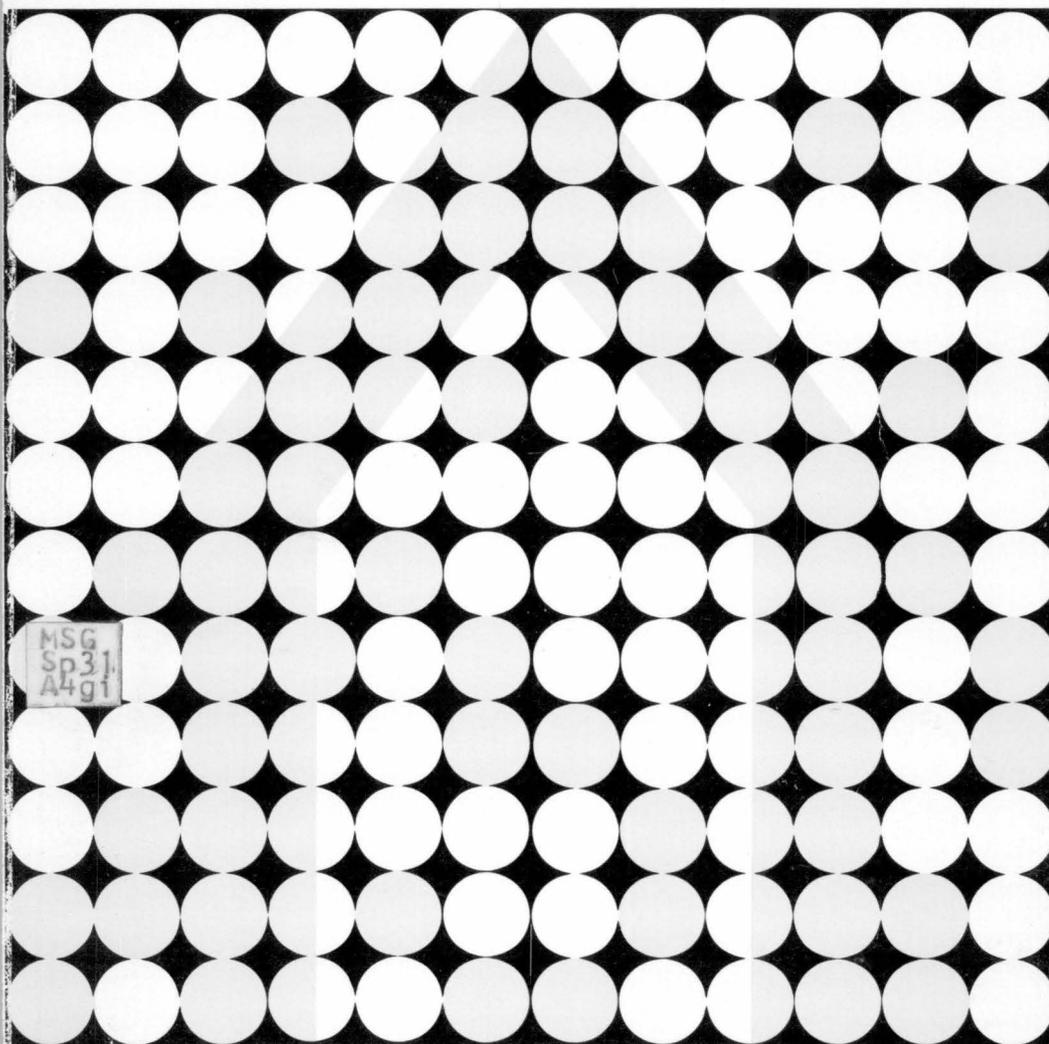


INSURING THE RIGHTS OF HANDICAPPED CHILDREN IN SCHOOL

A Compliance Procedures Manual



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**INSURING THE RIGHTS
OF HANDICAPPED CHILDREN
IN SCHOOL**

A Compliance Procedures Manual

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University of Minnesota
College of Education
Special Education Administration
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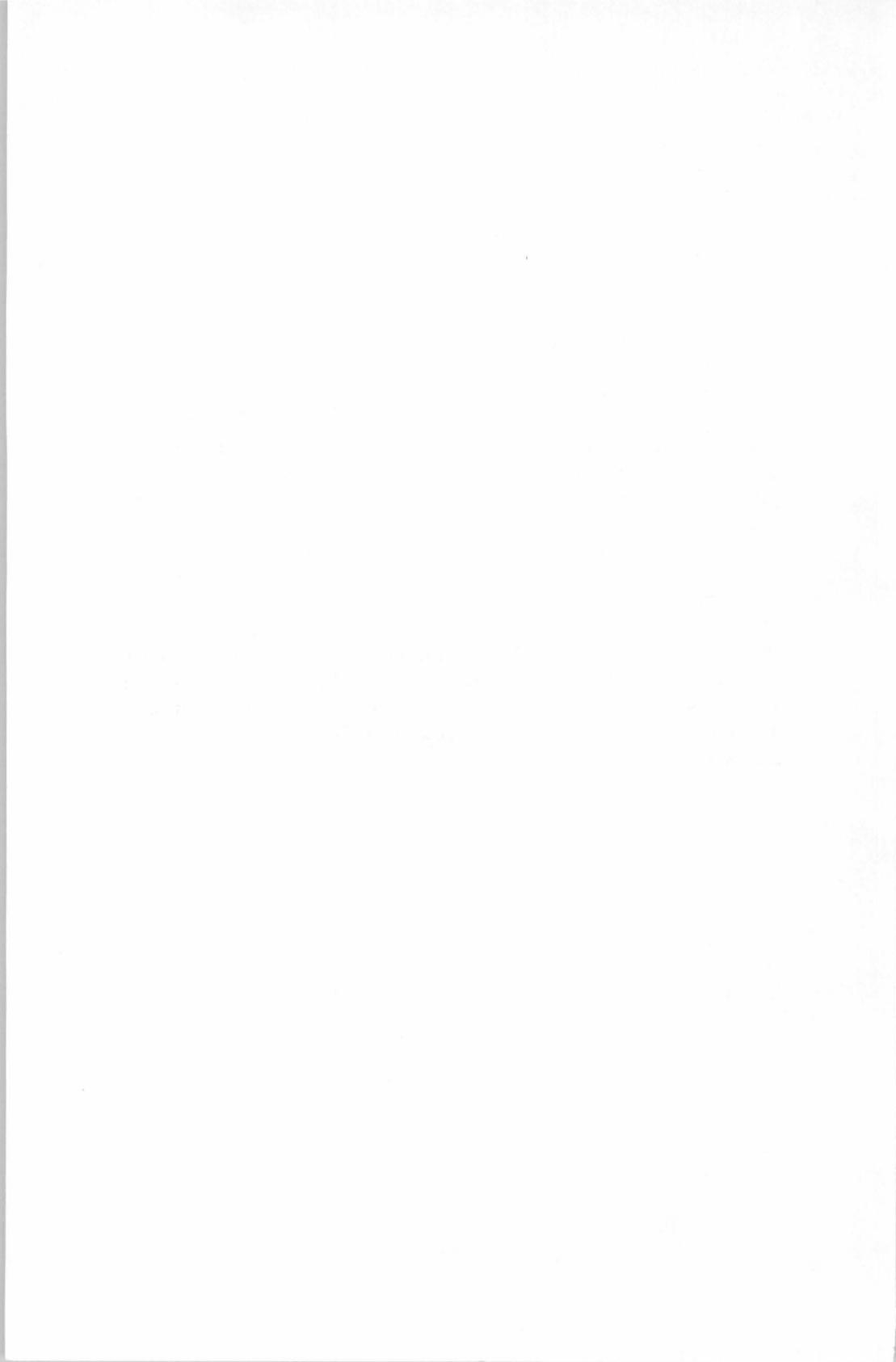
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PREFACE

The content of this book is based on current Minnesota statutes and regulations. These laws were incorporated into the 1977-78 state plan approved by the United States Department of Health, Education and Welfare (DHEW), Office of Education. On August 23, 1977, DHEW issued final regulations to implement Public Law 94-142. 42 Fed. Reg. 42474 (1977) (to be codified in 45 C.F.R. 1006 et seq). These regulations became effective October 1, 1977.

There appears to be some differences between the new federal regulations and Minnesota state law. The authors assume that Minnesota will have to modify parts of the state plan to comply with all mandatory federal requirements. Therefore, the reader is advised to closely follow the development of Minnesota laws and regulations.



OUTLINE OF PROCEDURES FOR PARTICIPANTS IN A DUE PROCESS HEARING

A. General Responsibilities:

1. Read and understand Minnesota Statutes Sections 120.03, 120.17, and 124.32.
2. Read and understand Rules of the State Department of Education, EDU 120 through EDU 129.
3. Read and understand Insuring the Rights of Handicapped Children in School--A Compliance Procedures Manual.
4. Always seek to avoid even the appearance of impropriety or bias.

B. Pre-hearing Responsibilities:

1. Pre-hearing Review of Documents:
 - a. At least five (5) school days prior to the scheduled hearing date, receive and review copies of the following documents for compliance with the requirements of the state rules, EDU 120-129
 - b. The school district's Formal Notice to parents of proposed action (EDU 127)
 - c. The Memorandum emanating from the conciliation conference (EDU 128)
 - d. The two (2) Hearing Notices (EDU 129 B)
 - e. Other written information proposed to be used as by the school district at the hearing, including assessments, tests, evaluations, and other reports relating to the proposed action

- f. The student's current and proposed educational program plan (if such a plan has been prepared)
 - g. The school district's resume of "additional material allegations" not contained in the original notice or memorandum
 - h. Any other information which the parties may have requested from each other in the pre-hearing discovery process, such as lists of prospective witnesses
2. Upon receipt of the above information, require the parties to remedy any deficiencies in their preparation for hearing, as authorized by EDU 129 D.2.
 3. Postpone the hearing for up to fifteen (15) school days if and only if absolutely necessary to achieve compliance with the rules.
 4. Pre-hearing Conference
 - a. In the responsible exercise of discretion, determine whether a meeting of the parties together prior to hearing is desirable; if so, schedule such a conference at a reasonable time and place and give the parties adequate, prior notice.
 - b. Ascertain and compel compliance with the procedural and substantive requirements of the state rules.
 - c. Identify and simplify issues to be resolved at the hearing.
 - d. Record areas of agreement/disagreement.

C. Conducting the Hearing:

1. Must normally be held within thirty (30) school days after the school district receives the parents' request (EDU 129 A).

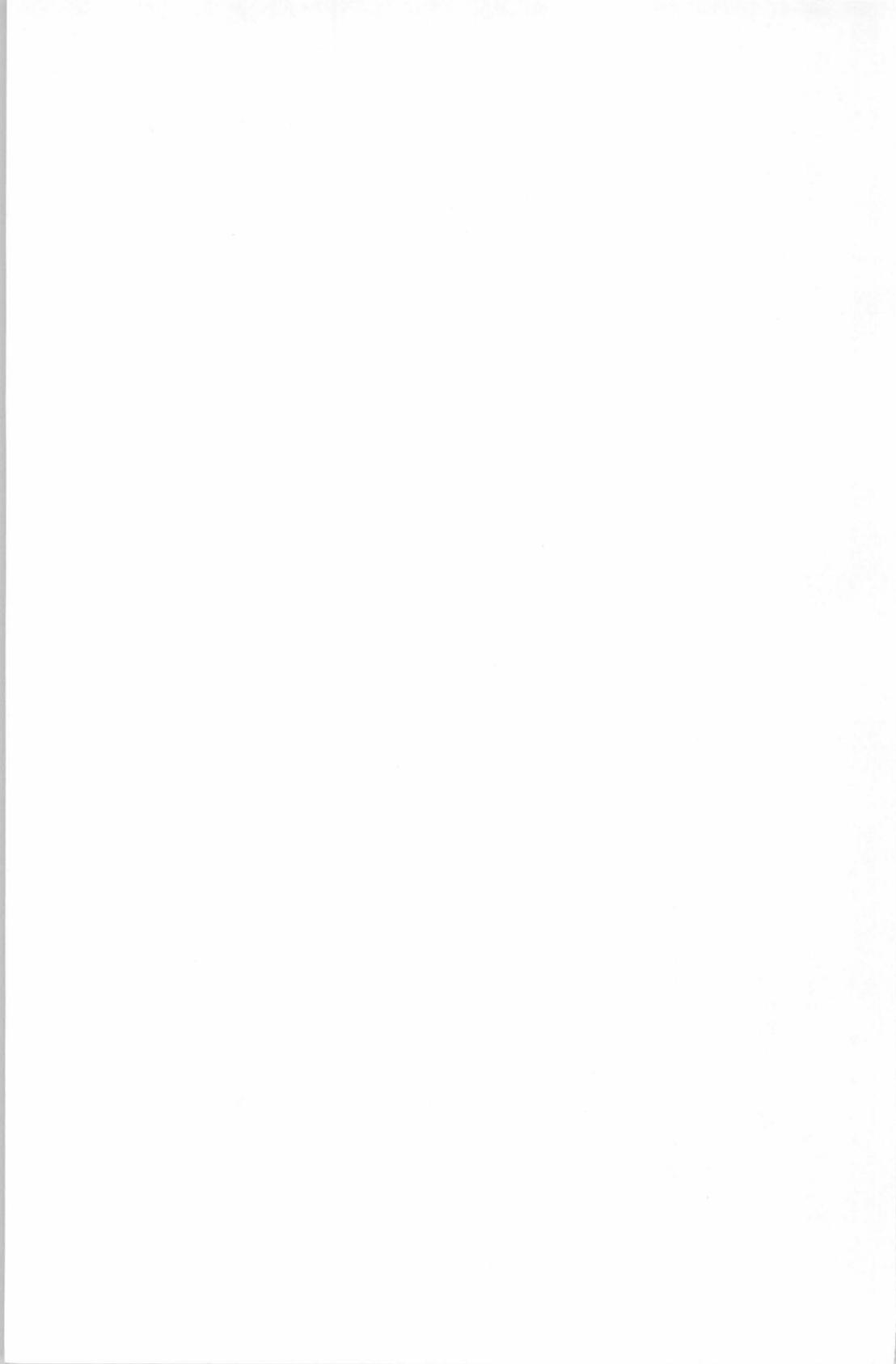
2. Determine whether hearing is to be open or closed to the public (EDU 129 E.1).
3. Insure that communication at the hearing will be facilitated by provision of an interpreter as provided in Minnesota Statute 546.42.
4. Insure that hearing room is environmentally adequate to accommodate all participants.
5. Insure that all parties to the hearing are present and prepared to proceed.
6. Insure that the recording equipment is turned on and working.
7. Announce the time, date, title of the case, and the identity of persons present.
8. Explain the nature and purpose of the hearing, including basic rights of the parties.
9. Announce for the record the nature of all documents offered in evidence, including notices, memoranda, "additional material allegations," results of the pre-hearing conference (if held), and any other documents which may have been the subject of prior discovery by the parties.
10. Insure that all documents offered into evidence are properly labelled.
11. Receive evidence in accordance with the standards prescribed in Minnesota Statute 15.0419 and rule on all objections regarding inadmissibility of evidence.
12. Begin receiving evidence by asking the school district to proceed with its case through the offering of physical evidence and direct examination of witnesses.

13. After each witness testifies ask the opposing party if he wishes to cross examine and allow such cross examination to proceed.
14. At the conclusion of the school district's presentation of evidence, determine whether a prima facie case has been presented in light of the substantive standards which must be met in order to support the proposed action (EDU 129 B.1 and 2).
15. If such a prima facie case exists, allow the parents or their representative to proceed with the presentation of their evidence, allowing the school district to cross examine at the conclusion of each witness' testimony.
16. Allow each party to briefly summarize its position in accordance with the evidence offered, beginning with the school district.
17. Continue the hearing for not more than ten (10) school days in accordance with EDU 129 E.8 only if necessary to achieve the objectives of that section and the rules.
18. Otherwise, adjourn the hearing at the conclusion of the presentation of evidence and the summaries.

D. Post-hearing Responsibilities:

1. Within five (5) school days after the hearing, prepare a typewritten decision in accordance with the specifications required by EDU G.4.
2. Compile and submit to the local school board a copy of the entire "record" of the case, including the following:
 - a. The typewritten decision
 - b. The tape recorded record of all proceedings

- c. All notices, memoranda, or other documents offered by any person or issued by the hearing officer in connection with the case



Chapter One

LEGAL ASPECTS OF EDUCATING HANDICAPPED CHILDREN

MAJOR LEGAL CONCEPTS

In recent years it has been recognized that the education of handicapped children involves rights which are protected by the Fourteenth Amendment to the United States Constitution. This protection assures that handicapped children will receive certain substantive benefits--the "right to treatment" and the "right to education"--and that they will be subject to fair procedures in determining their needs--"due process of law."

The substantive educational rights of handicapped children are grounded substantially on the constitutional principle of "equal protection." This principle requires that all persons, however unequal they may be in terms of their development, should be treated equally in the sense of being granted equal opportunities. In the context of educating handicapped children, this principle has been extended to require that educational opportunities granted to non-handicapped students be granted to handicapped students as well.

This principle has been expressed by legal scholars, courts, and legislatures primarily through recognition of an emerging "right to education" for handicapped children. Education professionals and others who work with handicapped children have utilized this concept in developing a mode of treatment and education, often referred to as "normalization" or "mainstreaming." This concept proposes to treat handicapped persons in the same manner as non-handicapped persons to the greatest extent possible, thereby minimizing their differences. In developing educational policies, this treatment modality is extended to provide handicapped children with an education as equal to non-handicapped children's education as possible. This principle is reflected in the law through various legislative policies (e.g., the policy of "the least restrictive alternative," which is discussed more fully in Chapter Two).

A second major legal concept invoked to protect the educational rights of handicapped children is the principle of "due process of law." This principle is grounded in the United States Constitution which provides in the Fifth Amendment that no person shall "be deprived of life, liberty, or property, without due process of law" and in the Fourteenth Amendment that no state shall "deprive any person of life, liberty, or property without due process of law."

Due process of law requires government officials to utilize fair procedures in undertaking actions which have significant consequences upon an individual's liberty or welfare. In the context of educating handicapped children, due process requires that state and local education agencies use fair procedures in matters pertaining to the identification, evaluation, and educational placement of handicapped students. This requirement is intended to prevent arbitrary and capricious decision-making and to produce results by which parents and school authorities will be willing to abide.

In the sphere of special education decision-making, the introduction of due process procedures also has the secondary effect of influencing the substance of the education provided. The requirement of individual, due process hearings, prior to action by school officials, tends to force the educational process to fit each individual child's needs. The resulting provision of an "individualized special education program" has long been a goal of educators and is incorporated as a specific legislative policy both in the Minnesota and federal statutes, as discussed in Chapter Two.

Finally, one should be aware that, although the constitutional protections of the Fourteenth Amendment provide the basic framework for analyzing the legal rights of handicapped children, these rights are not based solely upon the federal State constitutions and state compulsory school attendance laws have also provided part of the basis for recognizing the legal right of handicapped children to an appropriate education. Also, the federal constitutional principles which support these rights are inextricably entwined, making highly artificial any attempt to separate the concepts into discrete groupings. This complex relationship between the various legal concepts involved can probably be most easily understood through the examination which follows of the major cases actually litigated in the area of the law pertaining to handicapped students' rights.

RECENT LITIGATION ESTABLISHING HANDICAPPED STUDENTS' RIGHTS

In 1975, two U.S. Supreme Court rulings added force to the trend that public education officials abide by due process requirements in making decisions about students (*Goss v. Lopez*, 419 U.S. 565, [1975]; *Wood v. Strickland* 420 U.S. 308, [1975]).

In *Goss*, the Supreme Court struck down an Ohio law which provided for suspension from public school up to ten days without "any written procedure applicable to suspensions." This Ohio practice was held to violate students' constitutional rights to due process of law.

In *Wood*, the Court declared that a school board member engaged in any actions that "would violate the constitutional rights of the students affected or if he/she took the action with malicious intention to cause a deprivation of constitutional rights or other injury to the student" is personally liable for the "intentional or otherwise inexcusable deprivation" of the student's constitutional rights. These decisions followed similar rulings regarding students' rights in courts at all levels across the country.

A very recent decision by the Supreme Court appears to limit the amount of protection afforded school children by the Due Process Clause and, therefore, may indicate that the trend toward added due process protections for students as recognized in *Goss*, may be ebbing. In *Ingraham v. Wright*, 430 U.S. 651 (1977), the Court held that the imposition of corporal punishment, as administered by Florida school authorities, did not require the complete due process protections of prior notice and hearing. This decision was based partly on the fact that the Florida scheme in question provided that the teacher and principal exercise prudence and restraint when utilizing corporal punishment for disciplinary purposes. Also, the Court noted that if such punishment were later found to be excessive, school authorities might be held liable for civil damage or be subject to criminal penalties.

The responsibility of educators to adhere to due process requirements has only emerged since the early 1970's. In the past, decisions exempting a child from school, placing him in a special class, or otherwise changing his educational placement were often made without regard to fair procedure. Traditionally, the children most affected by such arbitrary decision making were those who were handicapped.

Since the early 1970's, however, the situation has changed. Extensive litigation and legislation have resulted in the requirement that state and local education agencies guarantee due process protection to handicapped children in all matters pertaining to their identification, evaluation, and educational placement.

Due process requirements regarding handicapped children in the public schools were first, and perhaps most clearly, established in the *Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania* case, 334 F. Supp. 1257 (E.D.Pa. 1971) and 343 F. Supp. 279 (E.D.Pa. 1972). Prior to ruling on the question of each mentally retarded child's right to an education, the court approved a stipulation which provided that "no child who is mentally retarded or thought to be mentally retarded can be assigned initially or reassigned to either a regular or special educational status or excluded from a public education without a prior recorded hearing before a special hearing officer." The court went on to establish an elaborate 23-step due process procedure to be used in all cases in which there is to be a change in a child's "educational status," where the change is based on the fact that the child is or may be mentally retarded.

The court in the PARC case also ordered other comprehensive changes in education for retarded children. The state was required to locate, evaluate, and re-evaluate all school-aged persons excluded from public schools. School districts were also required to place all retarded children in a "free program of education and training appropriate to the child's capacity." with a preference for regular classes over special education. Parents of handicapped children were excused from sending their children to school under compulsory school attendance statutes when they chose to withdraw their child from school with local school board approval, but local school districts were enjoined from excluding handicapped children against their parents' wishes. The

compulsory school attendance statute was further interpreted by the court to require that, if any school district provided free pre-schooling to normal children under school age, that school district could not deny such schooling to preschool-aged retarded children. Also, Pennsylvania's state tuition maintenance statute, which granted funds for payment of tuition at private schools, was interpreted to entitle any mentally retarded child to tuition-paid education at a private school.

Though the PARC order was limited to mentally retarded children, a subsequent decision, *Mills v. Board of Education of District of Columbia*, 348 F. Supp. 866 (D.D.C. 1972) expanded the application of due process procedures similar to those required in PARC to include all handicapped children. In *Mills*, the court specified two requirements that must be met before any child eligible for public education can be excluded from a regular program of education due to any school rule, practice, or policy. First, each child must be provided adequate alternative educational services suited to his/her needs, including any appropriate special education or tuition grants. Second, a prior due process hearing must be held. The child's status and progress and the adequacy of the educational alternatives provided him/her must also be reviewed periodically.

The orders in both *PARC* and *Mills* required that decisions be made

...within the context of the general education policy that, among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class and placement in a special public school class is preferable to placement in any other type of program of education and training (343 F. Supp. at 307).

As alluded to previously, this is known as the doctrine of "the least restrictive alternative." Many decisions have followed *PARC* and *Mills* upholding the "right to education" of handicapped persons.

FEDERAL LEGISLATION

With the enactment by the United States Congress of the Education Amendment of 1974 (Public Law 93-380), in order to remain eligible for federal funds for the education of handicapped children all state education agencies were required to adopt plans that would provide due process protection in educational decision making. These federal amendments required that education agencies provide parents of handicapped children with notice and the opportunity for an impartial due process hearing prior to any change in their child's educational placement. Additionally, the law required the implementation of the doctrine of "the least restrictive alternative."

A more recent federal enactment, "The Education for All Handicapped Children Act of 1975" (Public Law 94-142), expanded the circumstances which required notice and opportunities for impartial due process hearings. That law also requires that hearings involve the due process components of right to counsel, right to confront witnesses, a formal record of the hearing, and written findings and decisions. The local impact of this federal legislation, as well as other litigation, will become clear as one examines in the following chapters the provisions of Minnesota's statutes pertaining to special education.



Chapter Two

MINNESOTA'S STATUTORY POLICIES

Minnesota's Statutory scheme governing special education requires school districts to follow five minimum substantive and procedural standards in fulfilling the federal statutory and constitutional mandate to provide special education. These five standards are enumerated in Minnesota Statute Section 120.17, Subdivision 3a., which requires that every school district shall insure the following:

1. All handicapped children are provided the special instruction and services which are appropriate to their needs.

This provision means that schools must be capable of articulating and supporting reasons for providing particular services to a handicapped child. These reasons must involve a link between the type, amount and location of service and that child's observed strengths, weaknesses, and potential for development. They must relate to what special education can do for that child. For example, it might be quite appropriate for one child to receive speech therapy for 30

minutes each day at school in a group of two or three children while another child might be most appropriately served in a six-hour per day public school program for the profoundly retarded at a state hospital. Moreover, the needs of a child and thus the appropriate services often change over time. If the speech problem improves sufficiently, no more therapy may be needed. If the retarded child progresses sufficiently, he may function better in a program where he has more regular contact with less handicapped children. The special education mandate has always implicitly included the requirement that the service be appropriate; however, now that this requirement is explicitly in the statute, it will provide one standard for resolving disputes between parents and schools. (The...rules, under this provision, require districts to fill out and have on file a written individualized education program plan for each child, relating evaluation to programming and stating goals for the child and a timetable for achieving them.) (Diamond & Deans, 1976, p. 15)

The meaning of the term "handicapped children" is legislatively defined in Minnesota Statute Section 120.03 to include children or youth who have one or more of the following handicaps:

- deaf or hard-of-hearing;
- blind or partially sighted;
- crippled (including pregnancy);
- speech defect;
- physical impairment;
- educable or trainable mental retardation;
- emotional disturbance;
- learning disability; or
- special behavior problem.

Children with these handicaps are the ones who are to be specifically protected by the implementation of the statutory policy of providing appropriate education to handicapped children, often referred to by educators as the "full service goal."

To further ensure that the "full service goal" is met, Minnesota law requires that every school district provide special instruction and services, either within the district or in another district, for handicapped children of school age who are residents of the district. In the case of handicapped children, "school age" refers to children and youth from 4 to 21 years of age, inclusive, who have not completed secondary school. The statute also gives school districts the option to provide special education to handicapped children who have not attained school age and to trainable mentally retarded youth who have not attained the age of 26 years before the beginning of the school year and who have not attended nine years of public school prior to September, 1975 (M.S. sec. 120.17, subs. 1 and 1a).

One should note, however, the relationship between the definition of "school age" under this statute pertaining to handicapped children and the compulsory education laws in force in Minnesota. Even though school districts are required to provide special education and services for handicapped children from age four on up, parents are not *required* to send their children, handicapped or not, to public school until they reach the age of seven.

Special education services are any specially designed instruction or service utilized to meet the needs of handicapped students, including:

- education, instruction, training, aids, and services and/or ancillary or supplementary and supportive aids and services;
- related services such as transportation; and
- developmental, corrective, and other supportive services including counseling and medical (for diagnosis and assessment only) services which are necessary

to assist handicapped students to benefit from special education services.

The local school district has responsibility for the "appropriate" education of children who are permanent residents of that district. If the local school district cannot provide "appropriate" education in a certain case, it may send such a child to another district (called the "providing" district) or pay (with state support) for the child's education in a private facility within its district. Parents have the freedom to choose where to send their handicapped child. However, the parents must assume the cost of a private program if the public school documents that it can provide an appropriate educational program within the district.

2. Handicapped children and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, assessment and educational placement of handicapped children.

This requirement spells out the overall policy behind Section 4 of the act where the minimum procedures are stated. The aim is to involve parents and to use certain procedures to insure that they are informed and involved. It is based on the premise that children should not be placed in or removed from classes for those who are handicapped without the parents' knowledge, and that parents should not be treated by professionals as intruders in the process of planning school programs for their handicapped children. A conscious decision was made that parents need to know what is happening to their children and that parents have important information about the abilities of their children outside of school (Diamond & Deans, 1976, p. 15).

This legislative policy of parental involvement in decision making has been given added force through its recognition by the Minnesota Supreme Court.

3. To the maximum extent appropriate, handicapped children, including those in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of supplementary services cannot be achieved satisfactorily.

This provision incorporates the doctrine of "least restrictive alternative," explained above. Along with "appropriateness of needs," it is a critical and basic criterion for judging decisions about the service provided to handicapped children. The preferred pattern of service is "education in regular classes with the use of supplementary classes." This pattern is known as "mainstreaming." Supplementary services might mean such services as training in lip-reading or manual communication for the deaf, training in Braille for the blind, or helping a learning disabled child to cope with a learning disability such as dyslexia. The school must be able to justify any variation from mainstreaming in terms of the unsuitability of this pattern to a particular child's educational needs (Diamond & Deans, 1976, pp. 15-16).

4. In accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of classification

and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory.

This provision attempts to prevent the problem of wrongful placement of racial and cultural minorities in potentially stigmatizing classes for the handicapped, simply because the tests used to evaluate them do not show their true abilities. The use of non-discriminatory materials is required only to the extent required by "recognized professional standards." This limitation seeks to protect schools from demands that they use methods of evaluation which have not yet been invented. The art of meaningful, non-discriminatory evaluation and program planning is in its infancy at present (Diamond & Deans, 1976, p. 16).

5. The rights of the child are protected when the parents or guardians are not known or not available, or the child is a ward of the state.

This provision strives to protect the rights of parentless children (a) not to be wrongfully placed and (b) to be appropriately educated if they are handicapped. The most likely course would be for a surrogate parent or guardian ad litem to be given the parents' rights to notice, conciliation conferences and hearings. The rules require districts to notify the county welfare office in this situation (Diamond & Deans, 1976, p. 16).

Chapter Three

DUE PROCESS

PROCEDURES

BASIC CONCEPTS

Minnesota law assures parents the right to be involved in the development and assessment of the educational program provided their handicapped child. Minnesota's minimum statutory procedures generally divide into two categories. The first consists of formal notice which informs parents of any proposed school district action regarding their child. The second category consists of conciliation conferences, informal hearings and appeals which provide avenues for parents to raise concerns about or object to proposed district actions.

A basic concept underlining the sequence of procedural safeguards adopted in Minnesota is that school district officials are primarily responsible to assure that parents are fully informed in an effective and meaningful manner of the district's proposed actions. The responsibility to object actively to these proposals is placed on the parent. If the parent elects not to be involved in decision making and does not respond to district officials'

notices, the officials may carry out their responsibilities by proceeding with the proposed action. Thus, informed consent is implicit in this system, and appropriate information must be made available to parents of handicapped children. A parental decision not to participate cannot be used by district officials to deny a student programming which is believed to be in the student's best interests.

FORMAL NOTICE TO PARENTS

WHY FORMAL PARENT NOTICE? Minnesota special education law requires that district officials inform parents of proposed actions regarding possible classification of their child as "handicapped" and possible assignment of their child to special education instruction and services (EDU 127). The purpose of this notice is to tell parents what the school district proposes to do--and why--in a way that parents will understand and in a way that will make it possible for parents to prepare a response to the school district's proposals.

WHAT ARE THE GENERAL RESPONSIBILITIES OF SCHOOL DISTRICT OFFICIALS? District officials shall (1) give parents substantial information regarding the purpose and nature of the proposed actions, and (2) inform parents of the procedures that parents may follow if they disagree with the district official's proposal. Notice is to be given prior to making or refusing to make modifications of a student's educational program.

WHAT ARE THE GENERAL RESPONSIBILITIES OF THE PARENTS? Parents have a responsibility to (1) review information provided them by the district officials; (2) assess the information in regard to its potential consequences for their child; and (3) provide district officials with a written statement if they object to the proposed action. Parents are not required by law or regulation to inform the district officials of their agreement with the proposed

action; but, if the parents disagree, they have 10 school days upon receipt of the formal notice to object in writing to the proposed action (EDU 128A).

In determining whether the parents have waived this right to object, the school district must show that the notice fully advised parents in a timely fashion of the proposed action.

WHEN IS FORMAL PARENT NOTICE REQUIRED? A formal notice must be sent to parents whenever district officials propose to change or refuse to change the level of a student's educational placement. Such levels of educational placement have been defined in rules promulgated by the State Department of Education in terms of a Continuum of Placement Model (EDU 120 B.11).

The Continuum of Placement Model defines six levels of educational placement. Any school district proposal which involves or could lead to a change from one level to another requires formal notice to the parents.

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

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

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

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

Level Five. Students with handicaps functioning appropriately with primary placement in a special education program at a non-residential school for children and youth who are handicapped.

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

Formal notice must also be sent to parents whenever the school district proposes to change significantly or refuses to change significantly the special education services for a child (M.S. 120.17, Subd. 3b.(a); EDU 124 B.5.6; EDU 125 E.; EDU 127 B. and C.). Significant program changes may be categorized into four types:

1. When district officials believe that a formal educational assessment of a student should be conducted as a first step in considering the possible initiation, change, denial or termination of special education instruction and/or services for that student. This classification includes formal reassessments of students whose primary placement is in a special education program. District officials must inform parents of their right to participate as a team member in developing and determining their child's special education program.
2. When parents request an assessment of their child, and the district officials refuse to perform such an assessment. In case of refusal, notice shall be served within 10 school days after such refusal. If parents request service, whether from the district or by means of a tuition agreement, district staff should conduct an assessment in order to determine the need for special education instruction and services.
3. When district officials propose to initiate, change, add, or terminate special education

services or placement, following a formal education assessment. A copy of the student's proposed individual education program plan must be included with the notice.

4. When district officials refuse to initiate, change, add or terminate special education services or program following an assessment.

WHEN IS FORMAL PARENT NOTICE NOT REQUIRED?

Prior formal notice to parents is not required by Minnesota statute or rules promulgated by the Department of Education in the following four instances:

1. District personnel are conducting a large group screening, and informal observation in the classroom, consultation among school staff, or other routine identification-type activities. These activities may be helpful in gathering data upon which district officials may determine whether formal assessment is needed which then requires formal notice. Identification and large group screening activities are not to be used for classification of students or program change decisions (EDU 124 B.5.b.).
2. District staff is providing the student direct services (e.g. counseling) from a school psychologist or school social worker, but the student has not been referred for assessment or services from any special education instructional personnel. While prior notice and approval do not seem to be required by law or rule, local district policy may require prior parental approval before counseling from a school psychologist or school social worker. Each case will depend on its facts and considerations of the student's rights of confidentiality.
3. District staff are conducting a scheduled, periodic review of the progress of a student currently receiving special education instruction and/or services. This periodic review may

indicate that the student's program should be continued or that changes in teachers' methods and/or materials are needed.

4. The student is placed by another agency (e.g., Welfare, Corrections, physician or psychiatrist) in a program whose educational component receives state special education aid. In most cases, the providing school district is responsible for developing an individual educational program for the student--not the district of residence.

WHAT ARE THE GENERAL REQUIREMENTS APPLICABLE TO ALL FORMAL PARENT NOTICES? The rules of the Department of Education (EDU 127 A) prescribe the provisions which must be included in all formal notices.

1. The formal parent notice must be in writing.
2. The providing school district must make every effort to assure that no person's rights are denied for lack of a parent or appropriate guardian.
3. The notice must be written both in the primary language of the home and in English. Where the notice is to be given to non-readers or non-English speaking persons, the school district must make reasonable provisions to insure that the notice is understood by such persons.
4. Where parents are handicapped due to hearing, speech, or other communication disorder, or due to the inability to speak or comprehend English, the school district must arrange for all pertinent communications to be interpreted in a language which the handicapped person understands.
5. The notice must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action. This requires the school district to state the reasons for its

proposal in a clear and concise manner. The statement of reasons should cover all reasons on which the school district will rely to support the proposed action if a hearing is held. Reliance at a later date on reasons not advanced in the notice defeats the central purpose of the notice, which is to give parents adequate opportunity to prepare a response.

In addition, all notices must include a "response form" on which the parent may indicate approval of or objection to the proposed action. This response form must also identify the district employee to whom the form should be mailed or given and to whom questions may be directed (EDU 127 B.14 and C.8).

WHAT ARE THE REQUIRED CONTENTS FOR A NOTICE ISSUED PRIOR TO THE PERFORMANCE OF OR REFUSAL TO PERFORM A FORMAL EDUCATION ASSESSMENT OR REASSESSMENT? The providing school district must prepare and serve a notice which shall:

1. Include the reasons for assessment or the refusal to assess and how the results may be utilized;
2. Include a general description of the procedures used;
3. State where and by whom the assessment will be conducted;
4. Inform the parents of their right to review and receive copies of all records regarding their child in the school's possession;
5. Inform the parents of their right and the procedures and time for them to participate in developing their child's education program;
6. Inform the parents of their right to receive interpretations of the assessment data from a

knowledgeable school employee. The parents must also be informed of the procedure and time for such a conference and that the conference is to be held in private;

7. Inform the parents of their right to have included on the team which interprets the assessment data a person who is a member of the same minority or cultural background or who is knowledgeable concerning the race, culture or handicap of the student;
8. Inform the parents that they may obtain an independent assessment at their own expense;
9. Inform the parents that the district will proceed with the proposed action unless parents object on the enclosed "response form" or otherwise in writing within 10 school days after receipt of the notice;
10. Inform the parents that, if they object to the proposed action in writing, a conciliation conference will be held at a mutually convenient time and place; but that, if the parent fails to attend the conference, the school district will proceed with the proposed action;
11. Inform parents that if they still object to the proposed action after the final conciliation conference, they have a right to voice their objection at an informal due process hearing;
12. Inform the parents that they have the right to be represented by counsel or another person of their choosing at the conciliation conference and the informal due process hearing;
13. Include a statement assuring the parents that their child's educational program will not be changed as long as the parents object to the proposed action in writing.

(EDU 127 B.)

WHAT IS REQUIRED TO BE CONTAINED IN THE FORMAL PARENT NOTICE ISSUED PRIOR TO THE CHANGE IN A CHILD'S EDUCATIONAL PLACEMENT OR SPECIAL EDUCATION SERVICES? The providing school district shall prepare and serve a notice which shall:

1. Include a copy of the "individual educational program plan" (EDU 120 B.18 and EDU 125);
2. Inform the parents of their right to receive interpretations of assessment data from a knowledgeable school district employee. In addition, the notice must inform the parents of the time and procedure to be followed in requesting such an interpretive conference and that such a conference is to be held in private;
3. Inform the parents that they may obtain an independent educational assessment at their own expense;
4. Inform the parents that the school district will proceed with the proposed action unless the parent objects in writing on the enclosed "response form" or other wise within 10 school days after receiving the notice;
5. Inform the parents that, if they object to the proposed action, a conciliation conference will be held at a mutually convenient time and place; but that, if the parents refuse to attend the conciliation conference, the school district will proceed with the proposed action;
6. Inform the parents that, if they still object to the proposed action after the final conciliation conference, they have a right to voice their objection at an informal due process hearing;
7. Include a statement assuring that the student's educational program will not be changed as long as the parents object to the proposed action in the manner prescribed (EDU 127).

TO WHOM MUST THE FORMAL NOTICE BE GIVEN? As previously noted, Minnesota statutes and rules require that the school district officials give formal notice to the "parent." The term "parent," for this purpose, includes a biological mother or father, an adoptive mother or father, a legal guardian, a surrogate parent, or the student himself/herself if over 18 and not under legal guardianship. The definition of "parent" does not include a foster parent or another person, other than a parent with whom the student may be living (EDU 120 B.13).

WHAT IS A SURROGATE PARENT? A surrogate parent is the person appointed by the welfare or court system to represent a handicapped child's interests in the educational planning and programming process (EDU 123).

Minnesota law requires that district officials insure that the rights of any child who is handicapped are protected in the absence of a parent. This may occur if the parent or guardian is unknown or unavailable or if parental rights have been terminated by a court. The district official's responsibility in such a case is to contact the local county welfare department and request that it intervene on behalf of the child. The person thus appointed as parent representative is called the surrogate parent. It is the responsibility of the welfare system to process and to respond to the district official's request for a surrogate parent. If welfare officials do not respond, school district officials may continue without the surrogate parent providing that a reasonable and fully documented effort to obtain a surrogate parent has been made (M.S. 120.17, subd. 3a(e); EDU 127 A.2).

The rules also require that the school district suggest to the local county welfare system that the welfare system contact the county attorney's office in order to determine whether a guardian ad litem should be appointed to intervene on behalf of the child (EDU 123).

WHAT IS A WARD OF THE COMMISSIONER OF PUBLIC WELFARE? The Commissioner of Public Welfare may often be designated as legal guardian of a child whose parents' parental rights have been terminated. This procedure requires court action.

Under separate statute, the Commissioner of Public Welfare may be appointed public guardian of a mentally retarded child or adult, after a process which includes both the comprehensive evaluation of the person and a judicial hearing. In these cases, parents may still be involved since parental rights may not have been terminated. As public guardian, the Commissioner supervises and protects the retarded person by the following powers and duties:

1. Supervising activities generally;
2. Providing for a comprehensive, individual program plan, including education for those of school age;
3. Reviewing annually the child's adjustment and progress, including a review of the child's status as a ward of the Commissioner;
4. Permitting or withholding permission for marriage, sterilization, surgery, and adoption;
5. Acting on the person's behalf regarding control of property, judicial actions, and contracts.

A mentally retarded person's status as a ward of the Commissioner does not imply that the person is to be institutionalized or that the parental rights have been permanently terminated. The Commissioner is to encourage maximum self-reliance of the ward and involvement of the ward's parents or spouse in planning and decision making.

The Family Services and Guardianship Section of the State Department of Public Welfare is the

Commissioner's designee for supervising the approximately 10,000 mentally retarded, mainly adults, under public guardianship (M.S. 252a).

WHAT IS TERMINATION OF PARENTAL RIGHTS? Termination of parental rights is involved in a court proceeding which assigns guardianship of a child to one parent, to the Commissioner of Public Welfare, to a licensed child placing agency, or to "a reputable individual of good moral character." A guardian appointed after termination of parental rights may make major decisions affecting his/her ward. If the Commissioner of Public Welfare is appointed guardian, this responsibility may be delegated to the Welfare Board of the county where the child resides (M.S. 260.221 and 260.241).

WHAT IS A GUARDIAN AD LITEM? The special education rules specify that, as part of the surrogate parent request, school district officials suggest that the local welfare department contact the county attorney's office to determine whether a guardian ad litem should be appointed. A guardian ad litem is a person appointed to represent the interests of a child in a legal proceeding. Guardian ad litem appointments are usually temporary and occur prior to appointment of a legal guardian. A guardian ad litem's powers in representing the child's interests can extend to bringing suit for damages in the child's behalf (M.S. 260, subd. 4(a); EDU 123).

WHAT HAPPENS IF THE COUNTY WELFARE DEPARTMENT FAILS TO REPLY TIMELY TO THE SCHOOL DISTRICT OFFICIAL'S REQUEST FOR A SURROGATE PARENT? The school district official's responsibility for protecting a child's interests in the absence of a parent seems to extend only to making the request for county welfare department intervention. District officials must also utilize the same child study procedure as are required for all students thought to be or determined to be handicapped. Therefore, if county welfare officials do not respond to the request for a surrogate parent within a reasonable

amount of time, district officials must proceed with the proposed action without parent representation.

WHAT IS THE DIFFERENCE BETWEEN A "PROVIDING SCHOOL DISTRICT" AND A "RESIDENT SCHOOL DISTRICT?"

The rules of the Department of Education define a "providing school district" as a school district which maintains an educational program for the handicapped person. The "resident school district" is defined as the district where the handicapped person's parent or guardian resides or the district designated by the Commissioner of Education. The rules further provide that the resident school district, if different than the providing school district, must receive notice of and may be a party to any hearings or appeals if the resident school district timely notifies both the parents and the providing school district of its intention to be a party (EDU 120 B.6 and 7; EDU 127 A.6).

HOW IS THE FORMAL PARENT NOTICE DELIVERED?

The rules provide that the formal notice to parents "shall be served on the parents" (EDU 127 A). This legal language describes a process of delivery of the notice in which the date of receipt of notice may be documented by the person giving the notice. Under the special education rules, it is essential for school district officials to document the date that formal notice is received by the parents for the parent has 10 school days to respond in writing after receiving the notice. Examples of various ways in which notice may be served on the parent include:

1. Giving the notice to the parent at a conference and recording the date;
2. Making a home visit to deliver the notice and explaining the proposed action, recording the date;
3. Sending the notice by United State mail with a follow-up phone call to determine when it

was received and recording the date of such a phone call;

4. Sending the notice by certified or registered mail which assures the district officials of a return receipt.

WHAT ARE SOME OF THE POSSIBLE PARENT RESPONSES TO THE FORMAL PARENT NOTICE? There are at least four possible responses to the formal parent notice.

1. Parents may approve the school district's proposal, in which case district officials must proceed immediately with the proposed action (EDU 128 A).
2. Parents may request an individual conference for interpretation of the information contained in the notice. This is not considered to be the conciliation conference. However, this interpretive conference is to be privately held, at a mutually convenient time and place and should be held within a reasonable period of time. If at all possible, the conference should be held within 10 school days following parent receipt of the notice. This time period permits parents the option to object within the allotted time period after understanding the proposed action. If this is not possible, district officials should allow the parents additional time in which to object (EDU 127 B.6 and C.2).
3. Parents may object in writing to the proposed action or return the "response form," in which case district officials must immediately move to set up a conciliation conference (EDU 128 A).
4. Parents may not respond at all within the 10 school days. In this case, district officials must proceed with the proposed action after 10 school days have elapsed (EDU 128 A).

CONCILIATION CONFERENCE

WHY A CONCILIATION CONFERENCE? A conciliation conference is held whenever a parent objects to district officials' proposed action as provided in M.S. 120.17, subd. 3b(a) (EDU 128 A). The conciliation conference is intended to encourage parents and district officials to attempt to resolve their differences without going to a formal hearing. A conciliation conference is not held if parents merely want more information or an explanation of why the district officials are proposing a given action.

WHAT IS THE PURPOSE AND NATURE OF A CONCILIATION CONFERENCE? The purpose of a conciliation conference is to attempt to get both the parents and district officials to work toward developing agreement on issues concerning their child's education. In many states, statutes and regulations direct that a due process hearing be held as soon as parents object to a district official's proposed action. The Minnesota provision for conciliation conferences is a distinctive element in the system of procedural safeguards provided by law. The importance of this element should not be underestimated. The early participation of parents in the decision making process reduces the prospect of later formal proceedings.

Since the conciliation conference represents an important element in this due process system, it must be assured to provide a format for actual conciliation between parents and school district officials. Therefore, parents should not be isolated from the rest of the school staff involved in the conference. Rather, parents should be encouraged to participate meaningfully in the discussions.

WHAT HAPPENS AT A CONCILIATION CONFERENCE?

All data gathered on the student regarding identification, assessment, and program planning should be made available to all parties involved in the conciliation conference.

At the conciliation conference, parents and district officials should review the proposed action, the school officials' reasons for the action, and the reasons for any parental objection. It is important for district personnel to explain the proposed action in very specific terms so that areas of agreement and disagreement become apparent. In the case of agreement on certain issues, these plans may be implemented while parents and district officials attempt to resolve remaining issues.

WHEN MUST A CONCILIATION CONFERENCE BE HELD?

A conciliation conference must be held when parents lodge a written objection to the district officials' proposed action. Such objection must be lodged within 10 school days after parents have received the formal notice. If parents do not respond, the action must take place.

District officials shall schedule the conciliation conference within 10 school days of receiving the parents' written objection. The conciliation conference is to be held at a time and place mutually agreeable to parents and the district officials. More than one conciliation conference may be held by mutual agreement (EDU 128 A).

WHO ATTENDS THE CONCILIATION CONFERENCE?

District officials, parents, and other persons involved in the team planning conference should attend the conciliation conference. In addition, other knowledgeable persons who may not have previously been involved in planning for the student may attend. Also, at their expense parents may be represented by legal counsel or other persons of their choosing at all conciliation conferences.

WHAT HAPPENS AFTER THE CONCILIATION CONFERENCE?

A summary of the results of the final conciliation

conference must be written by the district officials and sent to the parents in the form of a Memorandum. The district officials must proceed with the proposed action if the parents agree with the action or if the parents refuse to attend the conciliation conference. If the parents attend the conference and do not agree to the proposed action outlined in the Memorandum, they may request a hearing. However, if the parents do not request a hearing within seven school days after receiving the Memorandum, the district officials must proceed with the proposed action delineated in the Memorandum.

The rules provide that parents may not request a hearing until at least one conciliation conference has been held. This limitation implies that an actual attempt at conciliation must be undertaken prior to granting an informal hearing (EDU 128 and 129 A).

WHAT IS THE MEMORANDUM? Within seven school days of the final conciliation conference, district officials must send parents a written Memorandum which includes the following information:

1. The district officials' proposed action after the conciliation conference. This may be a modification of the original proposal and may include that the district agrees with the parent.
2. The parents' right to an informal due process hearing if they continue to object to the proposed action. This statement of rights must include the procedures and timing for requesting such a hearing.
3. The "request form" on which parents may request a hearing. The parent need not use this form but may instead choose to make a hearing request by other written means.
4. Identification of the district employee to whom the written request for a hearing should be

mailed and to whom legal documents or other requests related to the hearing may be directed.

5. A statement that if parents do not make a written request for a hearing within seven days after receipt of the notice, the district officials will proceed with the actions defined in the conciliation memorandum.
6. A statement that, if parents request a hearing, they will receive a hearing notice describing their rights in regard to the hearing (EDU 128 B).

If the parents return the written request for a hearing within seven school days after receiving the Memorandum, the district officials must immediately make preparations for an informal due process hearing (EDU 129 A).

THE LOCAL HEARING

WHY A LOCAL HEARING? As previously mentioned, the opportunity for a hearing is a basic due process right guaranteed parents and guardians of handicapped children in certain circumstances. Minnesota state law makes provision for parents and guardians of handicapped children to have an opportunity to obtain an informal due process hearing initiated and conducted at the local school district level after at least one conciliation conference has been conducted. Although this local hearing is not a "full blown" due process hearing, it is intended to be an integral element in the due process system attempting to reach accord between parents and the school district concerning the educational needs of handicapped children (M.S. 120.17, subd. 3b(c)).

WHAT IS THE LOCAL HEARING AND WHEN MUST IT BE HELD? The local hearing is a procedure which occurs upon parent request when parents and district

officials have been unable to resolve their differences after one or more conciliation conferences. At the hearing, both the parents and district officials present their reasons and objections before a third party. The decision of the person who conducts the hearing must be based upon applicable law, rules and the evidence presented. The burden of proof is on the district officials to justify their proposed action.

Procedures for the local hearing are more detailed and formal than the other processes previously examined. The hearing is referred to as an "informal due process hearing" in order to reflect legislative intent that the atmosphere or tone of the hearing be less formal than that of a court proceeding.

The hearing shall be held within 30 school days of the parents' request unless continued by mutual consent of the district and the parents or the person conducting the hearing (EDU 129 A.).

The content of the informal hearing will be elaborated more fully in Chapter Four, which discusses the specific responsibilities of the hearing officer.

WHO MAY CONDUCT THE LOCAL HEARING? The local school board has the option of deciding who may conduct the local hearing. State law provides that, at the option of the local school board, the hearing shall take place before one of the following:

1. The entire school board or its designee (one or more school board members);
2. A person mutually agreed to by the school board and the parent or guardian;
3. A person appointed by the Commissioner of Education.

(M.S. 120.17, Subd. 3b.(c).)

It seems obvious that Minnesota law does not require that the hearing officer must be truly independent of the school system. Rather, the law permits the hearing officer to be an employee of the system. This situation has resulted primarily for two reasons. (1) It is not entirely certain which of the traditional due process protections the courts require to be afforded to parents of handicapped children in special education placement cases. (2) Minnesota law makes provision for a "full blown" formal, adjudicative proceeding, pursuant to Minnesota Statute 15, at the state level in cases where a child's liberty is being infringed against the parents' wishes. A more independent hearing officer presides over a Chapter 15 hearing. Those procedures will be detailed later.

WITH WHAT NOTICES MUST THE PARENTS BE PROVIDED PRIOR TO THE LOCAL HEARING? The original formal notice sent to parents prior to considering assessment or placement decisions and the memorandum sent after the last conciliation conference provide part of the information which parents must have prior to the local hearing. District officials must also send two notices to parents specifically related to the hearing.

1. Written notice of rights and procedures relating to the hearing, which is to be served on parents within five school days of receiving the parents' request for a hearing (EDU 129 B.2.).
2. Written notice of the date, time, and place of the hearing, which is sent to parents at least 10 school days prior to the local hearing (EDU 129B.1.).

Following the pre-hearing review (discussed later), the person conducting the hearing may require district officials to send additional notice to parents.

WHAT IS REQUIRED TO BE INCLUDED IN HEARING NOTICES? The rules provide that the first hearing

notice, served within five days of receipt of parents' request for a hearing, must include a list of rights and procedures related to the local hearing. This notice must inform the parents of the following:

1. That the school board shall determine whether the hearing will be held before:
 - a. The school board or its designee;
 - b. A person mutually agreed to by both parties;
 - c. A person appointed by the Commissioner of Education;
2. That parents shall receive notice of the time, date, and place of the hearing at least 10 school days in advance of the hearing, which will be held within 30 school days after the original written request for a hearing;
3. That parents have the right to be represented prior to and during the hearing by legal counsel or other representative of their choice;
4. That prior to the hearing, parents have the right to examine and receive copies of their child's records in the school's possession, upon which the proposed action may be based;
5. That parents may call, at their expense, their own witnesses to present relevant evidence, including expert testimony;
6. That parents may request the attendance of any official or employee of the school district who may have relevant evidence. District officials must inform parents of the time and manner in which to make such a request;
7. That parents have the right to cross examine any employee of the school district or other persons who present evidence at the hearing;
8. That parents have the right to have, within five days after written request, a list of persons who will testify on behalf of the district concerning the proposed action;

9. That parents have the responsibility to provide the school district, within five school days after written request, a list of persons who will testify for the parents at the hearing;
10. That the school district has a right to submit, if submitted at least five school days prior to the hearing, a "resume of additional material allegations," such as newly discovered facts or assessment information which were not previously disclosed in the original formal notice or memorandum. If such material allegations are not so disclosed, it shall be left to the discretion of the person conducting the hearing to determine if those material allegations may be introduced or considered at the hearing;
11. That the burden of proof is on the school district to justify its proposed action in light of the doctrine of "least restrictive alternative";
12. That a record will be kept of the hearing and made available at cost to the parents if the decision is appealed by the parents;
13. That the person who conducts the hearing will provide a written decision within five school days following the hearing. This decision must be based only on evidence received and recorded at the hearing and the proposed action upheld only when supported by a preponderance of evidence in favor of the school district;
14. That the decision of the person conducting the hearing may be reviewed by the school board, at its option, within 10 school days following the hearing officer's decision;
15. That a written review decision must be made by the school board within five school days of its review and must also be based on the standards set forth in 11 and 13, above;

16. That parents have the right to appeal the local decision to the Commissioner of Education. Though the rules do not require it, the hearing notice should also inform the parents of the circumstances in which and the manner in which they may request a state level due process hearing conducted pursuant to the provisions of Minnesota Statutes Chapter 15 prior to the review by the Commissioner;
17. That their child's educational program will not be changed as long as the parents object to the proposed action in the manner described, or until after the decision is finally made at the hearing, or on appeal (EDU 129B.2).

In addition to the information which district officials are required by the rules to send to parents in the hearing notice, school officials may enclose:

1. The statute and rules relating to the instruction and services which are in dispute;
2. A list of sources of advocacy for legal assistance;
3. If the local school board determines that the person conducting the hearing is to be agreed upon mutually, then the district officials may include a procedure for selecting that person.

A second hearing notice must be served on the parents at least 10 school days in advance of the local hearing. This notice must include the time, date and place of all hearings. Since the rules require that the local hearing shall be held at a time, date, and place mutually convenient to all parties, it is obvious that these factors must be arranged to the mutual satisfaction of all parties prior to the sending of the second hearing notice (EDU 129.B.1).

In addition to these two hearing notices, a third hearing type notice is recommended--the notice of appearance. Each party intending to appear at the local hearing should file with the hearing officer a notice of appearance and shall indicate the title of the case, the party's current address and telephone number, and the name, office address and telephone number of the party's attorney or representative (H.E. 205).

PRIOR TO THE INFORMAL HEARING HOW IS INFORMATION TO BE DISCOVERED OR DISCLOSED BY THE PARTIES? When either party requests a list of the other party's prospective witnesses, a list must be supplied to the requesting party within five school days of the request. The list of witnesses may be requested up to five school days before the informal hearing. Lists of witnesses must also be given to the person conducting the hearing at the hearing.

The "resume of additional material allegations" must be received at least five school days before the hearing. Additional allegations not presented previously may be presented at the hearing if the person conducting the hearing so determines.

Five school days before the hearing district officials must provide to the person conducting the hearing any information pertinent to the proposed action, including the information sent to parents. After receiving this information, the person conducting the hearing shall review it for compliance with the rules. If necessary, the person conducting the hearing may require the providing or resident district to submit additional information and may postpone the hearing for up to 15 school days for that purpose.

Five days prior to the hearing the person conducting the hearing must be provided with the following:

1. The district officials' notices and records relating to the conciliation conference and memorandum;

2. Written information concerning the providing school district's education assessment or reassessment and copies of any party's tests, evaluations, or other admissible reports or written information relating to such assessment or reassessment or the proposed action;
3. A copy of the student's current and proposed individual educational program plan;
4. Such other information from the school district or parents as the hearing officer may have requested at a prior date, provided that a copy of such information is provided to all parties and made part of the hearing record;
5. The requirements of 2 and 3 above do not apply when the hearing concerns assessment or reassessment only (EDU 129D.1).

WHAT ARE THE RIGHTS OF PARENTS REGARDING ACCESS TO SCHOOL RECORDS PERTAINING TO THEIR CHILD? Local school district officials must comply with the provisions of the Minnesota Data Privacy Act, enacted by the legislature in 1975. In accordance with the provisions of this act, school personnel must provide parents with access to their child's files and records and shall make school staff available to interpret those records. Access to the psychological data must include attendance of a person qualified to explain and interpret the data unless the parents, at their option, do not want the data so interpreted (M.S. 15.165).

The act further provides that, upon written request, parents are:

1. To be informed of whether the child is the subject of stored data;
2. To be informed of how such data are classified;
3. To be shown the data without any cost to parents;

4. To obtain copies of the data for a charge equivalent to the cost of copying;
5. To be informed about the meaning and content of the data (M.S. 15.165).

Parents, therefore, have the right to inspect and copy all documents pertaining to their child in the school's files, whether or not they are labeled "confidential." This right includes reports produced by the school system's own psychologists and other employees and reports supplied by persons in institutions outside the school system and retained in the system's files. Any school district practice of making "confidential records" available to parents only "in conference" with school personnel must give way to the parents' right to inspect and copy all records pertaining to their child. A possible exception includes informal records kept by a school district staff member for his/her own reference, which the staff member does not share with any other person. School district officials are not considered staff members for this purpose (M.S. 15.162).

In addition, school districts receiving any federal monies are affected by the federal confidentiality statute, Family Educational Rights and Privacy Act of 1974--the so called Buckley Amendment. Under that act, any school district receiving federal education funds must allow parents of students under the age of 18 the right to inspect and copy at reasonable times all documents related to the education of their children in the possession of the school district or its agents (20 U.S.C. 1232 G).

The hearing officer's role regarding pre-hearing review will be discussed more fully in the next chapter.

WHAT ARE THE REQUIREMENTS REGARDING THE TIMING OF AN INFORMAL HEARING AND THE HEARING OFFICER'S DECISION? The rules provide that a hearing concerning proposed action must be held not later than 30 school days after the school district receives the parents'

request for such a hearing. This time limit may be modified pursuant to the mutual agreement of parents and the school district. However, there is no right to request an informal hearing unless at least one conciliation conference has been held (EDU 129A).

The person conducting the hearing may also postpone the hearing for up to 15 school days in order to comply with the provisions concerning pre-hearing review (EDU 129D.2.g).

Also, the person conducting the hearing may continue it for not more than 10 school days to obtain additional testimony or information (EDU 129E.8).

Other aspects of the conduct of the local hearing and the hearing officer's decision will be discussed in detail in Chapter Four.

WHAT IS THE LOCAL DECISION? The local decision is the decision emanating from the local hearing procedure. In the absence of school board review, the local decision is the decision of the hearing officer. The local decision may also include a review and a decision by the school board if the hearing was originally not conducted by the entire school board.

The rules provide that the school board may review the decision of the person who conducted the hearing and issue its own written decision in all circumstances in which the total board did not conduct the original hearing. The local school board must review the decision within 10 school days of receiving the decision and must issue its own local written decision within another five school days if the board elects to review the hearing officer's decision at all (EDU 129 G.3.).

The school board decision is the binding local decision where the school board elects to review the hearing officer's decision. The hearing officer's decision is the binding local decision if the board does not review that decision (EDU 129 H.1.).

After expiration of the 10 school days allowed for local school board review, all decisions (the hearing officer's decision and the local school board decision if one exists) must be filed with the Commissioner of Education and mailed to the parties (EDU 129 G.5.).

The local decision is binding on all parties and becomes effective 15 school days after service of the decision upon the parties, unless the decision is appealed within the 15 day period (EDU 129 H.1.).

If the school district fails to implement the local decision, the parents have the right to bring that lack of action to the attention of the Commissioner of Education. The State Board of Education has the authority to impose such sanctions necessary to correct any such failure (EDU 129 H.6.).

WHEN MAY PARENTS OBTAIN A STATE LEVEL DUE PROCESS HEARING? The rules provide the opportunity for parents to obtain a state level due process hearing when they are dissatisfied with the local decision of the school board or its designee, but only if that local decision pertains to one of the three following types of proposed action:

1. A proposed education assessment or reassessment;
2. The proposed placement of their child in, or transfer of their child to, a special education program; or
3. The proposed provision or addition of special education services for their child.

This state level due process hearing is conducted pursuant to the provisions of Minnesota Statute Chapter 15 and is conducted by an impartial hearing examiner from the Office of the State Hearing Examiner. The procedure for requesting the Chapter 15 due process hearing, as provided in the rules, requires parents to make their request as part of their

written appeal to the Commissioner following the issuance of the binding local decision. Where the parents properly request a Chapter 15 due process hearing, the appeals procedures are halted until the state level Chapter 15 hearing is concluded (EDU 129 H.2.a.).

The purpose for the provision of a Chapter 15 hearing is to insure that the parents always have the opportunity for a hearing conducted by an independent hearing officer since the school board or its designee may not be considered to be independent of the district's interests.

WHAT IS INVOLVED IN THE PARENTS' APPEAL TO THE COMMISSIONER OF EDUCATION? The rules provide that parents may appeal a binding local decision to the Commissioner of Education within 15 school days of receiving the local decision. In such a case, the parents' appeal to the Commissioner must be based on a review of the local decision, including the entire record of the local hearing.

If the parents choose to request a state level Chapter 15 hearing, the Commissioner's review is suspended until the conclusion of the Chapter 15 hearing, at which time the Commissioner's review must be based upon the report of the State Hearing Examiner.

All notices of appeal by parents must be on the appeal form included with the local decision or otherwise in writing and must be sent by parents by mail to all parties to the local hearing. The rules specifically make the local school board a party to any appeal.

After receipt of the local decision and the transcript, or after receipt of the report of the hearing examiner in a Chapter 15 hearing, the Commissioner has 30 school days to issue a final decision in the case. The Commissioner's final decision is subject to the following requirements:

1. It must be in writing.
2. It must be based on the appropriate record on which the appeal was made.
3. It must include findings and conclusions.
4. It must be based on the same statutory standards and criteria applicable to local decisions.
5. It must contain the date upon which the decision is to take effect.

The decision of the Commissioner is final unless appealed further by parents or the school board to the District Court of the county in which the providing school district, in whole or part, is located. The scope of judicial review is the same as provided in Minnesota Statutes Chapter 15 (EDU 129H.2., 3., 4., and 5.).

Chapter Four

THE HEARING OFFICER'S RESPONSIBILITIES AND PROCEDURES

THE CONCEPT OF IMPARTIALITY

HOW DOES THE CONCEPT OF IMPARTIALITY FIT INTO THE SCHEME OF DUE PROCESS PROCEDURES? In Chapter Three the statutory scheme adopted by Minnesota for use in making decisions regarding assessment and placing handicapped children in educational programs has been discussed in detail. This scheme was prompted by and patterned after traditional notions of due process. Implicit in those notions is the concept that, whenever a proposed action is contested to the point that a hearing is to be convened, that hearing must be conducted in an impartial manner by one who is neutral with regard to the issues being contested. The terms "impartial," "neutral," and even "due process" all denote procedures which boil down to the basic notion of "fairness." The hearing must be conducted in a fair manner. This requires both that the school board select hearing officers who are fair and that these hearing officers discharge their responsibilities in a fair manner. For hearing officers, achieving a fair result should be their underlying goal.

WHAT IS THE SIGNIFICANCE OF THE CONCEPT OF IMPARTIALITY IN THE LOCAL HEARING PROCEDURE ADOPTED IN MINNESOTA? As previously noted, state rules place upon local school boards the responsibility of selecting a hearing officer for local hearings. Since the school board is also a party in local proceedings, its selection and compensation of hearing officers cannot technically be termed neutral. The rules have attempted to deal with this potential problem by including the possibility of a state level due process hearing in certain circumstances. Also, the rules provide that the final review step in this procedure is resort to courts of law. Consequently, any final analysis of proposed decisions by school officials regarding the assessment and placement of handicapped children can occur in the courts. Hearing officers should be aware, however, that the more objectivity and fairness they bring to the discharge of their duties at the local level, the less likely it becomes that school officials and parents must resort to the more time consuming and expensive procedures of judicial review. The interests of a handicapped child's education require a speedy and fair resolution of disputes.

Finally, hearing officers should be aware that whatever the source or amount of their monetary compensation, they will be compensated regardless of the outcome of their local decision.

WHAT STEPS CAN THE HEARING OFFICER TAKE TO INSURE THAT THIS CONCEPT OF IMPARTIALITY IS ADHERED TO? The procedural safeguards delineated in Chapter Three are intended to help insure a fair result. In addition, it is proper at the beginning of the hearing for a hearing officer to allow the parties to inquire as to his/her qualifications for being a hearing officer. Hearing officers should not object to such a polite inquiry. In fact, it would be a good idea to take the initiative at the outset by stating their qualifications and the incidents which led to becoming a hearing officer. It is also the hearing officers' responsibility to withdraw from participation in the local hearing at any time they deem themselves disqualified for any reason.

A binding rule of professional responsibility that lawyers have imposed upon themselves is the concept that lawyers should avoid even the appearance of impropriety. The same standard should be observed by hearing officers regardless of their professional training. It is designed to promote trust and faith in the fact finding and dispute settling mechanisms of which the hearing officer is a part. Therefore, it means that the hearing officer must act in a totally neutral and detached fashion. Conferences with school officials prior to a hearing about the case, while they may not directly affect the hearing officer's judgment, may give the appearance that the judgment ultimately rendered was biased. Likewise, extreme cordiality to one side of the case and distinct formality to the other may also give a misleading perception of the neutrality which the hearing officer must maintain. Because of the informal nature of these hearings, it is not at all unlikely that one side or the other will conduct ex parte communications with the hearing officer. These cannot be avoided though every attempt to communicate in this fashion should be viewed cautiously by the hearing officer. Any communication should be summarized in writing by the hearing officer with a copy sent to all parties involved in the case. For example, a phone call concerning procedures could be followed up by a letter from the hearing officer to the calling party confirming the gist of the procedural questions, with a carbon copy sent to the other party and, if the parties are represented by counsel, to their attorneys as well.

The hearing officer should be aware of the fact that parties appearing at the proceeding, no matter how informal the setting, are going to be nervous and possibly distraught. The parents, in particular, are going to be quite anxious over the proceedings and may misperceive an innocent question as being hostile in tone or substance. Therefore, questions should be phrased as carefully as possible with an eye toward fairness and understanding. The hearing officer should make every effort to get all the facts that each party wishes to present prior to making a decision, remembering at the same

time that, in order to conclude the hearing in a reasonable period of time, certain irrelevant matters must be excluded.

All rulings by the hearing officer should be explained, not in formal legal language, but in clear concise regular speech; and any objections by a party as to a particular ruling during the course of the proceeding should be duly noted and discussed in the final opinion prepared by the hearing officer.

GENERAL RESPONSIBILITIES

WHAT KNOWLEDGE MUST HEARING OFFICERS HAVE TO ADEQUATELY FULFILL THEIR RESPONSIBILITIES AS HEARING OFFICERS? To begin with, it is essential that hearing officers become familiar with the Minnesota Statutes pertaining to education of handicapped children, especially Minnesota Statutes Sections 120.03, 120.17 and 124.32. In this regard, hearing officers should also develop a good working knowledge of the rules promulgated by the State Department of Education for special classes and services for handicapped children, EDU 120 through EDU 129. They must understand the public policy behind these statutes and rules as well as the procedural technicalities expressed within them. In addition, they should be familiar with prior case law on the subject, pertinent rulings of the state Attorney General, and prior local decisions establishing relevant precedent. This body of information should establish clearly the boundaries for their subsequent decision making.

It may also be desirable that hearing officers have a general awareness and understanding of the types and quality of programs that are available at any time for handicapped children. However, they must take caution to be sufficiently open-minded so that they will not be predisposed toward any decision that they must later make. The decision that they must subsequently make must be based solely on evidence presented at the hearing. The temptation

to rely, consciously or unconsciously, on their personal knowledge of available programs is frequently great. Hearing officers should resist this temptation. They should make a conscious effort to ignore any biases regarding educational programs which they may have and decide the case on the basis of the record made by the parties at the hearing. The reason for this should be self-evident. By bringing the hearing officer's personal knowledge into the decision-making process without explanation, the parties will have no knowledge of that important evidence in the case and thus no opportunity to examine or respond to it. Such a result would defeat the reason for the hearing.

The best way to use knowledge the hearing officer has gained in this field as a tool in the decision making process of the hearing is simply to ask questions designed to elicit responses from the various parties and not to make pronouncements as to what the hearing officer thinks is correct. For example, if in the presentation of the plan for the child, the school system ignored some possibilities of which the hearing officer is aware for children with that type of problem, the officer might ask the school personnel what other alternatives they had considered and, specifically, which alternatives they had rejected and their reasons for that rejection. If they fail completely to discuss any of the programs or projects with which the hearing officer is familiar, it might be possible to inquire whether those programs had been explored. The hearing officer should not, however, based on the facts available to him/her, decide that those programs would be appropriate if they have not been explored by the school system. Instead, it would be proper to suggest, if both parties are willing, a continuance of the hearing in order to give the school system an opportunity to explore other alternatives. Remember, it is the hearing officer's purpose to effectuate a fair settlement of the disputed issues so that the real needs of the child can be met as expeditiously as possible. It is not the hearing officer's goal simply to decide who is right or who is wrong in the abstract but to

see that the child is fairly served if he or she is in need of service and to make sure that the most appropriate program is provided. The appropriateness of the program must, of course, be determined according to the state and federal regulations discussed elsewhere in this document.

WHAT OTHER ATTRIBUTES DO HEARING OFFICERS NEED TO PERFORM THEIR RESPONSIBILITIES APPROPRIATELY?

Hearing officers must conduct hearings and any pre-hearing conferences. To fulfill this duty, they must effectively structure and operate hearings in conformity with the required standards and encourage the participation of the parties and their representatives. They must fully utilize their ability to objectively, directly, and sensitively solicit and evaluate both oral and written information that needs to be considered in reaching their decision. For example, hearing officers may be presented with a situation where one of the parties tends to dominate the hearing totally, intimidating the other party. In such a situation, it is the hearing officer's responsibility to prevent such intimidation and to insure equal participation by the parties.

Hearing officers should also be aware of their unique and relatively new role in these proceedings. They are in a position to aid in improving the effectiveness of the hearing process through conscious evaluation of the processes, their own behavior, and the behavior of all the parties involved. For example, the hearing officer must allow each party a full and complete opportunity to explain its position on any particular point but must do so without making the hearing unduly burdensome upon either party or allowing one side to continually dominate the discussion. The hearing officer may do this by first offering each party an opportunity to respond to a particular point and then by asking questions which are felt appropriate and by direct discussion to the issues at hand. The hearing officer may find that the questioning process is the most effective means of soliciting the relative positions of the parties and of fostering the communication which evidently

has not successfully occurred up to the point at which the hearing officer was called into the proceeding. By clarifying their positions, the parties may reach a point of agreement that might obviate the need for continued proceedings. This is, of course, a desirable goal on the hearing officer's part.

PRE-HEARING RESPONSIBILITIES

WHAT ARE HEARING OFFICER'S DUTIES UNDER THE RULES REGARDING PRE-HEARING REVIEW? The rules provide that, five school days prior to the hearing, the person conducting the hearing shall receive copies of all school district notices and memoranda prepared and sent to the parents as well as other specified information. The rules further provide that, upon receipt of this information, the hearing officer:

1. Must review this information for compliance with the rules;
2. May, at his/her discretion, meet with the parties together prior to the hearing;
3. May require the providing school district to perform an additional educational assessment or reassessment;
4. May require the providing school district to propose an alternative individual program plan;
5. May require the providing school district to send additional notice to the parents;
6. May do such additional things necessary to achieve compliance with the rules;
7. May postpone the hearing for up to 15 school days if it becomes necessary (EDU 129D).

WHAT IS INVOLVED IN REVIEWING PRE-HEARING INFORMATION FOR COMPLIANCE? Initially, the hearing officer's review of all notices and memoranda must involve a comparison of the actual data issued by the school district with the specific requirements found in the rules promulgated by the Department of Education and applicable statutes. The information contained in Chapter Three may serve as a helpful checklist for determining whether the school district has complied with procedural technicalities required by the rules. However, the hearing officer's duties with regard to pre-hearing review entail much more than mere checking to see that procedural formalities have been followed.

One of the hearing officer's first responsibilities in this regard is to be assured that the matter before him/her is, indeed, within his/her jurisdiction as a hearing officer under the special education law. For example, the hearing officer must determine from the information provided whether the handicapped child involved is covered by the statute. Minnesota Statute Section 120.17, Subdivision 1 states that all school districts shall provide special education services for handicapped children of "school age." "School age" is defined to include children and youth from 4 to 21 years, inclusive. Therefore, the hearing officer must be assured that the child for whom special education services or placement being proposed is, indeed, school-age. Also, the hearing officer should be aware that handicapped children who have not attained school age may be provided special education services or placement if their parents so desire. However, school districts cannot require attendance of children, handicapped or not, until they have reached the minimum age for compulsory public school attendance as defined in Minnesota's compulsory education law. In the case where school district officials propose placement in a special education program for a handicapped child who has not attained the age for compulsory public school education and whose parents object to the school district proposal, the hearing officer would appropriately exercise responsibility for conducting a pre-hearing review by dismissing the case for lack of jurisdiction.

Similarly, the special education statute only applies to "handicapped children." If, on the basis of the material provided by the parties, the hearing officer fails to find that the child is "handicapped" as defined in Minnesota Statute 120.03, he/she should similarly dismiss for lack of jurisdiction.

The statute further provides that each school district shall provide special education services for the residents of its district. In the absence of a situation involving a "providing school district," the hearing officer must assure himself/herself that the notices and/or memoranda issued by the school district clearly show that the child in question is a resident of the school district proposing action.

There may also be situations where the pre-hearing review reveals to the hearing officer that the conflict involved is not one which may appropriately be resolved through the special education hearing procedures. Instead, a hearing under the Pupil Fair Dismissal Act may be appropriate. This might be the case, for example, where school officials propose suspension or expulsion of a student for disciplinary reasons which are unrelated to any handicap.

These examples are merely a few illustrations and do not represent all the possible defects in jurisdiction which may arise. These examples should, however, point out the complexity of the hearing officer's review and the necessity for awareness of the intricacies of the special education law.

Since jurisdictional defects are fatal to any ultimate decisions made by a hearing officer or reviewing bodies (either agencies or courts), if there is any doubt as to his/her jurisdiction to this case, the hearing officer should make every effort to determine the jurisdictional facts before proceeding. If those facts cannot be determined at the hearing, the hearing itself should be continued and the school district required to respond to the very clear questions of jurisdiction that must be discussed. The hearing officer should also note

that, in any final findings of fact and law that are filed by the hearing officer, there should be a clear statement of the basis upon which jurisdiction has been found and a clear ruling by the hearing officer that the hearing was conducted pursuant to the jurisdiction of the special education statutes and rules.

In addition to reviewing the notices and memoranda for compliance with procedural requirements of the rules, the hearing officer must also be assured that substantive requirements have been met. One example of such a substantive requirement is the general requirement applicable to all formal parent notices that notice of a proposed action must be sufficiently detailed with reasons to constitute adequate notice. This requirement might come into play where the school district is proposing a change in the child's educational placement based on a prior assessment. A hearing officer conducting a pre-hearing review must preliminarily evaluate the quality of the educational assessment, including an evaluation of the type of personnel involved in the assessment, procedures used, and the interpretation of the results. The rules, therefore, provide that the hearing officer may require the school district to perform an additional educational assessment following his/her pre-hearing review of the data. This substantive review of information provided prior to the hearing is perhaps one of the most difficult duties he/she has as a hearing officer. This is so because it requires that the hearing officer have and utilize a certain amount of special knowledge pertaining to the special education system. However, as noted earlier, in order to make a fair decision based only on the evidence introduced at the hearing, the hearing officer will subsequently need to ignore any special outside knowledge he/she may have pertaining to the special education system when the time for decision making arrives.

If there is information missing in the documents reviewed prior to the hearing, the hearing officer's choice is to either remand the proceeding for further information or in the alternative note the questions

he/she wishes to have answered for the record and be sure to ask them on the record at the hearing itself. It is important that the decision the hearing officer makes be based on information presented fairly and openly at the hearing. It may be that the hearing officer has specialized knowledge and can fill in the gaps of missing information based on the hearing officer's own knowledge of the system. While doing so may result in no real harm to the parties, it may be perceived by the parents as unfair and thus generate additional litigation by subsequent appeals and even court action because the hearing officer has failed to make a part of the record the factual basis of his/her findings. Therefore, the hearing officer must be sure to question and elicit the appropriate responses of all information that is felt will ultimately enter into his/her decision-making process.

In addition to reviewing information contained in school district notices and memoranda, a hearing officer should also review each party's request for a list of the other party's witnesses, the "resume of additional material allegations" provided by the school district, and any other information which may have been requested or provided. These data should also be reviewed for (a) compliance with procedural requirements contained in the rules, and (b) compliance with substantive requirements. Be aware of the specific tools provided by the rules to insure that the hearing officer's pre-hearing review is effective. These tools include the hearing officer's power to require the school district to perform additional assessments, to propose alternative individual educational program plans, or to send additional notice to the parents. There is also a "catch-all" clause allowing the hearing officer to do such additional things which he/she deems necessary to achieve compliance with the rules. Finally, the hearing officer has the power to postpone the hearing for up to 15 school days. Keeping in mind the possible detrimental effect which delay may have on a handicapped child's education, the hearing officer should strive to minimize the necessity for postponements and continuances.

Finally, in preparation for the hearing itself the hearing officer's review of the data must be done in such a way as to avoid any fears of the parents that the hearing officer has received information that he/she is not sharing with them. Thus, when the school system delivers its material to the hearing officer, any conversations with respect to the meaning of that material must either be stopped so that it can be done only in the presence of the parents or, in the alternative, notes should be taken and a subsequent letter mailed out to all parties reflecting the nature of such conversation. At no time should the school system be allowed to stress the urgency of particular findings and factors related to the parents' background, education and economic or racial origin which might mitigate for or against a particular position without the parents being fully aware of that information.

When dealing with parents of an economically disadvantaged background or of racial or ethnic background toward which there has been a history of discrimination both by public and private agencies, it is essential that the procedures the hearing officer follows are meticulously adhered to and do not give rise to complaints of racial bias.

If the pre-hearing review reveals to the hearing officer that the school system has not adequately prepared or evaluated this case, there is no need to schedule a hearing for the purpose of formally ruling in that fashion. Such ruling can be done by letter to all parties in which the hearing officer determines that there is an inadequate factual preparation or basis for findings with a remand to the school system to prepare additional findings which in turn must be shared with the parents. Only if they are unable to reach a resolution, then should a new hearing be scheduled.

WHAT IS A PRE-HEARING CONFERENCE? A pre-hearing conference is an informal meeting between the hearing officer, the parties, and their representatives prior to the informal hearing. Its purpose, in addition to

achieving the purpose of pre-hearing review (ascertaining and compelling compliance with the rules), is to identify and simplify the issues to be determined at the hearing. Other purposes of the pre-hearing conference may include obtaining agreement regarding the foundation for testimony or documentary evidence, considering the proposed witnesses for each party, and reaching settlement of the dispute without the necessity for a further hearing, depending on the nature of the specific case before the hearing officer. In order to identify the disputed issues, the hearing officer may need to speak with school officials to insure that a unified position is being presented and that all school officials are in agreement. Similarly, the hearing officer may need to speak with the parents of the affected child, and perhaps with the child directly to verify their stances on the disputed issues. These conversations may be conducted most efficiently at a meeting held prior to the hearing at which all parties and their representatives are in attendance. Such a meeting is a pre-hearing conference.

Although there is no formal requirement that any pre-hearing conference be recorded and even though any recording process may tend to inhibit free flowing discussion of the problems, it would be wise for the hearing officer to suggest that such a conference be recorded and to do so if both parties agree. This procedure will allow agreements that are reached prior to the hearing on particular factual or substantive issues to be adequately recorded and available for the hearing officer to be incorporated in the final opinion. This step will also save any needless dispute on appeal concerning issues which were agreed to in a pre-hearing conference noted in the opinion but not appearing in the conference record. In the event that the parties do not wish to have a tape recording made of the pre-hearing process, all issues agreed upon at the conference should be written out at the time of the conference; and the exact language that will ultimately be used in the findings shared with the parties at that time.

For example, if a dispute arises over the age of the child and resolution of that dispute is reached at the pre-hearing conference, the hearing officer should say something to the effect that, "It is agreed by the parties that the age of the child in this matter is five years of age and birth date is April 27, 1973." The same is true for the residence of the parents and other facts which should be agreed upon in routine fashion but for which there could be some later dispute.

While it is sometimes the practice in a court of law for the judge to allow the prevailing party to draft the findings of fact, in this case, because of the likelihood that the parents are not represented and in order to portray the reality of the fairness of this process, the hearing officer should prepare all findings of fact based on issues either agreed to or determined at the conference.

WHAT PROCEDURES MUST BE FOLLOWED IN CONDUCTING A PRE-HEARING CONFERENCE? Neither the statutes nor the rules prescribe procedures to be followed in a pre-hearing conference. In fact, the rules leave the decision whether or not to conduct a pre-hearing conference to the hearing officer's discretion. It is suggested that, whenever a pre-hearing conference is to be held, the parties should be notified well in advance of the time, place and nature of the conference, including a request that their representatives be present. The conference should be informal and expeditiously conducted by the hearing officer. Agreements on the identification of issues, stipulations as to admissible evidence, or other matters should be entered on the record by the hearing officer prior to the informal hearing.

One possible use of the pre-hearing conference could be that it be conducted immediately preceding the actual hearing itself. This event would eliminate the need for parents coming at two separate times and, if they employ legal counsel, the need for employing such counsel at two separate times.

At that point the hearing could be conducted in the following fashion. The individual educational assessment plan of the child, together with any checklists in this manual, could be followed with the parents asked to indicate what matters they object to and the hearing officer trying to separate those matters out into various component parts. Those components which are not resolved by agreement at the pre-hearing conference would be set forth in full and complete argument during the hearing itself.

For example, in discussion concerning whether the child should be removed from a classroom, the question should be determined as to whether the parents are objecting to the nature of the treatment itself or to removal from the classroom per se or the combination. If the parents are not objecting to the treatment but merely to removal, then it would seem that the issue for hearing would be for the school district to produce adequate information to justify why the program proposed could not be administered in the classroom. This is particularly the burden of the school system because of the requirement that the least restrictive alternative be provided at all times.

In order to facilitate such a pre-hearing conference the school system could bring in a proposed set of findings of fact, and the hearing officer could use these as a checklist to review those matters which are or are not in issue. The proposed findings of fact should be clearly labeled as such, i.e., "proposed," and the parents told that they are not bound by anything on the proposed list and have the right to object to any and all parts of that list but should not simply object for the sake of objecting because the burden of establishing these points at a hearing could produce an unnecessarily long hearing. On the other hand, parents should be assured that any matters contested will be given a full and fair hearing.

CONDUCTING THE LOCAL HEARING

WHAT STEPS SHOULD THE HEARING OFFICER FOLLOW IN COMMENCING THE HEARING? At the outset, the hearing officer should be familiar with his/her general role as the person conducting the hearing. In this capacity, the hearing officer presides at the hearing, receives all the evidence offered by the parties, rules on procedural matters, hears all witnesses, and determines whether additional information is needed to form a decision in the case (EDU 129F.1).

One of the hearing officer's first decisions will likely be determining whether the hearing will be open (to the public) or closed. The rules provide that the hearing shall be closed, unless the parents request an open hearing or unless the hearing takes place before the school board as a whole (EDU 129E.1).

As facilitator of the hearing process, the hearing officer also has the responsibility to set the tone and decorum for the hearing. The local hearing is described in the rules as an informal hearing. It is desirable to facilitate communication and benefit from such informality. The seating arrangement should enhance informality and permit all participants to see and hear each other easily. If there are participants who have visual or auditory impairments or who do not speak or understand English, adequate arrangements for translators must be made (EDU 127A.4.; M.S. sec. 546.42).

The hearing officer's decision must be based solely upon evidence introduced and received into the record. The entire "record" of the case consists in part of a tape recording, stenographic recording, or other recording of the hearing. Therefore, to aid in later rendering the decision (and in any appeal process), the hearing officer must take responsibility to see that the tape recorder, if that is the mode of recording utilized, is working properly and all the parties are speaking up (EDU 129F.1. and 4.).

At the outset, after introducing himself/herself, the hearing officer should explain the entire due process procedure (as detailed in Chapter Three), including the appeal process to be utilized should parents disagree with the outcome of the local hearing. At this time, the hearing officer should also explain the procedures that will be followed during the course of the hearing so that all parties can be assured that they will have an opportunity to present their statements. It should be made clear to the participants that, since the decision will be made on the basis of testimony offered at the hearing, the hearing officer will ask questions of witnesses from time to time. In explaining the procedures to be followed in the local hearing, the hearing officer should also explain the purposes of the hearing, one of which is to develop evidence of specific facts concerning the educational needs, current educational performance, or handicapping condition of the child as it relates to the need for the proposed action (EDU 129F.3).

The hearing officer should list for the record all persons attending the hearing, including appropriate identification. A possible problem area here involves the question of whether or not the child will be permitted to attend the hearing. If the child is over the age of majority (18 years), he/she has all the rights of an adult, assuming that he/she is legally competent. If the child has not reached the age of majority, the law generally gives the parents the right to determine if the child shall attend the hearing unless it is determined by the hearing officer that following the desires of parents would endanger the health or safety of the child.

Finally, the hearing officer should review the issues to be decided at the hearing and any facts previously agreed upon for the record. The source of this information consists of all notices, memoranda, additional material allegations, results of any pre-hearing conference, and any other information received from the parties prior to hearing.

WHAT ARE THE STANDARDS GOVERNING THE ADMISSIBILITY OF EVIDENCE AT THE HEARING? The special education rules provide that the evidentiary standards, rules and regulations specified in Minnesota Statute Chapter 15 shall apply to the local informal hearing. Minnesota Statutes 15.0419 state that all evidence is admissible "which possesses probative value commonly accepted by reasonable, prudent men in the conduct of their affairs." The "probative value" concept includes two basic requirements about the admissibility of evidence. The evidence must be (a) competent and (b) relevant. The hearing officer determines whether evidence is competent, that is, minimally reliable, and relevant, that is, having a tendency in reason to prove the fact asserted. The hearing officer need not permit participants in the hearing to wander far afield from the issues in the case and should not permit them to indulge in personal abuse of persons with whom they do not agree. The hearing officer should not permit school officials to advance reasons for proposed placement action which were not included in the notice served on parents or to defend the action with tests or reports that were not identified in the notice unless the hearing officer has previously determined that those additional material allegations may be considered pursuant to EDU 129E.4. Beyond that, however, the hearing officer should allow the participants wide latitude in the presentation of evidence. Parents and their representatives should be given the opportunity to present pretty much whatever evidence they wish to present, giving it the weight to which the hearing officer believes it is entitled.

Remember that the role of the person conducting the hearing is not only to rule on the admissibility of evidence but also to evaluate the evidence, taking into account both its relevance and its completeness. The hearing officer's role in evaluating both written evidence and oral testimony of the witnesses is similar to that role utilized in the pre-hearing review procedure. That is, whenever it is found that additional facts are relevant and necessary to a decision, the hearing officer may admit such information. At

the time of conducting the hearing, the rules also permit the hearing officer to determine whether the school district has sufficiently considered alternative educational programs, including special education services and opportunities; and the hearing officer may receive any additional evidence presented by any interested party or person regarding the availability and suitability of reasonable and viable educational alternatives.

HOW IS EVIDENCE OFFERED AND IN WHAT ORDER? The school system has the burden of establishing its reasons for action; or, in the case of the parents' appeal of inaction, the school has the burden of showing why it has not acted. In chronological order from the time it first became aware of the problem, the school system should present evidence as to what it has done with respect to each of the issues clearly delineated at the pre-hearing conference. Those things that are agreed upon need only be stated officially for the record with some indication of such agreement. Those matters which are at issue and have been determined at the pre-hearing conference to be at issue should be addressed fully and completely with supporting evidence.

For example, to the extent that the nature of the placement plan is in contest, the school system should first show how it developed the plan including its initial evaluation of the child and the child's needs and its determination with the consultation of appropriate experts as to what the appropriate plan for that child would be. Then, the system should indicate which school or treatment facility has an appropriate program and personnel to meet the needs of the child. It should also indicate how it arrived at that decision in terms of its decision-making process within the system, and, in particular, how the team met and evaluated its position.

The most efficient means of proceeding might be to allow the school system to present a general overview of its position with an indication of what is contested. If individual witnesses are called,

parents should have an opportunity, after the direct testimony of each witness, to cross examine that witness. With respect to the introduction of evidentiary material in written form, each document or cluster of documents should be numbered with a designation as to either that of the school system or that of the parents. When a document is to be introduced, it should be referred to by its identifying number so as to avoid confusion. If the document is not received into evidence by the hearing officer, it should be kept physically and made a part of the record in case either party wishes to appeal the hearing officer's decision not to admit the document. Upon its receipt into evidence it should have a new identifying characteristic or label to indicate that it has become part of the record for purposes of decision making.

The following example may be typical of a numbering process that could be used on documents: "School District Document One for identification purposes." In discussing this document that number and name should be used. If it is received into evidence, either by ruling of the hearing officer or if there is no objection to its receipt into evidence by the parents, the "identification" label can be removed and the document then becomes "School District Document Number One." Despite the fact that the language of the hearing may become somewhat stilted by continual reference to numbered items, it is important that this labeling process be used so that any reviewing agency or person will know at any point in time to which document reference is being made. If this system is not followed, the results can be rather confusing in the situation in which several pieces of paper are introduced by different parties into the proceeding. All that would result on the record would be the continual reference to "this piece of paper," "this document," or other such vague and unidentifiable terms.

After the school district has had an opportunity to present all of its evidence, subject to objections to the documents and cross examinations of any live witnesses, the parents could move for a judgment on their behalf.

If the school system has not established a record sufficient to justify a decision on its behalf by a preponderance of the evidence, there is no need to continue the hearing. Even if the parents do not choose to make such a motion, it would be wise for the hearing officer to make a determination at that point that the school system has or has not met at least a prima facie burden of establishing its position. If it has not, the hearing should be adjourned at that point with an appropriate memorandum issued by the hearing officer. If it has, then the parents should be given additional opportunity to present whatever evidence they may have that would tend to contradict or in some way diminish the impact of the school system's evidence.

In the case in which a particular educational plan is being contested, it would be at this point in the proceedings that the parents would be allowed to offer their expert testimony, their evaluation study, or whatever other evidence that might be useful in contradicting the school district's evidence. The same rules for marking and identifying documents and for allowing the cross examination of witnesses should apply. The purpose here is not to turn the proceeding into a trial but to make sure, through clarifying questions, that all parties understand fully the opinions of the witnesses and the basis for those opinions.

It would be wise to keep in mind some of the formal rules of evidence that need not be formally applied in this instance but are nevertheless useful measuring tools. Foundation evidence is generally necessary in a court of law to establish the

basis upon which live evidence or a document is relevant to the proceedings. For example, in a situation where evidence is offered with respect to the adequacy of a plan and a person is brought in who is going to say that he/she does not think the plan is good, it would be necessary in a court of law and desirable in a hearing such as this that before the testimony of this person is received with respect to his/her opinion that there be some demonstration on the record that the person offering evidence is familiar with the child and the child's needs, has had an adequate opportunity to review all the facts surrounding the child's problems and, indeed, is an expert in his field and therefore qualified to offer an expert opinion. Merely allowing someone to come in and say, "I think the child should be in the X school as opposed to the Y school because I have seen a lot of children in the same circumstances," is no basis for receiving that kind of opinion.

The hearing officer is empowered under Minnesota Statutes 15.0419 to exclude evidence which is deemed to be incompetent, irrelevant, immaterial and repetitive. The hearing officer should be careful also to exclude evidence which might be deemed highly prejudicial and only of marginally relevant value. Repetition, irrelevant, and perhaps even prejudicial evidence might consist of a parade of teachers, all of whom testify to the fact the child is unable to master basic concepts in the regular classroom when the issue before the hearing officer is not whether the child is in need of special education but what type of education that should be.

The hearing officer must clearly separate in the record evidence that is relevant to the contested issues from other evidence which simply serves to reinforce the already agreed to issues such as need of a child or the desire of the school system to help the child. The hearing officer must rule with a firm hand in limiting the receipt of evidence to issues which are indeed contested.

Otherwise the hearing goes on at great length; and the record, while underscoring the obvious needs of a child, may not serve to clarify the issue of what should happen with the child.

Whenever written evidence is introduced which summarizes the finding of experts who are otherwise unavailable for cross examination, the parents (if they object to the evidence) should be given an opportunity to delay the hearing in order that the hearing officer can have time to compel that expert to testify. Parents may have many reasons for mistrusting the written summary of an expert opinion. Such mistrust need not be based on any attack of competence against the expert but merely on lack of clarity in the written word, or language which is susceptible to more than one realistic meaning, or some misstatement of preliminary facts which indicates that the expert was basing his or her opinion on something that is either inaccurate or totally in error.

HOW IS CROSS EXAMINATION OF WITNESSES AND REBUTTAL EVIDENCE HANDLED? Each party should have the right to cross examine witnesses presented by the other side and have opportunity to redirect questions to its own witnesses when a cross examination has created an area of uncertainty in the testimony. The hearing officer should also feel free to ask questions of witnesses in order that the record clearly reflects the position which witnesses are taking. Extensive cross examination is unlikely under these circumstances; but in order to fully develop all of the facts, the hearing officer should allow a broad scope of examination.

Generally cross examination is limited to the evidence given on the direct testimony; but, if in direct testimony a witness opens up areas even by omission that might be relevant to the conclusions drawn by that witness, these areas may be inquired into in cross examination. Again, if evidence is raised in cross examination which is not clarified

either by the witness or by other evidence presented by either party, the hearing officer or either party may seek a continuance in order to bring in additional evidence to clarify a particular point. This continuance should only be granted in those instances where the area in need of clarification is material to the ultimate outcome of the proceeding. In other words, do not waste time on clearly collateral issues if the main issues are decided to the satisfaction of the parties.

WHAT OPPORTUNITY IS THERE FOR INITIAL AND FINAL ARGUMENTS? Since the nature of these proceedings is informal, rules concerning opening and final arguments are not necessary. It would of course be helpful if at the outset of the proceedings, the school district could summarize its position and explain what evidence it hopes to introduce in order to support its position. Most of this should become abundantly clear at the pre-hearing conference, and the opening discussion should merely be a summary of what was already agreed to at the pre-hearing conference. There appears to be no great need for the parents to state their position at the outset of the presentation by the school system.

At such time as the school has presented its entire case and the hearing officer has determined that the school system has established a prima facie case in support of its position, the parents should be given an opportunity to summarize their position in order that time may be saved in the presentation of their evidence. If, for example, at the conclusion of the school system's case the parents find themselves in general agreement on all issues even some that have previously been contested by them, they should say so; and the hearing officer should declare those issues resolved so that the remainder of the hearing can focus on those matters which are still at issue.

After each side has presented all of its evidence and the hearing officer is satisfied with respect to the completeness of all the evidence on the contested issues, it would be useful to allow each side a final opportunity to discuss the meaning of the evidence with respect to its position. In a court of law this would be called the final argument. It need not be structured in that fashion. In fact, it may take the form of a dialogue in which the hearing officer asks each of the parties to comment on some of the critical facts still at issue. If there are many facts involved and both sides are represented by counsel, the hearing officer could ask for a submission of final briefs which summarize the facts at issue and discuss their implication in written form.

Normally such a procedure should be avoided; it will not be necessary in the usual case because the number of facts at issue would be relatively few. If either side requests an opportunity to submit arguments summarizing the facts, the hearing officer should decide whether or not to allow that opportunity, together with additional time for the opposing side to comment in light of the issues that will be addressed, fairness to the child and the ultimate delay that this procedure might create. The most important factor in the hearing officer's decision to delay the matter for additional briefs would be the hearing officer's need for additional comment. If after the hearing is held and all the arguments are made, the hearing officer clearly knows what he or she will decide and has a good faith basis for that decision, further briefs will simply clutter the record and create delay. If on the other hand, the issues are complex in their relationship to the law or the facts that must be applied or determined, briefs may serve a useful function.

WHAT IS THE EFFECT OF PRIVILEGED EVIDENCE?

As previously noted, the special education rules provide that Minnesota Statute Chapter 15 is to be consulted regarding evidentiary standards, rules

and regulations applicable to the local hearing. Minnesota Statute 15.0419 provides that hearing officers shall give effect to the rules of privilege recognized by law. These "rules of privilege recognized by law" generally refer to the effect that privileged information has on the conduct of the hearing. For example, a conflict may arise when one party is cross examining another party with respect to information which the second party claims is privileged, and therefore non-disclosable.

There are generally recognized to be two kinds of privileges. The first kind includes the Fifth Amendment privilege against self-incrimination. Regarding this privilege, the hearing officer must generally be aware that the United States Constitution protects any person, a child or an adult, from having to incriminate himself/herself. This means that a person need not confess to a crime or give information which may lead to a conviction. The second kind of privilege relates to confidential communications made in the course of a privileged relationship. Minnesota law recognizes the following privileged relationships in M.S. 595.02:

1. The husband/wife relationship
2. Attorney/client
3. Priest/penitent
4. Physician/patient
5. Psychologist/client

The hearing officer should realize that privileged information resulting from any of these confidential communications may be made non-privileged upon the consent of the client, patient, penitent, or spouse.

In regard to privileges, the major obligation of the hearing officer is to recognize that they

do exist in the law. Whenever a person or his/her representative validly asserts such a privilege, the hearing officer should accept it and move on with the testimony, remembering that he/she must not attribute negative connotations to the fact that the person asserted his or her privilege to remain silent (EDU 129 E.7).

MAY THE HEARING OFFICER ASK QUESTIONS OF THE WITNESSES? The person conducting the hearing may question and cross examine any of the witnesses in order to develop evidence or any other relevant information. The rules specifically provide that, consistent with the rights and procedures set forth therein, nothing in the rules shall limit the right of the person conducting the hearing to question witnesses and request information. However, the hearing officer conducting a local special education hearing does not have the power to subpoena witnesses. Either party may request that various witnesses attend, but the respective witnesses may refuse to attend the hearing and/or testify (EDU 129 F.3).

HOW DOES THE HEARING OFFICER HANDLE WRITTEN DATA AND DOCUMENTS? Since the special education rules require that the evidentiary standards of M.S. Chapter 15 apply, the hearing officer must turn to M.S. sec. 15.0419 to determine the rules regarding such documents. Subdivision 2 of that Section provides that all evidence, including records and documents, must be offered in evidence and made a part of the record in the case. No other factual information of evidence may be considered in determination of the case. Documentary evidence may be received in the form of copies or incorporated in the record by reference. In terms of the special education local hearing, this means that all notices to parents, memoranda, additional material allegations, and any other information requested or presented to the hearing officer must be offered by the presenting party and made a part of the physical record in the case. Remember that, if the school district officials attempt to

offer tests, assessments or other information not included in their "additional material allegations," it is up to the hearing officer to determine whether to allow this additional information to be introduced. In discharging his discretionary powers in this matter, the hearing officer must keep in mind the underlying policy behind the due process hearing notion, namely, that parents should have advance notice of all allegations to which they must be prepared to respond at the hearing.

MAY EITHER THE HEARING OFFICER OR THE PARTIES REQUIRE WITNESSES TO ATTEND THE HEARING? The hearing officer does not have subpoena power to require witnesses to attend the hearing. While either party may request that witnesses attend, any witness may technically refuse to attend the hearing. However, the rules do provide that the parents have the specific right to request the attendance of any official or employee of the school district or any other person who may have evidence relating to the proposed action. In order to give this rule effect, the school system is obliged to make arrangements to permit employees to testify within the time period for holding the hearing. A practical solution to scheduling problems would be to schedule school employees to testify after regular school hours.

WHAT IS THE SIGNIFICANCE OF "BURDEN OF PROOF?" The rules state that the school district shall bear the burden of proof as to all facts and grounds for the proposed action. By sustaining the burden of proof as to all facts, the school district must show that its version of the facts is more persuasive than any other version. Similarly, the fact that the school district bears the burden of proof as to grounds for the proposed action means that the hearing officer's decision as to those grounds must be in favor of the parent unless the school district's evidence is more persuasive than the parents'. If the evidence on both sides is equally persuasive, the decision should be against the party that bears the burden of proof--in this

case, the school district (EDU 129 F.2).

WHAT IF THE HEARING OFFICER NEEDS MORE INFORMATION TO MAKE A DECISION THAN IS PRESENTED BY THE PARTIES AT THE HEARING? At the conclusion of the hearing, the hearing officer might determine that there remains a dispute of fact which, in the interest of fairness and the student's educational needs, requires the testimony of additional witnesses or the provision of additional information. He/she may then request that specific persons give testimony or that additional information be submitted. To illustrate, in cases which involve proposed assessment or reassessment, this may involve calling persons as witnesses who can recommend modifications in the proposed assessment instruments and procedures to insure compliance with the requirement of non-discrimination. In cases which involve proposed placements or provision of services, the hearing officer may determine that alternative educational programs and opportunities other than the proposed action have not been sufficiently considered and more information is needed (EDU 129 E.8.).

FOR HOW LONG MAY THE HEARING OFFICER EXTEND THE HEARING? The hearing officer may continue the hearing for not more than 10 school days to obtain any additional testimony or information necessary to the decision (EDU 129 E.8.).

THE HEARING OFFICER'S DECISION

WHEN MUST THE DECISION BE MADE? The rules require that the hearing officer prepare a written decision within five school days after the hearing. In very rare situations, circumstances may arise which justify failure to meet such a rigid deadline. However, such circumstances must involve a genuinely compelling necessity. Too much other work is never sufficient justification. If the hearing officer is too busy to decide the case

within the required time, he/she should not accept the assignment. Once assigned, compliance with the deadline is a priority (EDU 129 G.).

WHAT IS THE REQUIRED CONTENT OF THE DECISION?

All local decisions must meet the following requirements:

1. Contain written findings of fact and conclusions of law, including a statement of the controlling facts upon which the decision is made in sufficient detail to appraise the parties and the Commissioner of Education of the basis and reason for the decision;
2. State whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district;
3. State the amount and source of any additional district expenditures necessary to implement the decision;
4. Be based on the standards and principles set forth in Minnesota Statutes, sec. 120.17, Subd. 3a and EDU 129 G.1 and 2.
5. Include information detailing the right to appeal the decision, the procedure and time in which to do so, and an appeal form on which parents may identify which appeal option, as set forth in EDU 129 H.2 they request (EDU 129 G.4. and 5.).

WHAT SUBSTANTIVE STANDARDS AND CRITERIA MUST BE FOLLOWED IN MAKING THE DECISION? The standards which the hearing officer is required to follow by statute in making a decision include the five major policies found in M.S. sec. 120.17, subd. 3a and discussed in Chapter II of this manual, plus the specific standards delineated in the rules promulgated by the Department of Education, specifically EDU 129 G.1 and 2. The hearing officer will notice

that the specific standards and criteria found in the rules divide into two categories. The first category involves standards to be used in rendering decisions regarding assessment or reassessment. The second category pertains to decisions regarding educational placement and the provision of special education services.

WHAT ARE THE HEARING OFFICER'S OPTIONS IN RENDERING A DECISION REGARDING ASSESSMENT OR REASSESSMENT? When rendering a decision regarding assessment or reassessment, the hearing officer may (1) sustain (uphold) the school district's proposal, (2) not sustain (deny) the proposal, or (3) modify the school district's proposal for assessment or reassessment (EDU 129 G.1).

UNDER WHAT CIRCUMSTANCES MAY THE HEARING OFFICER SUSTAIN THE SCHOOL DISTRICT'S PROPOSAL FOR ASSESSMENT OR REASSESSMENT? The hearing officer may sustain (uphold) the school district's proposal for assessment or reassessment if he/she determines, on the basis of record, upon a showing by the school district by a preponderance of the evidence (1) that there are facts relating to the child's performance in his/her present education placement or (2) that there are facts presenting handicapping conditions, which indicate reasonable grounds to believe that the educational assessment or reassessment procedures are justified as a step toward the possible initiation of or change in the person's educational placement of program, including special education services which will provide an educational program appropriately suited to the child's needs (EDU 129 G.1.a.).

UNDER WHAT CIRCUMSTANCES MAY THE HEARING OFFICER MODIFY A SCHOOL DISTRICT'S PROPOSAL FOR ASSESSMENT OR REASSESSMENT? If the hearing officer determines, based on all the evidence received at the hearing, that it would be consistent with the principles and policies set forth in the statute and the rules to modify the proposed assessment or reassessment instruments or procedures in order to

insure compliance with the requirement of non-discrimination, he/she has the authority to do so (EDU 129 G.1.b).

WHEN MAY THE HEARING OFFICER DENY THE SCHOOL DISTRICT'S PROPOSAL FOR ASSESSMENT OR REASSESSMENT? The hearing officer may deny the school district's proposed assessment or reassessment of the child if he/she determines on the basis of the record that the school district has not established by a preponderance of the evidence presented that its assessment or reassessment meets the needs of the child within the principles and policies of the state and federal acts. The phrase "preponderance of the evidence" does not mean "beyond a reasonable doubt" but means at least more probable than not or by 51% of the evidence presented. In other words, if the case is so close that he/she cannot decide who is right at that point, the hearing officer must rule against the school system. If, however, it is more probable than not that the school system is correct, the hearing officer must rule in the school's favor. With respect to the need for assessment or reassessment, the school system must establish by a preponderance of the evidence that there is a need to assess or reassess the child. This does not mean that the school system must establish by a preponderance of the evidence that the child indeed has a handicap fitting within the meaning of this statute but "by a preponderance of the evidence" that the child has displayed the signs and symptoms which justify an assessment to determine whether or not there is a handicap within the meaning of the law.

WHAT CHOICES DOES THE HEARING OFFICER HAVE IN RENDERING A DECISION REGARDING EDUCATIONAL PLACEMENT OR SPECIAL EDUCATION SERVICES? In rendering a decision regarding educational placement or services, the hearing officer may sustain, in whole or part, or not sustain the proposed educational placement or services.

WHEN MAY THE HEARING OFFICER SUSTAIN, IN WHOLE OR PART, THE PROPOSED EDUCATIONAL PLACEMENT OR SERVICES? The hearing officer may sustain the proposed placement or services, in whole or part, only if he/she determines on the basis of the record that the school district has satisfied its burden of proof through showing by a preponderance of the evidence, the need for the proposed action, in light of the standards, requirements, and principles of the statute (EDU 129 G.2.a).

WHAT DOES "NEED" MEAN IN THE CONTEXT OF RENDERING A DECISION SUSTAINING A PROPOSED EDUCATIONAL PLACEMENT OR SPECIAL EDUCATION SERVICES? The showing of "need" required of the school district refers to a determination of the educational needs of the child. The rules also impose a presumption that, among alternative programs of education, a handicapped child's educational needs require adherence to the policy of "least restrictive alternative" (EDU 129 G.2.b).

WHAT SPECIAL, ADDITIONAL CRITERIA MUST BE SATISFIED IN ORDER TO SUSTAIN A PROPOSED ACTION THAT WOULD RESULT IN A CHILD BEING REMOVED FROM A REGULAR EDUCATION PROGRAM? The hearing officer may sustain such a proposed action only if and to the extent that he/she finds (1) that the nature or severity of the handicap is such that education in the regular education program with the use of special education services cannot be accomplished satisfactorily, and (2) that there is an indication that the child will be better served with an alternative program or services. This decision must also be made in accordance with the principle of "least restrictive alternative" (EDU 129 G.2.c).

WHAT ELSE MUST THE OFFICER DETERMINE IN RENDERING A DECISION REGARDING EDUCATIONAL PLACEMENT OR SPECIAL EDUCATION SERVICES? The hearing officer must also determine whether school officials have sufficiently considered alternative educational

programs including special education services and opportunities. If, after requesting and receiving any additional evidence by any interested party or person pertaining to the availability and suitability of reasonable and viable educational alternatives, the hearing officer concludes that there are no reasonable or viable educational alternatives, the hearing officer shall so state in his/her findings of fact (EDU 129 G.2.d).

UNDER WHAT CIRCUMSTANCES MUST THE HEARING OFFICER DENY THE SCHOOL DISTRICT'S PROPOSED ACTION REGARDING A CHILD'S EDUCATIONAL PLACEMENT OR SPECIAL EDUCATION SERVICES? The hearing officer must deny the proposed placement or services if he/she determines on the basis of the record that the school district has failed to show by a preponderance of the evidence that the action is "necessary" to the child's education, that the placement proposed is not the least restrictive alternative available, or that there has been insufficient consideration by the school district of alternative programs and services that would serve to otherwise keep the child within the regular classroom. Refer to the previous discussion regarding denial of proposed assessment or reassessment for a discussion of what it means to prove a fact "by a preponderance of the evidence."

WHAT MUST THE HEARING OFFICER DO TO COMPLY WITH THE REQUIREMENT THAT ANY DECISION "BE BASED SOLELY UPON THE EVIDENCE INTRODUCED AND RECEIVED INTO THE RECORD?" The hearing officer should make a conscious effort to ignore any personal knowledge outside of the evidence introduced by the parties at the hearing. The reason for this is that a due process hearing requires that the parties be given notice of all factors that enter into the decision so that they will have an opportunity to examine those factors and respond to those which may be adverse to them. If the hearing officer should bring personal knowledge into the rendering of a decision of which the parties have no notice,

they would be unable to respond to that important evidence. Through careful preparation of factual findings that deal with the contentions actually made by the parties and evidence offered by the parties to support those contentions, the hearing officer will be able to insure that any decision is based solely upon the evidence introduced and received into the record.

WHAT ARE "FINDINGS OF FACT," "CONCLUSIONS OF LAW," AND "CONTROLLING FACTS UPON WHICH THE DECISION IS MADE"; AND WHY ARE THESE REQUIRED TO BE INCLUDED IN A DECISION? The "findings of fact" are the hearing officer's determination of the actual factual situation, distilled from the two versions of the facts presented by the parties. These "findings" should be itemized and should include only facts relevant to the issues being disputed.

The "conclusions of law" are statements of the ultimate results reached by the hearing officer's decision. For example, the hearing officer may conclude that one program is "appropriate" while another is "inappropriate." These conclusions should also be itemized and should relate to the issues in dispute.

The "controlling facts upon which the decision is made" is an itemized list explaining why the hearing officer reached the conclusions he/she did, given the facts which were found to be correct. For example, "controlling facts" explain why the hearing officer has rejected the school district's claim that public school placement would be inappropriate--or why the hearing officer was not persuaded by the parents' evidence regarding the appropriateness of a child's placement (EDU 129 G.4.a).

"Controlling facts" also refers to findings by the hearing officer which are required by the standards prescribed in the rules in order for the hearing officer to arrive at a particular decision. For

example, pursuant to EDU 129 G.2.c., the hearing officer may decide to sustain a proposed action that would result in the child's removal from a regular educational program only when two facts have been established, namely: (1) the nature of the handicap is such that education in the program with the use of special education services cannot be accomplished satisfactorily; and (2) there is indication that the child will be better served with an alternative program or services. These factual findings are the "controlling facts" upon which a decision to sustain such a proposed action must be based. Therefore, these factual findings must be specifically addressed in the hearing officer's written decision.

Findings and conclusions that actually address the parties' contentions instead of merely stating the result serve a number of purposes. First, school district officials and parents are both entitled to assurances that the hearing officer has decided the case that they presented and not something else. They cannot be sure of this unless the hearing officer actually addresses their contentions. Second, preparing a decision which explains a result often reveals aspects of the matter that require further thought and may even require modifications of the result. Therefore, findings and conclusions and controlling facts help a hearing officer to make sure that his/her decision is fair and solidly based on the record. Third, persuasive and well thought out opinions make appeals less likely. However, in the event that a decision is appealed to higher administrative levels or to the courts, findings and conclusions that address the parties' contentions are necessary to demonstrate that there was, indeed, a basis for the decision.

One way of assuring consistency and accuracy in the preparation of the findings of fact and conclusions of law the hearing officer must write is to take a few minutes after the proceeding is complete with respect to the offer of evidence and the final discussions or arguments of the parties

to briefly review with the parties his/her notes as to the facts presented. This will serve two purposes--(1) to insure the accuracy of the hearing officer's own notes and understanding of the facts presented; and (2) to offer the final opportunity for resolution of the problems when the facts of the case become clear.

The hearing officer need not announce his or her decision at the hearing; but, where it would promote settlement and improve the cooperation between parents and school systems, it may be desirable to indicate at least a preliminary conclusion.

WHAT IS THE EFFECT OF THE REQUIREMENTS OF EDU 129 G.4.b. and c.? The state regulations require that the hearing officer's decision must determine whether the special education services appropriate to the child's needs can be reasonably provided within the resources available to the providing district. While the purpose of this requirement is not entirely clear, the requirement should not interfere with the hearing officer's judgment as to what are the special education services appropriate to the child's needs. In other words, the hearing officer makes two findings--(1) the appropriate educational program for the child, and (2) a separate finding as to whether the resources of the school district are adequate to meet those needs.

There also is a requirement under the same provisions that the hearing officer state the amount and source of any additional expenditures necessary to implement the decision. It appears that this is a recommendation which, in those instances where the school district has inadequate funds available, the school district may have to request funds either from state or federal authorities or other private resources. It is necessary to make these findings in order to assist the school district in seeking the additional funds necessary to meet the child's needs.

On several occasions the United States Supreme Court has indicated that fundamental rights should not be denied a citizen merely because of the lack of funds available to governmental agencies. The hearing officer's finding here will be very helpful to the school district in seeking adequate funds to meet the needs of the child but must not be a part of the hearing officer's decision as to what are the needs of the child.

WHAT STEPS SHOULD THE HEARING OFFICER TAKE AFTER WRITING A DECISION? The hearing officer must submit to the local school board the following:

1. His/Her written decision, which includes findings of fact, conclusions of law, controlling facts, and the information detailing the right to appeal;
2. The physical recording of all evidence and testimony received or considered;
3. All documents, data, notices, and memoranda submitted by any person or issued by the hearing officer in connection with the case.

These items comprise "the record" in the case which may be reviewed by the local school board (except when the hearing is conducted by the entire school board) at its option within 10 school days after receipt of the hearing officer's decision. The school board has an additional five school days to review the hearing officer's decision and issue a local written decision (EDU 129 G.3).

At the expiration of the time for school board review (10 school days from the school board's receipt of his/her decision), the hearing officer may serve a copy of his/her decision on the parties (EDU 129 G.5).

The decision of the hearing officer, or in case of school board review the board's decision,

shall be binding on all parties and shall become effective 15 school days after service of the decision, unless the decision is appealed (EDU 129 H.1).

WHAT SHOULD THE HEARING OFFICER DO IF THE SCHOOL SYSTEM OR EXPERTS NEED ALL OR PART OF THEIR FILES BACK IN ORDER TO CONTINUE THEIR DAILY OPERATION WITHIN THE SCHOOL SYSTEM? While it is clear that the evidence of the hearing must be preserved both for review by the local school district and for subsequent review by state hearing officials and even perhaps the courts, a burden is placed on the school system in tying up many of its records that may be related to class and official operations of the district. It is a common practice within the court system and one which can be readily adopted by the hearing officer to require the school system to submit true and complete copies (generally photo-copy) of the original documents. Once the hearing officer is satisfied that the copies are in fact accurate and there is no objection by the parents, the school officials should be allowed to withdraw their original files and documents. At the same time, because of the need to insure that all materials remain intact for subsequent review, it might be helpful not to submit all of the copies of documents to the school board for their initial review. Be sure that they get at least one complete set. The hearing officer should maintain a complete file and set of documents which can be forwarded to the State Commissioner of Education for review if a Chapter 15 hearing is not requested by the parties.

Even in the event that a Chapter 15 hearing is requested by the parties, one or both parties may desire to submit many of the documents to the State Hearing Examiner. Again, the full and complete compilation of these documents will save the parties both time and expense at subsequent proceedings. Therefore, a full set of copies should be maintained by the hearing officer when the opinion is issued. (It is assumed that each party

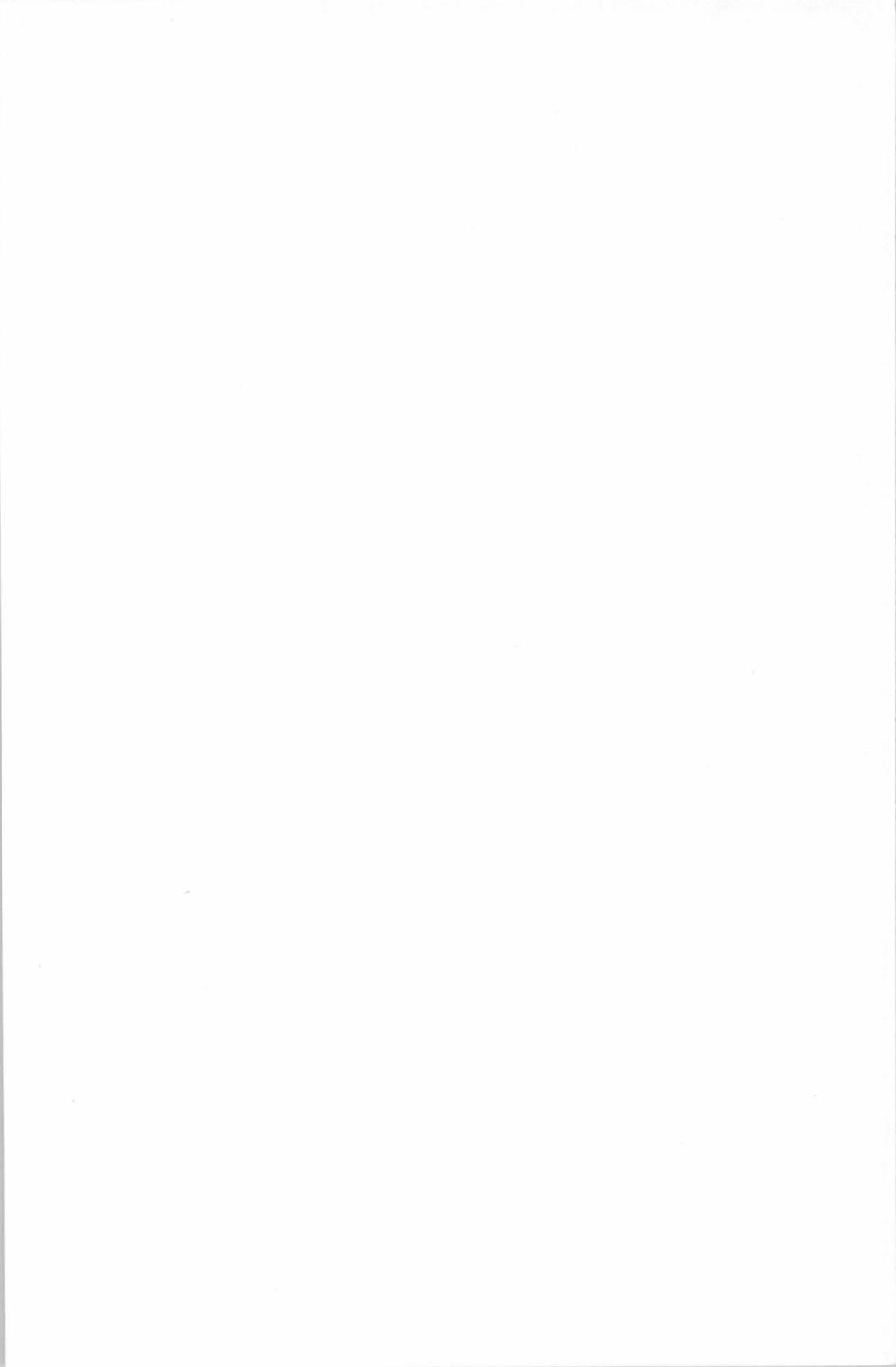
has a full and complete copy of all written documents submitted by themselves and the others. This exchange should be made prior to the hearings in order to insure procedural fairness as noted earlier.) The only documents the parties would not have at the conclusion of a hearing would be those generated at the hearing by the hearing officer (generally only the findings of fact and conclusions of law), and these are to be distributed after the local school board has had an opportunity to review the proceedings. Audio tapes, if that is a means by which the record is preserved, should be maintained carefully by the hearing officer although the parties should be allowed to make copies for their records.

REFERENCES

Diamond, B.M., & Deans, T.S. Standards and procedures for decisions on education of handicapped children: 1976 legislation. Hennepin Lawyer, November-December, 1976, pp. 12-18.

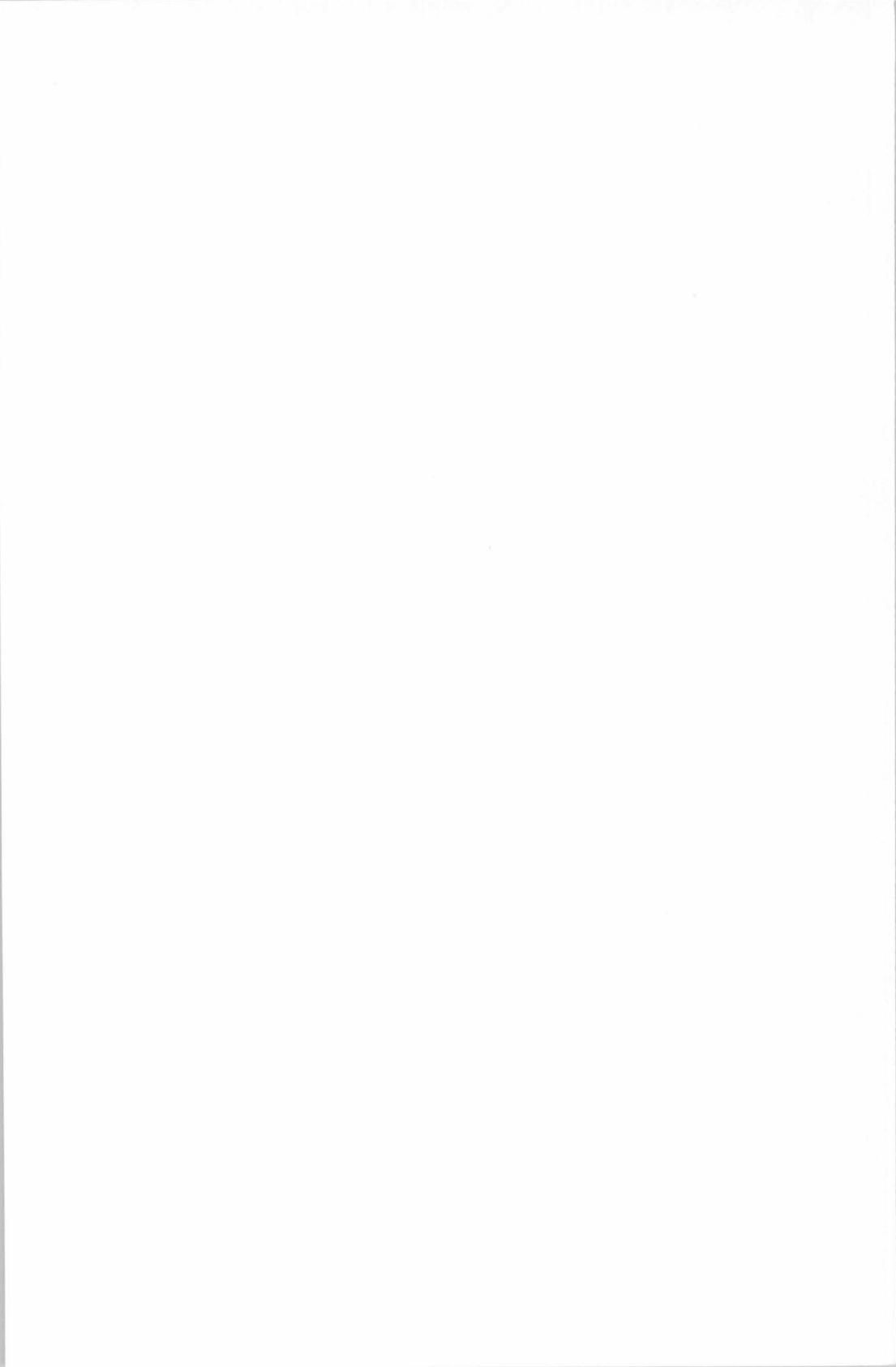
Public Law 93-380. 20 U.S.C. 1401 etc.

Public Law 94-142. 20 U.S.C. 1405 etc.



Appendix A

GLOSSARY OF
SPECIAL EDUCATION
TERMS



Accelerating Behaviors--Behaviors which are increasing in frequency.

Affective Domain--Behaviors which emphasize the attitudes, values, and emotions of the student.

Agnosia--Inability to recognize or interpret visual, auditory, tactile, or kinesthetic information.

Ambulatory--Ability to move about or walk.

Aphasia--Loss of language, resulting in an inability to comprehend spoken or written language or to speak or write.

Apraxia--Inability to evoke language on a voluntary basis: Person is unable to say or write what he intends to express.

Articulation--Ability to speak distinctly and enunciate speech sounds clearly.

Auditory--Sensation of hearing.

Auditory Acuity--Ability to hear an auditory stimulus at various decibel (loudness) levels.

Auditory Blending--Ability to blend single sounds in a word into the entire word.

Auditory Discrimination--Ability to differentiate between sounds.

Auditory Figure-Ground Discrimination--Ability to differentiate between sounds coming from nearby and from a distance.

Auditory Memory--Ability to recall sensations received through hearing.

Auditory Sequential Memory--Ability to reproduce or remember a sequence of auditory units, such as numbers, letters, or words.

Autistic--Childhood personality disorder characterized by self-absorption and withdrawal into fantasy.

Basal (Readers)--A series of reading textbooks used in an elementary school to teach beginning readers.

Behavior Modification--Procedure used to increase desired behaviors and/or decrease undesired behaviors by giving immediate rewards or punishment when that specific behavior occurs. Both social and academic behaviors may be the target of modification.

Behavioral Deficit Teaching--Teacher determines the student's academic and/or social deficits and teaches to correct them.

Behavioral Objective--Social or academic goals that specify the desired behaviors, under what conditions they are to be performed, and at what level of accuracy.

Bilingual--Speaking two languages.

Body Image--Awareness of one's own body and the relationship of body parts to each other and the outside environment.

Braille--System of "touch reading" for those who are visually handicapped and cannot read written script.

Capability--Innate potential to perform a given task.

Cerebral Dominance--One hemisphere of the brain considered dominant over the other. For most people, the left hemisphere is dominant, resulting in right-handedness.

Cerebral Palsy--Nervous system impairment resulting in motor incoordination ranging from mild to severe. Retardation may accompany this disorder.

Chaining--Process of systematically building upon existing knowledge to develop new skills: These new skills then form a foundation for further learning.

Chemically Dependent--Physically or psychologically dependent upon the use of chemicals such as drugs or alcohol.

Closure--Ability to recognize a whole image when parts are missing.

CNS--Central Nervous System.

Cognitive Domain--Behaviors which emphasize the intellectual processes of the student.

Competency-Based Instruction--Desired outcomes of instruction are identified in terms of specific behaviors: The student's progress toward achieving competency in these areas can be observed and measured.

Conceptualization--Process of integrating language, sensation, memory, and perception into concepts.

Concrete Reinforcers--Rewards such as candy, toys, food, or balloons, which are given to children for whom less tangible rewards are not effective.

Contingencies--Conditions under which behavior occurs.

Contingency Contracting--Specific goals are established for a student based upon assessment and observation. A written contract is developed, specifying the goals and identifying the consequences of meeting and not meeting these goals. Both the student and teacher are given copies of the contract.

Convulsive Disorders (Epilepsy)--Condition in which mild to severe convulsive seizures occur at varying frequencies. Medication may result in drowsiness, lack of concentration, or incoordination which may disrupt school work.

Criterion-Referenced Tests--Assessment instruments which yield information about the student's skills in a specific area: scores indicate the percentage of correct responses, but do not translate into grade-level equivalents. These tests indicate the student's mastery of specific skills.

Cross-Modality Perception--Neurological process converting information received through one sense to another within the brain.

Culture-Biased--Assessment and instruction that does not make provision for the child's ethnic background, including inappropriate language and expectations which may make assessment results invalid.

Decelerating Behavior--Behavior that is decreasing in frequency.

Decode--Reading or speaking.

Delinquent--Child who participates in unlawful activities and/or fails to abide by standard school ethics.

Diagnostic Teaching--Teacher evaluates children's learning processes and their specific needs on a day to day basis as he/she works with them.

Diagnostic Test--Test which provides a microscopic view of the component parts of some area of performance. This enables the teacher to analyze the child's functioning within a specific skill area.

Dialect--The varying voice inflections and articulation or vernacular which characterizes the speech of persons from different parts of the country.

Directionality--Discrimination of right and left, up and down, forward and backward, and other directional orientation.

Disadvantaged--Student from an environmental background which is not conducive to developing the behaviors and skills necessary for success in school.

Discrimination--Ability to differentiate between stimuli that are seen, heard, touched, or felt.

Distractibility--Attending to insignificant stimuli rather than to what is currently relevant.

Dominance--Preference for using left or right side of the body (right or left handedness).

Down's Syndrome (Mongolism)--Birth defect resulting in physical abnormalities and retardation ranging from mild to profound.

Dysarthria--Speech articulation impediment: Speech is garbled, unintelligible.

Dyscalculia--Difficulty performing mathematical functions.

Dysgraphia--"Specific Writing Disability:" Inability to copy or reproduce written language.

Dyslexia--Reading disorder characterized by letter reversals and inversions. Child has average or above average learning potential but cannot read at an appropriate age and grade level.

Dysnomia--Difficulty recalling words or naming familiar objects.

Echolalia--Meaningless repetition or speech sounds and words.

Educable Mentally Retarded (EMR)--Intelligence levels slightly below the range considered normal.

Elementary School--School including grades one through six, and perhaps kindergarten.

Emotionally Disturbed (ED)--Socially inappropriate behaviors ranging from mild maladjustment to that including autistic-type features.

Encode--Writing or spelling.

Endogenous--Presumed genetic causes of a particular condition.

Etiology--Cause or origin of a particular condition.

Exceptional Students--That minority of pupils whose educational needs are very different from the majority of same-age students.

Exogenous--Environmental causes of a particular condition.

Expectations--Behaviors regarded as likely to occur.

Expressive Language--Production of spoken or written language for the purpose of communicating with others.

Extinction--Process of decreasing the frequency of a behavior until it no longer occurs.

Extinguished Behavior--Behavior that no longer occurs.

Fluency--Ability to express one's thoughts clearly.

Formal Diagnosis--Educational evaluation by a team of professionals to determine a child's learning strengths and weaknesses.

Functional Analysis of Behavior--Description of behavior which includes the behavior itself, the events which precede and follow that behavior, and the relationship between these events.

Generalization--Process of integrating specific information into more broad concepts or classification.

Handedness--Preference for using either right or left hand.

Hyperactivity--Excessive movement and motor activity usually accompanied by distractibility, short attention span, and learning problems.

Immediate Reinforcement--Immediately rewarding successful accomplishment with praise or extrinsic symbols.

Impulsivity--Behavior characterized by acting on impulse without considering the consequences of one's actions.

Informal Diagnosis--Teacher's evaluation of a child's learning needs based upon working with him/her day to day.

Inner Language--Internalizing and organizing experiences without the use of formal language, as in thinking.

Integrated Program--Educational programs including handicapped and non-handicapped children, as well as minority students in percentages representative of the racial composition of the community in which they live.

Intelligence--Native potential for learning, as measured by a formal assessment instrument.

Intermediate Grades--Grades four through six in an elementary school.

Intermittent Reinforcement--Once a behavior has been learned, reinforcement is given on an intermittent basis, instead of each time it occurs.

Inversion--Reading or writing errors in which the direction of letters are confused: They are written or read upside down.

Itinerant Teacher--Teacher who is assigned to and travels to more than one school.

Junior High School--Usually includes grades seven through nine.

Kinesthetic--Sensation of feeling movement.

Language--Using symbols for the purpose of communication, by speaking, reading, or writing.

Laterality--Awareness and identification of left and right sides of the body.

Learning Disability (LD)--Disorder in speech, language, reading, writing, or mathematics, with normal learning potential. Learning disabled persons are often characterized by inconsistent performance. A child may be reading far below his grade level, but show superior performance in math.

Linguistics--Study of the components of our speech and language system.

Management Aide--Classroom aide employed for the purposes of physical and behavioral management for specific students.

Mastery Learning--Minimum levels of acceptable performance are specified, and students are given as many opportunities as needed to develop the skills necessary to demonstrate their competency in a particular area.

Maturation Lag--Delay in certain specialized aspects of neurological development: Generally in five motor areas such as handwriting or skipping.

Middle School--Usually includes grades five through eight.

Midline--Vertical line which divides the body into right and left sides.

Minimal Brain Dysfunction (MBD)--Mild neurological abnormality resulting in learning problems in children with average intelligence.

Mixed Dominance--Unclear preference for using left or right sides of the body: Child is confused about which hand to write with or which foot to lead with.

Modality--One of the senses through which learning occurs.

Morphology--The "grammar" of our language.

Motivation--Child's desire or willingness to perform a given task.

Motor Coordination--Ability to coordinate movement between various parts of the body, such as touching the nose or tying shoes.

Multisensory--Learning experiences in which several senses are involved.

Negative Reinforcement--Denying privileges, or mild punishment given for failing to comply with specified behavior.

Neurological--Functions of the central nervous system including the cerebral cortex and brain.

Neurological Dysfunction--Malfunction in the brain resulting in difficulty or inability to perform certain tasks.

Norm-Referenced Tests--Assessment instruments which yield grade level or age equivalent scores in a particular area: These identify an individual's performance in relation to the performance of others on the same test.

Observational Recording--Recording the behaviors of a child based upon direct observation.

Outpatient--Under medical or psychological care, but not living within the treatment facility.

Overlearn--Using repetition in teaching until a student's response is automatic or given without hesitation.

Overload--Providing more information than a child can process, resulting in confusion and anxiety.

Perception--Process of organizing and interpreting information obtained through the senses.

Perceptual Constancy--Ability to label an object accurately, despite it's visual variability: for example, recognize and name a "chair," whether viewed from the front, back, up close, from a distance, etc.

Perceptual Motor--Interaction of movement activities with visual, auditory, tactile, or kinesthetic perception.

Perceptual Motor Match--Integration of perception and movement.

Perseveration--Continuation of a behavior beyond the point of appropriateness.

Phonetic Reading--Learning the sounds and symbols (letters) of language to "sound out" unfamiliar words and to spell them.

Phonics--The symbols and their corresponding sounds which are included in written language.

Physically Handicapped--Physical handicaps which may or may not require modifications in educational programming.

Precision Teaching--Process of teaching which includes identification of specific behaviors and measurement and recording the frequency at which they occur.

Primary--Grades one through three in an elementary school.

Proficiency--The degree of skill to which a particular behavior is developed.

Psychodynamic Approach to Remediation--Remediation or treatment in which the focus is upon the unconscious factors affecting a child. This is usually limited to psychological or psychiatric treatment.

Psycholinguistics--Study of the interaction of psychology and language.

Psychological Evaluation--Assessment of child's intelligence for learning, perception, and emotional maturity.

Psychomotor Domain--Behavior which emphasizes the neuromuscular or physical skills of a student.

Rate--Number of times a behavior occurs within a specified interval of time.

Readiness--Learning occurs when children have the physical skills needed for the task, are interested in the task, and recognize the purpose of the task.

Reauditorization--Ability to recall a sound or word.

Receptive Language--Language that is received by another, such as listening or reading.

Reinforcement--Behavior which increases the possibility that a certain response to a given stimulus will occur by giving or withholding a reward when that response does or does not occur.

Remedial Education--Instruction for the purpose of decreasing the severity or eliminating existing handicaps: for example, providing reading instruction to a child who is reading below grade level.

Response-Cost--After an inappropriate behavior occurs, the student must relinquish a reward he has already earned.

Reversals--Reading or writing error in which a letter or word is perceived in reversed or backward order: Read "was" as saw.

Revisualization--Ability to recall the visual image of a picture, word, or sound.

Secondary School--Usually includes grades seven through twelve.

Sensation--Feeling resulting from activation of sensory-neural structures.

SERT: Special Education Resource Teacher--A teacher certified in one or more areas of special education who works as a resource teacher rather than as a teacher of a self-contained classroom.

Social Reinforcement--Using peers or social praise to reinforce occurrences of desired behavior.

Socially Maladjusted--Inappropriate social behaviors or poor peer relationships.

Soft Neurological Signs--Observable symptoms of mild neurological abnormalities, such as clumsiness.

Spatial Orientation--Ability to locate oneself in space, involving concepts such as in, on, under, over, left, right, etc.

Special Learning and Behavior Problems (SLBP)--Children characterized by having a learning disability and/or inappropriate social behaviors.

Specific Language Disability (SLD)--A specific dysfunction in written or oral language. This is often included within the broader classification of "learning disabilities."

Speech--Articulation of language sounds for the purpose of communication.

Speech Impaired--Disorder in the area of oral language, such as stuttering.

Standard English--Oral and written language which adheres to recommended grammatical usage.

Strauss Syndrome--"Hyperactivity": Excessive movement and motor activity, usually accompanied by distractibility, short attention span, and learning problems.

Superior Cognitive Abilities--"Gifted": Having intelligence above the range considered "normal," or demonstrating superior achievement.

Syllabication--Dividing words into syllables.

Tactile--Sensation of touching.

Targeted/Pinpointed Behaviors--Specific behaviors identified as the focus of a behavior modification program.

Temporal Relationships--Relationships involving the concept of time, such as before, after, today, yesterday, etc.

Time-Out--Procedure for dealing with failure to respond appropriately: Child is temporarily removed from a situation that he/she feels is rewarding.

Token Economies--Behavior modification program in which tokens are given in exchange for occurrences of desired behaviors. Tokens may be saved and ex-

changed for other reinforcers which are rewarding to that child.

Tracking--Placing students with similar learning ability in the same class.

Trainable Mentally Retarded (TMR)--Retardation more severe than that in the "educable mentally retarded" range.

Transfer--Applying skills already learned to new and varied situations.

Validity--An indication of whether a test measures what it is supposed to measure; for example, does a history test measure attainment of concepts relevant to history, or does it measure reading skill?

Visual--Sensation of seeing.

Visual Acuity--Degree to which objects are seen accurately.

Visual Discrimination--Ability to see and identify differences in objects, forms, letters, or words.

Visual Figure-Ground Discrimination--Ability to differentiate an object from the background surrounding it.

Visual Memory--Ability to recall information received through the eyes.

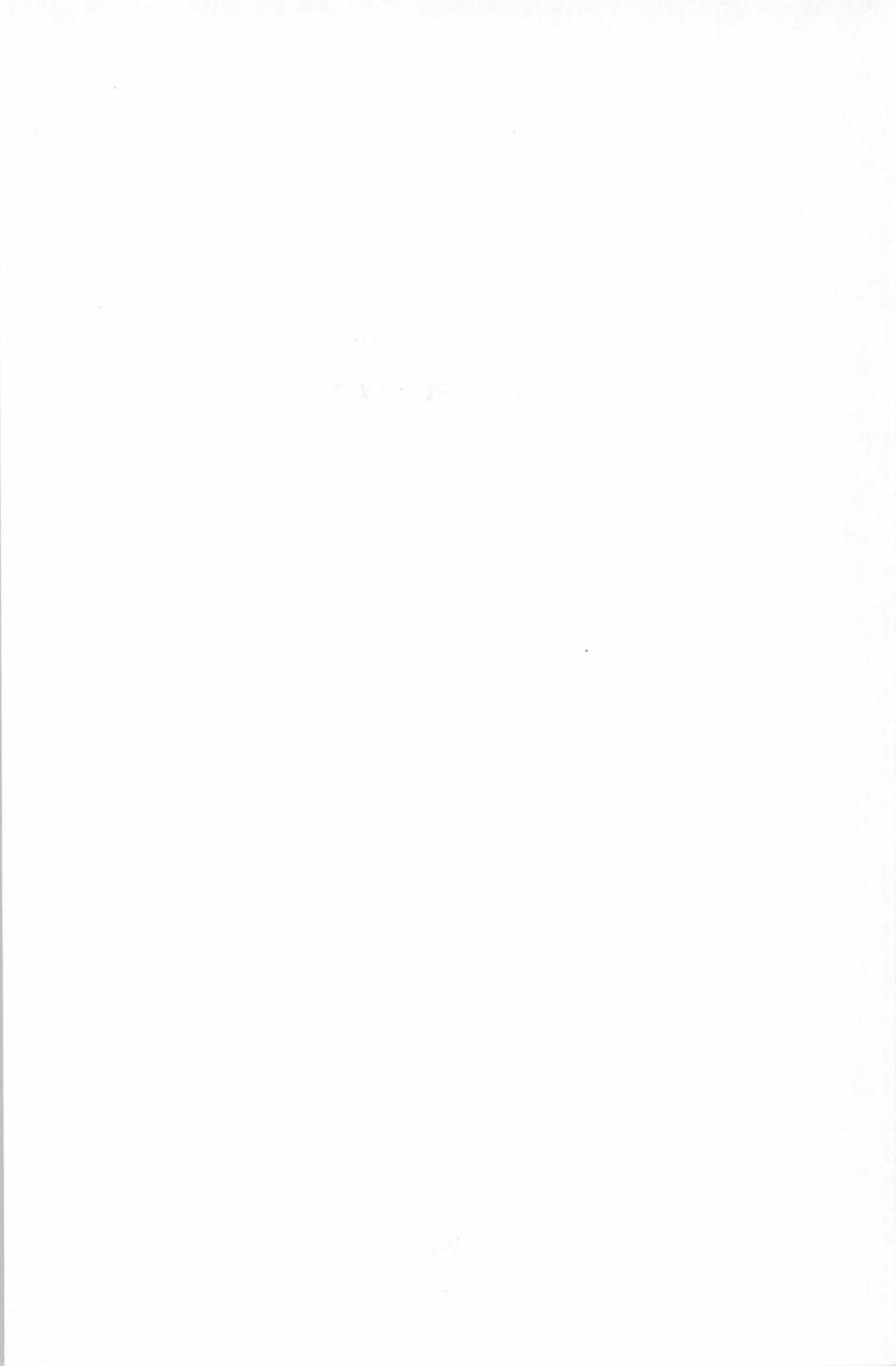
Visual-Motor Coordination--The coordination of vision with movement, such as tracing or cutting.

Visual Sequential Memory--Ability to recall letters or words presented in a visual sequence.

Vocational Planning--Providing job related programs for older students.

Appendix B

TESTS USED FOR
ASSESSMENT AND DIAGNOSIS



NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Adaptive Behavior Scales	Ages 3-12, 13-adult	Personality	Independent Functioning, Physical Development, Economic Activity Language Development, Number and Time Concepts, Occupation-- Domestic, Occupation--General, Self-Direction, Responsibilities, Socialization, Violent and Destructive Behavior, Antisocial Behavior, Rebellious Behavior, Untrustworthy Behavior, With- drawal, Stereotyped Behavior and Odd Mannerisms, Inappropriate Interpersonal Manners, Inappropriate Vocal Habits, Unacceptable or Eccentric Habits, Self-Abusive Behaviors, Hyperactive Ten- dencies, Sexually Aberrant Behavior, Psychological Disturbances, Use of Medication
Arthur Point Scale of Performance	Ages 4.5-5.5, 5.6-adult	Intelligence	
Assessment of Children's Language Comprehension	Ages 2-6	Listening Comprehension	Vocabulary, 2 word phrases, 3 word phrases, 4 word phrases
Beery Buktenica Develop- mental Test of Visual Motor Integration	Ages 2-8	Sensory-Motor Integration	
Bender Visual Motor Gestalt Test	Ages 4 and older	Personality	
Boehm Test of Basic Concepts	Kindergarten to Grade 2	Intelligence	
Child Behavior Rating Scale	Kindergarten to Grade 3	Personality	Teachers or parents rate adjustment in the areas of Home, Self, Social, School, and Physical
Columbia Mental Maturity Scale	Ages 3.5-9	Intelligence	
Deep Test of Articulation	Reading Level 2 and under, and 3 and over	Speech	Total Verbal Ability

NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Detroit Tests of Learning Aptitude	Ages 3 and over	Intelligence	Pictorial Absurdities, Verbal Absurdities, Pictorial Opposites, Verbal Opposites, Motor Speed and Precision, Auditory Attention Span, Oral Commissions, Social Adjustment, Visual Attention Span, Orientation, Free Association, Memory for Designs, Number Ability, Broken Pictures, Oral Directions, Likenesses and Differences, Total
Differential Aptitude Test	Grades 8-12 and adults	Intelligence	Verbal Reasoning, Numerical Ability, Abstract Reasoning, Clerical Speed and Accuracy, Mechanical Reasoning, Space Relations, Language Usage, Total Scholastic Aptitude
Durrell Analysis of Reading Difficulties	Grades 1-6	Reading	Oral Reading, Silent Reading, Listening, Words Flashed, Word Analysis, Spelling, Handwriting
Electroencephalogram (EEG)	All ages	Medical	Detects abnormalities in brain waves, used to diagnosis neurological damage
First Grade Screening Test	First Grade entrants	Learning Disabilities Screening	Intellectual Deficiency, Central Nervous System Dysfunction, Emotional Disturbance
Frostig Developmental Test of Visual Perception	Ages 6-12	Sensorymotor	Eye Motor Coordination, Figure-Ground, Form Constancy, Position in Space, Spatial Relations
Full Range Picture Vocabulary Test	Ages 2 and over	Intelligence	
Gallistel-Ellis Phonic Reading and Spelling Test	Grades 1-12	Reading and Spelling	Reading Phonetically Regular Words, Reading Phonetically Irregular Words, Spelling Phonetically Regular Words, Spelling Phonetically Irregular Words, Sounds
Gates-McKillop Reading Test	Grades 2-6	Reading	Omissions, Additions, Repetitions, Mispronunciations, Oral Reading Total, Words--Flash Presentation, Words--Untimed Presentation, Phrases--Flash Presentation, Recognizing and Blending Common Word Parts, Giving Letter Sounds, Naming Capital Letters, Naming Lower Case Letters, Recognizing Visual Form of Sounds, Auditory Blending, Spelling, Oral Vocabulary, Syllabication, Auditory Discrimination

NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Gates-McGinitie Reading Test	Grades 1-9	Reading	Vocabulary, Comprehension
Gessell Developmental Schedules	4 weeks-6 years	Intelligence	
Goldman-Fristoe Test of Articulation	Ages 2 and over	Speech	Sounds in Words, Sounds in Sentences, Stimulability
Goodenough-Harris Drawing Test	Ages 3-15	Intelligence	
Gray Oral Reading Test	Ages 5-16 and adults	Reading	
Harris Tests of Lateral Dominance	Ages 7 and over	Sensory-Motor	Knowledge of Right and Left, Hand Dominance, Eye Dominance, Foot Dominance
Illinois Tests of Psycholinguistic Ability (ITPA)	Ages 2-10	Learning Disabilities	Auditory Reception, Visual Reception, Visual Sequential Memory, Auditory Association, Auditory Sequential Memory, Visual Association, Visual Closure, Verbal Expression, Grammatic Closure, Manual Expression, Auditory Closure, Sound Blending, Total
KEY Diagnostic Math Test	Kindergarten to Grade 7	Mathematics	Content (Numeration, Fractions, Geometry, Symbols), Operations (Addition, Subtraction, Multiplication, Division, Mental Computation, Numerical Reasoning), Applications (Word Problems, Missing Elements, Money, Measurement, Time), Total
Kindergarten Auditory Screening Test (KATZ)	Kindergarten and Grade 1	Speech and Hearing	Speech in Environmental Noise, Phonemic Synthesis, Same/Different
Kindergarten Evaluation of Learning Potential	Kindergarten	Reading Readiness	Association Learning, Conceptualization, Creative Self-Expression, Total
Malcomesius Screening Tests for Identifying Children with Specific Learning Disability	Grade 5-8	Learning Disability	Listening Comprehension, Visual Copying Far Point, Visual Copying Near Point, Visual Perception, Memory, Visual Discrimination, Visual Perception in Association with Kinesthetic Memory, Auditory Recall, Auditory Perception of Beginning and Ending Sounds, Auditory Association

NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Metropolitan Achievement Tests	Grade 1-12	Achievement	These tests measure achievement in academic areas appropriate for grades one through twelve.
Northwestern Syntax Screening Test	Ages 3-7	Speech	Receptive Language, Expressive Language
Peabody Individual Achievement Test (PIAT)	Kindergarten to Grade 12	Achievement and Intelligence	Mathematics, Reading Recognition, Reading Comprehension, Spelling, General Information, Total
Peabody Picture Vocabulary Test (PPVT)	Ages 2.5-18	Intelligence	
Porteus Mazes	Ages 3 and over	Intelligence	Quantitative and Qualitative Scores
Pre-Reading Screening Procedures	Grade 1 Entrants	Reading Readiness, Learning Disability	Visual, Visual-Motor, Auditory Discrimination, Letter Knowledge, Individual Auditory Tests
Pre-School Language Scale	Ages 2-6	Hearing	Auditory Comprehension, Verbal Ability, Total
Purdue Perceptual Motor Survey	Ages 6-10	Sensory-Motor	Identifies children whose perceptual-motor skills are inadequate for achieving academic success: Balance and Posture, Body Image, Body Image Differentiation, Perceptual-Motor Match, Rhythmic Writing, Ocular Control, Form Perception
Rorschach Psycho-diagnostic Plates	Ages 3 and over	Personality	
Rotter Incomplete Sentences Blank	Grade 9-12, 13-16	Personality	
Spache Diagnostic Reading Scales	Grades 1-6	Reading	Word Recognition, Instructional Reading Level (Oral Reading), Independent Reading Level (Silent Reading), Rate of Silent Reading, Potential Reading Level (Auditory Comprehension), plus 8 Phonic Tests

NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Slingerland Screening Tests for Identifying Children with Specific Language Disability	Grade 1-4	Learning Disabilities	Visual Copying Far Point, Visual Copying Near Point, Visual Perceptual Memory, Visual Discrimination, Visual Perception in Association with Kinesthetic Memory, Auditory Recall, Auditory Perception of Beginning and Ending Sounds, Auditory Association
Slossen Intelligence Test	2 weeks to adult	Intelligence	
Slossen Oral Reading Test	Grade 1-8 and High School	Reading	
SRA Achievement Tests	Grade 1-9	Achievement	Reading, Language Arts, Mathematics, Composit, Social Studies, Science, Use of Sources
Stanford-Binet Intelligence Test	Ages 2 and over	Intelligence	
Stanford Diagnostic Arithmetic Test	Ages 2.5-4.5 Ages 4.5-8.5	Mathematics Mathematics	Concepts, Computation, Number Facts Concepts, Computation, Common Fractions, Decimal Fractions and Percentages, Number Facts
Test of Auditory Discrimination: Goldman-Fristoe-Woodcock	Ages 4 and over	Speech-Sound Discrimination	Scores under two conditions: Quiet and Background Noise
Thematic Apperception Test (TAT)	Ages 4 and over	Personality	
Valett Developmental Survey of Basic Learning Abilities	Ages 2-7	Aptitude	Motor Integration and Physical Development, Tactile Discrimination, Auditory Discrimination, Visual-Motor Coordination, Visual Discrimination, Language Development and Verbal Fluency, Conceptual Development
Vineland Social Maturity Scale	Birth-adult	Personality	

NAME OF TEST	AGES	TYPE OF TEST	SUBTESTS
Wechsler Adult Intelligence Scales (WAIS)	Adult (16 and over)	Intelligence	Verbal, Performance, Full Scale
Wechsler Intelligence Scales for Children (WISC)	Ages 5-15	Intelligence	Verbal (Information, Comprehension, Arithmetic, Similarities, Vocabulary, Digit Span), Performance (Picture Completion, Picture Arrangement, Block Design, Object Assembly, Coding), Full-Scale
Wechsler Preschool and Primary Scale of Intelligence	Ages 4-6.5	Intelligence	Verbal (Information, Comprehension, Arithmetic, Similarities, Vocabulary, Digit Span), Performance (Picture Completion, Picture Arrangement, Block Design, Object Assembly, Coding), Full-Scale
Wepman Auditory Discrimination Test	Ages 5-8	Hearing	
Wide Range Achievement Test (WRAT)--JASTAK	Ages 5-12 and 12 and over	Achievement	Spelling, Arithmetic, Reading
Woodcock Reading Mastery Tests	Kindergarten to Grade 12	Reading	Letter Identification, Word Identification, Word Attack, Word Comprehension, Passage Comprehension, Total. In addition, there are four scores in each area, including, Easy Reading (96% mastery), Reading Grade Level (90% mastery), Failure Reading Level (75% mastery), and Relative Mastery of Grade Level

Appendix C

MINNESOTA EDUCATION
STATUTES



DEPARTMENTS, AGENCIES

Education

CHAPTER 120

DEFINITIONS; GENERAL PROVISIONS

Sec.		Sec.	
120.01	Citation, education code.	120.59	Flexible school year programs; purpose.
120.02	Definitions.	120.60	Definition.
120.03	Handicapped children, defined.	120.61	Establishment of program.
120.05	Public schools.	120.62	Division of children into groups.
120.06	Admission to public school.	120.63	Hearing.
120.065	Farm in more than one district, attendance option.	120.64	Assignment of teachers.
120.07	Attendance.	120.65	Establishment and approval.
120.08	Attendance; high school in adjoining state.	120.66	Powers and duties of the state board.
120.065	School census.	120.67	Termination of program.
120.10	Compulsory attendance.	120.71	Minnesota public school fee law, citation.
120.11	School boards and teachers, duties.	120.72	General policy.
120.12	Compulsory attendance; how enforced.	120.73	Authorized fees.
120.13	Duties and powers of labor and industry department.	120.74	Prohibited fees.
120.14	Truant officers.	120.75	Hearing.
120.15	Schools for truant and delinquents.	120.76	Post-secondary instructional programs.
120.16	Investigation and aid to children.	120.77	Fuel conservation.
120.17	Handicapped children.	120.78	Fuel conservation reports.
120.171	Expenditures limited to meet federal requirements.	120.80	Early graduation.

120.01 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.01 CITATION, EDUCATION CODE. Chapters 120 to 129 may be cited as the education code.

[Ex1959 c 71 art 1 s 1; 1975 c 162 s 1]

120.02 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.02 DEFINITIONS. Subdivision 1. For the purposes of this chapter the words, phrases and terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. "Commissioner" means the commissioner of education.

Subd. 3. "District" means a school district.

Subd. 4. "Board" means a school board.

Subd. 5. "County board" means a board of county commissioners.

Subd. 6. "Superintendent" means superintendent of the school district involved.

Subd. 7. [Repealed, 1975 c 162 s 42]

Subd. 8. "Department" means state department of education.

Subd. 9. "Auditor" means county auditor.

Subd. 10. [Repealed, 1975 c 162 s 42]

Subd. 11. "Commission" means state advisory commission on school reorganization.

Subd. 12. "State board" means state board of education.

Subd. 13. A common district is any school district validly created and existing as a common school district or joint common school district as of July 1, 1957, or pursuant to the terms of the education code.

Subd. 14. An independent district is any school district validly created and existing as an independent, consolidated, joint independent, county or a ten or more township district as of July 1, 1957, or pursuant to the education code.

Subd. 15. A special district is a district established by a charter granted by the legislature or by a home rule charter including any district which is designated a special independent school district by the legislature.

Subd. 16. [Repealed, 1971 c 25 s 30]

Subd. 17. [Repealed, 1975 c 162 s 42]

Subd. 18. School district tax is the tax levied and collected to provide the amount of money voted or levied by the district or the board for school purposes.

[Ex1959 c 71 art 1 s 2]

120.021 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.023 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.03 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.03 HANDICAPPED CHILDREN, DEFINED. Subdivision 1. Every child who is deaf, hard of hearing, blind, partially seeing, crippled or who has defective speech or who is otherwise physically impaired in body or limb so that he needs special instruction and services, but who is educable, as determined by the standards of the state board is a handicapped child.

Subd. 2. Every child who is mentally retarded in such degree that he needs special instruction and services, but who is educable as determined by the standards of the state board, is a handicapped child.

Subd. 3. Every child who by reason of an emotional disturbance, or a learning disability, or a special behavior problem needs special instruction and services, but who is educable, as determined by the standards of the state board is a handicapped child.

Subd. 4. Every child who is mentally retarded in such degree that he requires special training and services and who is trainable as defined by standards of the state board is a trainable handicapped child.

[Ex1959 c 71 art 1 s 3; 1969 c 981 s 1; 1975 c 432 s 7]

120.04 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.04 MS 1967 [Repealed, 1969 c 981 s 7]

120.05 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.05 PUBLIC SCHOOLS. Subdivision 1. **Classification.** For the purpose of administration the state board shall classify all public schools under the following heads, provided the requirements in subdivision 2 are met:

- (1) Elementary,
- (2) Middle school,
- (3) Secondary,
- (4) Vocational center school,
- (5) Area vocational-technical school.

Subd. 2. **Definitions.** (1) Elementary school means any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades one through six or any portion thereof and staff meeting the standards established by the state board of education.

(a) The state board of education shall not close a school or deny any state aids to a district for its elementary schools because of enrollment limitations classified in accordance with the provisions of subdivision 2, clause (1).

(2) Middle school means any school other than a secondary school giving an approved course of study in a minimum of three consecutive grades above fourth but below tenth with building, equipment, courses of study, class schedules, enrollment and staff meeting the standards established by the state board of education.

(3) Secondary school means any school with building, equipment, courses of study, class schedules, enrollment of pupils ordinarily in grades seven through twelve or any portion thereof and staff meeting the standards established by the state board of education.

(4) A vocational center school is one serving a group of secondary schools with approved areas of secondary vocational training and offering vocational secondary and adult programs necessary to meet local needs and meeting standards established by the state board of education.

(5) An area vocational-technical school is a school organized according to section 121.21, and standards established by the state board of education.

[Ex1959 c 71 art 1 s 5; 1961 c 562 s 7; 1971 c 25 s 31; 1971 c 118 s 1]

120.06 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.06 ADMISSION TO PUBLIC SCHOOL. Subdivision 1. Age limitations; pupils. All schools supported in whole or in part by state funds are public schools. Admission to a public school is free to any person who resides within the district which operates the school, who is under 21 years of age, and who satisfies the minimum age requirements imposed by this section. Notwithstanding the provisions of any law to the contrary, the conduct of all students under 21 years of age attending a public secondary school shall be governed by a single set of reasonable rules and regulations promulgated by the local board of education. No person shall be admitted to any public school after September 1, 1971, (1) as a kindergarten student, unless he is at least five years of age on September 1 of the calendar year in which the school year for which he seeks admission commences; or (2) as a first grade student, unless he is at least six years of age on September 1 of the calendar year in which the school year for which he seeks admission commences or has completed kindergarten; except that any school board may establish a policy for admission of selected pupils at an earlier age.

Subd. 2. Rules of state board. The state board of education shall promulgate rules relative to the time schedule for implementation of the uniform minimum school age entrance requirements in subdivision 1.

[Ex1959 c 71 art 1 s 6; 1967 c 173 s 1; 1974 c 529 s 1]

120.065 FARM IN MORE THAN ONE DISTRICT, ATTENDANCE OPTION.

When a pupil resides on a farm and the land comprising the farm is included in more than one district the pupil may attend the school of either district providing that if the pupil is to attend the school in the district of which he is not a resident he must first have the approval of the commissioner. A farm for the purposes of this section encompasses all tracts of land owned or operated as one farm, including a city residence, and which includes not less than 40 acres in the district the pupil wishes to attend, providing no such tract is more than two miles distant from the tract of land on which the pupil resides. In the payment of state aid, the district in which the pupil attends shall be considered the district of his residence. Transportation may be provided by the district in which the child attends under the provisions of this section.

[1967 c 626 s 1; 1969 c 242 s 1; 1973 c 123 art 5 s 7]

120.07 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.07 ATTENDANCE. Subdivision 1. Right to attend adjoining district. The children of any person not resident within the limits of any incorporated city, and residing more than two miles by the nearest traveled road from the school house in the district where such children reside, are authorized to attend school at a school in an adjoining district nearer to such residence than the school in the district where such children reside, upon such reasonable terms as shall be fixed by the board of such adjoining district, upon application of the parents or guardian of such children. This section shall not apply where transportation is furnished by the home district.

Subd. 2. Tuition; how determined and paid. The board of the child's resident district shall pay tuition to the district in which the child is attending. If the boards of the districts involved do not agree upon the tuition rate for instruction of the non-resident child, either board may apply to the commissioner to fix such rate giving ten days' notice to the other board and upon the expiration of ten days after such notice, the commissioner shall make an order binding on both districts fixing such tuition rate.

[Ex1959 c 71 art 1 s 7; 1973 c 123 art 5 s 7]

120.08 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.08 ATTENDANCE; HIGH SCHOOL IN ADJOINING STATE. Subdivision 1. Any person under 21 years of age residing in any district not maintaining a secondary school who has successfully completed the elementary school may, with the consent of the board of such district, attend any secondary school of a district in an adjoining state willing to admit him, which secondary school is nearer to his place of residence than any duly established secondary school in Minnesota, the distances being mea-

sured by the usual traveled routes. Any tuition charged by the district so attended shall be paid to the district attended by the district in which the person resides. This tuition shall not be more than (a) such district charges non-resident pupils of that state, (b) the average maintenance cost exclusive of transportation per pupil unit in average daily membership in the school attended, nor (c) the tuition rate provided for in section 124.18, subdivision 2.

Any pupil attending a secondary school in an adjoining state for whom tuition is paid from district funds is entitled to transportation services in accordance with Minnesota Statutes.

Subd. 2. A school board in a district maintaining a secondary school may by a majority vote provide for the instruction of any resident pupil in a school district in an adjoining state nearer to his place of residence than the school of his resident district, the distances being measured by the usual traveled routes. Any charge for tuition by the district so attended or for transportation shall be paid by the pupil's resident district provided that such pupil shall continue to be a pupil of the district of his residence for the payment of apportionment and other state aids.

[Ex1959 c 71 art 1 s 8; 1961 c 562 s 8; 1975 c 162 s 2]

120.09 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.09 MS 1967 [Repealed, 1969 c 1082 s 2]

120.095 SCHOOL CENSUS. Subdivision 1. Except as otherwise provided in this section, the school board of each district shall cause to be taken an enumeration, called the school census of all persons under 21 years of age on September 1 during the year the census is taken. The school census shall show the name and date of birth of each person required to be enumerated and the name and address of his parent, guardian, or other person having charge of such child, and such other data as the state board may require.

Subd. 2. The school census shall be taken by the clerk of the board, or by some other person appointed by the board. Such person taking such census shall certify to the board the correctness of the enumeration and the information therein contained. The board shall fix the compensation for such work. Each child shall be counted in only one district, being that in which he resides on September 1 and the enumeration period shall be from September 1 through October 1.

Subd. 3. The school census shall be taken each year during the period September 1 through October 1 and reported in summary form to the department of education before October 15 of each census year in all districts except as follows:

In districts including cities of the first class and other school districts in which the district boundaries coincide with those of federal census tracts the decennial and middecade census tabulation made by the federal bureau of the census may be substituted for the prescribed enumeration.

Subd. 4. The school board of any district, at its option, may establish a permanent and continuing census or enumeration that will keep current the data required by subdivisions 1 to 3.

Subd. 5. The school census shall include an enumeration of children requiring special education by categories as designated by the state board and as required for reports deemed necessary by the commissioner of education.

[1969 c 1082 s 1; 1971 c 84 s 1,2]

120.10 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.10 COMPULSORY ATTENDANCE. Subdivision 1. **Ages and term.** Every child between seven and 16 years of age shall attend a public school, or a private school, for a minimum term, as defined by the state board, during any school year. No child shall be required to attend a public school more than a maximum term, as defined by the state board, during any school year.

Subd. 2. **School.** A school, to satisfy the requirements of compulsory attendance, must be one in which all the common branches are taught in the English language, from textbooks written in the English language, and taught by teachers whose qualifications are essentially equivalent to the minimum standards for public school teachers of the same grades or subjects. A foreign language may be taught when such language is an elective or a prescribed subject of the curriculum, but not to exceed one hour in each day.

Subd. 3. **Legitimate exemptions.** Such child may be excused from attendance upon application of his parent, guardian, or other person having control of such child, to any member of the board, truant officer, principal, or superintendent, for the whole or any part of such period, by the board of the district in which the child resides, upon its being shown to the satisfaction of such board:

(1) That such child's bodily or mental condition is such as to prevent his attendance at school or application to study for the period required; or

(2) That such child has already completed the studies ordinarily required in the tenth grade; or

(3) That it is the wish of the parent, guardian, or other person having control of such child, that he attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction conducted and maintained by some church, or association of churches, or any Sunday school association incorporated under the laws of this state, or any auxiliary thereof, such school to be conducted and maintained in a place other than a public school building, and in no event, in whole or in part, at public expense; provided, that a child may be absent from school on such days as the child attends upon instruction according to the ordinances of some church.

Provided that students in regular attendance at the University of Minnesota Northwest School of Agriculture at Crookston, Minnesota, and the University of Minnesota Southern School of Agriculture at Waseca, Minnesota, during the fall and winter terms may be excused from attendance between April 1 and October 1 in any year.

Subd. 4. **Issuing and reporting excuses.** The clerk or any authorized officer of the school board shall issue and keep a record of such excuses, under such rules as the board may from time to time establish. Each excuse issued shall state the reason for such excuse and a copy of each excuse issued under subdivision 3, clause (1) shall be forwarded to the commissioner of education within 30 days following issuance.

[*Ex1959 c 71 art 1 s 10 subds 2,3; 1961 c 567 s 1; 1967 c 82 s 1; 1969 c 161 s 1,2; 1974 c 326 s 1; 1975 c 162 s 3*]

120.11 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.11 **SCHOOL BOARDS AND TEACHERS, DUTIES.** It shall be the duty of each board through its clerk or other authorized agent or employee, to report the names of children between six and 16 years of age, with excuses, if any, granted in such district, to the superintendent or principals thereof, within the first week of school. Subsequent excuses granted shall be forthwith reported in the same manner. The clerk or principal shall provide the teachers in the several schools under his supervision, with the necessary information for the respective grades of school, relating to the list of pupils with excuses granted. On receipt of the list of such pupils of school age and the excuses granted, the clerk or principals shall report the names of children not excused, who are not attending school, with the names and addresses of their parents, to the district superintendent within five days after receiving the report.

[*Ex1959 c 71 art 1 s 11; 1975 c 162 s 4*]

120.12 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.12 **COMPULSORY ATTENDANCE; HOW ENFORCED.** Subdivision 1. **Notice to parents and county attorney.** The district superintendent shall forthwith notify the parent, guardian, or person in charge to send such child, of whose unexcused absence he has been informed, to school and upon his neglect or refusal to comply with the notification, the district superintendent shall, upon receipt of information of such non-compliance, notify the county attorney of the facts in each case. Notification by registered mail shall be considered sufficient notice.

Subd. 2. **Private schools.** It shall be the duty of the principal, teacher, or other person in charge of any private school to make reports at such times and containing such information as is herein required respecting public schools. Such report shall be made to the district superintendent in whose district such private school is located.

Subd. 3. **Criminal complaint; prosecution.** The district superintendent shall make and file a criminal complaint against persons neglecting or refusing to comply with the provisions of law relating to the sending of children to school, in any court in the county exercising criminal jurisdiction and, upon the making of such complaint, a warrant shall be issued and proceedings and trial be had as provided by law in cases

of misdemeanor and shall be prosecuted by the county attorney of the county wherein the offense is committed.

[Ex1959 c 71 art 1 s 12; 1975 c 162 s 5]

120.13 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.13 DUTIES AND POWERS OF LABOR AND INDUSTRY DEPARTMENT.

The department of labor and industry and its assistants shall assist in the enforcement of the provisions of law relating to compulsory school attendance and have authority to examine the excuses granted thereunder, to make investigation into the causes for which excuses have been granted, and to revoke and cancel any that may be found to be granted without proper or sufficient cause.

[Ex1959 c 71 art 1 s 13; Ex1967 c 1 s 6]

120.14 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.14 TRUANT OFFICERS. The board of any district may appoint and remove at pleasure truant officers, who shall investigate all cases of truancy or non-attendance at school, make complaints, serve notice and process, and attend to the enforcement of all laws and school regulations respecting truant, incorrigible, and disorderly children and school attendance. When any truant officer learns of any case of habitual truancy or continued non-attendance of any child required to attend school he shall immediately notify the person having control of such child to forthwith send to and keep him in school. He may arrest without warrant and take to school any such child and shall act under the general supervision of the board, or, when directed by the board, under that of the district superintendent.

[Ex1959 c 71 art 1 s 14]

120.15 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.15 SCHOOLS FOR TRUANTS AND DELINQUENTS. Boards may maintain ungraded schools for the instruction of children of the following classes between seven and 16 years of age:

(1) Habitual truants;

(2) Those incorrigible, vicious, or immoral in conduct; and

(3) Those who habitually wander about the streets or other public places during school hours without lawful employment.

All such children shall be deemed delinquent and the board may compel their attendance at such truant school, or any department of the public schools, as the board may determine, and cause them to be brought before the juvenile court of the county for appropriate discipline.

[Ex1959 c 71 art 1 s 15]

120.16 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.16 INVESTIGATION AND AID TO CHILDREN. Subdivision 1. **Resolution; certification.** When a board finds, by resolution, that any child in the district is unable to attend school because his financial resources and needs require his employment elsewhere, the clerk shall certify the resolution of such fact to the county board of the county of the child's residence. Upon such certification, the county board shall, after investigation, furnish such aid as will enable the child to attend school during the entire school year.

Subd. 2. **Reports; children receiving aid.** The truant officer or other authorized officer shall notify the teacher to whom any child receiving aid under the provisions of this section may be assigned. It shall be the duty of the teacher having charge of such child to report monthly to the board the progress such child is making in his school work, and the record of attendance, together with such other information as may be deemed necessary by the teacher.

[Ex1959 c 71 art 1 s 16]

120.17 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.17 HANDICAPPED CHILDREN. Subdivision 1. **Special instruction for handicapped children of school age.** Every district shall provide special instruction and services, either within the district or in another district, for handicapped children of school age who are residents of the district and who are handicapped as set forth

in section 120.03. School age means the ages of four years to 21 years for children who are handicapped as defined in section 120.03 and shall not extend beyond secondary school or its equivalent. Every district may provide special instruction and services for handicapped children who have not attained school age. Districts with less than the minimum number of eligible handicapped children as determined by the state board shall cooperate with other districts to maintain a full sequence of programs for education, training and services for handicapped children as defined in section 120.03.

Subd. 1a. School districts may provide special instruction and services through the school year in which the pupil reaches age 25 for trainable mentally retarded pupils as defined in section 120.03, subdivision 4, who have attended public school less than nine years prior to September, 1975.

Subd. 2. **Method of special instruction.** Special instruction or training and services for handicapped children may be provided by one or more of the following methods:

- (a) Special instruction and services in connection with attending regular elementary and secondary school classes;
- (b) The establishment of special classes;
- (c) Instruction and services at the home or bedside of the child;
- (d) Instruction and services in other districts;
- (e) Instruction and services in a state university laboratory school or a University of Minnesota laboratory school;
- (f) Instruction and services in a state residential school or a school department of a state institution approved by the commissioner, or by any other method approved by him;
- (g) Instruction and services in other states;
- (h) Contract with public, private or voluntary agencies.

The primary responsibility for the education of a handicapped child shall remain with the district of the child's residence regardless of which method of providing special instruction or training and services is used.

Subd. 3. **Rules of the state board.** The state board shall promulgate rules relative to qualifications of essential personnel, courses of study or training, methods of instruction and training, pupil eligibility, size of classes, rooms, equipment, supervision, parent consultation and any other rules and standards it deems necessary, for instruction of handicapped children. These rules shall provide standards and procedures appropriate for the implementation of and within the limitations of subdivisions 3a and 3b.

Subd. 3a. **School district obligations.** Every district shall insure that:

- (a) All handicapped children are provided the special instruction and services which are appropriate to their needs;
- (b) Handicapped children and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, assessment and educational placement of handicapped children;
- (c) To the maximum extent appropriate, handicapped children, including those in public or private institutions or other care facilities, are educated with children who are not handicapped, and that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when and to the extent that the nature or severity of the handicap is such that education in regular classes with the use of supplementary services cannot be achieved satisfactorily;
- (d) In accordance with recognized professional standards, testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children are selected and administered so as not to be racially or culturally discriminatory; and
- (e) The rights of the child are protected when the parents or guardians are not known or not available, or the child is a ward of the state.

Subd. 3b. **Procedures for decisions.** Every district shall utilize at least the following procedures for decisions involving identification, assessment and educational placement of handicapped children:

(a) Parents and guardians shall receive prior written notice of: (1) any proposed formal educational assessment of their child; (2) a proposed placement of their child in, transfer from or to or denial of placement in a special education program; or (3) the proposed provision, addition, denial or removal of special education services for their child;

(b) Parents and guardians shall have an opportunity to meet with appropriate district staff in at least one conciliation conference if they object to any proposal of which they are notified pursuant to clause (a);

(c) Parents and guardians shall have an opportunity to obtain an informal due process hearing initiated and conducted in the school district where the child resides, if after at least one conciliation conference the parent or guardian continues to object to: (1) a proposed formal educational assessment of their child; (2) the proposed placement of their child in, or transfer of their child to a special education program; (3) the proposed denial of placement of their child in a special education program or the transfer of their child from a special education program; (4) the proposed provision or addition of special education services for their child; or (5) the proposed denial or removal of special education services for their child.

At the option of the school board, the hearing shall take place either before the school board; or (1) its designee, (2) a person mutually agreed to by the school board and the parent or guardian, or (3) a person appointed by the commissioner. A decision pursuant to (1), (2), or (3) shall be subject to review by the school board within ten days at its option. The proceedings shall be recorded and preserved, at the expense of the school district, pending ultimate disposition of the action.

(d) Within five days of a hearing or review pursuant to clause (c), the person or persons conducting the hearing or review shall issue a local decision which shall be binding on all parties unless appealed to the commissioner by the parent or guardian pursuant to clause (e).

The local decision shall:

- (1) be in writing;
- (2) state the controlling facts upon which the decision is made in sufficient detail to apprise the parties and the commissioner of the basis and reason for the decision;
- (3) state whether the special education program or special education services appropriate to the child's needs can be reasonably provided within the resources available to the responsible district or districts;
- (4) state the amount and source of any additional district expenditure necessary to implement the decision; and
- (5) be based on the standards set forth in subdivision 3a and the rules of the state board.

(e) Any local decision issued pursuant to clauses (c) and (d) may be appealed to the commissioner within 15 days of receipt of that written decision, by the parent or guardian. The school board shall be a party to any appeal.

If the decision is appealed, a written transcript of the hearing shall be made by the school district and shall be accessible to the parties involved within five days of the filing of the appeal. However, for appeals of local decisions issued by school boards or their designees concerning proposals set forth in clause (c) (1), (2), and (4), no written transcript shall be made if the parent or guardian requests a chapter 15 due process hearing pursuant to this clause at the time the appeal is filed. The commissioner shall issue a final decision based on a review of the local decision and the entire record within 30 days after receipt of the local decision and the transcript. However, in appeals of local decisions issued by school boards or their designees concerning proposals set forth in clause (c) (1), (2) and (4), a parent or guardian may, at the time the appeal is filed, request a due process hearing conducted pursuant to the provisions of chapter 15. In that case the commissioner shall issue a final decision within 30 days after that hearing and the final decision shall be based on the report of the hearing examiner.

The final decision shall:

- (1) be in writing;
- (2) include findings and conclusions; and

(3) be based upon the standards set forth in subdivision 3a and in the rules of the state board.

(f) The decision of the commissioner shall be final unless appealed by the parent or guardian or school board to the district court of the county in which the school district in whole or in part is located. The scope of judicial review shall be as provided in chapter 15.

(g) The child's school district of residence, if different from the district where the child actually resides, shall receive notice of and may be a party to any hearings or appeals pursuant to this subdivision.

Subd. 3c. **Legislative report.** On or before November 15, 1978, the commissioner shall report to the legislature on the experiences of Minnesota school districts in implementing subdivision 3b of this section. The report shall include an assessment of the impact on districts of parental requests for services pursuant to subdivision 3b, clause (c) (3) and (5), and recommendations concerning the need for legislation.

Subd. 4. **Special instructions for non-resident children.** When a school district provides instruction and services outside the district of residence, transportation or board and lodging, and any tuition to be paid, shall be paid by the district of residence. The tuition rate to be charged for any handicapped child shall be the actual cost of providing special instruction and services to the child including a proportionate amount for capital outlay and debt service minus the amount of special aid for handicapped children received on behalf of that child. If the boards involved do not agree upon the tuition rate, either board may apply to the commissioner to fix the rate. The commissioner shall then set a date for a hearing, giving each board at least ten days' notice, and after the hearing the commissioner shall make his order fixing the tuition rate, which shall be binding on both school districts.

For the purposes herein, any school district may enter into an agreement, upon such terms and conditions as may be mutually agreed upon, to provide special instruction and services for handicapped children. In that event, one of the participating units may employ and contract with necessary qualified personnel to offer services in the several districts, and each participating unit shall reimburse the employing unit a proportionate amount of the actual cost of providing the special instruction and services, less the amount of state special education aid, which shall be claimed in full by the employing district.

Subd. 5. **School of parents' choice.** Nothing in this chapter shall be construed as preventing parents of a handicapped educable child from sending such child to a school of their choice, if they so elect, subject to admission standards and policies to be adopted pursuant to the provisions of sections 128A.01 to 128A.08, and all other provisions of chapters 120 to 129.

Subd. 5a. Every district may provide summer programs for handicapped children living within the district, including nonresident children temporarily placed in the district pursuant to subdivisions 6 or 7. Prior to March 31, the providing district shall give notice to the district of residence of any nonresident children temporarily placed in the district pursuant to subdivisions 6 or 7, of its intention to provide these programs. Notwithstanding any contrary provisions in subdivisions 6 and 7, the school district providing the special instruction and services shall apply for all state aid for the summer program, including special state aid pursuant to section 124.32, foundation aid and transportation aid. For the purposes of computing foundation aid for these programs, all pupils enrolled in these programs shall be construed to be residents of the district providing the programs. The unreimbursed actual cost of providing the program for nonresident handicapped children may be billed to the district of the child's residence and shall be paid by the resident district. This subdivision shall be effective March 1, 1976.

Subd. 6. **Placement in another district; responsibility.** The responsibility for special instruction and services for a handicapped child temporarily placed in another district for care and treatment shall be determined in the following manner:

(a) The school district of residence of such a child shall be the district in which his parent resides, if living, or his guardian, or the district designated by the commissioner of education if neither parent nor guardian is living within the state.

(b) The district providing the instruction shall maintain an appropriate educational program for such a child and shall bill the district of the child's residence for the actual cost of providing the program, as outlined in subdivision 4, except that the

board, lodging, and treatment costs incurred in behalf of a handicapped child placed outside of the school district of his residence by the commissioner of public welfare or the commissioner of corrections or their agents, for reasons other than for making provision for his special educational needs shall not become the responsibility of either the district providing the instruction or the district of the child's residence.

(c) The district of residence shall pay tuition and other program costs to the district providing the instruction and the district of residence may claim foundation aid for the child as provided by law. Special transportation costs shall be paid by the district of the child's residence and the state shall reimburse for such costs within the limits set forth in section 124.32, subdivision 3.

Subd. 7. Placement in state institution; responsibility. Responsibility for special instruction and services for a handicapped child placed in a state institution on a temporary basis shall be determined in the following manner:

(a) The legal residence of such child shall be the school district in which his parent resides, if living, or his guardian;

(b) When the educational needs of such child can be met through the institutional program, the costs for such instruction shall be paid by the department to which the institution is assigned;

(c) When it is determined that such child can benefit from public school enrollment, provision for such instruction shall be made in the following manner:

(1) Determination of eligibility for special instruction and services shall be made by the commissioner of education and the commissioner of the department responsible for the institution;

(2) The school district where the institution is located shall provide an appropriate educational program for the child and shall make a tuition charge to the child's district of residence for the actual cost of providing the program;

(3) The district of the child's residence shall pay the tuition and other program costs including the unreimbursed transportation costs and may claim foundation aid for the child. Special transportation shall be provided by the district providing the education program and the state shall reimburse such district within the limits provided by law.

Subd. 7a. Attendance at school for the handicapped. Responsibility for special instruction and services for a visually disabled or hearing impaired child attending the Minnesota school for the deaf or the Minnesota braille and sight-saving school shall be determined in the following manner:

(a) The legal residence of the child shall be the school district in which his parent or guardian resides;

(b) When it is determined pursuant to section 128A.05, subdivisions 1 or 2 that the child is entitled to attend either school, the state board shall provide the appropriate educational program for the child. The state board shall make a tuition charge to the child's district of residence for the actual cost of providing the program; provided, however, that the amount of tuition charged shall not exceed \$2,000 for any school year. The district of the child's residence shall pay the tuition and may claim foundation aid for the child. All tuition so received shall be deposited in the state treasury, subject to the order of the state board;

(c) When it is determined that the child can benefit from public school enrollment but that the child should also remain in attendance at the applicable school, the school district where the institution is located shall provide an appropriate educational program for the child and shall make a tuition charge to the state board for the actual cost of providing the program, less any amount of aid received pursuant to section 124.32. The state board shall pay the tuition and other program costs including the unreimbursed transportation costs. Aids for handicapped children shall be paid to the district providing the special instruction and services. Special transportation shall be provided by the district providing the educational program and the state shall reimburse such district within the limits provided by law.

Subd. 8. [Repealed, 1973 c 683 s 30]

Subd. 8a. Residence of child under special conditions. The legal residence of a handicapped child placed in a foster facility for care and treatment when: (1) parental rights have been terminated by court order; (2) parent or guardian is not living within the state; or (3) no other school district residence can be established, shall be the

school district in which the child resides. The school board of the district of residence shall provide the same educational program for such child as it provides for all resident handicapped children in the district.

Subd. 9. **Special instruction.** After August 15, 1977, no resident of a district who is eligible for special instruction and services pursuant to this section shall be denied provision of this instruction and service on a shared time basis because of attendance at a nonpublic school defined in section 123.932, subdivision 3. Nothing in this subdivision shall be construed to prevent any school district from providing special instruction and services pursuant to section 120.17 on a shared time basis prior to August 15, 1977.

Subd. 10. **Nonresident education; billing.** All tuition billing for the education of nonresident children pursuant to section 120.17 shall be done on uniform forms prescribed by the commissioner. The billing shall contain an itemized statement of costs which are being charged to the district of residence. One copy of each such billing shall be filed with the commissioner.

[Ex1959 c 71 art 1 s 17; 1961 c 559 s 2; 1961 c 690 s 1; 1965 c 241 s 1-3; 1967 c 872 s 1; 1969 c 981 s 2-5; 1971 c 689 s 1-3; 1973 c 683 s 1,2; 1975 c 162 s 41; 1975 c 321 s 2; 1975 c 432 s 8-10; 1976 c 211 s 1-6; 1976 c 271 s 13-18]

NOTE: Subdivision 1 as amended by Laws 1976, Chapter 271, Section 13, is effective August 15, 1977. Subdivisions 5 and 7a as amended by Laws 1976, Chapter 271, Sections 14 and 16 are effective July 1, 1977.

120.171 EXPENDITURES LIMITED TO MEET FEDERAL REQUIREMENTS.

Neither the state department of education nor any school district shall expend funds from state appropriations or local tax levies for the purpose of complying with the administrative requirements of Public Law 94-142, an act of the 94th Congress of the United States cited as the "Education for All Handicapped Children Act of 1975," except for those administrative requirements which are also contained in Minnesota laws and statutes, including Laws 1976, Chapter 211, Sections 1 to 6, or established by the rules of the state board. Only federal funds received pursuant to Public Law 94-142 may be expended to meet these federal requirements not established by Minnesota laws or statutes or the rules of the state board, and no federal funds received pursuant to Public Law 94-142 may be expended for any other purpose until these requirements have been fulfilled.

[1976 c 211 s 7]

120.18 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.18 MS 1967 [Repealed, 1969 c 981 s 7]

120.19-120.38 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.41-120.43 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.44 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26; 1961 c 446 s 2; 1961 c 567 s 2 subd 2]

120.46 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.51-120.57 MS 1957 [Repealed, 1959 c 687 s 13; Ex1959 c 27 s 13; Ex1959 c 71 art 8 s 26]

120.58 MS 1957 [Repealed, Ex1959 c 71 art 8 s 26]

120.59 **FLEXIBLE SCHOOL YEAR PROGRAMS; PURPOSE.** The purpose of sections 120.59 to 120.67 is to authorize school districts to evaluate, plan and employ the use of flexible school year programs. It is anticipated that the open selection of the type of flexible school year operation from a variety of alternatives will allow each district which seeks to utilize this concept to suitably fulfill the educational needs of its pupils. These alternatives shall include but not be limited to various 45-15 plans, four-quarter plans, quinmester plans, extended school year plans, flexible all-year plans, and four-day week plans.

[1974 c 326 s 2]

120.60 **DEFINITION.** "Flexible school year program" means any school district plan approved by the state board of education which utilizes school buildings and facilities during the entire year and/or which provides forms of optional scheduling of pupils and school personnel during the school year in elementary and secondary schools or residential facilities for handicapped children.

[1974 c 326 s 3]

