

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

The consumer/advocate members of the Task Force emphasize four main points to the Legislature in its review of the Task Force's work: 1. There was a full and fair opportunity for the Task Force members and their respective organizations to raise concerns and propose amendments to special education laws; 2. The results of the Task Force's work showed many areas of agreement and proposed means to address concerns; 3. Certain concerns with special education laws were beyond the scope of the Task Force and need to be addressed further; and 4. There was an emerging consensus on the restraint and seclusion laws and that should be respected by the Legislature.

We will address each point in turn.

**1. There was a full and fair opportunity for the Task Force members and their respective organizations to raise concerns and propose amendments to special education laws.**

The Legislature gave the Task Force a revised charge for its work in 2008-2009. Specifically, the Legislature permitted the Task Force to propose amendments to laws in areas where the Task Force deemed appropriate and to address the state's aversive and deprivation (also called "restraint and seclusion" laws). This allowed the Task Force an opportunity to raise concerns and to propose a way to address those concerns, be it through repeal, amendment, or other means. The Task Force prioritized its work by reviewing Minnesota special education rules with the new charge and, if time were available, to revisit its work from the 2007-2008 meetings on the statutes. Due to time limitations, the Task Force was only able to review Minnesota rules. However, in so doing, Task Force members, and the organizations they represented, had a full and fair opportunity to raise concerns and to propose how to address the concerns.

The majority of the Task Force's time and efforts were devoted to this process. And, as such, we recommend that Legislature should

substantially consider and defer to the Task Force's work on these areas if any organization proposes a repeal or amendment of the same laws. We note that during the 2008 special education rulemaking process many school district affiliated individuals and organizations requested that the Minnesota Department of Education and the Administrative Law Judge to defer to the Task Force's work. Now that the Task Force has completed its work, we recommend that the Legislature weigh the Task Force's work heavily in any deliberations to repeal or amend special education laws.

## **2. The results of the Task Force's work showed many areas of agreement and proposed means to address concerns**

Using this full and fair opportunity to raise concerns and propose changes, the Task Force reached agreement in a relatively wide range of areas. The Task Force had two main voting options on each law, essentially to either

- repeal the Minnesota law in order to conform with federal requirements, or
- keep the law.

A "Yes" vote in the fifth column of the Rules Chart was to repeal the law and a "No" vote was to keep the law. (The Task Force understood that if a law was kept, a subsequent discussion and vote to amend to improve the law would be taken).

The Task Force agreed by majority, and often by much more, that most areas of the Minnesota regulations for special education should not be amended to conform to the corresponding federal regulations.

### Keep or Repeal Laws

A super-majority of the Task Force (at least seven members) **voted that 36 rules should be kept** (see "No" votes in the fifth column). In contrast, a supermajority of the Task Force voted that only two rules should be repealed<sup>1</sup> (see "Yes" votes in the fifth column) and there was a split vote on 11 rules. However, these results show that there is a wide-ranging

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<sup>1</sup> These include: Minnesota Rule 3525.2445 and Minnesota Rule 3525.4750.

agreement on the need to keep a large number of state rules and not to repeal them to the federal minimum.

If the Task Force decided to keep a rule (or where there was a not a majority vote to repeal a rule), the Task Force had an opportunity to either keep as is or to indicate a need for amendment, and again the results show general agreement as discussed next.

#### *Keep As Is*

**There were 23 rules that at least a supermajority of the Task Force voted to keep as is.** In other words, these rules were seen as sufficient and appropriate without a need to amend them. These votes are reflected by at least seven “No” votes in the fifth column and at least seven “No” votes in the sixth column.

#### *Keep and Amend*

**There were 25 rules that at least a supermajority of the Task Force voted to amend to improve.** These votes are reflected by at least “No” votes in the fifth column and at least seven “Yes” votes in the sixth column. There were also nine rules where there was a split decision in whether to amend.

As examples of the laws that needed amendment, the Task Force found that regulations affecting the following eligibility criteria areas warranted further analysis: Deaf and Hard of Hearing (3525.1331); Developmental Cognitive Disability (3525.1333); Other Health Impaired (3525.1335); Specific Learning Disability (3525.1341); and Speech or Language Impairments (3525.1343).

For two other examples, the Task Force agreed that Minnesota Rule 3525.2900 should be amended so that transition age is by Grade 9 and that Minnesota Rule 3525.2810 should be amended to reflect this change to the transition age.

In a number of instances, the Task Force forwarded specific recommendations for the rule. For example, the Task Force noted agreement on amendments for Minnesota Rules 3525.0800, Minnesota

Rules 3525.1327, Minnesota Rules 3525.2440, Minnesota Rules 3525.2450, Minnesota Rules 3525.2455, Minnesota Rules 3525.2710, Minnesota Rules 3525.4010, Minnesota Rules 3525.4110, Minnesota Rules 3525.4220, Minnesota Rules 3525.4420 and Minnesota Rules 3525.4700.

Again, and overall, the Task Force agreed by majority, and often by much more, that most areas of the Minnesota regulations for special education should not be amended to conform to the corresponding federal regulations. Instead, the special education rules need to be further examined and improved, not repealed.

### **3. Certain concerns with special education laws were beyond the scope of the Task Force and need to be addressed further.**

In its review of rules, the Task Force voted in a number of instances to have another group or process more fully address the concerns raised. From our standpoint, this decision was made in recognition of the consensus around the range and types of concerns, the limited time available to the Task Force, the limited expertise of the Task Force members on specific issues that needed more analysis and elaboration, and, in some cases, existing work done by other organizations on the same issue. Within this context, we want to emphasize that the Task Force clearly identified the rules that need updates, amendments and restructuring and that the best way to improve them is to have a reputable organization or group convene the needed stakeholders to develop appropriate proposals in those areas. This organization or group could be the Department of Education or any other that is recognized as holding the necessary expertise to effectively engage and employ an efficient means to develop consensus and research based changes. We therefore recommend that the Legislature encourage the Department of Education or other groups to use the Task Force's work as a starting point to review concerns and make improvements.

#### **4. There was an emerging consensus on the restraint and seclusion laws and that should be respected by the Legislature.**

The Task Force divided up its work on restraint and seclusion (also called aversive and deprivation) laws into two parts. First, the Task Force reviewed current laws and voted: A. to “keep as is;” B. to keep them with an amendment; or C. to repeal them. Members could also abstain from this decision. There were two restraint and seclusion laws that the Task Force voted to repeal – Minn. R. 3525.0210, Subpart 9 “deprivation procedures” and Minn. R. 3525.0210, Subpart 46 “time out for exclusion” and there was one law that five members of the task force to “keep as is” Minn. R. 3525.2900, Subpart 5B (one member abstained, two voted to keep with an amendment and two voted to repeal).

In contrast, for the other 17 restraint and seclusion laws, there was a general consensus (with more than seven member votes) that laws should be retained with an amendment. Therefore, it is clear that there was a shared understanding about the fundamental need for the laws and the need to improve them.

Second, the Task Force then approached the more difficult task of developing proposed amendments to the restraint and seclusion laws. To do so, the Task Force reviewed the Restraint and Seclusion Comparison Chart and began to reach consensus on specific language. This emerging consensus is contained in the Task Force results and represents an important building block for the remaining parts of the restraint and seclusion laws. We also note that there are several groups and individuals participating in efforts to reach consensus on this controversial set of laws.

We urge the Legislature to strongly consider Task Force recommendations and the work of others.

Respectfully submitted,

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\* Due to a death in the family, and the time constraint in submitting these comments, Ms. Richardson did not have an opportunity to review this document before submission.