute graduation exams. The department will seek reciprocity for the GRAD in other states when it accepts their assessments.

This provision is necessary to provide the Department with the appropriate flexibility to recognize assessment scores from other states that are commensurate with the GRAD exam. This provision is reasonable because it is in line with the practice of other states that have high-stakes graduation exams. Nine states allow their state departments of education to review other state exams to consider accepting that state's graduation exam in lieu of their own (CEP 2006, 89).

**Subp. 9. District-placed students and students attending school under a tuition agreement.** District-place students and students attending school under a tuition agreement are public school students. To graduate from a Minnesota public high school, district-placed students and students attending school under a tuition agreement must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30.

This provision is reasonable and states that district-placed students and students who attend school under a tuition agreement are public school students and are subject to the requirements of Minnesota graduation exams.

**Subp. 10. Care and treatment; correctional facility students.** To graduate from a Minnesota public high school, a student placed for care and treatment or a student in a correctional facility must fulfill the graduation test requirements in reading, mathematics, and writing established by Minnesota Statutes, sections 120B.02 and 120B.30, unless the student has an IEP or a 504 plan, in which case part 3501.1190 applies.

This provision is reasonable and states that students placed for care and treatment or students who are residents of correctional facilities are public school students and are subject to the requirements of Minnesota graduation exams.

### **3501.1190 STUDENTS WITH INDIVIDUALIZED EDUCATION PROGRAM PLANS OR SECTION 504 ACCOMMODATION PLANS.**

It is helpful to understand the differences between an Individualized Education Program Plan and a Section 504 plan before addressing the need for and reasonableness of the testing accommodations and modifications that the proposed rules delineate.

Individualized Education Program Plans (IEPs) differ from Section 504 plans. IEPs are mandated by the Individuals with Disabilities Education Act (IDEA) which is an education act and a federal funding statute, the purpose of which is to provide financial aid to states in their efforts to ensure a free appropriate public education for learners with disabilities. The implementation of IDEA is the responsibility of special education providers. The IDEA requires schools to provide IEPs. Appropriate education for purposes of IDEA means a program designed to provide "educational benefit." A full comprehensive evaluation is required. All areas related to the suspected disability must be assessed. The learner is evaluated by a multidisciplinary team. The Minnesota requirements to implement IDEA are included in Minnesota Statutes, Chapter 125A and Minnesota Rules, Chapter 3525.

Section 504 plans are mandated by Section 504 of the civil rights law known as the Rehabilitation Act of 1973. The purpose of Section 504 as a broad civil rights law is to protect the rights of individuals with disabilities in programs and activities that receive or benefit from federal financial assistance from the U.S. Department of Education. Section 504 implementation is the responsibility of regular education providers. Section 504 requires a plan for appropriate educational modifications or accommodations in the school environment to address the needs of an individual student with disabilities. Appropriate education under a Section 504 plan means an education comparable to the education provided to non-disabled learners. Evaluation through Section 504 draws on information from a variety of sources; decisions are made by a group knowledgeable about the learner, evaluation data, and placement options.

Minn. Stat. § 120B.30 contains a provision that allows students with disabilities to earn a Minnesota public school diploma by achieving an individualized passing score on the GRAD, a state passing score on the state's alternate assessment or an individualized passing score on the state's alternate assessment:

For reading and mathematics:

- (iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan;
- (iv) obtaining achievement level equivalent to or greater than proficient as determined through a standard setting process on the state-identified alternate assessment or assessments in grade 10 for reading and grade 11 for mathematics for students with an individual education plan; or
- (v) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan;

For writing:

- (iii) achieving an individual passing score on the graduation-required assessment for diploma as determined by appropriate state guidelines for students with an individual education plan or 504 plan; or

(iv) achieving an individual passing score on the state-identified alternate assessment or assessments as determined by appropriate state guidelines for students with an individual education plan.

Standard 10.1 of the *Standards for Educational and Psychological Testing* states that appropriate accommodations should be made available to test takers, while ensuring that these accommodations still produce valid and reliable results:

In testing individuals with disabilities, test developers, test administrators, and test users should take steps to ensure that test score inferences accurately reflect the intended construct rather than any disabilities and their associated characteristics extraneous to the intent of the measurement. (AERA, 106).

In the proposed rules, all students with disabilities are expected to participate in the graduation standard testing process. IEP and 504 teams will hold all students with disabilities to the state standard except in the most extreme instances, which are to be decided individually in the IEP and the 504 plan process. Modifying expectations will be allowed only on an individual basis. Adoption of individual standards for an individual student must occur concurrently with the adopting of transition goals and objectives. All IEP and 504 plans for students with disabilities will identify the necessary testing accommodations.

**Subpart 1. Considerations for students with IEPs or section 504 accommodation plans. The individualized education program or section 504 accommodation plan for a student with a disability must identify one of the following decisions for each subject area of the GRAD:**

The proposed rules for providing these options for students with disabilities are consistent with what other states are doing. Of the 25 states that had current or planned graduation exams as of August 2006, all provide for an alternate route to graduation for student with disabilities.

The Department of Education consulted case law in developing the IEP/504 policy in the proposed rules. In *Brookhart v. Illinois State Bd. of Educ.*, 697 F.2d 179 (7th Cir. 1983) (change in graduation requirements for handicapped children violated due process because it deprived children of adequate opportunity to meet new requirements), the court held that test administrators are required under Section 504 to provide reasonable accommodations for disabled students who are otherwise qualified. It was determined, however, that an accommodation should not 'substantially modify' the test (i.e. test questions do not have to be changed). The decision also requires that when tests are initiated as a requirement for a diploma, parents and educators must have adequate time to consider the disabled student's IEP and decide whether the tested skills should become a part of the student's educational plan. *Brookhart* indicates that the student's IEP team, consisting of parents and educators, could determine that a student's IEP should not contain the tested skills.

**A. the student is expected to achieve the statewide standard with or without testing accommodations, resulting in a PS notation on the record when achieving a passing score:**

**OR**

In order to include all students in the procedures outlined by the proposed rules, some students with disabilities must be provided accommodations for test conditions. Such accommodations allow a student the opportunity to participate in assessment procedures.

The proposed rules meet the need for including special needs students in the expectation that all students demonstrate competency in the statewide standards in the basic requirements. The proposed rules allow for the individual needs of students with disabilities by giving IEP and 504 teams the responsibility to decide whether or not the statewide standards are appropriate for the individual student's abilities and by allowing the IEP and 504 teams to provide for modifications or accommodations in testing.

Accommodations, as stated in the proposed rules, are reasonable because they allow a student who has a disability to demonstrate their individual level of knowledge and skill in the testing process. A test accommodation, by definition, does not compromise the validity of the student's test score. Examples of testing accommodations include providing a Braille version of a reading test for a student who is blind or reading a math test aloud to a student who has a disability that affects the ability to read but does not affect the ability to manipulate numbers.

B. the student is expected to achieve the statewide standard at an individually modified level of difficulty, resulting in a PI notation on the record when achieving the modified level. A Minnesota alternate assessment must be used when an IEP team chooses to replace the GRAD. Adoption of modifications for a student must occur concurrently with the adoption of transition goals and objectives as required by Minnesota Statutes, section 125A.08, paragraph (a), clause (1).

In order to include all students in the procedures outlined by the proposed rules, some students with disabilities must be allowed modifications to the statewide standards. Such modifications allow a student the opportunity to fulfill individual potential while working towards the statewide standard.

Federal law requires that consideration for each student's needs to make a successful transition to adult life be a part of the IEP process beginning no later than age 16. 34 CFR § 300.320(b). State law requires that transition goals be incorporated in the IEP for students at grade 9 or age 14, whichever comes first. Minn. Stat. § 125A.08; Minn. R. 3525.2900.

Transition services are intended to assure that preparation for five areas of adult life are included in the IEP goals and objectives of each student with a disability. These areas are employment, postsecondary education, home living, community participation, and recreation and leisure.

It is reasonable to require that decisions relating to the GRAD be made concurrently with decisions regarding instructional goals for the development of adult living skills. It is reasonable that decisions

relating to requirements that a student must meet to earn a diploma not be made before age 14 because state statute requires transition planning to begin at age 14 or in ninth grade.

Subp. 2. Testing students with IEPs or section 504 accommodation plans. All students must be tested under standard conditions as specified by the developer of the test except those students whose IEPs or 504 plans specify other decisions consistent with subpart 1.

The plan to accommodate students with special needs is reasonable for students because it allows all students to participate on a level appropriate to their needs. The purpose of the statewide test is to measure individual achievement and to measure what students know and are able to do. The test is not intended to penalize students. It is reasonable to allow accommodations or modifications for students with disabilities.

The proposed rules for accommodating students with disabilities in assessing their mastery of the GRAD requirements is reasonable because in most cases, accommodations that will be made in testing procedures will be accommodations that the student already receives in the classroom as outlined on a student's IEP plan (Alabama Department of Education, 1993). Thus, the rule does not pose an undue burden on school districts.

A. Decisions regarding appropriate testing conditions, including a decision to provide accommodations for a student, must be made by the IEP team or through the section 504 accommodation plan process and must be reviewed annually.

It is reasonable to assign responsibility for decisions relating to testing accommodations to the IEP or 504 team. Those teams include membership that best know the student's skills and areas of need. The IEP team always includes the parent, the special education service providers and the student when appropriate. These people are best qualified to make decisions about the individual. The alternative (making a single decision for all students) is not reasonable and goes against the most basic precept of special education law and rule. The program is to address the individual needs of the student. Further, it is also reasonable that this be reviewed annually because students do mature and grow and federal and state laws and rules require the annual revision of a student's IEP.

Making these decisions as a part of the IEP process assures that schools do not systematically exempt students with disabilities and exclude them from data that will be compiled from assessment results. The proposed rules foster the accountability of schools for all students, including those with disabilities.

B. Where subpart 1, item B, applies, the student's IEP or section 504 accommodation plan must define an appropriate assessment of the statewide standard at a modified level of difficulty. Achievement of the individually modified standard shall be certified only through documented student performance of the defined assessment.

It is reasonable to require that achievement of a modified standard designed and adopted for an individual student be documented by the district. The Department's purpose for proposing a graduation standard is to assure that all students who are awarded a diploma have demonstrated that they achieved a specific standard. The fact that a different standard is established for an individual student should not alter the requirement that the district document the student's performance at the agreed-upon level.

## CONCLUSION

Based on the foregoing, the proposed rules are both necessary and reasonable.

7/11/08

Date

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Deputy Commissioner

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