

# BMS

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BUREAU OF MEDIATION SERVICES  
State of Minnesota

February 15, 2008

Representative Mindy Greiling  
381 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd.  
Saint Paul, Minnesota 55155

Senator LeRoy Stump  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
Capitol Building, Room 208  
St. Paul, MN 55155-1606

Dear Representative Greiling and Senator Stump:

Attached, please find the final report of the Special Education Task Force (“Task Force”) that was created during the 2007 legislative session by Chapter 146, Article 3, Section 23. The report consists of two documents. One is entitled the Special Education Task Force Review of Special Education Statutes. The other is the corresponding document regarding the Special Education Rules.

The Task Force was created to submit a report that: “Identifies clearly and concisely explains each provision in state law or rule that exceeds or expands upon a minimum federal requirement contained in the law or regulation for providing special education programs and services to eligible students. The report must also recommend which state provisions that exceed or expand upon a minimum federal requirement may be amended to conform with minimum federal requirements.”

The Task Force was made up of ten individuals with extensive knowledge of special education laws from several specific categories mandated by the legislature including: providers, advocates, regulators, consumers of special education services, lawyers who practice in the field of special education, special education teachers and school officials. A complete matrix of the Task Force members and their roles on the Task Force is attached (Attachment A). The Task Force was facilitated by Mariann Johnson, of M.T. Johnson and Associates and convened by Commissioner James A. Cunningham, Jr.

The Task Force met seven times between September, 2007, and February, 2008. The Task Force members initially agreed to four meetings but added three more in order to complete as much of the Task Force’s work as possible. All of the meetings were full-day events and were conducted

at the Bureau of Mediation Services in St. Paul, Minnesota. Copies of all meeting notes are attached (Attachment B).

At the beginning of the first meeting, the Task Force went over the ground rules for all future meetings. One immediate point of contention concerned the Task Force making a recommendation to amend state law or rules using a “supermajority” vote of 70 percent. The supermajority vote was originally proposed to deal with the fact that there were ten voting members on the Task Force and facilitator and the convener of Task Force wanted a voting system that would reflect something other than a simple majority. However, the supermajority voting concept became both controversial and problematic when it was discovered at the second meeting that Amy Roberts, the Department of Education representative would not be voting on any of the proposed changes.<sup>1</sup> As Ms. Roberts was not going to participate in any voting, the original reason for a supermajority vote was invalid. The Task Force repeatedly argued over the issue of a supermajority versus a simple majority. In order to move the group forward the convener of the group stated that the final report would reflect the actual number of votes both to amend and not amend. Accordingly, all of the statutes recommended for amendment in the attached reports have the actual voting numbers attached to them.

Several of the Task Force’s meetings concerned the definitions of “exceed” and “expand”. After repeated discussions, the group agreed to define “exceed” as follows: “A rule or statute exceeds if it goes beyond the federal limit or goes above minimum additional requirements.” The Task Force agreed on the following definition of “expand”: “A rule or statute expands if it increases in scope, size or volume.”

The first source material that the Task Force reviewed was an article published in May of 2007 by Paul Ratwik of the Ratwik, Roszak and Maloney law firm.<sup>2</sup> The Ratwik article was one of the few informational sources that listed the differences between state and federal special education laws. After the first two meetings, the Task Force had enough information and direction that the Ratwik article was not used any further as an information source. After the second meeting, the Task Force only reviewed and referred to federal and state laws and/or Minnesota rules.

The next major development in the Task Force’s work was the development of a matrix that was the basis for the attached final reports. The matrix was originally conceptualized at the Task Force’s second meeting on October 29, 2007. The matrix was redesigned at every subsequent meeting. The final form of the attached reports have all of the items required by the legislation that created the Task Force.

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<sup>1</sup> Ms. Roberts’ rationale for not voting is contained in the Department of Education’s comment letter (see Attachment C).

<sup>2</sup> The Task Force would like to thank Paul Ratwik for his assistance. Mr. Ratwik’s memo helped the Task Force find a starting point for its discussion surrounding the differences between state and federal laws on special education.

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In order to allow the Task Force members to expand upon those provisions in the state law or rules that they felt especially strongly about, the decision was made to allow members of the Task Force to write a letter explaining their positions that would be attached to the final document (Attachment C).

As you will see from the attached reports, the Task Force was unable to make final recommendations to amend the state rules. From the start, the Task Force struggled with reviewing the rules while they were in the process of being modified by the Minnesota Department of Education. During the Task Force's last meeting on February 8, 2008, it was noted that the Department of Education's recommendations were in the hands of an administrative law judge for final approval. During that same meeting, there was a spirited discussion whether the Task Force should submit the incomplete rules document that is attached or just submit the completed statutes document. A majority of Task Force members voted to submit the incomplete rules. The rationale was that the Task Force's work on whether the rules exceeded or expanded on Minnesota Law was a significant accomplishment and worth memorializing.

In conclusion, the Task Force was faced with the daunting proposition of reviewing and making recommendations on literally hundreds of state laws and rules that deal with special education. The Task Force did an outstanding job of discussing and working on those important issues. Each member of the Task Force brought something to the group that was helpful in the group achieving many of its objectives. I would like to commend and thank each of the Task Force members for participating. The Task Force's work was challenging and often times contentious, but there were several opportunities where the discussions allowed Task Force members to share and expand their perspectives on special education. I would also like to thank the facilitator, Marianne Johnson, for doing an outstanding job of keeping the Task Force productive and engaged.

Very truly yours,

A handwritten signature in black ink, appearing to read "J.A. Cunningham, Jr.", written in a cursive style.

James A. Cunningham, Jr.  
Commissioner

JAC:csc

Attachments

**SPECIAL EDUCATION TASK FORCE**

**FINAL REPORTS**

## SPECIAL EDUCATION TASK FORCE REVIEW OF SPECIAL EDUCATION STATUTES

MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.02	Child with a disability defined.	9 E	Subd. 1. Birth mandate	Federal law states ages 3-21, MN law states birth-21		Yes 1 No 8
125A.023	Coordinated interagency services.	9 E		Goes beyond requirements of federal law		Yes 4 No 4 Abstain 1
125A.027	Interagency early intervention comm.	9 E		Local committee does not exist in IDEA; Local committee goes beyond IDEA		Yes 5 No 4
125A.03	Special instruction for children with a disability.	9 E	(b) age limits, districts with less than minimum number of eligible children must cooperate with other districts to maintain full range of programs	Not prescribed in IDEA; Contains a broader age eligibility & requires district with less than a minimum number of children to cooperate with other districts to maintain a full range of programs		Yes 5 No 4
125A.04	High school diploma.	9 E	Allows equivalent diploma to be awarded to child who obtains IEP objectives	If 504, it should not be included on the list; IDEA does not address equivalent diploma		Yes 0 No 9
125A.05	Method of special instruction.	4 E, 5 No	Defines what are the methods and defines primary responsibility lies with resident district, if not then providing district must notify and offer resident district chance to participate	"On 1st Half." "Due to Age Limit."  Comment: "On "2 <sup>nd</sup> Half."		
125A.06	Blind persons' literacy rights.	4 E, 5 No	All	Need to look at Fed. Act and Definition of "Blind"		
125A.07	Rules of commissioner.	9 E	(a) MDE must adopt rules, must consult with DHS and DOH for rules for children under 5 and their families, must adopt rules for eligibility and experimental criteria, MDE must notify a district that requested variance, (b) state's regulatory scheme should support by one or more outcomes listed	IDEA does not explicitly grant such powers to the Commissioner;	IDEA leaves it to the state to implement the statute & decision of the state leg to grant rule making authority is perfectly consistent with federal law	Yes 5 No 4

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.08	School district obligations.	9 E	(a)(1) IEP team must consider and may authorize MA services, transition at age 14/grade 9, (2) services to children under 5 (b) for paraprofessionals, district must ensure immediate and ongoing training and district wide process for working under supervision	IDEA does not address MA services; It sites transition at age 14, Requirements regarding paraprofessionals		Yes 5 No 4
125A.091	Alternative dispute resolution and due process hearings.	7 E, 2 No	Subd. 1. district must follow federal and state law Subd. 2. parent must receive notice	Goes beyond IDEA; Notification and BOP are contrary to IDEA; Facilitated team meetings are additional	Federal law requires states to create a procedure for conducting due process proceedings. Since state law implements federal law it does not exceed/expand.	Yes 5 No 4
125A.11	Special instructions for nonresident children.	5 E, 4 No	Subd. 1(a). determines who pays and tuition rate Subd. 1(b). determines aid payment Subd. 1(c) special provisions for certain charter schools, intermediates, coops for charging resident district costs Subd. 2. for day program out of district, district is responsible for transportation, for residential out of district, non-resident district is responsible transportation costs paid by transporting district and state pays district Subd. 3. districts may enter into agreement to provide services	IDEA does not prescribe who pays and who does not in local districts	IDEA sets no standard therefore MN cannot exceed a nonexistent standard.	Yes 0 No 7 Abstain 2
125A.12	Attendance in another district.	4 E, 5 No	If resident district does not provide sp ed, district must provide transportation			
125A.13	School of parents' choice.	No				
125A.14	Extended School Year	5 E, 4 No	changed	IDEA does not address summer programming	To implement federal requirements the state needs to create criteria. MN Statute is consistent with that charge.	Yes 0 No 9

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.15	Placement in another district; responsibility.	9 E	(a) defines resident district (b) for temporary care and treatment, district is responsible for transportation, district may provide services in different places (c) non resident district responsible for provide appropriate education, transportation and must bill resident district, different for DHS or DOC placement (d) private residential facility may enter into contact (e) resident district shall pay tuition and other program costs, may claim aid, transportation costs borne by transporting district and state must pay district.	Level of prescriptiveness does not appear in IDEA		Yes 5 No 4
125A.155	Special education reciprocity; commissioner duties.	9 E	MDE must develop reciprocity agreement	IDEA does not require the state to enter into reciprocity agreements		Yes 3 No 4 Abstain 2
125A.16	Placement in state institution; responsibility.	5 E, 4 No	(a) determination of responsibilities (b) provision of instruction requirement, district where institution exists is responsible for transportation and services and must make tuition charge, district must pay tuition and other program costs, transportation must be paid by district and state must pay district	IDEA does not require prescriptiveness for who pays and who provides transport	Implements a federal requirement without exceeding or expanding upon the federal requirement.	Yes 7 No 1 Abstain 1
125A.17	Legal residence of a child with a disability placed in a foster facility.	9 E	Defines resident district in certain situations	IDEA does not define legal residence		Yes 0 No 9  Voting to retain 125A.17 recommend legislature define "foster facility" with that of group homes.

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.18	Special instruction; nonpublic schools.	9 E	For non public school students in district of residence, district must provide necessary transportation, other situations addressed, parties serving students on shared time have access to due process hearing and complaint system	IDEA has a specific mandate for nonpublic students and MN law exceeds it.		Yes 7 No 0 Abstain 2 Voting to retain 125A.18, & to recommend the legislature revise the statute.
125A.19	Nonresident education; billing.	9 E	Tuition billing of non-resident children must be done on uniform form. Billing shall include itemized costs and filed with MDE.	IDEA does not require uniform billing forms.	IDEA sets no standard therefore MN cannot exceed a nonexistent standard.	Yes 9 No 0
125A.20	Transportation aid agreements.	9 E	For day program outside of resident district, res and non-res district may enter into agreement for transportation costs and claim transportation aid  Process comment - check for a corresponding rule	IDEA does not address transportation aid agreements.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 9 No 0
125A.21	Third party payment.	9 E	Subd. 1. District must pay non-federal share, can't use fed funds, district may pay or reimburse co-pays Subd. 2(a). Districts shall seek reimbursement Subd. 2(b). district shall provide written notice for children enrolled in MA or who have no other health coverage Subd. 2(c). district must give parents written notice Subd. 2(d). district must obtain consent and inform parents of effect of refusal Subd. 2(f). If certain congressional action, district must obtain consent Subd. 3. District may use reimbursement in certain ways Subd. 4. district may not require parents to pay for services under IEP	IDEA does not require billing for 3 <sup>rd</sup> party payment.  Level of prescriptiveness goes beyond IDEA.		Yes 5 No 4

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.22	Community transition interagency committee.	9 E		Level of prescriptiveness goes beyond IDEA.		Yes 5 No 4
125A.23	Agency access to nonpublic data.	9 E	DO Admin must prepare form for sharing data	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 5 No 1 Abstain 3
125A.24	Parent advisory councils.	9 E		Level of prescriptiveness goes beyond IDEA.		Yes 4 No 5
125A.25	Legislative commitment to conciliation.	NO				
125A.259	Citation; interagency early childhood intervention system.	NO				
125A.26	Purpose.	NO				
125A.27	Definitions.	NO				
125A.28	State interagency coordinating council.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 5 No 4
125A.29	Responsibilities of county boards and school boards.	9 E		IDEA does not require responsibilities of county boards and school boards. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 4 No 5
125A.30	Interagency early intervention committees.	9 E		Level of prescriptiveness goes beyond IDEA.		Yes 4 No 5

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.31	Local primary agency.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 3 No 5 Abstain 1
125A.32	Individualized family service plan (IFSP).	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 4 No 5
125A.33	Service coordination.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 4 No 5
125A.34	Early intervention respite services.	9 E		IDEA does not address respite services.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 4 No 5
125A.35	Early intervention service dollars.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 4 No 5
125A.36	Payment for services.	9 E		IDEA does not address payment of services.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 3 No 6
125A.37	Payor of last resort.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 3 No 6
125A.38	Maintenance of effort.	9 E		Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 4 No 5
125A.39	Local interagency agreements.	9 E		IDEA does not require local interagency agreements. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 3 No 6

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.39	Local interagency agreements.	9 E		IDEA does not require local interagency agreements. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 3 No 6
125A.41	Coordinating health insurance benefits.	9 E		IDEA does not require coordinating health insurance benefits.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 6
125A.42	Procedural safeguards; parent and child rights.	9 E		IDEA does not require procedural safeguards, parent and child rights.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 2 No 6 Abstain 1
125A.43	Mediation procedure.	9 E	(a) fed funds for mediation (b)-(e) med procedures	IDEA does not require mediation procedure. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 2 No 7
125A.44	Complaint procedure.	9 E	(a) allows complaint (b) MDE must coordinate with other agencies on disputes	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 2 No 6 Abstain 1
125A.45	Interagency dispute procedure.	9 E	(a) disputes must be resolved according to this statute (b)-(f) process for resolving disputes	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 2 No 6 Abstain 1
125A.46	Due process hearings.	9 E	Refers to 125A.091	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 2 No 6 Abstain 1
125A.48	State interagency agreement.	9 E	(a) MDE, DOH, DHS must enter into agreement (b) agreement must have certain requirement, written materials for parents	IDEA does not require state interagency agreement. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 0 No 9

## SPECIAL EDUCATION TASK FORCE REVIEW OF SPECIAL EDUCATION STATUTES

MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.50	Alternative delivery of specialized instructional services.	9 E	Subd. 1. MDE may approve alternative plans Subd. 2,3. District's application must include certain contents Subd. 4. MDE must review for approval and excess expenditures Subd. 5. District must submit annual report Subd. 6. District must comply with laws for ensuring child's civil rights, MDE cannot waive rights of pupils	IDEA does not address alternative delivery of specialized instructional services.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.515	Placement of students; approval of education program.	9 E	Subd. 1. MDE shall approve programs, facilities must conform to state and fed requirements Subd. 3. District where residential facility exists must provide ed services, DOC is district Subd. 4. Ed services must begin within 3 days Subd. 5(a). providing district must contact resident district within 1 business day Subd. 5(b). providing agency must hold IEP meeting and give notice Subd. 5(c). must screen if child not eligible for sp ed Subd. 6. must prepare exit report Subd. 7. defines minimum services Subd. 8. providing district and facility must develop discipline and behavior management for emergency situations	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 5 No 2 Abstain 2
125A.52	Residential facilities; screening	9 E	Subd. 1. Secure facilities must screen Subd. 2. MDE may make rules for residential facilities	IDEA does not address residential facilities; screening.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 2 No 6 Abstain 1
125A.53	Director of a special education cooperative.	9 E	Coop has authority for selecting and employing coop director, no right to employment because of seniority or order of employment	IDEA does not address Director of a special education cooperative.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 8 Abstain 1

## SPECIAL EDUCATION TASK FORCE REVIEW OF SPECIAL EDUCATION STATUTES

MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.54	Interagency office on transition services.	9 E	MDE must establish office	IDEA does not require interagency office on transition services. Level of prescriptiveness goes beyond IDEA.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.56	Alternate instruction required before assessment referral.	9 E	Changed in 2007	IDEA does not address alternate instruction required before assessment referral.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 4 No 3 Abstain 2
125A.57	Definition.	9 E	Subd. 2. Defines AT	Level of prescriptiveness goes beyond IDEA.		Yes 9 No 0
125A.58	Purchasing guidelines.	9 E	Subd. 1. New district may purchase AT from old district, new district must notify and complete purchase agreement	IDEA does not address purchasing guidelines.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 2 No 6 Abstain 1
125A.59	Interagency agreement to purchase used assistive technology DEVICES.	9 E	Subd. 1. DEED may purchase AT Subd. 2. DEED and MDE not liable for problems with At Subd. 3. Not decrease 3 <sup>rd</sup> party obligation	IDEA does not address interagency agreement to purchase used assistive technology devices.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 1 No 7 Abstain 1
125A.60	Purchase agreement;	9 E	MDE must develop guidelines for sale of used AT	IDEA does not address purchase agreements.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 6 No 2 Abstain 1
125A.61	Location and status.	NO	All			
125A.62	Duties of MSA board	9 E	All	IDEA does not address duties of MSA board.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.63	Resource centers	9 E	All	IDEA does not address resource centers.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.64	Powers of board of the Minnesota state academies.	9 E	All	IDEA does not address powers of board of the Minnesota state academies.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.65	Attendance at academies for the deaf and blind.	9 E	All	IDEA does not address attendance at academies for the deaf and blind.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.66	Obligations of the academies.	NO	All			
125A.67	Staff of the academies.	9 E	All	IDEA does not address staff of the academies.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.68	State adopted procedures.	9 E	All	IDEA does not address state adopted procedures.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.69	Admission standards.	9 E	All	IDEA does not address admission standards.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.70	Expense of pupils.	9 E	All	IDEA does not address expense of pupils.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.71	Rents and Fees	9 E	All	IDEA does not address rents and fees.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.72	Student activities account.	9 E	All	IDEA does not address student activities account.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.73	Duties of state departments.	9 E	Subd. 1. MDE must assist MSA Subd. 2. DER must develop employee skill statement	IDEA does not address duties of state departments.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
125A.74	Medical assistance payments to school districts.	9 E	Subd. 1. District may enroll Subd. 2. District is entitled to receive reimbursement Subd. 3. May contract for providing MA services Subd. 4. May enroll as a provider and must comply with fed and state statutes Subd. 5. revenue is not reduced	IDEA does not require medical assistance payments to school districts.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 4 No 5
125A.744	Statewide data management system to maximize medical assistance reimbursement	9 E	Subd. 2. MDE must develop data system to maximize MA reimbursement, Subd. 3. districts "may" enroll, DHS must reimburse for federal share	IDEA does not require statewide data management system to maximize medical assistance reimbursement.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 4 No 3 Abstain 2

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.75	Special education program approval; aid payments; travel aid.	9 E	Subd. 1. state must pay travel aid for home based services for children under 5 Subd. 3. state must pay actual cost for Care and treatment, district must follow MDE procedure and then call bill for transportation and other costs, MDE must seek reimbursement Subd. 4. district must submit to MDE an application for approval on spec ed instruction and services, MDE must review application to determine eligibility for aid Subd. 5. districts encouraged to consider class size and provide supports to ensure mainstreaming Subd. 6. district must submit separate applications for summer school programs, MDE must review and approve	IDEA does not require special education program approval aid payments, travel aid.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 5 No 4
125A.76	Special education revenue.	8 E, 1 No	Subd. 2(a)(7). MDE must develop UFARS system for 3 <sup>rd</sup> party billings and track Subd. 5. If MDE increases rule obligation, MDE must increase sp ed aid to compensate Subd. 7. Sp Ed Coop and others must allocate expenditures among member districts	IDEA does not require special education revenue. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Statutes appear to be outdated and inconsistent with current practices.
125A.78	Alternative delivery base revenue adjustment.	9 E	Subd. 1. eligibility for alternative base revenue adjustments if MDE approves application	IDEA does not require alternative delivery base revenue adjustment. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Statutes appear to be outdated and inconsistent with current practices.
125A.79	Special education excess cost aid.	9 E	S. 4. district must submit unreimbursed tuition bill to MDE and demonstrate good faith effort to obtain costs S 8. District must submit tuition bill	IDEA does not require special education excess cost aid. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Statutes appear to be outdated and inconsistent with current practices.

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
125A.80	Uniform billing system for out-of-home placed students	9 E	MDE develops UFARS for districts to obtain cost for out of home students	IDEA does not require uniform billing system for out-of-home placed students. Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Statutes appear to be outdated and inconsistent with current practices.
120B.30	Statewide Assessments	6 E, 3 No	Subd. 1b1(iii)-(v) and 2b1(iii-v) provides processes for fulfilling testing requirements for kids on IEPs Subd. 1(d) MDE must have alternate assessments for the "very few" students with disabilities	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Moving target due to NCLB
121A.15	Health Standards; Immunizations; and School Children.	3 E 6 N				
121A.22	Administration of Drugs and Medication	9 E	Administration of drugs can be explained in IEP.	IDEA does not address administration of drugs and medication.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 2 No 7
121A.41	Pupils Fair Dismissal	9 E	Subd. 7. Sets Sept 1 as cut off Subd. 10. man. det. and timing requirements (if more than 5 consecutive days), parent ability to request man. det.	Level of prescriptiveness goes beyond IDEA.		Yes 3 No 4 Abstain 2
121A.43	Exclusion And Expulsion Of Pupils With A Disability.	8 E 1 N		IDEA does not require exclusion and expulsion of pupils with a disability.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 3 No 5 Abstain 1
121A.53	Report to MDE	9 E	Subd. 1. Board must report sp ed status Subd. 2. MDE must prepare report for commissioner	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement. IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.	Yes 3 No 5 Abstain 1

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
121A.59	Bus Transportation A Privilege Not A Right.	4 E 5 N				
121A.61	Discipline and Removal of Students from Class	9 E	Subd. 3(k). policy must include procedures for referring a student in need of services and procedures for consideration for further assessment or review of the adequacy of an IEP Subd. 3(l) the procedures for consideration of whether there is a need or a further assessment or of whether there is a need for a review of the adequacy of a current IEP of a student with a disability who is removed from class	IDEA does not require discipline and removal of students from class.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 5 No 4
121A.66	Definitions	9 E	Subd. 1-7. defines aversive procedures and stimulus, deprivation procedure, emergency, PBIS, time out	IDEA does not address definitions.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 5 Abstain 1
121A.67	Aversive And Deprivation Procedures.	5 E 4 N		IDEA does not address aversive and deprivation procedures IDEA does not require aversive and deprivation procedures. Level of prescriptiveness goes beyond IDEA.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 2 No 6 Abstain 1
122A.09	Duties	9 E	Subd. 4(l). Board must adopt rules for teachers who provide health related services consistent with license or registration requirements	IDEA does not require duties. Level of prescriptiveness goes beyond IDEA.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 9
122A.12	Board of School Administrators	9 E	Board of School Adm must include one sp ed director	IDEA does not address Board of School Administrators. Level of prescriptiveness goes beyond IDEA.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 8 Abstain 1

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
122A.18	Board to Issue Licenses	5 E, 4 No	Subd. 2b. teachers must pass exam before providing direct instruction in sp ed programs	IDEA does not require board to issue licenses.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 5 Abstain 1
122A.31	ASL/English Interpreters	5 E, 4 No	Subd. 1d1. Provisional certificate extended if sp ed director writes letter of support	IDEA does not address ASL/English interpreters.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 1 No 5 Abstain 3
122A.60	Staff Development	9 E	Subd. 1. Staff development committee must include special education teacher. Subd. 3. Staff development committee must have staff development plan for improving student achievement consistent with ed outcomes and must have goals, including effectively meeting needs of groups including children with disabilities	IDEA does not address staff development.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 5 Abstain 1
122A.61	Reserved Revenue	9 E	Subd. 1. some funds must be used for staff development, including special education-related activities	IDEA does not address reserved revenue.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 4 No 5
123A.05	ALC	No	Subd. 3. ALCs have access to special ed programs			
123A.06	ALC programs and services	9 E	Subd. 1. ALCs shall coordinate use of sp ed services in the community and services area	IDEA does not address ALC programs and services.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 5 Abstain 1
123A.07	ALC Resource Center	9 E	ALC must serve as resource and shall provide services to include recommendations for successful learning program for sp ed students in an alternative setting	IDEA does not address ALC resource center.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 6

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
123A.21	Service Cooperatives	No	Board of Directors must submit a plan to its members and shall identify program and services, which may include but are not limited to (12) teaching and learning services, including services for students with special talents and needs			
123A.22	Cooperative Centers for Vocational education	No	Subd. 4(b)(2) center board may provide special education for the disabled and disadvantaged			
123B.41	Definitions.	5 E 4 N		Level of prescriptiveness goes beyond IDEA.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 1 No 6 Abstain 2
123B.76	Expenditures; Reporting.	4 E 5 N				
123B.88	Independent School Districts; Transportation.	5 E 4 N		IDEA does not require independent school districts; transportation.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 3 No 4 Abstain 2
123B.92	Transportation Aid Entitlement.	5 E 4 N		IDEA does not address transportation aid entitlement	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 8 Abstain 1
124D.095	On Line Learning Options	7 E, 2 N	Subd. 10. Advisory council shall bring to the attention of MDE matters related to special education	IDEA does not address on line learning options.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 7 Abstain 2
124D.10	Charter Schools	E - Subd. 6	Subd. 6. Contract must include sp ed plan if sp ed services offered	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 0 No 9
		No - Subd. 12	Subd. 12. Charter schools must comply with sp ed laws			
124D.122	Flexible Year	No	District may, with MDE approval, offer flexible year program in residential facilities for children with disabilities			

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
124D.19	Community Ed Programs: Advisory Council	No	Subd. 11e. District encouraged to coordinate comm. Ed with other programs including sp ed			
124D.23	Family Service Collaboratives	E - Subd. 2a(10)	Subd. 2a(10). design and implement coordinated program that offers a continuum of services for students with disabilities ages 0-21	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 3 No 6
		No - Subd. 2b	Subd. 2b. outcome based indicators may include those for long term sp ed			
124D.29	Career Teacher	No	Adjustments in student-staff ratio for sp ed student			
124D.454	Access to Transition System for Children with Disabilities	4 E 5 N	Subd. 1. System of funding created			
124D.49	Education And Employment Transitions Partnerships.	8 E 1 N		IDEA does not address education and employment transitions partnerships	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 4 No 4 Abstain 1
124D.66	Assurance Of Mastery Programs.	4 E 5 N				
124D.78	Parent and Community Participation	9 E	Subd. 1. School boards must provide for maximum involvement of parents of children enrolled in sp ed programs	IDEA does not require parent and community participation.	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 6 Abstain 3
126C.05	Definition Of Pupil Units.	4 E 5 N				
126C.19	Shared Time	7 E 2 N	Subd. 4. where services can take place	Level of prescriptiveness goes beyond IDEA.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 6 No 0 Abstain 3

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendment
				Why Exceeds	Why Not Exceeds	
127A.11	Monitor MA Services for Disabled Students	9 E	MDE must monitor costs of MA services	IDEA does not require monitor MA services for disabled students.	Implements IDEA requirement without exceeding or expanding upon the federal requirement.	Yes 3 No 5 Abstain 1
127A.47	Payments To Resident And Nonresident Districts.	5 E 4 N		IDEA does not address payments to resident and nonresident districts	IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.	Yes 0 No 6 Abstain 3
128B.03	Finances, Insurance, Transportation.	4 E 5 N				

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<u>MN Law</u>	<u>Title</u>	<u>Exceed/ Expand, or No Votes</u>	<u>Notes</u>	<u>Comments</u>		<u>Recommend Amendments</u>
				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
3525.0210	Definitions.		Various: administrator, aversive procedure, aversive stimulus, conciliation conference, conditional procedures, cultural liaison, deprivation procedure, direct services, due process hearing, emergency, facilitated IEP, filing/file, FBA, functional skills evaluation, functional skills, hearing officer, indirect services, IFSP, manual restraint, mechanical restraint, mediation, paraprofessional, parent, providing district, recognized professional standards, resident district, service/serve, significant change in placement, surrogate parent, teacher, technically adequate instrument, time out for exclusion, time out for seclusion, vocational evaluation  <i>Proposed changes to this item</i>			
3525.0300	Provision of full services.	9 E	Ages 0-3			
		N	Ages 3-21			
3525.0400	Least restrictive environment.		Indication of better served  <i>Proposed changes to this item and proposed change pupil -&gt; child</i>			
3525.0550	Pupil IEP manager.	9 E	District shall assign, defined responsibilities, list of duties  <i>Proposed change pupil -&gt; child</i>			
3525.0700	Parental involvement.	9 E	District shall inform parents of alternatives and methods of instructions in 125a.05 (last sentence only exceeds)  <i>Proposed change pupil -&gt; child</i>			
3525.0750	Identification of pupils with disabilities.	5 E 4 N	Districts must develop systems  <i>Proposed change pupil -&gt; child</i>			
3525.0755	Extended school year services.	5 E, 4 N	Subd. 2. Definitions Subd. 3. Determination process/criteria Subd. 4. sources of information Subd. 5. Other factors must be considered  <i>Proposed change pupil -&gt; child</i>			

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
3525.0800	Responsibility for ensuring... provision of instruction and services.		Subd. 1. clarifies responsibility for FAPE in out of district placement  <b><i>Proposed changes to this item</i></b>			
		E	Subd. 2. district cannot contract for services when it can do it in district and if not, still must ensure FAPE			
			Subd. 3. resident district initially responsible, unless care and treatment or ed choice, district must invite other district if placement outside of district is considered			
			Subd. 4. if an out of district placement, resident district still responsible for FAPE and LRE and DP, providing district responsible for other things, resident district may appoint member of providing district as its rep			
			Subd. 5. Resident district responsible for resolving disputes, if providing district gets notice of dispute, it must inform resident district within 1 day  <b><i>Changes proposed, Subd. 5 – Subd. 9</i></b>			
			Subd. 6. Tuition rate appeal process defined			
			Subd. 7. ed and financial responsibilities for care and treatment in district and non district placements			
			Subd. 8. if parent placement out of district in ed choice program, resident district is responsible for cost, providing district responsible for assuring FAPE, notice and hearing. Transportation costs determined by statute			
			Subd. 9. financial responsibility for 18-21 is district where parents/guardian live			
3525.0850	Behavior interventions.		Policy encourages positive approach, skill acquisition, must be designed to enable a pupil to progress and develop skills and function as independently as possible  <b><i>Changes proposed</i></b>			
3525.1100	State and district responsibility for total special education system.		Subd. 1. MDE is responsible for ensuring compliance Subd. 2. districts must submit a plan to MDE – a part of application, not needed annually, plan requirements listed and includes conditional procedures and procedure for review emergency situations where CP are used  <b><i>Changes proposed</i></b>			

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
3525.1310	State aid for special education personnel.	5 E 4 N	Defines what activities are reimbursable and which are not  <b><i>Proposed change Pupil → Child</i></b>			
3525.1325	Autism spectrum disorders (asd).	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1327	Deaf-blind.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1329	Emotional or behavioral disorders.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1331	Deaf and hard of hearing.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1333	Developmental cognitive disability.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1335	Other health disabilities.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1337	Physically impaired.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1339	Severely multiply impaired.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
3525.1341	Specific learning disability.	9 E	Lists criteria not in federal law  <b><i>Changes proposed</i></b>			
3525.1343	Speech or language impairments.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
<u>3525.1345</u>	Visually impaired.	9 E	Lists criteria not in federal law  <b><i>Changes proposed</i></b>			
<u>3525.1348</u>	Traumatic brain injury (tbi).	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.1350</u>	Infant and toddler intervention services.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.1351</u>	Intervention services: ages three through six years.	9 E				
<u>3525.1352</u>	Developmental adapted physical education: special education.	9 E	Lists criteria not in federal law  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.1354</u>	Team override on eligibility decisions.	5 E, 4 N	<b><i>Proposed change Pupil → Child</i></b>			
<u>3525.1400</u>	Facilities, equipment and materials.	N	Essentially equivalent classrooms and facilities, provide atmosphere conducive to learning, must supply necessary equipment and instructional materials  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.1550</u>	Contracted services.	5 E 4 N	Subd. 1. When contracting, contract must be with people with appropriate licenses or with members in good standing Subd. 2. May provide sp ed to pupil in community based program if program meets MDE rules  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.2325</u>	Education programs for k-12 pupils and regular students placed in centers for care		Subd. 1. district in which facility is located must provide reg. ed, sp ed or both to K-12 students under listed conditions and by certain timelines Subd. 2. For short term, when services must begin and under what circumstances, screening necessary, interventions and evaluations decisions Subd. 3. For long term, notices and consent, team meeting, temporary services, screening,			

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<u>MN Law</u>	<u>Title</u>	<u>Exceed/ Expand, or No Votes</u>	<u>Notes</u>	<u>Comments</u>		<u>Recommend Amendments</u>
				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
	and treatment.		additional evaluation requirements Subd. 4. Exit report Subd. 5. minimum services Subd. 6. placement and coordination of care and treatment and special education services, joint determination of amount and site of services, must consider regular school site if child determined to be able to benefit Subd. 7. Reimbursement process and conditions  <b><i>Changes proposed</i></b>			
<u>3525.2335</u>	Early childhood program services, alternatives, and settings.	4 E, 5 N	<b><i>Proposed change Pupil → Child</i></b>			
<u>3525.2340</u>	Case loads.	5 E 4 N	Subd. 4. Establishes case loads Subd. 5. Establishes case loads for EC program alternatives, requires at least one para  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.2350</u>	Multidisability team teaching models.	9 E	Subd. 1. District may assign team staff Subd. 2. licensure requirement, need one teacher licensed in the area of student's disability Subd. 3. Licensed teacher is responsible for conducting eval and participating in team meetings, consultation must be provided to other teachers if not licensed in that area, consultation time is determined by IEP team  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.2380</u>	Variances from ratios.	5 E 4 N	District may apply for case load variance			
<u>3525.2385</u>	State interpreter/transliterator standards for the deaf and hard of hearing.	9 E	Subd. 2. Reimbursement only available if compliance with standards Subd. 3. Staff must have certain qualifications for interpreter/transliterator Subd. 4. Staff must have certain qualifications for cued speech			
<u>3525.2405</u>	Directors.	6 E 3 N	Subd. 1. Specifies director requirements, district must employ, cooperative director permitted, director cannot have direct instructional duties			

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
<u>3525.2435</u>	Effort to locate parent.	N	District must make reasonable efforts to locate parent, possible efforts specified			
<u>3525.2440</u>	Surrogate parent appointment.		District must make appointments in certain conditions  <b><i>Changes proposed</i></b>			
<u>3525.2445</u>	Consultation with county social services.	5 E 4 N	District must consult with county social services worker  <b><i>Proposed change Pupil → Child</i></b>			
<u>3525.2450</u>	Removal of surrogate parent.		Board may remove surrogate parent, reasons specified  <b><i>Changes proposed</i></b>			
<u>3525.2455</u>	Surrogate parent knowledge and skills.		District must make information and training available to surrogate parent or appoint one with specified knowledge  <b><i>Changes proposed</i></b>			
<u>3525.2550</u>	Conduct before evaluation		Subd. 2. Evaluation timeline is 30 school days from obtaining parental permission  <b><i>To be replaced by 3225.2500. Sub-part 3 is added.</i></b>			
<u>3525.2710</u>	Evaluations and reevaluations.		Subd. 1. refers to 125A.02 Subd. 4 F. requires FBA prior to using conditional procedures and must rule out other treatable cause for behavior Subd. 6. districts must comply with specific evaluation report requirements  <b><i>Proposed change, and there is a proposal for 3525.2720 to be added.</i></b>			
<u>3525.2810</u>	Development of individualized education program plan.		Subd. 1A(2). IEP must include benchmarks or short term objectives Subd. 1A(7). Transition begins at age 14 Subd. 1A(9). Specifies how parents are informed of progress toward annual goals and the extent to which progress is sufficient to achieve goals by end of year Subd. 1A(10). Requires statement of need for and responsibilities of para Subd. 1A(11). Requires documentation needed by .2900  <b><i>Changes proposed</i></b>			

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
<u>3525.2900</u>	Transition and behavioral intervention planning.		Subd. 4. Transition begins at age 14 or grade 9 Subd. 5A(1). defines types of interventions and specifies when they can be used and Subd. 5A(2). Defines interventions which can not be used Subd. 5B. interventions must be consistent with discipline policy, continued and repeated use must be reviewed in IEP development Subd. 5C. If emergency situations used twice in a month or there is a pattern, team meeting must be held, allows interim use, requires team meeting within five school days, parent and district admin notification of emergency use of reg procedure Subd. 5D. Time out procedures and conditions listed Subd. 5E. Parent may withdraw consent, and district must follow specified process and IEP meeting held  <b><i>Changes proposed</i></b>			
<u>3525.3010</u>	Educational placement.		Subd. 1A. Continuum specified  <b><i>Changes proposed</i></b>			
<u>3525.3100</u>	Follow-up review requirements.		Process for reinstatement, no need to document pre-referral interventions or for new evaluation  <b><i>Changes proposed</i></b>			
<u>3525.3600</u>	Prior written notice.		Refers to 125A.091 Districts must provide copy of proposed IEP when initiation or change of IEP  <b><i>Change proposed</i></b>			
<u>3525.3700</u>	Conciliation conference.		<b><i>Changes proposed</i></b>			
<u>3525.3750</u>	Mediation and other alternative dispute resolution.	9 E*	<b><i>* Mediation does not exceed, but the reference to conciliation and ADR does exceed</i></b>	.		
<u>3525.3790</u>	Time computation.	3 E 6 N				
<u>3525.3900</u>	Initiating a due process hearing.		<b><i>Changes proposed</i></b>			
<u>3525.4010</u>	Hearing officers.		<b><i>Changes proposed</i></b>			

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MN Law	Title	Exceed/ Expand, or No Votes	Notes	Comments		Recommend Amendments
				Why Exceeds	Why Not Exceeds	
3525.4110	Prehearing conference.		<i>Changes proposed</i>			
3525.4220	Hearing rights of respective parties.		<i>Changes proposed</i>			
3525.4300	Hearing procedures.	9 E				
3525.4320	Rules of evidence.	5 E 4 N				
3525.4350	Consolidation of cases.	5 E 4 N				
3525.4420	Decisions of hearing officer.		<i>Changes proposed</i>			
3525.4700	Enforcement and appeals.		<i>Changes proposed</i>			
3525.4750	Expedited hearings, who may request.	9 E	<i>Proposed change Pupil → Child</i>			
3525.4770	Expedited hearings, timelines.		<i>Changes proposed</i>			
<b>OTHER RULES</b>						
3501.0090	Students with IEPs or 504 plans	E 5 N 4	Subd. 1. Requires statement on IEP and 504 plan re testing decision (participate, exempt, modify) Subd. 2. Testing process explained			
3500.1000	Experimental and Flexible School Year Programs	E 4 N 5	Subd. 1D, district may request approval for establishing alternative eligibility criteria	Not addressed in IDEA	IDEA sets no std therefore MN cannot exceed a nonexistent std; Not a special ed law	
3505.1600	Local Applications for Aid	E 3 N 6	District must provide information on enrollment and cost of special needs programs	IDEA does not require such state reports	Not a special ed law; IDEA sets no std for how districts should qualify for state aid	

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				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
3505.4900	Support Services	E 5 N 4	Provides "special needs" student/staff ratio	Adds to personnel requirement	IDEA sets no std therefore MN cannot exceed a nonexistent std	
3512.0500	Program Requirements for K-12 Principals	E 3 N 6	Subd. 20. Principals must have knowledge of spec ed laws	IDEA does not address licensed requirements for administrators	IDEA sets no std therefore MN cannot exceed a nonexistent std	
7470.1600	Transporting Pupils with Disabilities	E 5 N 4	Subd. 2. appeal process Subd. 3. transit time Subd. 4. Type of vehicle Subd. 5. Additional assistance, determination, for vehicles Subd. 6. Special equipment to ensure safety Subd. 7. wheelchair securement	Specifies additional requirements over/above IDEA	IDEA sets no std therefore MN cannot exceed a nonexistent std	
7470.1700	Drivers and Aides	E 5 N 4	Subd. 1. careful selection Subd. 2. information sheet Subd. 3. Training	Goes significantly beyond the requirements in IDEA	IDEA sets no std therefore MN cannot exceed a nonexistent std	
8710.2000	Standards of Effective Practice for Teachers	E 3 N 6	Subd. 11C. Teachers must understand student rights, appropriate education for students with disabilities	IDEA requires teachers to be "highly" qualified	IDEA sets no std therefore MN cannot exceed a nonexistent std	
8710.5000	Core Skills for Teachers of Special Education	E 3 N 6	Subd. 2A. Teacher must understand legal bases Subd. 2C. Teacher must understand rights and responsibilities, including due process, FAPE, IEP, etc  Similar for 8710.5400 (DD); 8710.5500 (EC); 8710.5600 (EBD); 8710.5700 (LD); 8710.5800 (Physical and Health Disabilities)  <b>Changes: 8710.5000 is the same language cut and pasted into the rules through 8710.5008</b>	IDEA requires teachers to be "highly" qualified	IDEA sets no std therefore MN cannot exceed a nonexistent std	

## SPECIAL EDUCATION TASK FORCE REVIEW OF SPECIAL EDUCATION RULES

<u>MN Law</u>	<u>Title</u>	<u>Exceed/ Expand, or No Votes</u>	<u>Notes</u>	<u>Comments</u>		<u>Recommend Amendments</u>
				<u>Why Exceeds</u>	<u>Why Not Exceeds</u>	
<b>NEW, ADDITIONAL MDE PROPOSED RULES</b>						
3225.2720	Criteria Upon Reevaluation					
3530.4300	Educational Placement Decisions					

**ATTACHMENT A –  
SPECIAL EDUCATION TASK FORCE MATRIX**

## SPECIAL EDUCATION TASK FORCE

<b>ROLE</b>	<b>NAME</b>	<b>ASSOCIATION</b>	<b>PHONE</b>	<b>E-MAIL ADDRESS</b>
Providers	Willie Jackson	Special Education Consultant	952-836-2748	willie.jackson@mpls.k12.mn.us
Advocates	Virginia Richardson	PACER (Parent Advocacy Coalition for Educational Rights)	952-838-9000	vrichardson@pacer.org
Regulators	Amy Roberts	Department of Education	651-582-8482	amy.roberts@state.mn.us
Consumers	Jacki McCormack	Arc Greater Twin Cities	952-920-0855	<a href="mailto:jackimccormack@arcgreatertwincities.org">jackimccormack@arcgreatertwincities.org</a>
	John Guthmann	Parent	651-482-8900	kguthmann@hdbob.com
Lawyers	Laura Booth	Booth Law	763-550-7194	ltbooth@district287.org
	Daniel Stewart	MN Disability Law Center	612-332-1441	<a href="mailto:djstewart@midmlegal.org">djstewart@midmlegal.org</a>
Special Ed Teacher	Stacey Pumper	Education Minnesota	<a href="tel:952-496-9629">952-496-9629</a>	<a href="mailto:jspumper@earthlink.net">jspumper@earthlink.net</a>
School Officials	Grace Schwab	Minnesota School Boards Association	651-225-0637	gschwab@mnmsba.org
	Denny Ulmer	Minnesota Administrators for Special Education	218-751-6622 x 103	dpulmer@bric.k12.mn.us
Facilitator	Mariann Johnson	M.T. Johnson & Associates	612-872-7959	mariann@mtjohnson.com
Convener	James Cunningham	Bureau of Mediation Services	651-649-5433	james.cunningham@state.mn.us

2/8/2008

**ATTACHMENT B –  
MEETING NOTES FROM THE SEVEN TASK  
FORCE MEETINGS**

# Special Education Advisory Task Force

## Task Force Meeting

Monday, September 24, 2006

9:00 am – 4:00 pm

### Location:

Bureau of Mediation Services

1380 Energy Park Lane, Suite Two

St. Paul, MN 55108

## \*\*\**Meeting Notes*\*\*\*

### Meeting Objectives:

1. Orient task force members to the purpose, scope and role of the Task Force as outlined in State of MN H.F. No. 2245.
2. Review the Task Force meeting process and guidelines. Establish future meeting dates.
3. As outlined in MN H.R. No. 2245, review the MN Department of Education's January 2006, "*Memorandum/Public Notice of MN Requirements Not Required by Federal Laws.*"
4. Discuss and agree upon an initial set of key topics for the Task Force to address.
5. Identify next steps of the Task Force, including sources of data required by the Task Force to complete its work.

### Meeting Participants:

Stacey Pumper – Education MN

Denny Ulmer – MASE

Amy Roberts – MDE

Jacki McCarmack – ARC, Parent

Virginia Richardson – Advocate

Grace Schwab – MSBA

Laura Booth – Booth Law, LLC/Attorney

John Guthmann – Parent and Attorney

Dan Stewart – MNDCC/Attorney

Willie Jackson – Reflective Resource Inc.,  
Education Consultant

### Meeting Visitors/Non-Participants:

Tim Palmatier – Palmatier Law Office

Peter Martin – Knutson, Flynn & Deans, P.A.

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of  
Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

### Meeting Guidelines

- Work collaboratively and by consensus. Consensus fallback = 70% supermajority.
- Balanced and full participation
- All voices respected and heard
- Listen to learn
- Respectfully agree to disagree
- May call "time outs"(15 min max) and agree to report back to the full group following the time out.
- Do ask, do tell: ask for help with understanding others' perspectives and agree to share your own with others.

## **I. Purpose of Task Force**

James Cunningham, Commissioner of the State Of Minnesota's Bureau of Mediation Services, welcomed the meeting participants and provided an overview of his role as the Task Force convener. He introduced Mariann Johnson of M.T. Johnson & Associates as the meeting facilitator.

Meeting participants were provided a handout entitled, "*Overview and Scope of the Special Education Advisory Task Force.*" Included in the handout was the following Task Force purpose statement:

*"Compare federal and state special education requirements, and to recommend which state laws and rules that exceed or expand upon minimum federal special education requirements for providing special education programs and services to eligible students should be amended to conform with minimum federal requirements."*

### **Participant comments on the Task Force Role and Purpose Statement:**

- Are we looking at what is more than required? MN ADR has expanded upon the Federal.
- Our job is to explain, to add clarity, to help with implementing language.
- Special Education Criteria serves to operationalize the legislation. We are not looking at Criteria.
- Hoping for no more, or additional requirements for Districts.

James Cunningham agreed to clarify with Representative Mindy Greiling the June 14<sup>th</sup> request that the Task Force also, "...*Analyze the costs of the state requirements that exceed federal requirements and to provide that information in the February 15, 2008 report.*"

## **II. Member Introductions**

Members briefly introduced themselves to the group. (Note: SE = Special Education)

Jacki M. – Representing ARC. Past experiences: Coalition of Children w/Disabilities.

Amy R. – Works with the Compliance Division of the MDE. Representing MDE and the State of MN and its needs to comply with state and federal regulations. Also representing MN's children/students, parents, teachers, etc.

Laura B. – School law lawyer. Lawyer for a number of MN School Districts.

Denny U. – Executive Director Bemidji SE Coop. Past Director of Park Rapids. EBD Teacher. Licensed Superintendent. Representing MASE and School Districts.

Willie J. – Representing General Education and Special Education. Former school administrator for the Minneapolis Public Schools. Currently a consultant to schools.

Dan S. – Works for the MN Disability Law Center and U of MN Special Education Law Clinic. Advocate for SE children and families. Past employee of MDE.

Virginia R. – Works for PACER as a SE advocate. Representing all children and their parents.

Stacey P. – Special Education teacher and evaluator (IEP) for Maple Grove. Representing Education MN.

John G. – Lawyer, parent of special education child. Affiliated with the Coalition for Children w/Disabilities.

Grace S. – Representing the MSBA and School Boards. Past legislative experience. Also representing parents and students.

### **III. Participant Vision for Task Force**

Members of the Task Force then shared their vision for their work together on the Task Force.

- Hope that we develop an “I now understand that perspective.” Listen. We develop clarity around some provisions of law for the benefit of students, general and special education.
- Respectful, collegial. Focused on clarity, understanding - take out ambiguity.
- Everything does not just come down to cost. We must consider children and what is best for them. Establish clarity.
- Hard job as defined by the legislature. We have to stay focused on what we have been asked to do.
- Desire for honesty, that we reveal any hidden agendas. That we have an open and honest process.
- We conduct a thorough analysis and figure out our common ground. That we identify what is working and allow it to come to the surface.
- Envision/are able to understand/walk in each other’s shoes.
- Understand that cost is important so that funding needs can be presented in solid numbers in order to provide quality services and quality staff.
- Aware that MDE is conducting ongoing rule-making – it may impact our or change our work. Also, will need to identify areas of disagreement and why – clarify issues.
- Desire to better support Special Education line staff. Stay focused within mandate we have been given.

- Change the paradigm of what happened in the past, not repeat past challenges. Move forward with our mandate. Do our job.

**Overarching Vision Themes:**

- *Deep commitment to Minnesota students/children with disabilities and their families, and Minnesota’s teachers and administrators.*
- *To **clarify** areas of ambiguity and to establish increased understanding.*

**Keeping Task Force Member Visions Alive**

**AGREEMENT:**

Following the vision discussion, task force members discussed two procedural items that they agreed to include as working elements of the Task Force process:

- 1) “Check-ins” will be briefly held at the beginning of all Task Force meetings. The purpose of the check-ins will be to provide members an opportunity to share constituent feedback received in-between meetings about the work of the Task Force as outlined in the legislation.
- 2) As needed, and in rare occasions, members may request a “Time Out” during a Task Force meeting. A “Time Out” may not exceed 15 minutes; its purpose would be for a member to seek additional information or clarification from other members of the Task Force “off line” or outside the regular meeting.

#### **IV. MDE Presentation: January, 2006 Memorandum/Public Notice of MN Requirements Not Required by Federal Laws. (Federal Reporting Requirements Under IDEA 2004, Section 608).**

Task Force member and MDE representative Amy Roberts answered questions about the January 2006 Memorandum and presented additional data from MDE related to the scope and purpose of the Task Force. Amy distributed a copy of MN Rules, Chapter 3525 and MN Statutes 2006, Chapter 125A to each member of the Task Force. She briefly reviewed rule making currently underway at MDE that may impact the work of the Task Force.

#### **Additional Information/Data Requested from MDE**

Task Force members requested the following information from MDE:

- Draft changes, as soon as possible, on the proposed rule changes. (Possibly as early as October).
- Meeting notes/reports outlining the MDE's stakeholder committee that met previously to address the same issues that this Task Force has been asked to address. Specifically, Task Force members requested the rationales the committee had made for changes they had suggested, and that committee's "Statement of Need".
- "SONAR" for some rules and legislative history as it relates to the regulation, Statutes and Rules. (Legislative Library).

#### **Other Data Requested by the Task Force To Complete its Work**

Task Force members asked James Cunningham to provide Task Force members with the following data:

- Federal regulations (IDEA) and/or web links to the federal regulations
- Complete RATWIK report sent by email

#### **Possible Additional Data:**

- Include court decisions related to the scope of this Task Force?

## V. Small Group Work to Begin to Identify Task Force Topics/Issues

### Charge of Task Force Clarified by Group As follows:

1. Identify and decide what exceeds/expands upon IDEA, create a list.
2. Explain clearly – why and how areas exceeds/expands.
3. Recommendations should include three areas:
  - No change
  - Changes (to amend and conform with minimum federal requirements)
  - Things only MN does: distinction, possible rationale with keeping
4. Other topics/issues not listed above (1-3) may be listed, time permitting. For example, laws or regulations, beyond Special Education Rules and Statutes, that may impact the delivery of special education services. The focus of group will remain on 1-3, as listed above.

The Task Force then broke into three smaller groups and reviewed, “*A Comparative Examination of Federal and Minnesota Educational Requirements for Children with Disabilities*” by Ratwik, Roszak, & Maloney, P.A., May 1, 2007.

The Ratwik Report was used by the small groups to aid them in initially identifying which MN statutes and rules may **exceed** or **expand** upon that required by the federal Individuals with Disabilities Education Act of 2004 (IDEA). Small groups also were asked to provide **comments** and/or rationales for their work.

For a review of the work conducted by the small groups, please see the attached *draft* document, “***Task Force Member Initial Review of the Federal and Minnesota Education Requirements for Children with Disabilities, Using the Ratwick Comparative Examination.***”

## VI. Agreed Upon Meeting Dates of the Task Force

Full day meetings – 9am – 4:30 pm to be held at the Bureau of Mediation Services.

- ◆ Oct 29
- ◆ Nov 28
- ◆ Jan 14

## **VII. Next Steps for the Task Force**

Prior to the next meeting, members will be sent:

1. Meeting notes and small group grids/work on their RATWIK analysis.
2. The complete RATWIK document via e-mail.
3. Links to Federal/IDEA regulations.

Task Force Member Homework:

- Review other small groups' work - come with clarifying questions, comments, etc. Comments may include (at next meeting or in the future) rationales for the value of keeping any identified "exceeds" or "expands."
- As warranted, come up with any "Additional" exceeds or expands considerations for the Task Force to review:
  - Within IDEA
  - Outside IDEA (outside mandate) for list.

## **VIII. Parking Lot**

- "Cost" should be a secondary task for this group. Group needs clarification on how we would conduct this secondary task.
- "Other Comprehensive Issues" – (General Education) listing of other than Special Education specific statutes and rules. Can we include?
- Those things that exceed – if we think should be "left alone" because it is important/staff rationale of its value and include in the report

**Special Education Advisory Task Force**  
**Task Force Meeting**

**Monday, October 29, 2007**

**9:00 a.m. to 4:00 p.m.**

**Location:**

**Bureau of Mediation Services**  
**1380 Energy Park Lane, Suite Two**  
**St. Paul, MN 55108**

**\*\*\**Meeting Notes*\*\*\***

**Meeting Objectives:**

- 1) To discuss the Task Force member/small group reviews and evaluation of the Ratwik Special Education Comparative document
- 2) To receive an update on MDE's proposed Special Education Rule changes.
- 3) To discuss and identify as a Task Force, which state laws and rules may exceed or expand upon minimum federal special education requirements for providing special education programs and services to eligible students.
- 4) To identify next steps for the task Force and the plan for completing required tasks.

**Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCarmack - ARC, Virginia Richardson – PACER, Grace Schwab – MSBA, Laura Booth - Booth Law, John Guthmann - Attorney, Dan Steward - MNDCC/Attorney, Willie Jackson - Reflective Resource Inc.

**Meeting Visitors/Non-Participants:**

Tim Palmatier -Palmatier Law Office  
Peter Martin - Knutson, Flynn & Deans, P.A.  
Two law school students (Students of Dan Steward (

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

**Assistant Facilitator:** Josh Moore

## I. Meeting Overview and Task Force Business

- ◆ Review of the DRAFT September 24<sup>th</sup> Meeting Notes:
  - Delete “Teacher” for Jackie
  - John is presently affiliated with the Coalition, not a past member.
  - James will send corrected meeting notes copies to Task Force members.
- ◆ Commissioner Cunningham announced that he spoke with Representative Greiling’s about her June 14, 2007 request that the Task Force, “...*Analyze the costs of the state requirements that exceed federal requirements and to provide that information in the February 15, 2008 report.*” He told Representative Greiling about the Task Force’s concerns that they would not have the time to address the cost issue. The Representative said that the request was simply a request, and that she understood that the Task Force will not address the cost concern.
- ◆ The facilitator announced that observers are only to observe and not to participate in the formal meeting or in the small group discussions.
- ◆ A member raised a question about why lawyers are observing. Member responses included the following:
  - Stakes are high.
  - The lawyers in the back of the room (observers) have expertise in special education law.
  - Anyone could be in the back of the room. Anyone who comes will have an interest in the content of the meeting.
  - Understands that this is a public meeting and that anyone may attend. Desire for there to be no hidden agendas, and for Task Force members to put everything on the table.

## II. Member Check-ins

- Notified of new Special Education forms. Some members of her school committee feel that “Recommended” forms are actually “Enforced” forms. Where is this addressed? Do districts have to (mandated to) use these forms? Paperwork takes away from teaching time.  
Question: Is this topic (forms) outside the scope of Task Force?  
One member responded “Yes” and another “No.”
- What about other laws not addressed in the Ratwik’s report? Would it also be fulfilling our Task Force scope to review laws not mentioned in the Ratwik report? There a lot of rules and statutes that are not addressed in the report, but that impact Special Education.

- Dan Steward announced he prepared two documents for review by the Task Force. They are both tables of comparisons between federal and state special education laws – but unlike Ratwik’s report, they start with MN State Statutes and Rules.
- The annual MASE Conference was recently held. A discussion on the activities and scope of this Task Force was held. There is hope that we will slow the “Creep” when it comes to additional rules and paperwork.
- MASE recently sent a letter to MDE’s Deputy Commissioner requesting to put rule making on hold pending work of the Task Force. MSBA was also a joint author on this letter.
- There was an opportunity for all concerned to bring up objections to the proposed rule changes before this Task Force was convened.
- A question was raised as to whether or not to this Task Force should address State Rules. There is some risk that all the time spent on them will be wasted – given that MDE’s work on Rule changes.
  - Members generated possible options including:
    - Incorporate new proposed rules into our review.
    - Ignore new proposed rules, deal with current rules.
    - Include current and proposed MN rules.
    - Only deal with new rules that we know would become law, leave alone the rules that will be amended or repealed.
- Teachers tried to give input into the new proposed Rules, but their input was not included in the new Rule.

### **III. Dan Stewart’s Review of Documents Prepared for the Task Force**

Dan Stewart distributed two documents he prepared for Task Force member review and discussion. Documents titled: *“Special Education Task Force MN Statutes Chart”* and *“Special Education Task Force MN Rules Chart.”*

#### **Dan’s comments included the following:**

- **Started with MN Law** first, unlike the Ratwik report that started with Federal law.
- **Suggestions of Types** - It is important to determine what TYPE of law it is before we determine if it should be repealed.
  - Student Rights (i.e. See Denny’s list distributed at the last meeting, criteria)
  - Implement IDEA requirements (i.e. criteria for ESY - what we do with the Fed. Law)

- Standard Operating Procedures (i.e. transliterates, uniformed billing - spelling out how districts must run)
- Permissive regulations (things that districts may do - i.e. may have multidisciplinary program)

**ACTION:** Task Force members agreed to use Dan's documents as a means to complete their task. Following Amy Robert's presentation, they will start with reviewing the Statutes document.

#### **IV. Update on MDE's Proposed Special Education Rule Changes** Presentation by Amy Roberts, MN Department of Education

Amy Robert's announced and reminded members that, upon her request, James Cunningham recently e-mailed members the proposed rule changes.

##### Amy's Comments Included:

- SONAR - Describes how the proposal came into being. The department took into consideration differing points of view.
- Meeting Date for the Rule Hearing will be on December 3, 2007 in MDE's Conference Room 15 and 16.
- Barbara Nielson will be the hearing officer.
- MDE is out of compliance w/ Federal Government and therefore, MDE has decided it was in the State's best interest to move ahead with the Rule changes.
- MDE does not have the jurisdiction to make substantive changes to certain Rules at this time.
- MDE cannot change certain rules unless statutes are changed.
- Amy clarified her role on the Task Force as a representative of MDE: Serving as a neutral, as a resource, to answer questions, and to bring information or questions back and forth between the Task Force and MDE. She cannot take an active role on the Task Force or take a position, because any position she takes would be a MDE official position and she is unable to do that without conferring with MDE leadership.

##### **Responses to Amy's presentation:**

- Why would the legislature create this sort of substantive conflict between MDE's rule making and the scope of this Task Force?
- What impact would a disagreement have to this hearing?  
Hearing officer is charged with deciding if the rule is reasonable.  
Disagreement will be recorded as part of public record.
- We need to move ahead and not try to understand legislative decisions.
- How does MN compare to other states in compliance with Fed Government?  
Every state has had its own response.  
Five states were already almost in compliance. MN needed work.  
Others terribly out of compliance.

**V. Outline of Process to Use for Discussing and Identifying Laws and Rules that Exceed or Expand.**

Comments Included:

- We could hold an extra meeting, if necessary. James will try to focus on creating an outcome by February 15. Keep us on task.
- The way we prioritize our work matters.
- Start with Dan's document, go one by one, and determine if consensus exists or not.
- Proposed amendment: would this committee be willing to hold another meeting?
- Proposed amendment: some committee members (small group) review proposed rule changes, and present a draft at the next TF meeting.
- MDE will reopen rules that have just been done. Would require same notice and hearing process.
- Review what we know is permanent first.
- We should not overestimate our power/ the scope of this Task Force.

**ACTION/DECISION:** Task Force members agreed to put a hold on work completed on the Ratwik document, and review Dan's MN Statutes document as a large group.

**VI. Analysis and Discussion of Expands and Exceeds, Using Dan's MN Statute Document.**

**ACTION/DECISION:** The Task Force members agreed to review the document and consider whether or not each Statute:

- ◆ *Exceeds or Expands = E*
- ◆ *? – Not consensus, need to come back to – needs more review and discussion.*
- ◆ *NO – does not exceed.*

*PLEASE SEE ATTACHED DRAFT DOCUMENT: "Review Of Document From The October 29, 2007 Task Force Meeting: Group Comments On "Exceeds – Or – "?"/"Come Back To."*

Task Force members reviewed the document for the remainder of the meeting and completed as much more on the Statute document as was possible, given meeting time. Members concluded that the Task Force needs more study of the laws to complete the remainder of its review.

**VII.**

### **Next Steps for Task Force Members Prior to the Next Meeting**

- 1) Collect and discuss additional MN Laws Possibly not included in “Dan’s Document”
  - a. Who: Individual members get data to James in advance of next meeting.
  - b. When: One week prior to next meeting
- 2) For pages 15 – 20 of the document reviewed today, James will send State of MN Information/Sources to aid member’s review.
- 3) Prior to the next meeting, check Federal/IDEA statutes to see if it answers question raised today. Each person does their own work.
- 4) Laura and Dan will work together to look at the proposed MN Rule changes before the next meeting. They will provide a report back to the group.
- 5) Next Meeting Date: Nov. 28 will not work. December 6 and December 20 and to be held as meeting dates. James will contact Denny to see if these dates work for him. All members will then be contacted about the final date.
- 6) Before the next meeting, members should go through the Ratwick Analysis document to make sure that nothing fell through the cracks.
- 7) Review Dan’s Rules document prior to the next meeting.

## **Special Education Advisory Task Force Task Force Meeting**

Thursday, December 6, 2007  
9:00 a.m. to 4:00 p.m.

### **Location:**

Bureau of Mediation Services  
1380 Energy Park Lane, Suite Two  
St. Paul, MN 55108

### **\* Meeting Notes \***

#### **Meeting Objectives:**

- 1) To receive constituent feedback from Task Force members regarding the work of this Task Force.
- 2) To continue to identify which state laws and rules may exceed or expand upon minimum federal special education requirements for providing special education programs and services to eligible students.
- 3) To identify next steps for the Task Force and a plan for completing required tasks.

#### **Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCarmack - ARC, Virginia Richardson – PACER, Grace Schwab – MSBA, Laura Booth - Booth Law, John Guthmann - Attorney, Dan Steward - MNDCC/Attorney, Willie Jackson - Reflective Resource Inc.

#### **Meeting Visitors/Non-Participants:**

Tim Palmatier -Palmatier Law Office  
Peter Martin - Knutson, Flynn & Deans, P.A.  
Alicia Wright – U of MN Law Student  
Carolyn Westra – U of MN Law Student  
Peter Noll – Minnesota Catholic Conference

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

#### **Meeting Guidelines:**

- Work collaboratively and toward consensus
- Balanced and full participation
- All voices respected and heard
- Listen to learn
- Respectfully agree to disagree
- May call “time outs” (15 minutes max or use breaks, report back to full group)
- Do ask, do tell – share perspectives, ask about others

## **I. Meeting Notes from October 29<sup>th</sup>**

Task Force members reviewed the meeting notes from October 29<sup>th</sup> and made the following change:

Page 4 under, “Amy Roberts Comments” fifth bullet, change from “*MDE does not have the ability to make substantive changes to the Rules at this time*” to “*MDE does not have the **jurisdiction** to make substantive changes to **certain** Rules at this time*”.

## **II. Review of the Proposed MN Rule Changes**

Task Force members agreed to table the agenda item on the presentation and discussion on the *Proposed MN Rule Changes* until after the Task Force has had an opportunity to review the current MN Rules.

## **III. Review of the Special Education Task Force Statutes Document**

Members continued their review and work on the Special Education Task Force Statutes Document, which lists MN Statutes pertaining to Special Education and the charter of this group. To assist in the work of determining whether a MN Statute “Exceeds or Expands” upon a minimum federal requirement, members reviewed the complete MN and Federal Statutes and the Ratwik document.

Please see the attached, “Special Education Task Force Statutes Document” for the results of the work completed at this meeting.

Members identified the following as additional statutes that the Task Force might review as part of its work.

(Note: These statutes were not included in the original “Special Education Task Force Statutes Document”)

- 121A.15 – “Health standards, immunizations and children”
- 121A.43 – “Exclusions or exclusion of child w/disability”
- 121A.59 – “Bus transportation:
- 121A.67 – “Adverse and deprivation procedures”
- 123B.76 – “Expenditure reporting”
- 123B.88 – “School district transportation”
- 123B.92 – “Transportation aid”
- 123B.41 – “Definitions”
- 124D.49 – “Education and employment transition partnerships
- 126C.05 – “Definition of pupil units”
- 127A.47 – “Resident/Nonresident district payment”
- 128B.03 – “Finances & Transportation, Special Education/White Earth Reservation

- 124D.66 – “AOM”

### **Next Steps for the Statutes Review at the December 20<sup>th</sup> Meeting**

- 1) Each member should come prepared to re-examine all those MN Statutes that were given a “?” in the “Special Education Task Force Statutes Document” and to recommend whether or not it exceeds or expands upon a minimum federal requirement.  
SPECIAL INSTRUCTIONS: When reviewing the document, please note that all the Statutes given a ? have been highlighted in yellow. Statutes that were identified as not to be included for review have strikes through the Statutes.
- 2) Each member should also come prepared to participate in a discussion leading to specific recommendations for each of the MN Statutes identified as either expanding or exceeding minimum federal requirements. Recommendations are to include, “which state provisions may be amended to conform to minimum federal requirements.” Additional recommendations may also be developed, as agreed upon by Task Force.

### **IV. Review of the Special Education Task Force Rules Document**

Members began their review of the “Special Education Task Force Rules Document”, using the same review criteria as used in when reviewing the Statutes document.

To assist in the work of determining whether a MN Rule “Exceeds or Expands” upon a minimum federal requirement, members reviewed the complete MN Rule, Federal Statutes and MN Sonor.

Please see the attached, “Special Education Task Force Rules Document” for a review of the work completed on the Rules at this meeting.

### **Next Steps for the Rules Review at the December 20<sup>th</sup> Meeting**

- 1) Members should come prepared to discuss and recommend whether or not each rule listed in the Rules document exceeds or expands upon a minimum federal requirement. A group process will be employed to facilitate this process.

## **V. Ideas and Possible Format for the Final Report**

- 1) Include related federal law in the Statutes document.  
Who: Dan, Laura.  
Dan and Laura request assistance of other Task Force members to complete this task.
- 2) Possible option: Break the final report down into 2 parts:
  - a. Where there is a federal comparable
  - b. Where/when there is not a comparable
- 3) Possible option: In the "Type Column" of the Statutes document, include the type or category. Possible examples: Student rights, Implements IDEA Requirements, Standard Operating Procedures, Permissive Regulations. Others: Not in IDEA; for example, Federal laws that direct the State to create a Rule, and others as identified by the group.

**Special Education Advisory Task Force**  
**Task Force Meeting**

**Thursday, December 20, 2007**

**9:00 a.m. to 4:00 p.m.**

**Location:**

Bureau of Mediation Services  
1380 Energy Park Lane, Suite Two  
St. Paul, MN 55108

**\*\*\* Meeting Notes \*\*\***

**Meeting Objectives:**

- 1) To receive constituent feedback from Task Force members regarding the work of this Task Force.
- 2) To continue to identify which state laws and rules may exceed or expand upon minimum federal special education requirements for providing special education programs and services to eligible students.
- 3) To identify next steps for the Task Force and a plan for completing required tasks.

**Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCarmack - ARC, Virginia Richardson – PACER, Grace Schwab – MSBA, Laura Booth - Booth Law, John Guthmann - Attorney, Dan Steward - MNDCC/Attorney, Willie Jackson - Reflective Resource Inc.

**Meeting Visitors/Non-Participants:**

Tim Palmatier -Palmatier Law Office  
Peter Martin - Knutson, Flynn & Deans, P.A.

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

**Assistant Facilitator:** Josh Moore

**Meeting Guidelines:**

- Work collaboratively and toward consensus
- Balanced and full participation
- All voices respected and heard
- Listen to learn
- Respectfully agree to disagree
- May call “time outs” (15 minutes max or use breaks, report back to full group)
- Do ask, do tell – share perspectives, ask about others

## **I. Review of Meeting Notes from the December 6<sup>th</sup> CAC Meeting.**

Members reviewed the meeting notes and accepted them with no changes. Mariann also distributed the most recent draft of the Rules and Statutes documents. The draft documents include the work completed at the December 6<sup>th</sup> meeting.

## **II. Member Check-ins and Task Force Business**

Concerns from members included:

- ◆ Definition of “exceeding” and “expanding” – still lacking clarity.
- ◆ Which MN Rules are targeted for repeal? What should we do about those as a Task Force?
- ◆ The Task Force has a lot of work to accomplish. Will we be able to complete the work expected of the Task Force in the timeline provided?

James Cunningham reported to the Task Force about communications he has had with Representative Greiling:

- ◆ Letter dated June 14, 2007 from Rep. Greiling to James was distributed to all Task Force members.
- ◆ James reported that he has requested information from Representative Greiling about the Task Force’s final report. Specifically, he asked if the current draft charts (Rules and Statutes) would suffice as a report. He has not received a response as of yet.
- ◆ James offered the option of the Task Force reviewing close-to-final draft report on-line rather than as a group.
- ◆ James noted again that Representative Greiling stated she was okay with the Task Force not analyzing costs.
- ◆ James expressed his opposition to asking for an extension to the February 15<sup>th</sup> report due date.

Task Force responses to James Cunningham’s comments:

- ◆ Would like to convene as a group to review the report, rather than on-line.
- ◆ The chart format is appropriate. Confirm if size is acceptable (11x17) – think it should be 8.5 x 11 instead of the larger size.
- ◆ Would like the final report to include definitions of terms, especially the terms “Exceed” and “Expand.”

The Task Forces discussed what to do with additional statutes, the “Parking Lot” statutes identified and recorded at the December 6<sup>th</sup> meeting:

- ◆ They are not exceeding or expanding.
- ◆ The Task Force should make a formal recommendation on them.
- ◆ They should be treated the same as the other statutes.
- ◆ Mariann requested the group’s permission to add the 13 additional statutes to the list of Statutes to be reviewed by the Task Force.

There were no objections.

### **Definitions of “Exceed” or “Expand”**

Mariann requested that group revisit the terms “Exceed” and “Expand” and as a full Task Force, agree upon a formal definition for the terms “Exceed” and “Expand”.

The Task Force discussed some of the factors at stake in defining these terms. The main rationales and points of contention included:

- ◆ Does “to exceed” mean to go beyond a minimum set by federal rules?
- ◆ Does expand mean to elaborate on existing Federal?
- ◆ Does to “Operationalize” mean to expand?
- ◆ Does Minnesota’s compliance with Federal Rules and Statutes and the implementation a requirement mean it is not an expansion?
- ◆ Where Federal law is silent or when the Federal government gives Minnesota a choice, how should that be viewed?
- ◆ If we use expand too broadly, then this Task Force would mark all State Rules and Statutes as “Expand.” The Task Force work would therefore be irrelevant.

Additional Comments:

- Members should simply vote based on their personal definition.
- Not all will agree on the definition.

Following a discussion, the Task Force ultimately decided upon the following definitions, with no objections raised:

- ◆ **Definition of Exceed:**  
***“A Rule or Statute EXCEEDS if it goes beyond the federal limit, goes above minimum additional requirements.”***
- ◆ **Definition of Expand:**  
***“A Rule or Statute EXPANDS if it increases in scope, size or volume.”***

### **Discussion on Separate Columns for Exceed and Expand?**

Comments Included:

- ◆ Separate the two out because they have different meanings
- ◆ This as an unnecessary dichotomy.
- ◆ What might the impact be of having constituents read a report without distinctions?
- ◆ Mariann reminded the group that early on they made the decisions to review and vote *Expand or Exceed* together.

The group agreed to continue with the process of reviewing and voting on *Expand or Exceed* together.

## **Voting Procedure**

### **Comments Included:**

- ◆ Objections were raised to the “Super-Majority” voting procedure.
- ◆ Some members stated that they had originally agreed to the super-majority procedure with the belief that Amy Roberts would be voting.
- ◆ The alternative of a straight majority vote received objection on the lines that some members wish for the final report to the legislature to have a larger representative backing from the Task Force.
- ◆ An observation was made that there is a dichotomy of school vs. advocates, which shakes out to 5 versus 4. Some members objected to being categorized as one or the other.

Mariann Suggested an Alternative:

Members simply vote *Expand, Exceed or No* and that the final report will list the votes cast per Statute and Rule.

Commissioner Cunningham made the decision that the report will reflect voting numbers as Mariann described above – Task Force decisions will not be made or recorded by majority or super majority.

### **III. Completion of “Expand/Exceed” Review and Work on MN STATUTES**

Members tallied their votes on the MN Statutes Chart (See separate MN STATUTES document/chart).

Members tallied their votes on the additional thirteen Statutes as follows:

- ◆ **Additional Statutes Votes:**
- ◆ 121A.15: 6 No, 3 Exceed
- ◆ 121A.43: 1 No, 8 Exceed
- ◆ 121A.59: 5 No, 4 Exceed
- ◆ 121A.67: 4 No, 5 Exceed
- ◆ 123B.76 5 No, 4 Exceed
- ◆ 123B.88 4 No, 5 Exceed
- ◆ 123B.92 4 No, 5 Exceed
- ◆ 123B.41 4 No, 5 Exceed
- ◆ 124D.49 1 No, 8 Exceed
- ◆ 126C.05 5 No, 4 Exceed
- ◆ 127A.47 4 No, 5 Exceed
- ◆ 128B.03 5 No, 4 Exceed
- ◆ 124D.66 5 No, 4 Exceed

#### **IV. Continuation of Review and Work on MN RULES – Exceed/Expand or Not**

A suggestion was made to try to limit discussion on each of the rules to five minutes. Josh agreed to monitor the time.

Amy Roberts listed the MN Rules to which there are proposed changes. Those Rules are noted in the Rules Chart (See attached MN RULES document/chart).

##### **Note:**

- ◆ Rule 3225.2550 is to replace 3225.2500
- ◆ Rule 3225.2720 is proposed to be added “Criteria Upon Reevaluation.”

##### **“Other Rules”**

- ◆ Add 3530.4300 “Educational Placement Decisions.”
- ◆ 8710.5000 is the same language cut and pasted into the following rules until 5008.

Members discussed the question of whether to review current rules or proposed rules, or both. Choices:

- ◆ Look at current
- ◆ Look at proposed
- ◆ Look at both
- ◆ Leave proposed until after Feb 2, then review the new rules once they are adopted or rejected.

Task Force members agree to not review any of the proposed Rule changes at this meeting and go back to the list of proposed Rule changes as time permits. Exceptions: Any MN Rule change that simply changed “Pupil” to “Child”.

Members then discussed and eventually vote on any disputed Rules (those that the group had determined were “?”s). Please see the attached MN RULES document/chart for a completing listing of the Task Force’s work.

#### **V. Next Meeting and Meeting Wrap-up**

##### **Action Item:**

As homework, members will study all the Rules in the “Other RULES” category

##### **Dates for Future Meetings<sup>\*</sup> :**

January 14, 2008, **8:30** - 3:00

February 8, 2008, **8:30** - 3:00

**\* Please note the earlier start time.**

**Special Education Advisory Task Force**

**Task Force Meeting**

**Monday, January 14, 2008**

**9:00 a.m. to 4:00 p.m.**

**Location:**

**Bureau of Mediation Services  
1380 Energy Park Lane, Suite Two  
St. Paul, MN 55108**

**\*\*\**Meeting Notes*\*\*\***

**Meeting Objectives:**

- 1) To receive constituent feedback from Task Force members regarding the work of this Task Force.
- 2) To continue to identify which MN (“Other Rules”) may exceed or expand upon minimum federal special education requirements for providing special education programs and services to eligible students.
- 3) Identify those MN Statutes and Rules that Task Force members recommend be amended to conform to minimum federal requirements.
- 4) Identify next steps for the Task Force and a plan for completing required tasks, including the writing and review of the final report.

**Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCormack – Consumer, Virginia Richardson – PACER, Grace Schwab-MSBA, Laura Booth – Booth Law, John Guthmann – Consumer, Dan Stewart – MDLS/Attorney, Willie Jackson– Reflective Resources, inc.

**Meeting Visitors/Non-Participants:**

Peter Martin - Knutson, Flynn & Deans, P.A.

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

**Meeting Documentation:** Jackie Smith

**Meeting Guidelines:**

- Work collaboratively and toward consensus
- Balanced and full participation
- All voices respected and heard
- Listen to learn
- Respectfully agree to disagree
- May call “time outs” (15 minutes max or use breaks, report back to full group)
- Do ask, do tell – share perspectives, ask about others

## **I. Review of Meeting Notes from the December 20<sup>th</sup> SEATF meeting**

Members reviewed the December 20<sup>th</sup> meeting notes and accepted them with the following changes:

Page one, under “Meeting Participants”:

- Change “McCarmack, ARC” to “McCormack, ARC”
- Change “Steward, MNDCC” to “Stewart, MDLC”

## **II. Member Check-in and Task Force Business**

James Cunningham reported to the Task Force on his communications with Representative Greiling:

- Last correspondence was on December 19<sup>th</sup> regarding the format for the final report.
- James presented members of the Task Force with a copy of an e-mail exchange documenting his communication and response from Representative Greiling (emails dated 12/09/07 and 1/07/08).
- Representative Greiling noted that the staff committee requested more information in the “Comments” section, specifically how the rule or statute does or does not exceed or expand upon the federal standard. In addition, she asked if the Ratwik material could be incorporated in the final chart/report for ease in cross-referencing.

Task Force responses to Representative Greiling’s requests:

- Would like to eliminate Ratwik cross-references.
- The Representative represents only one opinion, would like the Senate contacted as well.

Laura Booth commented on two recent legal decisions that Task Force members should know about as they may impact the work of this Task Force. A Task Force member objected to Laura presenting the information. Another Task Force member requested that Laura present the following brief summary, and the Task Force agreed:

- 1) The 8<sup>th</sup> Circuit Court of Appeals held that MN law that places the burden of proof on the school district in all cases is in error given an earlier US Supreme Court decision. Since MN requires that the burden be assigned in this way, the statute was overruled by the 8<sup>th</sup> Circuit.
- 2) The second case interprets the MN statute on shared time private school students. Robbinsdale school district argued that a private school student did not have an individual right to a FAPE, as is the case under federal law. It appears that the Court held that if the student is actually enrolled in the public school and the private school, the student has a right to FAPE under MN law.

### **III. Discussion on the Format for the Final Report to the Legislature**

Task Force members reviewed the current formats of the Statutes and the Rules charts and discussed the format to be used for the final report to the legislature.

It was agreed that the “Related Federal Law” column be deleted.

Member comments regarding whether or not to delete the “Dissenting Opinions” column from the report:

- I thought we agreed to retain the dissenting opinions column.
- We need the dissenting opinion column, or the opportunity to explain different views in the comments section.

James Cunningham suggested that it might be better to offer dissenting opinions as an attachment/appendix to the charts. James also reminded the group that the two charts would encompass the final report delivered to the legislature.

Decision regarding “Dissenting Opinions”:

- Members will be responsible for writing their own dissenting opinions for specific statutes and rules, and submitting their written opinions to Commissioner Cunningham in a timely fashion for inclusion as an attachment or part of the final report’s appendix.
- A specific date for submission of “Dissenting Opinions” was not established.

Additional members’ suggestions for the final report/charts:

- Remove “how” column. It was for Task Force use, is incomplete, and includes reference to Ratwik’s work, which many of us don’t want included in the final report.
- Change the “how” column to “what” and leave it on the form, moving it to come after the title.
- A final decision was not reached on whether or not to keep the “How” column in the final report. It was agreed however, that the column be kept in all charts being discussed and reviewed by the Task Force.

Mariann made the following suggestions regarding the “Comments” column:

- The Comments column should be separated into two sections, (1) Why Exceeds/Expands and (2) Why Not Exceeds/Expands.
- Task Force member explanations to be filled in these two columns should be kept to brief, declarative statements.
- Prior to the two comments columns, the votes for exceeds/expands or not exceeds/expands will be listed.

A discussion followed regarding the “Recommended Amendments” section on the charts.

The following decisions were made regarding the “Recommended Amendments.”

- Votes would be kept with regards to “To Amend” or “Not to Amend.” Members may also abstain from voting.
- Unless otherwise agreed to by the full Task Force, specific recommendations on how to/not to amend a specific rule or statute will not be recorded or included in the charts.
- Individual Task Force members may, however, submit their individual opinions regarding possible amendments for inclusion as part of the report’s appendix/attachments.

#### **IV. Review and Continued Work on the MN Rules and Statutes**

Pages 9 and 10 of the December 20<sup>th</sup> version of the **MN RULES Chart** were reviewed – the “Other Rules” section of the chart. “Exceeds/Expands” or “Does Not Exceed/Expand” votes were taken and comments were made and recorded as to why the Rule exceeded or did not exceed. (See January 14<sup>th</sup> Rules Chart)

Members then moved on to **MN STATUTES Chart** . Brief discussions were held and members voted on whether or not to “Recommend Amending” on all those Statutes listed in the chart that had unanimous votes for exceed, or that the majority had voted that it exceeded/expanded. (See January 14<sup>th</sup> Statutes Chart)

#### **V. Meeting Parking Lot Items**

Parking lot items generated throughout the meeting included the following:

- In the final report to the Legislature, note the work/contributions made by Dan (having created the forms we are using) and Laura, for her research.
- Ratwik – including his comments referencing his report would be over and above our scope – we should not include in final document. (Reference to Ratwik report currently show up in the “How” column.)
- Need to decide if and how we might include the current “how” section of the charts in the final charts/report that goes to the legislature.
- Need to determine final date for all comments (dissenting opinions, etc.) to be received by James. Also, need to determine if comments will be circulated to all task force members and specific length of comments.

#### **VI. Meeting Wrap-Up and Next Meeting**

Members agreed hold an additional meeting on January 28<sup>th</sup>.

##### **Dates for Future Meetings:**

- January 28, 2008 8:30 am – 3:30 pm
- February 8, 2008 8:30 am – 3:00 pm

**Special Education Advisory Task Force  
Task Force Meeting**

**Monday, January 28, 2008**

**8:30 a.m. to 3:30 p.m.**

**Location:**

**Bureau of Mediation Services  
1380 Energy Park Lane, Suite Two  
St. Paul, MN 55108**

**\*\*\**Meeting Notes*\*\*\***

**Meeting Objectives:**

- 1) Receive constituent feedback regarding the work of this Task Force.
- 2) Continue to complete work on the review of MN Statutes: brief statements on why/why not exceeds, and votes on whether or not to recommend amendment.
- 3) Time permitting, continue to complete work on the review of MN Rules: brief statements on why/why not exceeds, and votes on whether or not to recommend amendment.
- 4) Identify next steps for the Task Force and a plan for completing required tasks, including the writing and review of the final report.

**Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCormack - Consumer, Virginia Richardson – PACER, Grace Schwab – MSBA, Laura Booth - Booth Law, John Guthmann - Consumer, Dan Stewart - MDLC/Attorney, Willie Jackson - Reflective Resource Inc.

**Meeting Visitors/Non-Participants:**

Peter Martin - Knutson, Flynn & Deans, P.A.

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

**Meeting Documentation:** Jackie Smith, M.T. Johnson & Associates

**Meeting Guidelines:**

- Work collaboratively and toward consensus
- Balanced and full participation
- All voices respected and heard
- Listen to learn
- Respectfully agree to disagree
- May call “time outs” (15 minutes max or use breaks, report back to full group)
- Do ask, do tell – share perspectives, ask about others

## **I. Review of Meeting Notes and Charts from the January 14th Meeting**

Members reviewed the January 14<sup>th</sup> meeting notes and accepted them with the following changes:

Page 1, "Meeting Participants"

- John Guthmann, "Attorney", should be changed to "Consumer".
- Jacki McCormack, "ARC", should be changed to "Consumer".

Commissioner Cunningham commented that a list of Task Force members would accompany the report to the legislature. The list is available for review by Task Force members.

January 14<sup>th</sup> Statutes Document:

- 12 additional "Other Statutes" were added to the end of the statutes document. These statutes were identified and voted on (exceed/expand or not) by the Task Force in December, and were captured in the meeting notes, but not included in the original statutes chart.
- The document's previous "Comments" column was separated into two sections, (1) Why Exceeds/Expands and (2) Why Not Exceeds/Expands.

January 14<sup>th</sup> Rules Document:

- The document was reviewed to make certain that all MDE proposed Rule changes were correctly titled and listed in the chart.
- The document's previous "Comments" column was separated into two sections, (1) Why Exceeds/Expands and (2) Why Not Exceeds/Expands.

Per Task Force member requests at the January 14<sup>th</sup> meeting, members were also provided with DRAFT mock-ups of both charts in 8.5x11 formats. The smaller sized charts represented possible formatting examples for the final documents/charts to be submitted to the legislature. As requested, the 8.5 x 11 formats eliminated the "how" column.

Member comments on the 8.5 x 11 formats:

- The "how" column needs to be included on the report.

Further discussion on the format of the final charts was moved to the end of the meeting or the February 8<sup>th</sup> meeting.

## **II. Review of the Meeting Agenda and Today's Meeting Process**

Mariann Johnson reviewed the agenda and its focus on the review of the remaining statutes.

For each of the remaining statutes with unanimous or a majority of "Exceeds/Expands" votes (approximately 100 statutes), meeting participants agreed to:

1. Provide a brief statement for why and/or why not each statute expands or exceeds upon a minimum federal special education requirement.
2. Vote on whether or not to recommend the statute may/should be amended to conform with minimum federal requirements.
3. Spend five minutes (10 minutes maximum) per statute, on discussing and voting on whether or not to recommend the statute should/may be amended.

Further, it was agreed that comments would not be taken or recorded on “how” a specific statute might be amended. However, Task Force members agreed that they may submit brief, written comments recommending how specific statutes may/should be amended. Task Force members were asked to submit all amendment recommendations/comments directly to James Cunningham for inclusion in an appendix to the legislative report.

A discussion was held regarding the remaining work of the Task Force and the review process. Member comments included the following:

- If I’m ok with the current rule, does it mean I am not ok with the proposed change to the rule?
- Proposed rules are not laws yet. We agreed to review only current rules and if there was time, to cover MDE’s proposed rule changes.
- We still have 100+ items. Concerned that we have so many to cover that there will not be enough time for adequate discussion.
- Recommend we break into smaller discussion groups to encourage more dialogue, and so that all voices are heard.
- To recommend amending the law should take more than a 5-4 vote. We have not had the time to discuss our differences. If we are speaking of amending the statutes, we need more time for discussion.
- We should come up with solid recommendations for the 5-4 votes. If we have bad provisions in the law, we should look at those.
- The legislature does not expect us to be the “deciders”. They know what a 5-4 vote means. We have made a commitment to finish this. We need to quit questioning what we are doing and go forward with the work.
- Specific recommendations for amendments should go in an attachment to the report.
- We should keep moving forward and “red flag” items as needed, put them in the parking lot and then come back to those items for more discussion.
- People have expressed to me that they are upset about our changing from the super majority to a simple vote. This discourages consensus. I’m uncomfortable just voting.
- We are changing the rules once again. When people don’t like how the votes are coming out, they want to change the process.
- On items where we have voted, the reference to Ratwik should be eliminated (in the “How” column).
- Mariann reminded the group that as previously agreed and for discussion purposes, the “How” column would remain in all documents being reviewed by the Task Force. However, the Task Force still needs to formally decide whether or not to include the column in the final report/charts submitted to the legislature.

Commissioner Cunningham explained that the review process outlined earlier in today's meeting (page 2) was the best compromise. Given our time constraints, the Task Force can simply not debate each statute. Be encouraged that you are doing a great job given the complexity of the task and the time constraints.

Given comments provided for the "exceeds/not exceeds" discussions at the January 14<sup>th</sup> meeting, Mariann suggested that the group agree on several standard responses for "why exceeds" and "why not exceeds" and label those responses a, b, c. In reviewing the statutes, members could then call out the appropriate letter as a declarative statement for why or why not the law exceeds.

Task Force members unanimously agreed to this process and identified the following responses:

"Why Exceeds/Expands":

**A** – IDEA does not address.

**B** – IDEA does not require.

**C** – Level of prescriptiveness goes beyond IDEA.

"Why Not Exceeds/Expands":

**A** – IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.

**B** – Implements IDEA requirement without exceeding or expanding upon the federal requirement.

**C** – IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.

### **III. Review and Work on MN Statutes Chart**

Members provided the appropriate declarative statements for each statute, beginning with MN Law 125A.20 and continuing through MN Law 125A.74. Discussions were then held and votes were taken and recorded for the "recommend amendment" column. (See the January 28<sup>th</sup> Statutes Chart).

### **IV. Report Parking Lot**

Inclusion of the "how" column on final report – needs more discussion.

### **V. Meeting Wrap-Up and Next Meeting**

The next meeting will be held on February 8, 2008, 8:30 am to 3:30 pm.

**Special Education Advisory Task Force**

**Task Force Meeting**

**Friday, February 8, 2008**

**8:30 a.m. to 3:30 p.m.**

**Location:**

**Bureau of Mediation Services  
1380 Energy Park Lane, Suite Two  
St. Paul, MN 55108**

**\*\*\**Meeting Notes*\*\*\***

**Meeting Objectives:**

- 1) Receive constituent feedback regarding the work of the Task Force.
- 2) Complete work on the review of MN Statutes: brief statements on why/why not exceeds, and votes on whether or not to recommend amendment.
- 3) Complete work on the review of MN Rules: brief statements on why/why not exceeds, and votes on whether or not to recommend amendment.
- 4) Identify all next steps for the final report.

**Meeting Participants:**

Stacey Pumper - Education MN, Denny Ulmer – MASE, Amy Roberts – MDE, Jacki McCormack - Consumer, Virginia Richardson – PACER, Grace Schwab – MSBA, Laura Booth - Booth Law, John Guthmann - Consumer, Dan Stewart - MDLC/Attorney, Willie Jackson - Reflective Resource Inc.

**Meeting Visitors/Non-Participants:**

Peter Martin - Knutson, Flynn & Deans, P.A.

**Meeting Convener:** James Cunningham, Commissioner, State of MN Bureau of Mediation Services

**Meeting Facilitator:** Mariann Johnson, M.T. Johnson & Associates

**Meeting Documentation:** Jackie Smith, M.T. Johnson & Associates

**Meeting Guidelines:**

- Work collaboratively and toward consensus
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- Listen to learn
- Respectfully agree to disagree
- May call “time outs” (15 minutes max or use breaks, report back to full group)
- Do ask, do tell – share perspectives, ask about others

## **I. Review of Meeting Notes from the January 28th SEATF Meeting**

The meeting notes from January 28<sup>th</sup> were reviewed and approved without change.

There was one noted correction to the January 28<sup>th</sup> statutes document:

- Page 1 – MN Law125A.07 – move “Why not” statement to the correct column.

Commissioner Cunningham announced and congratulated Task Force member, John Guthmann, who was appointed to the Ramsey County Court last week.

Commissioner Cunningham provided Task Force members with an update to his latest communication with the legislature. They discussed options should the Task Force not complete its work by the end of the today’s meeting. Representative Greiling indicated that if the Task Force could not finish both the Rules and Statutes review, the legislature may ask the group to come back next session. She asked that Commissioner Cunningham convey her thanks to the members of the Task Force for their hard work and commitment.

Commissioner Cunningham provided a master copy of the member matrix for changes. It was suggested that acronyms on the member matrix be spelled out for clarity.

The Task Force agreed that they would extend their meeting time until 4:00 pm to try to complete their review and work of MN statutes, and to complete as much work as possible on their review of MN rules.

## **II. Review and Work on the MN Statutes Chart**

Work began on the MN Statutes Chart with the Task Force providing brief statements on why/why not exceeds and voting on whether or not to recommend amendment. As one voting member was not yet present, it was decided to proceed and take and include the members votes on Statutes \_\_\_\_\_ and \_\_\_\_\_ after her arrival.

Following previous meeting’s agreed upon process, the following declarative statements would be used to complete the “Why Exceeds” and “Why Not Exceeds” columns:

“Why exceeds”:

- A** – IDEA does not address.
- B** – IDEA does not require.
- C** – Level of prescriptiveness goes beyond IDEA.

“Why not exceeds”:

- A** – IDEA sets no standards; therefore, MN cannot exceed a nonexistent standard.
- B** – Implements IDEA requirement without exceeding or expanding upon the federal requirement.
- C** – IDEA requires the State to establish a process or criteria. MN statute is consistent with that charge.

The Task Force agreed that **MN statutes 125A.76 – 125A.80** would all reflect:

- Statements B and C for the “Why Exceeds” column
- Statements B and C for the “Why Not Exceeds” column
- Rather than a vote, the “Recommend Amendment” column would include the following statement: “Statutes appear to be outdated and inconsistent with current practices.”

See the “MN Statutes Chart” February 8, 2008 document for a record of all work completed on the Statutes review by the Task Force.

### **III. Review and Work on MN Rules Chart**

The following discussion occurred regarding completing the review of Task Force MN Rules chart.

- Let’s start by reviewing all rules that relate to criteria, and vote E/E and to amend or not amend on those rules. Exceptions - page 3 & 4 – 1325-1354:
  - Visually impaired (1345) – under change
  - Deaf/hard of hearing (1331) - review
  - SLD (1341) – under change
- I debate the value of starting the rules and not being able to finish our review.
- Maybe we could look only at those rules that are problematic.
- Representative Greiling suggested reviewing rules that have a broad impact.
- I would not be happy with a report with the rules addressed one way and the statutes addressed another way. We should either complete the rules or not turn in the rules at all.
- I would not want to go through the rules and pick out the ones I think are important.
- The report could be misused if it is only partially complete.
- The report would be confusing because we have completed the review of the all the statutes but not the rules.
- Our charge is to recommend which rules should be amended. We should not turn in a document that does not spell out which rules should be amended.

#### Suggestions as to how to proceed with the rules document:

- Continue going through rules and identify “Why Expands/Exceeds” or “Why not Expands/Exceeds.”
- Leave report “As Is.”
- Choose only “Red flag” rules – those that we consider most problematic and complete our work on those rules.
- Work on the rules chart and complete our review of as many as possible, voting to amend or not to amend.
- Pull out “Criteria – only Rules”, as was mentioned earlier.
- Turn in only the statutes document, not the rules document, as we will not have time to finish it today.
- Finish the rules chart review – work until it is complete.

## **Final Rules document options and member votes/DECISION:**

- 1. Turn in all work completed to date on the rules chart - 5 votes**
2. Don't turn in rules chart at all – 3 votes
3. Go through as many of the rules as possible today, and then turn in only those sections that are complete – 1 vote

### **IV. Discussion and Agreement on the Charts' "How" Columns and Other Final Report Discussions and Agreements**

Discussion continued with comments regarding the format of the final report and specifically whether or not to include the current "How" column in both charts.

#### **Comments Included:**

- I think the "How" columns are misleading and we should strike them in both charts.
- The "How" column has been summarized as reference points and comments for our review and discussion, it should not be used or considered as a legal analysis.
- If you strike it all, we lose the listing of the subdivisions that we considered.
- The column could be re-titled as "reference points."
- Strike column and take specific subdivisions and move them into the "MN Law" column.

#### **"How" column options and member votes:**

- 1) Strike the column - 2 votes
- 2) Don't strike the column but define its use in cover letter - 0 votes
- 3) Strike all Ratwik references, keep "How" column but re-title it as "Notes" - 6 votes**
- 4) Keep "How" column as is but re-title as "Notes" – 1 vote

**DECISION: The "How" column on both reports will be re-titled as "Notes" and all references to Ratwik will be eliminated.**

The facilitator asked the Task Force if they felt a statement should be added to clarify why the reports reflect a "Why not exceeds" statement when there is also a unanimous "Expand/Exceed" vote.

#### **Clarifying statement options and member votes:**

- **Vote to leave documents as is with no explanation – vote 5**
- Vote to include clarifying statement – vote 4

#### **Additional decisions regarding final report format:**

- Any comments in "Why Exceeds" or "Why Not Exceeds" other than the agreed upon declarative statements (A,B or C statements, see page 2 of these notes) would not be included in the final report.
- Proposed rule change comments identified by the Task Force will be shown under the "Notes" column, bold and italicized.

**V. Review of the Task Force Member Decisions Regarding the Statutes and the Rules Work/Charts and its Report to the Legislature.**

- 1) Task Force members unanimously agreed that the Statutes document was complete and should be turned in to the legislature with the Task Force's final report.
- 2) Per the vote on the previous page, the Rules document will be turned in "As Is" (i.e., last review of the rules chart as conducted at the January 14<sup>th</sup> Task Force meeting).
  - 3) Task Force members may provide written comments regarding specific rules and statutes identified by the Task Force. These comments will be included in the report's appendix and must be submitted to James Cunningham **no later than 4:30pm on Thursday, February 14<sup>th</sup>.**

Commissioner Cunningham provided the following outline for the final report to the legislature. He also indicated that the last paragraph of his cover letter would explain why the rules document is incomplete.

1. Cover letter and content:

- Purpose of the task force and its membership
  - Meeting frequency
  - Super majority issue and exceed/expand definitions
  - Source material - Ratwik and federal/state laws
  - Mention of opportunity for members to provide individual, written comments to support their work on the rules and statutes documents, i.e., explanation of the report's "Attachment C"
  - The Commissioner's concluding comments
2. Statutes Document (as completed on 2/08/08)
  3. Rules Document ("As Is" – as of 1/14/08)
  4. Appendix
    - Member list ("Matrix")
    - All meeting notes
      - Member comments

**V. Meeting Wrap-Up**

Commissioner Cunningham reminded members of the **Thursday, February 14, 4:30 pm** deadline for all appendix comments.

The facilitator indicated that the notes and final charts from this meeting would be sent to members on Monday, February 11th to assist them in writing their optional individual comments.

James Cunningham stated that copies of all materials submitted to the legislature will also be sent to Task Force members.

Commissioner Cunningham recognized and congratulated Task Force members and the facilitator, Mariann Johnson, for their commitment and hard work.

**ATTACHMENT C –  
POSITION STATEMENTS RECEIVED FROM  
TASK FORCE MEMBERS**

## **DECLARATION BY CONSUMER/ADVOCATE MEMBERS OF THE TASK FORCE**

### **The Legislature Should Focus on Areas of Consensus**

Despite challenges created by the enabling legislation,<sup>1</sup> the Task Force was able to reach consensus in connection with a number of statutes. The Task Force unanimously or overwhelmingly agreed that the following laws should be amended to the federal minimum: Minn. Stat. §§ 125A.16; 125A.19; 125A.20; and, 125A.57. The authors of this Declaration believe that the Legislature should consider amending a statute or rule only if there was broad-based agreement among members of the Task Force.

The Task Force also recommended that certain laws be reviewed and considered for significant revision. These include Minn. Stat. §§ 125A.17; 125A.18; and, 125A.76. Accordingly, we encourage the Legislature to address the problems associated with these laws.

Finally, the Task Force voted unanimously or overwhelmingly to retain without amendment certain laws that the majority found to exceed or expand upon the federal minimum standard. These laws include Minn. Stat. §§ 125A.04; 125A.11; 125A.14; 125A.40; 125A.48; 125A.50; 125A.53; 125A.54; 125A.59; 125A.62-73; 122A.09; 122A.12; 123B.41; 123B.92; 124D.095; and, 124D.10. While a number of these laws do not appear in IDEA, or implement an IDEA requirement, they were found to be of value by the Task Force. Accordingly, the authors of this Declaration believe that the Legislature should recognize the broad-based consensus in favor of these statutes and decline to consider an amendment or repeal.

### **Special Note on the Birth Mandate**

The Task Force overwhelmingly voted in favor of retaining Minnesota's commitment to the birth mandate. Minn. Stat. § 125A.02. However, a 5-4 majority of the Task Force voted to amend three other statutes that include reference to the birth mandate, Minn. Stat. §§ 125A.03, 125A.07, and 125A.08, to the federal minimum. Based upon discussion prior to the vote on these statutes,

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<sup>1</sup> See discussion contained in "Exceed Expand Upon" and Task Force Composition sections of this Declaration.

the authors of this Declaration believe that the five majority members voted in favor of amendment because of other provisions that do not specifically relate to the birth mandate. *See* the comments under the “Why Exceeds” column of the Task Force Report. Accordingly, the vote on sections 125A.03, 125A.07, and 125A.08 should in no way be viewed as questioning Minnesota’s commitment to the birth mandate.

### **“Exceed or Expand Upon” Note**

The authors of this Declaration believe that the operative language of the enabling statute created confusion and undermined the potential effectiveness of the Task Force. The Legislature asked the Task Force to identify Minnesota statutes and laws that “exceed or expand upon minimum federal special education requirements.” A significant amount of Task Force time was spent discussing what the operative language meant. For the most part, the Task Force had no trouble with the term “exceed.” IDEA sets many standards. If Congress set a standard or created a local school district obligation in IDEA, the Task Force generally agreed on the Minnesota statutes and rules that exceeded a specific federal minimum standard.

Unfortunately, the term “expand upon” was quite problematic. It is unclear what the Legislature meant when it chose to insert the term in the statute.

There are several ways to examine what the term “expand upon” might mean. In some cases, Congress did not address a topic in IDEA that Minnesota has chosen to address. Arguably, Minnesota cannot expand upon a federal standard that has never been set.

In other cases, such as establishing teacher licensure requirements, Congress created a local obligation but expressly told the states to develop their own standard or procedure. To us, it goes without saying that if Congress told states to establish a procedure for satisfying a federal obligation, the procedure created by Minnesota cannot “exceed or expand upon” a federal minimum standard. By definition, Congress told the states to create their own minimum standard.

Finally, in other situations, Congress created a minimum standard but said nothing about how states or school districts should implement the standard. We believe that a Minnesota statute or rule that makes it possible to put a federal

minimum standard into practice cannot “expand upon” the federal minimum requirement if the federal standard itself has not been changed.

Because the enabling statute did not define what the Legislature meant by the term “expand upon”, it was left for the Task Force to reach its own understanding of the term. The Task Force was divided by the ambiguity presented by the term “expand upon.” With nine voting members, the four members signing this Declaration agree that a Minnesota provision that “operationalizes” or “implements” a federal standard without changing the standard should not be viewed as “exceeding or expanding upon” a federal minimum standard. Likewise, we are of the opinion that Minnesota provisions complying with a federal mandate to create a standard or addressing a topic for which no federal standard exists does not “exceed or expand upon” a federal minimum.

In our view, the five majority members of the Task Force applied a definition of “expand upon” that permits virtually all Minnesota statutes and rules to receive the “expand upon” label.<sup>2</sup> The impact of such an extreme view is evident when one examines prior efforts to identify the Minnesota statutes and rules that exceed minimum federal standards. For example, pursuant to a federal mandate contained in section 608 of IDEA, the Department of Education filed a report dated January 26, 2006 in which Minnesota statutes and rules exceeding federal minimums were identified. The Department of Education report identified 12 such statutes and rules.

In addition, at the time the Legislature’s Task Force bill was being debated, a 497-page analysis prepared by Paul Ratwick, an attorney who represents school districts, was circulated. In his report, Mr. Ratwick identified 56 statutes and rules and rules that he believes exceed minimum federal requirements. It was clear from the Ratwick Report, that the author did not regard Minnesota provisions that “operationalize” or “implement” federal law as inconsistent with federal minimum requirements.

Now, through their expansive and all-encompassing interpretation of the operative language in the Task Force bill, the five majority members have identified 135 statutes and rules that “exceed or expand upon” federal minimum

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<sup>2</sup> The majority-voting block of school district representatives made possible by the enabling legislation is discussed in detail in the **Task Force Composition** section of this Declaration.

requirements. Thus, according to the majority, Minn. Rules 3505.1100, which contains a simple statement requiring access to “disabled” students when school districts seek approval of vocational programs, exceeds or expands upon federal minimum standards. Similarly, although federal law requires each state to create standards to ensure that teachers are adequately trained, the majority block of school district representatives voted to declare that Minn. Stat. § 122A.18, which implements the IDEA requirement through the state Board of Teaching, exceeds or expands upon a federal minimum standard. Because the five majority members often utilized an unreasonably broad definition of “exceed or expand upon”, we believe that the mission of the Task Force has been largely rendered meaningless.

### **Limited Legislative Charge**

The Legislature permitted the Task Force to consider only whether to keep the Minnesota law in its entirety or amend the law to the federal minimum. This restriction foreclosed the possibility of meaningful discussion on how a law might be amended to improve its language instead of merely amending to the federal minimum. Thus, instead of focusing on best practice or whether Minnesota statutes and rules produce the most effective and cost efficient system for delivering special education and related services, the Task Force was forced into a series of up or down votes on the limited question of amending to the minimum federal standard.

On many occasions, Task Force members appeared to agree that a statute or rule should be amended but not necessarily to a perceived federal minimum. Some statutes were viewed as confusing, obsolete or unfair in application to school districts. Unfortunately, the Task Force felt obligated to limit most of these discussions because it required deviation from the limited legislative charge. For this reason, some votes to amend to the federal minimum do not necessarily reflect an agreement that there should be no Minnesota statute on the subject. Instead, many “amend” votes reflect a belief that the current statute requires revision or improvement. The authors of this Declaration operated from the perspective that necessary statutes in need of amendment should be retained until amendment. On the other hand, the five majority members appeared to favor voting to eliminate statutes that need to be retained, but rewritten.

On at least two occasions, the Task Force reached a consensus on the need to change the law, but did not vote to amend to the federal minimum. (Minn. Stat. §§ 125A.17; 125A.18). In addition, the Task Force viewed several laws as outdated and inconsistent with current practice. (Minn. Stat. §§ 125A.76-.80). The authors of this Declaration encourage the Legislature to take action in connection with those laws that the Task Force identified as needing revision rather than amendment to the federal minimum.

### **Task Force Composition Note**

The enabling statute, 2007 Minn. Laws, ch. 146, Art. 3, § 23, appointed Task Force membership in a manner that favored school districts. The session law called for appointment of a “ten-member task force composed of equal numbers of providers, advocates, regulators, consumers of special education services, lawyers who practice in the field of special education and represent either parents or school districts, special education teachers and school officials.” The number of categories favored school representation over advocate and consumer representation. The Legislature should have anticipated that the Department of Education would assume a position of neutrality. Making the Department of Education an ex-officio member would have permitted appointment of an equal number of school and advocate/consumer voting representatives. As written, the enabling statute insured that there would be a voting block majority in favor of school districts.

What was predictable when reading the enabling statute became reality when the Department of Education elected to abstain from voting. The appointees representing special education providers, teachers, school district lawyers, special education administrators and school boards were able to form a majority block. The ability of one group to vote as a majority block stifled consensus and ultimately weakened the ability of the Task Force to produce a persuasive and meaningful report.

The Task Force voted to amend thirteen statutes to the federal minimum based upon five of nine votes.<sup>3</sup> For these statutes, there is significant disagreement over the merits of amendment. Because there was no consensus supporting

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<sup>3</sup>Minn. Stat. §§ 125A.027; 125A.03; 125A.07; 125A.08; 125A.091; 125A.15; 125A.21; 125A.22; 125A.28; 125A.61; 125A.259; 125A.31; and, 125A.515.

amendment of these laws to the federal minimum across the spectrum of stakeholders, we urge the Legislature to give no weight to these votes.

### **Super Majority Note**

At the first meeting of the Task Force, there was a unanimous consensus that all votes to amend or repeal a Minnesota statute or rule would require a supermajority. During the same discussion, the Department of Education representative indicated that she would be abstaining from all votes.

At the third meeting of the Task Force, as the first votes were being contemplated, representatives of special education providers, teachers, school district lawyers, special education administrators and school boards questioned the supermajority agreement. It was argued that the supermajority consensus was reached before the Department Education representative indicated that she would be abstaining from all votes. The Task Force could not agree on whether this characterization of the decision process was accurate. At this point, the Commissioner of the Department of Mediation Services stepped in, declared that there would be no supermajority required, and indicated that the report would list the outcome of each vote. As a result, based upon the make up of the Task Force, those representing special education providers, teachers, school district lawyers, special education administrators and school boards could enlist a five-vote majority to recommend that any statute or rule be amended to conform to minimum federal requirements.

The Commissioner indicated that his decision was based upon a need to streamline the process so the Task Force could complete its work on time. We agree that the Task Force was given insufficient time by the Legislature to complete its mission. We also agree with the Commissioner that the supermajority rule would have produced more discussion and debate, thereby taking significantly more time.

However, we find the Commissioner's unilateral decision disturbing for two reasons. First, a Task Force or other committee should set its own operating rules. There was no basis to revisit an issue of such importance two meetings after the original supermajority consensus was reached.

Second, creation of the Task Force was consistent with past legislative practice when dealing with special education stakeholders. With great regularity over the past fifteen years, the education committees of both the House and Senate have responded to controversies over proposed changes to special education law by asking stakeholders on both sides of the issue to meet, attempt to agree on the proposed legislation, and report on any agreement that was reached. In many cases, agreement was reached and the compromise legislation was passed. The most recent example of this Legislative practice is the 2006 behavioral intervention amendments, now found in Minn. Stat. § 121A.67. The supermajority requirement would have insured a significant measure of consensus when approaching the issue of what statutes and rules should be amended to conform to minimum federal requirements. The supermajority requirement also discouraged voting blocks and encouraged compromise. Certainly, the supermajority requirement would have compensated for the inequity discussed in the **Task Force Composition Note**.

The Commissioner's unilateral decision to change the rules in mid-stream produced the opposite outcome. As a result, any 5-4 vote in favor of amending a statute or rule to conform to minimum federal requirements should not be viewed as reflecting a deliberative process or a consensus. Instead, these votes only mirror the 10-year effort of the school administrators and school boards to eliminate most statutes and rules that they believe exceed minimum federal requirements. For the foregoing reasons, the authors of this Declaration believe that elimination of the supermajority voting agreement undermined the purpose of the Task Force. Accordingly, the 5-4 votes in favor of amending a statute or rule to conform to minimum federal requirements should not be given any significant weight by the Legislature.

### **Submission of an Incomplete Report**

Time did not allow the Task Force to complete its work. Our review of the rules only included consideration of whether the rules exceeded or expanded upon federal minimums. The explanation of why a rule "exceeded or expanded" or not was only partially completed. No votes were taken on the question of whether rules should be amended. Through their five-person majority block, the representatives of the task force representing schools voted to submit the incomplete report addressing the rules to the Legislature. The four Task Force members representing consumers and advocates objected to submission of an incomplete report.

The Task Force representatives representing advocates and special education consumers believe that an incomplete report should not have been submitted for several reasons. First, subdivision one of the enabling legislation charged the Task Force with providing recommendations as to which statutes and rules that exceed or expand upon federal minimums should be amended. Thus, turning in a partial product that did not address amendment violates the legislative charge.

Second, time did not allow for completion of our task. Had it been known that completion of the full legislative charge was not possible in connection with the rules, we would not have agreed to start a review of the rules at all.

Finally, the partial report addressing the rules provides incomplete and misleading information to the legislature. Without an explanation of why a rule “exceeds or expands” or not, the Task Force designation is devoid of meaning. As discussed earlier in this Declaration, Task Force members had vastly different understandings of what “exceed or expand upon” meant. Moreover, as demonstrated by the statute report that the Task Force completed in its entirety, there were numerous votes not to amend statutes that a majority found to “exceed or expand upon.” Thus, in the absence of a complete report on the rules, some in the Legislature might be under the mistaken belief that a particular rule found by the Task Force to “exceed or expand upon” should be amended. There is no basis for such a conclusion.

In the final analysis, the partial report on the rules should be viewed as having no real value. The authors of this Declaration urge the Legislature to disregard the partial report on the rules.

### **Explanation of Apparent Unanimous Votes That Were Not Unanimous**

Over the course of the Task Force meetings, the Legislature’s intended definition of “exceeds or expands upon” was extensively debated and evolved in the minds of many members. Thus, on a number of occasions, an initial vote that a statute or rule “exceeds or expands upon” was unanimous. These statutes and rules are listed with an “E” in the “Exceed/Expand” column of the report matrix. Later, in light of the ongoing debate over the meaning of the term “exceed or expand upon”, the authors of this note expressed a desire to revisit the vote. Instead, as a compromise, the Task Force, by consensus, agreed that the minority could list a

reason why a statute did not exceed or expand upon in the “Why Not Exceeds” column despite the initial unanimous vote. Accordingly, there was not unanimous agreement on any statute or rule with an explanation listed under the “Why Not Exceeds” column.

Respectfully submitted,

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February 15, 2008

Honorable Charles W. Wiger, Chair  
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Minnesota State Senate  
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Honorable Leroy A. Stumpf, Chair  
Senate E-12 Education Budget Division  
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***Re: Special Education Advisory Task Force  
Addendum Report by Task Force Members Representing School Districts***

Dear Senators and Representatives:

We, the undersigned members of the Special Education Advisory Task Force, hereby submit the following Addendum Report to the Task Force's Final Report submitted this date by the Commissioner of the Bureau of Mediation Services to your respective committees. As you know, the Task Force was created by the Legislature in the 2007 session (Laws 2007, Chapter 146, sec. 23) in response to growing concerns among educators, legislators and parents that both the complexity and cost of special education in Minnesota is rapidly escalating and that a primary source of these concerns are the enormous volume of Minnesota statutes and rules that exceed minimum federal special education requirements.

The Task Force, which was comprised of school administrators, teachers, attorneys, parents, advocates and providers of special education, dedicated 7 full-day meetings to the study of the state statutes and rules that pertain to special education. As recorded in the Final Report, the Task Force identified in excess of

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100 statutes and rules that exceed or expand upon minimum federal requirements. The Task Force concluded that a number of statutes should be reduced to the federal minimum.

Unfortunately, and notwithstanding diligent efforts by its members, the Task Force did not complete its work, particularly with respect to whether state administrative rules governing special education should be reduced to the minimum federal standards. The reason why this work is incomplete stands as a testament to the sheer size of the problem.

There are simply too many special education-related statutes and rules in Minnesota – more than most jurisdictions in the United States and more than this Task Force had the time to fully review.

Because the Task Force did not finish its work, and because the Final Report only provides a cursory summary and explanation of the pertinent statutes and rules, we believe it is critical for you to understand our concerns in greater detail. Therefore, we offer this Addendum to provide a more explanatory statement of our position on this issue as school representatives on the Task Force.

The information is broken into two parts: (1) General comments regarding the overall condition of special education statutes and rules from our perspective; and (2) A list and brief description of statutes and rules which, we believe, must be amended or repealed in the 2008 legislative session in order to bring relief to public school districts. We hope that you will find this information useful as you contemplate changes to Minnesota law.

## I. GENERAL COMMENTS

1. ***Minnesota is Substantially Overregulated in Special Education.*** The Task Force identified 95 state statutes (or subparts of statutes) and 41 rules (not including the 48 subparts of the definition section in Minnesota Rule 3525.0210) that exceed or expand upon federal law. The statutes and rules are so pervasive that the Task Force did not complete its review of the Minnesota special education rules. By way of comparison, Minnesota's neighbor to the east, Wisconsin, offers a strong program of special education services to disabled students, but does so with only 26 statutes and only *seven* administrative rules that pertain to special education. *See* Wis. Stat. § 115.758 *et seq.*; Wis. Admin. Code PI 11. There is simply no relationship between excessive regulation and improved educational outcomes.

2. ***Reducing State Statutes and Rules to Federal Minimum Standards Will Not Change the Obligation of School Districts to Provide Appropriate Services to Children with Disabilities in the Public Schools.*** The right of special education students to a free and appropriate public education ("FAPE") is clearly established under federal law. As a recipient of federal special education funding, Minnesota is already required to comply with a series of detailed *federal*

statutes and regulations governing the delivery of service to disabled students. A number of significant parental rights are also prescribed in both federal legislation and regulation. Even without any state law, Minnesota would still be obligated to service such children. Yet, the perception persists in certain quarters that highly prescriptive and poorly written *state* statutes and regulations produce better outcomes. The direct opposite is the case, however. Unquestionably, the most significant adverse affect is a decrease in instructional time because school administrators and teachers are spending more time in meetings and completing paperwork than they are actually serving students. Substantial reform at the state level is long overdue and must be undertaken promptly.

3. *A Number of State Statutes and Rules Create Standards Which Are Contrary to Federal Special Education Law and Multiply the Complexity of Decision-Making at the School Level.* Student discipline is of particular concern here. Under the IDEA, a manifestation determination (i.e. a meeting held by a school administrator, the parent and relevant members of the student's IEP team to determine whether an act of misconduct is a manifestation of a student's disability) must be conducted for any removal of a student beyond **ten consecutive school days**. Minnesota law requires a manifestation determination: (a) for any removal of **five consecutive days or longer**; (b) whenever the parent requests a manifestation determination to be conducted; and (c) for every single removal that exceeds ten cumulative days in a school year.

The overlay between state and federal law diminishes the capacity of school officials to properly perform their important discipline and school safety functions. School administrators are expected to follow a maze of state and federal statutes and regulations that has numerous decision points, all of which are potential vehicles for litigation or sanction by the Minnesota Department of Education. Furthermore, those that support the "higher" state standard (i.e., a standard that conflicts with federal law) assume that all individuals are capable of understanding and applying these legal complexities. In our experience, even the most seasoned, conscientious administrators do not always make the correct decision, particularly with limited time to reflect.

Eliminating conflicts between federal and state law will allow school officials to more easily perform their responsibilities without being paralyzed by potential "trip wires" in state law that often lead to litigation and do not improve educational outcomes.

4. *Some State Laws Create Financial Burdens Which Are Not Imposed By Federal Law and Which Drain Scarce Public Resources.* For example, the shared time law, Minn. Stat. § 125A.18, has been interpreted to say that voluntarily enrolled non-public school students (i.e. students whose parents made a personal family decision to enroll in a private school or who have opted to home school their children and forego a public school education) are entitled to full special education services as if they were enrolled in the public school. Federal law contains no

such requirement. The end result is that Minnesota school districts are required to expend substantially more dollars on providing special education services to non-public school students than is required by the federal law – a law that is already substantially underfunded by the federal government.

5. ***State Statutes Conflict With Other State Statutes and Rules.*** For instance, Minn. Stat. § 125A.03(b) entitles a student who turns 21 during the school year to receive special education services until July 1 of that year. Minn. Stat. § 121A.41, subd. 7 defines a “pupil” to be a student with a disability until September 1 after the child with a disability becomes ***22 years of age***. Additionally, the so-called “care and treatment rules” found at Minnesota Rule 3525.0800 and 3525.2325 conflict with Minn. Stat. §§ 125A.51 and 125A.515.

6. ***Statutes and Rules Incorporate By Reference Outdated Federal Law.*** For example, Minn. Stat. § 125A.03(a) references Sections 300.121(d) and 300.24 of the IDEA regulations. Those 1999 federal regulations were replaced by different regulations in 2006.

7. ***Chapter 125A Is In Substantial Need of Restructuring and Revision.*** Many special education statutes in Minnesota are poorly written and contain outdated language that, in some cases, originates from the late 1950’s. A number of statutes have been amended to the point where the Legislative intent or express terms are difficult to discern. The Legislature needs to undertake a comprehensive revision of Chapter 125A and modernize both the language and the structure of special education statutes.

8. ***The Minnesota Department of Education Has Not Fulfilled its Federal Mandate to Minimize State Rules – The Legislature Should Direct That This Occur.*** Section 1407(a)(3) of the IDEA requires that each state “minimize” their special education rules to which local school districts are subject. The plain meaning of the term “minimize” means to reduce to least possible amount. It is clear from the findings of this Task Force that the MDE has not fulfilled this mandatory federal obligation. The Legislature should impose a mandate on the MDE to fulfill its federal obligation and reduce state special education rules to the minimum.

## II. STATUTES AND RULES RECOMMENDED FOR AMENDMENT OR REPEAL IN THE 2008 LEGISLATIVE SESSION

1. **Minn. Stat. § 125A.02 - Child with a Disability Defined:** The definition of “child with a disability” should be amended to incorporate the language in the federal IDEA. The reference to eligibility based upon the “standards of the commissioner” should be removed. As amended, the state eligibility criteria would need to reflect that eligibility for special education must be based upon three things: (1) the presence of one or more

disabilities; (2) adverse affect on educational performance; and (3) as a result of the disability, the student *needs* special education.

2. **Minn. Stat. § 125A.03 - Special Instruction for Children with a Disability:** Subdivision (b) establishes that if a student turns 21 during a school year, the student is entitled to continue to receive services until the end of that school year. This age cut-off differs from that found in the definition of “pupil” in the Minnesota Pupil Fair Dismissal Act, Minn. Stat. § 121A.41, subd. 7. The two age limits need to be reconciled. Section 125A.03 also needs to be modified to reflect that services to students enrolled in private schools shall be provided in accordance with federal law.
3. **Minn. Stat. § 125A.07 - Rules of Commissioner:** As stated above, the MDE has not fulfilled its mandatory federal obligation to minimize state rules in Minnesota. The statute should be modified to require the MDE to minimize the state rules and keep to a minimum future rules governing special education.
4. **Minn. Stat. § 125A.08 – School District Obligations:** Federal law requires consideration of transition services for student with disabilities beginning at age 16, when students are in high school. This statute and other state laws require transition services beginning at grade 9 – or approximately age 14. Minnesota should modify the transition services requirement to fit the federal standard. Section 125A.08 and other related statutes also need to be amended to remove the requirement that IEPs contain short-term objectives. Federal special education law has eliminated the requirement of short-term objectives for most students in order to relieve teachers from unnecessary paperwork burdens. Minnesota law should be amended to conform to the federal standard.
5. **Minn. Stat. § 125A.091 - Alternative Dispute Resolution and Due Process Hearings:** This section needs to be amended. A number of provisions in the statute substantially exceed federal law.
6. **Minn. Stat. § 125A.18 - Special Instruction/Nonpublic Schools:** As stated above, the statute needs to be revised to reflect that special education services to private school students shall only be given as provided under federal IDEA standards.
7. **Minn. Stat. § 125A.515 - Placement of Students; Approval of Education Program:** This statute is poorly written and must be significantly revised in order to be understandable by the special education community in Minnesota. Many terms of the statute are not defined and are excessively prescriptive in nature.

8. **Minn. Stat. § 125A.57 - Definition:** This statute defines “assistive technology” for purposes of state law. The definition does not incorporate the updated federal IDEA definition and arguably could include surgically implanted devices such as cochlear implants. This statute needs to be revised to conform to federal IDEA standards.
9. **Minn. Stat. § 121A.41 - Pupil Fair Dismissal Act:** Subdivision 7 needs to be revised to be consistent with Section 125A.03. The portions of subdivision 10 that pertain to discipline of special education students should be repealed in favor of following the federal law regarding discipline of special education students.
10. **Minn. Stat. § 121A.43 - Exclusion and Expulsion of Pupils with a Disability:** The standards set forth in this provision reflect outdated provisions of the federal law that have been repealed. As a result, this provision creates a double standard and an increased potential for confusion and litigation over the differences in federal and state law. This statute should be repealed in favor of the federal standard.
11. **Minn. R. 3525.00210, subp. 34 – Definition of Parent.** The current state rule substantially deviates from federal law and makes it more difficult to use a foster parent as a “parent” for special education purposes. The rule should be repealed in favor of the federal standard.
12. **Minn. R. 3525.0400 - Least Restrictive Environment:** The rule should be repealed in favor of the specific least restrictive environment regulation under the IDEA.
13. **Minn. R. 3525.0755 - Extended School Year Services:** The rule should be repealed in favor of federal interpretations of the ESY standard.
14. **Minn. R. 3525.1100 - State and District Responsibility for Total Special Education System:** The rule should be repealed as an unnecessary paperwork burden. The MDE can establish a model TSES Manual for use by all school districts. School districts should not be required to prepare their own manuals and have them reviewed for compliance purposes.
15. **Minn. R. 3525.2340 - Case Loads:** The rule should be repealed. Case load requirements are creating significant staffing problems for school districts.
16. **Minn. R. 3525.2380 - Variances from Ratios:** The rule, which is connected to the case load requirements, should also be repealed.

17. **Minn. R. 3525.2435 - Effort to Locate Parent:** The rule should be repealed in favor of the federal standard. (Federal law already has a provision requiring this to occur).
18. **Minn. R. 3525.2440 - Surrogate Parent Appointment:** The surrogate parent rule should be repealed in favor of the federal standard. Current state law makes it much more difficult to appoint a surrogate parent.
19. **Minn. R. 3525.2445 - Consultation with County Social Services:** This rule can significantly delay the appointment of a surrogate parent, to the determine of special education students. The rule should be repealed in favor of the federal standard.
20. **Minn. R. 3525.3010 - Educational Placement:** The rule should be repealed since it refers to repealed portions of federal law and it is redundant to requirements already set forth under federal law.
21. **Minn. R. 3525.3100 - Follow Up Review Requirements:** The rule should be repealed since there is no similar requirement under federal law and the provision has the potential to either exceed or fall short of federal requirements.
22. **Minn. R. 3525.3600 - Prior Written Notice:** The rule adds substantial additional requirements to the prior written notice. The rule should be repealed in favor of the federal standard.
23. **Minn. R. 3525.3900 – Initiating a Due Process Hearing:** The rule adds substantial additional requirements not found in federal law which result in excessive paperwork burdens for school districts. The rule should be repealed in favor of the federal standard.
24. **Minn. R. 3525.4750 and 3525.4770 – Concerning Expedited Hearings:**  
The rule should be repealed in favor of the federal expedited hearing standard. The state rule establishes extremely narrow and untenable deadlines that greatly exceed the requirements of federal law.

**CONCLUSION**

In its present form, Minnesota special education law is largely cumbersome, confusing and impedes the delivery of special education services. The adverse affects are being felt throughout Minnesota as the cost of providing services rise and good teachers leave special education. Policymakers should keep in mind that all mandated activities, regardless of their financial cost, take time away from educators and carry unanticipated consequences.

We encourage the Legislature to take comprehensive action to fix the system-wide problems described above and to resist the creation of additional statutes and rules that unduly complicate special education and frustrate service delivery. As the Final Report of the Task Force demonstrates, less is definitely more.

Respectfully submitted,

**GRACE SCHWAB**  
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## Memorandum

**To:** James Cunningham, Commissioner  
Bureau of Mediations Services

**From:** Amy L. Roberts, Director  
Minnesota Department of Education

**Date:** February 14, 2008

**Re:** Bureau of Mediation Services Special Education Task Force Report

The Minnesota Department of Education (Department) participated in the Bureau of Mediation Services Special Education Task Force (Task Force) as a non-voting member and offers these comments on the process, the outcome and potential future activities. The legislation did not specify the format the Task Force was to use in order to fulfill its charge. The Task Force opted for a voting model. Therefore, the Department representative served as a source of information with historical and policy perspectives on the various laws that were reviewed and discussed, but did not vote in order to not jeopardize the Department's role as a neutral administrator of the laws. In addition, voting by the Department representative seemed to be particularly inappropriate given the perceived high-stakes nature of the Task Force and its composition. This is underscored by the number of 5-4 votes both in the context of determining whether a given statute or rule exceeded or expanded upon Federal law and with respect to whether that statute or rule should be amended to conform with the Federal minimum.

Prior to passage of the law creating the Task Force, the Department had begun both informal and formal processes to revise certain portions of Minnesota's special education rules. The Department's focus was to revise Minnesota rules in order to comply with Federal requirements relating to the reauthorization of IDEA and subsequent Federal regulations, to respond to the directive made by the 2005 Minnesota Legislature concerning Minn. Stat. 121A.67 (positive behavioral supports), the requirement of 2006 Minn. Laws 163 Sec. 16 (care and treatment), and to address areas causing confusion and disparate treatment of children with disabilities among school districts.

The Department convened an informal stakeholder group to review and submit comments to multiple drafts of the proposed rules. Over a series of meetings, the stakeholder group met, discussed, and debated many of the proposed rule provisions, although no votes were taken during the course of the process. The Department utilized the informal stakeholder process as a means to obtain needed and valuable information. The meetings produced lively and productive

discussions that informed and ultimately provided a basis for much of the final proposed rule package. The Department believes the format of the informal stakeholder group meetings, one based on discussion of specific, defined rule topics where no voting or adopting of a position was required, created an environment conducive to discussion about concerns and possible solutions. The Department then used the input from multiple stakeholders, attempting to balance the competing interests as the proposed rules were drafted and redrafted. The rules proposed by the Department during the formal rulemaking process contain numerous suggestions offered by various stakeholder group members. Also, many of the organizations and actual individual members of the Task Force were also members of the Department's informal stakeholder group, although the processes, purposes and products of the two groups differ significantly.

The Department consistently and repeatedly stated that although the current rulemaking efforts are proceeding, it also plans subsequent revisions to Minnesota's special education laws in order to keep pace with changes in the field and to reduce inefficiency where possible. It is important to consider Minnesota's historical role in the provision of special education. Minnesota provided special education services long before there was ever a Federal mandate to do so and generally Minnesota has built a system that works. Minnesota has few due process hearings or complaints relative to other states. This may be attributable to the resources Minnesota has put into programs that resolve conflict at the lowest possible level, the clarity the rules have provided, and the quality that is maintained at the local level in the current special education system. Subsequent revisions to Minnesota law should be done with a careful eye to maintaining our current level of service.

Finally, some may note the differences between the matrices of Minnesota statutes and rules submitted by the Task Force in contrast to the 608 Document submitted by the Department to the Federal government. The differences are again best understood in light of the purposes and processes underscoring the creation of each product. One of the Department's key roles is to ensure the State's compliance with Federal laws and regulations. In this context, the Department is required to submit the 608 Document to the Office of Special Education Programs (OSEP), the Federal agency with oversight of Minnesota. The 608 Document is by necessity a narrowly interpreted and drafted document designed to ensure the State's compliance with Federal law without unnecessarily raising the level of Federal scrutiny or oversight. The Task Force took a broader, far more sweeping approach to analyzing Minnesota statutes and rules. The legislature for the State of Minnesota directed the Task Force to consider Minnesota laws in light of Federal law and make recommendations regarding the future of those laws in our State. As stated above, the State of Minnesota has a long, proud history of providing educational services to children with disabilities and the State should continue to provide leadership in this arena and not be content merely to follow minimum Federal protections.

To that end, the Department looks forward to the opportunity to improve Minnesota's special education system. The Department is committed to working in partnership with members of the Minnesota Legislature and all stakeholders to revise, refine, and improve Minnesota statutes and rules for the betterment of children with disabilities throughout the State.