

**ADMINISTRATIVE RULES COMMITTEE**  
**Wednesday, December 12, 2007**  
**by Dr. Gary Gronberg, Assistant Superintendent**  
**328-1240**  
**Department of Public Instruction**

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Mr. Chairman and members of the committee:

My name is Dr. Gary Gronberg and I am the Assistant Superintendent for the North Dakota Department of Public Instruction. The Department appreciates this opportunity to present information to you this morning regarding a proposed new chapter, amended sections, and repeal of a chapter of the North Dakota Administrative code. The various amendments are "housekeeping" amendments that bring state rule language up to date with current federal and state statutory language and with other state rule content.

The Department received ten questions from Mr. Walstad in a December 6, 2007 memorandum for the proposed rule changes, and our responses are as follows:

1. One of the proposed rules resulted from a statutory change made by the Legislative Assembly that is now in NDCC sec. 15.1-32-01.
2. The rules align with mandatory new federal statute and regulations. The nation's federal special education law, the Individuals with Disabilities Education Improvement Act was recently reauthorized by Congress and signed into law by President Bush. The new regulations for this federal law went into effect in October, 2006. The proposed rules for dispute resolution, as noted, bring our State's rules into alignment with the federal rules.
3. Notice was published in each of the county newspapers and a copy of the notice of proposed rulemaking was mailed to every superintendent and to the president of the school board of every school that does not have a superintendent. Written notice was also mailed to individuals and entities

that had requested written notices about rules changes and to associations with statewide membership, including the North Dakota Education Association (NDEA), the North Dakota Council of Educational Leaders (NDCEL), the North Dakota Council for Exceptional Children (NDCEC), and the North Dakota School Boards Association (NDSBA). Notices were e-mailed to persons who requested e-mail notification. A public hearing was held on October 10, 2007, and representatives from each of the cited education organizations participated in the hearing in addition to local administrators and faculty members from institutions of higher education. There were no objections expressed regarding the proposed rules. However, the Department received expressions of support for the proposed rules.

4. A copy of a summary of all comments to rules and the agency's response is attached to this document.
5. The approximate cost of giving public notice and holding the hearing on the rules was \$2,083.
6. List of North Dakota Administrative Code sections amended:
  - 67-11-09-03 Credential standards [early childhood special education teacher credential]
  - 67-11-10-03 Credential standards [emotional disturbance teacher credential]
  - 67-11-10-04 Types of credentials [emotional disturbance teacher credential]
  - 67-11-13-03 Credential standards [specific learning disabilities teacher credential]
  - 67-11-13-04 Types of credentials [specific learning disabilities teacher credential]
  - 67-11-16-03 Credential standards [special education strategist credential]
  - 67-11-16-04 Types of credentials [specific learning disabilities teacher credential]

In April 2007 it was brought to DPI's attention by an inquiry from the public that the letter of approval for tutor in training status expires July 1, 2007. This expiration affects tutor in training status for ED, SLD, and special education strategist credentials. The origin of this expiration date is traceable to NDDPI Guide I at part IV-1, section 4. The July 1, 2007 expiration of tutor in training status has negative impact on the provision of special education and related services to students with disabilities as required by federal and state law. The letter of approval for tutor in training status is still needed to ensure sufficient numbers of qualified persons to provide special education and related services. IDEA 04 permits the continuation of tutor in training status, so the expiration is not necessary. The amendments remove the July 1, 2007 expiration from all three credential areas and change the reference from tutor in training "certification" to tutor in training "approval" which is a more accurate designation.

The amendments also remove rule content that was outdated on its face, specifically, provisions in effect only until August 1, 2003. The amendments also add "middle level" to the list of endorsements. These amendments track existing rule language in the special education strategist chapter (ch. 67-11-16) that is newer and more streamlined.

The amendments to the early childhood special education credential, chapter 67-11-09, align NDDPI rule language with language in Education Standards and Practices Board (ESPB) licensure rules by adding "early childhood".

The anticipated effective date of the amended rules is January 1, 2008. Revised ND Admin Code sec 67-23-03-02 Application for Federal Funds Under Part B of IDEA.

These amendments are proposed at this time because the United States Department of Education adopted new federal rules on October 13, 2006. The new federal rules were, in turn, the result of the federal special education law being

amended and reenacted effective July 1, 2005. See the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), Public Law 108-446. The two changes from the existing rule are to change the name of the former “end of year report”, which is no longer required, to the current “IDEA data report” as it is termed by the US Department of Education, and to clarify in paragraph 2(a) that it is exit data that is being collected. The changes reflect current practice and will not involve additional work for schools. The projected effective date for these amendments is January 1, 2008.

New chapter 67-23-05. Chapter 67-23-04 is repealed, with a small portion retained in new chapter 67-23-05, in order to avoid duplication of federal rules. The rulemaking is done at this time because the United States Department of Education adopted new federal rules effective October 13, 2006. See the Individuals with Disabilities Education Act of 2004 (IDEA 2004). Federal law sets out the procedures for the following special education dispute resolution options: mediation, state complaint investigation, and due process. Most of the contents of current chapter 67-23-04 are now found in federal regulations. The Department’s special education dispute resolution activities will go forward unchanged by these amendments since those activities occur under federal regulations.

A few items from the current rule have been retained in new chapter 67-23-05 because they are specific to North Dakota. There is a general reference to IDEA dispute resolution options so that persons consulting the rule will be aware that there exists a much broader context for dispute resolution, and to direct persons to sources of further information. The Office of Administrative Hearings continues as the Department’s due process hearing body, and present procedures regarding the routing of due process hearing requests are also retained.

A new section has been added to establish the Department’s program for informal dispute resolution by means of a facilitated IEP meeting and to set out

basic features of the facilitated IEP. See section 67-23-05-02. The facilitated IEP meeting is a service offered by the Department to permit more localized problem solving and to prevent escalation of disputes into more formal resolution forums. Federal administrative funds are used to fund this program, and IDEA permits this expenditure. The facilitated IEP meeting may be thought of as high level technical assistance in the form of guided conversation to enable the family and the school to resolve conflicts. The Department currently uses SFN 58305 Request for a Facilitated IEP Meeting as the vehicle to initiate a facilitated IEP. This form is available on the Department's website.

The projected effective date for these amendments is January 1, 2008.

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67-23-01-01 Definitions. The section being amended is the definitions section for N.D. Admin. Code article 67-23, Special Education. These amendments are proposed at this time because the United States Department of Education adopted new federal rules on October 13, 2006. The new federal rules were, in turn, the result of the federal special education law being amended and reenacted effective July 1, 2005. See the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), Public Law 108-446. Some definitions have been repealed because they are not necessary, such as those that are now defined elsewhere in administrative rules. For example, "department" and "superintendent" are now defined in the comprehensive definitions chapter at N.D. Admin. Code chapter 67-01-02. Some definitions have been amended to be more congruent with federal and state statutes and rules. For example, the definition of "student with a disability" has been amended to track the language of federal

regulations and the state definitions at NDCC sec. 15.1-32-01 more closely. The projected effective date for these amendments is January 1, 2008.

7. A regulatory analysis was prepared and a copy is attached.
8. A small entity regulatory analysis and small entity economic impact statement was prepared and a copy is attached.
9. No constitutional takings assessment was prepared because one was not required by NDCC Sec. 28-32-09.
10. The rules were not adopted as emergency (interim final) rules under NDCC Sec. 28-32-03.

The Department of Public Instruction appreciates your consideration of these administrative rules and respectfully requests your approval.