

**CHAPTER 3535**  
**STATE BOARD OF EDUCATION**  
**EQUAL OPPORTUNITY IN SCHOOLS**

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**RULES RELATING TO EQUALITY OF EDUCATIONAL OPPORTUNITY AND SCHOOL DESEGREGATION**

**3535.0200 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of parts 3535.0200 to 3535.2200, the following words and phrases shall have the meaning ascribed to them.

Subp. 2. **Equal educational opportunity.** "Equal educational opportunity" is defined as the provision of educational processes where each child of school age residing within a school district has equal access to the educational programs of the district essential to his needs and abilities regardless of racial or socioeconomic background.

Subp. 3. **Minority group students.** The term "minority group students" is defined as students who are Black-American, American-Indian, Spanish surnamed American, or Oriental Americans. The term "Spanish surnamed American" includes persons of Mexican, Puerto Rican, or Spanish origin or ancestry.

Subp. 4. **Segregation.** Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the student population of the entire district, for the grade levels served by that school building, by more than 15 percent.

**Statutory Authority:** *MS s 121.11 subs 7,12; 124.14*

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## EQUAL OPPORTUNITY IN SCHOOLS 3535.0600

### 3535.0300 POLICY.

The State Board of Education recognizes many causes for inequality in educational opportunity, among which is racial segregation. The State Board of Education agrees with the United States Senate Report of the Select Committee on Equal Educational Opportunities that, "the evidence, taken as a whole, strongly supports the value of integrated education, sensitively conducted, in improving academic achievement of disadvantaged children, and in increasing mutual understanding among students from all backgrounds."

The State Board of Education recognizes its duty to aid in the elimination of racial segregation in Minnesota public schools and therefore adopts these rules, the purpose of which is to direct and assist each school district in the identification of and the elimination of racial segregation which may exist in the public schools within the district. The rules which follow are designed to implement the policy of the State Board of Education as set forth in "Educational Leadership Role for Department of Education and Board of Education in Providing Equal Educational Opportunity," November 9, 1970.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### 3535.0400 DUTIES OF LOCAL BOARDS, PENALTY FOR FAILURE TO COMPLY.

Each local board shall, in accordance with parts 3535.0200 to 3535.2200, submit data to the commissioner on the racial composition of each of the schools within its jurisdiction.

Each local board shall, if segregation is found to exist in any of its schools submit to the commissioner a comprehensive plan for the elimination of such segregation that will meet the requirements of parts 3535.0200 to 3535.2200; submit information to the commissioner on the progress of implementation of any comprehensive plan which has been approved; and implement in accordance with its schedule a comprehensive plan which has been approved. The penalty for noncompliance with parts 3535.0200 to 3535.2200 shall be the reduction of state aids pursuant to Minnesota Statutes 1971, section 124.15.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### 3535.0500 SUBMISSION OF DATA.

**Subpart 1. Compliance.** Each local board shall submit to the commissioner by November 15 of each year such data as are required by subpart 2 of this part. If a local board fails to submit such data by November 15 annually, the commissioner shall notify the board of noncompliance. A reasonable time of 15 days shall be allowed for compliance.

**Subp. 2. Report.** Each local board shall submit a report showing the number of students enrolled which belong to each race for each of the schools under its jurisdiction. The information required to be submitted may be based upon sight count or any other method determined by the local board to be accurate. The clerk of the local board of education shall certify the accuracy of the report.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### 3535.0600 SUBMISSION OF PLAN.

The commissioner shall examine the data which are submitted pursuant to part 3535.0500. Whenever the commissioner finds from the examination of such data that segregation exists in any public school, he shall in writing within 30 days after receipt of data notify the local board having jurisdiction over said school that such finding has been made. The commissioner may after data has been submitted and examined, pursuant to parts 3535.0500 and 3535.0600 determine from additional data received at any subsequent time that a condition of segregation exists and request action to correct the situation. Any local board receiving notification of the existence of segregation shall forthwith prepare a comprehen-

sive plan to eliminate such segregation and shall file a copy of such plan with the commissioner within 90 days after the receipt of the notification.

If the local board fails to submit a plan within 90 days, the commissioner shall notify the local board of noncompliance. A reasonable time of 15 days shall be allowed for compliance.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.0700 STANDARDS FOR DEVELOPING THE PLAN.**

The 15 percentage points requirement of part 3535.0200, subpart 4 shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district. The commissioner shall approve school desegregation plans that vary from the standard by up to an additional 15 percentage points if the local board can justify an educational reason for a variance to the state board from the comprehensive school desegregation plan submitted. If the variance is approved by the commissioner, it may result in a school building exceeding 50 percent minority enrollment if necessary.

An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the State Board of Education shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**History:** *L 1984 c 463 art 7 s 49,53 subd 2*

### **3535.0800 TRANSPORTATION TIME STANDARD.**

If to alleviate the isolation of minority group students, required transportation time would exceed more than one hour trip per day, then a standard may be determined by the commissioner based on the data presented by the district for each such school within the district.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.0900 CONTENTS OF THE COMPREHENSIVE PLAN.**

The comprehensive plan, submitted pursuant to part 3535.0600, shall contain a detailed description of the actions to be taken by the local board to eliminate segregation. Each plan shall contain: an explicit commitment by the local board to fulfill the requirements of these rules; a detailed description of the specific actions to be taken to correct racial segregation of students and faculty, showing the intended effect of each action proposed with respect to the entire plan, and each specific action proposed in the plan; a time table showing dates of initial implementation and completion; evidence that broad community participation and involvement was secured in the planning and development of the plan; and specific affirmative proposals to ensure that the integration process provides an effective learning environment for all children based upon mutual cultural and personal respect. The plan shall also include a narrative description of changes in the staffing patterns of the school district, curriculum changes to meet the needs of students in a desegregated environment, any anticipated building or remodeling programs, present and projected attendance patterns, staff preparation or projected in-service training programs. The implementation period shall not exceed two years. The plan shall specify the effect which each proposed action will have on the racial composition of each school within the district and shall include projections of the racial composition of each school within the district which may be expected upon completion of the plan.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1000 METHODS TO CONSIDER IN THE FORMULATION OF THE PLAN.**

In the formulation of plans to eliminate and prevent racial segregation in schools, local boards shall consider and employ methods that are educationally sound and administratively and economically feasible. Such methods may include but are not limited to: school pairings and groupings; grade reorganization; alteration of school attendance zones and boundaries; pupil reassignments and such optional transfers as are consistent with these requirements; establishment of educational parks and plazas; rearrangements of school feeder patterns; voluntary metropolitan or inter-district cooperative plans; specialized or "magnet" schools, differentiated curricular or other program offerings at schools serving children predominately of different racial groups at the same grade level; reassignments of faculty, staff, and other personnel, affirmative recruitment, hiring, and assignment practices to ensure that each system's personnel corps, as well as the faculty, staff, and other personnel at all attendance centers within systems, become and remain broadly representative racially.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1100 CONSIDERATION OF DESEGREGATION WHEN PLANNING NEW SCHOOL SITES.**

All decisions by local boards concerning selection of sites for new schools and additions to existing facilities shall take into account, and give maximum effect to, the requirements of eliminating and preventing racial as well as socioeconomic segregation in schools. The commissioner will not approve sites for new school building construction or plans for addition to existing buildings when such approval will perpetuate or increase racial segregation.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1200 CONSIDERATION OF EQUITY IN DEVELOPING THE PLAN.**

All plans to effect school desegregation and integration shall be equitable and nondiscriminatory. Within the constraints imposed by feasibility and educational soundness, inconvenience, or burdens occasioned by desegregation shall be shared by all and not borne disproportionately by pupils and parents of minority group students.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1300 NO USE OF PUPIL GROUPING OR CLASSIFICATION.**

Local board shall not adopt or maintain pupil grouping or classification practices, such as tracking, which result in racial segregation of pupils within a given school.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1400 CONTINUAL REVIEW BY THE LOCAL BOARD.**

All plans shall be subject to continuing review and evaluation by the local boards and shall provide that amendments to improve their effectiveness shall be adopted and implemented on a continuing basis; provided, however, that the implementation of any proposed amendment which would result in resegregation of any school or classroom, shall not take effect until after it has been reviewed by the commissioner of education in the manner provided with respect to plans in part 3535.1500. Submissions of proposed amendments shall be accompanied by materials setting forth the reasons underlying the proposals and their projected effects upon racial composition of all affected schools and classrooms.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

**3535.1500 REVIEW OF THE PLAN BY THE COMMISSIONER.**

The commissioner shall review any plan or amendment submitted under

these provisions and shall determine whether it complies with the requirements of these rules. If the commissioner determines that the plan will eliminate segregation in the schools of the district submitting the plan, and that the dates for implementation of the plan will not exceed two years, and that any proposed transportation to achieve desegregation is not restricted to minority students, he shall approve the plan and notify the State Board of Education and the local board within 30 days. The commissioner may provide to the local board of education such technical assistance and services as requested by the local board and deemed necessary by the commissioner in order to implement the plan. If the commissioner finds that the plan will not eliminate segregation in the schools of the district submitting the plan, or that the dates for implementation will exceed two years or that any transportation to achieve desegregation is restricted to minority students, he shall reject the plan.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.1600 NOTIFICATION OF REJECTION OF THE PLAN.**

The commissioner shall notify the local board of the rejection of the plan within 30 days. The notice shall specify the reasons for the rejection of the plan, the revisions necessary to make the plan satisfactory, and a period of 45 days in which the local board shall submit a revised plan.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.1700 NOTIFICATION OF FAILURE TO COMPLY.**

If no revised plan is received within 45 days, or if the revised plan fails to contain the revisions specified by the commissioner, or if the plan fails to meet the requirements of parts 3535.0200 to 3535.2200 the commissioner shall notify the local board of action to be taken pursuant to part 3535.0400.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.1800 SUBMISSION OF INFORMATION ON IMPLEMENTATION OF PLAN.**

If a local board has submitted a plan which has been approved by the commissioner, the local board shall submit to the commissioner at such times as he shall request, such information as he deems necessary concerning the implementation of the plan. If the local board fails to submit such information, the commissioner shall notify the local board of the noncompliance. A reasonable time of 15 days shall be allowed for correction of noncompliance.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.1900 IMPLEMENTATION OF THE PLAN.**

The commissioner shall examine the information requested to part 3535.1800. If he determines that there is any discrepancy between the schedule in the plan as approved and the progress which has been achieved in the implementation of the plan, he shall notify the local board of noncompliance. A reasonable time, which shall be determined by the commissioner according to the nature of the discrepancy, shall be allowed for correction of the discrepancy.

**Statutory Authority:** *MS s 121.11 subds 7,12; 124.14*

### **3535.2000 APPEARANCE BEFORE THE STATE BOARD.**

Any school district aggrieved by a decision required by the commissioner by parts 3535.0200 to 3535.2200 may serve a written request on the State Board of Education within 30 days of any such decision to appear before said board.

The appearance shall be made at the next regular state board meeting following receipt of such request. Following such appearance the board may in writing support, modify, or reject the commissioner's decision. Any such notice served by a school district shall stay any proceeding pursuant to Minnesota

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Statutes 1971, section 124.15 to reduce state aids for noncompliance with parts 3535.0200 to 3535.2200 until a determination by the board.

**Statutory Authority:** *MS s 121.11 subs 7,12; 124.14*

### 3535.2100 NOTICES.

Any notice to a local board which is required by these rules shall be written and shall be sent by certified mail, to the superintendent, and to the clerk of the local board of the district at their respective business addresses. For the purpose of parts 3535.0200 to 3535.2200, the business address of the clerk of the local board is deemed to be the main administrative office of the district.

The content of any notice of noncompliance shall be such as is specified in Minnesota Statutes 1971, section 124.15, subdivision 3. The reasonable time for correction of noncompliance shall be such as specified in parts 3535.0200 to 3535.2200.

**Statutory Authority:** *MS s 121.11 subs 7,12; 124.14*

### 3535.2200 NO DISTRICT EXEMPT FROM PART 3535.0500.

At no time shall any local board be exempt from the reporting requirements of part 3535.0500.

**Statutory Authority:** *MS s 121.11 subs 7,12; 124.14*

## PROHIBITION OF DISCRIMINATORY PRACTICES IN EDUCATION

### 3535.2300 POLICY.

The policy of the State Board of Education is to assure compliance with state and federal law prohibiting discrimination because of age, race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability, and to promote the elimination of these discriminatory practices in public schools and public educational agencies under its general supervision.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.2400 DUTIES OF LOCAL BOARDS, PENALTY FOR FAILURE TO COMPLY.

Each local board shall submit to the commissioner such data as specified in part 3535.2500 for purposes of determining that the educational program is meeting provisions of state and federal law prohibiting discrimination on the grounds listed in part 3535.2300.

Each local board shall comply with all state and federal law prohibiting discrimination on the grounds listed in part 3535.2300.

Each local board shall direct the superintendent to coordinate, implement, and report to the local board the district's efforts to comply with parts 3535.2300 to 3535.2900.

Each local school board shall, pursuant to Title IX of the Educational Amendments of 1972 (Public Law Number 92-318), disseminate on a continuing basis its policy of nondiscrimination on the basis of sex.

The penalty for noncompliance with parts 3535.2300 to 3535.2900 shall be the reduction of state aids pursuant to Minnesota Statutes, section 124.15.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.2500 COMPLIANCE REPORTS AND SUBMISSION OF DATA.

Annually, on November 15, each school board shall submit to the commissioner a statement of compliance with state and federal law prohibiting discrimination on the grounds specified in part 3535.2300 and, in support of that statement, shall complete the form contained in part 3535.9920, and submit a report as required by Code of Federal Regulations, title 29, section 1602.41

(EEO-5 report), showing the number of certificated and noncertificated personnel employed which belong to each race and sex for each of the schools under its jurisdiction.

The statement of compliance required by Minnesota Statutes, section 124.15, subdivision 2a, shall be specified in part 3535.9910.

The form to be completed in support of the assurance statement shall be as specified in part 3535.9920.

**Statutory Authority:** *MS s 124.15 subd 2a*

**3535.2600 NOTICES.**

The content of any notice of noncompliance shall be such as is specified in Minnesota Statutes, section 124.15, subdivision 3.

Any notice to a local board which is required by parts 3535.2300 to 3535.2900 shall be written and shall be sent by certified mail to the superintendent and to the clerk of the local board of the district at their respective business addresses. For the purposes of parts 3535.2300 to 3535.2900 the business address of the clerk of the local board is deemed to be the main administrative office of the district.

The commissioner shall provide to each school district in the state of Minnesota the documents specified in part 3535.9920, number 1, and shall update the material as needed to insure compliance.

**Statutory Authority:** *MS s 124.15 subd 2a*

**3535.2700 APPEAL OF COMMISSIONER'S DETERMINATION.**

Any school district aggrieved by a decision required of the commissioner under parts 3535.2300 to 3535.2900 may dispute that decision pursuant to Minnesota Statutes, section 124.15, subdivision 4.

**Statutory Authority:** *MS s 124.15 subd 2a*

**3535.2800 DUTIES OF THE COMMISSIONER.**

Upon receipt of the school board's assurance of compliance and the supporting data, the commissioner shall:

A. In order to determine whether special state aid shall be withheld, process the data and forward it to the commissioner of human rights, pursuant to Minnesota Statutes, section 124.15, subdivision 5a.

B. In order to determine whether a violation of federal laws prohibiting discrimination has occurred: within 90 days of the receipt of the data, the commissioner of education shall review it to determine whether a school district is in compliance with federal law prohibiting discrimination; if, after review of the data, it appears to the commissioner that a violation of federal law exists, he shall make a prompt investigation; and if the investigation indicates noncompliance with federal law, the commissioner shall inform the school district. If the noncompliance cannot be resolved by informal means, the commissioner may proceed to suspend or terminate federal assistance.

**Statutory Authority:** *MS s 124.15 subd 2a*

**3535.2900 EXEMPTIONS.**

No district shall be exempt from parts 3535.2300 to 3535.2900.

**Statutory Authority:** *MS s 124.15 subd 2a*

**PROHIBITION OF DISCRIMINATORY PRACTICES IN ATHLETIC PROGRAMS**

**3535.3000 DEFINITIONS.**

Subpart 1. **Scope.** All the words listed shall have the meaning herein ascribed to them.

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Subp. 2. **Athletic program.** "Athletic program" means all interscholastic and intramural sports offered to students by public and private elementary and secondary educational institutions.

Subp. 3. **Interscholastic athletic program.** "Interscholastic athletic program" means all athletic activities offered within a school the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools within an organized conference under the auspices of the Minnesota state high school league or with other like teams in other schools operating under separate jurisdictions.

Subp. 4. **Intramural athletic program.** "Intramural athletic program" means all noninterscholastic athletic activities offered within a school, which are not a part of the regular physical education curriculum, designed to provide students athletic opportunities, experiences, and the development of competencies in a variety of sports.

Subp. 5. **Participate.** "Participate" means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of varsity, junior varsity, and sophomore teams, after the tryout period has ended.

Subp. 6. **Participation rate for a particular sex in the interscholastic athletic program.** "Participation rate for a particular sex in the interscholastic athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

Subp. 7. **Participation rate for a particular sex in the intramural athletic program.** "Participation rate for a particular sex in the intramural athletic program" means the ratio of the number of participants of that sex in the athletic program to the number of students of that sex in the student body.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.3100 SCOPE AND PURPOSE.

Parts 3535.3000 to 3535.3700 are promulgated pursuant to Minnesota Statutes, section 126.21, subdivision 5, as amended by Laws of Minnesota 1980, chapter 355, section 1. Parts 3535.3000 to 3535.3700 apply to both public and private elementary and secondary schools that operate athletic programs.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.3200 SEPARATION BY TEAMS.

Subpart 1. **Programs for students in the seventh grade and above.** Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited.

Subp. 2. **Programs for students in the sixth grade and below.** Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. The educational institution shall make a biennial determination of students' demonstrated interest. The method used shall be reported to the State Department of Education in conjunction with the report required by part 3535.3600.

Subp. 3. **Provision of separate teams.** Any public or private elementary or secondary school may provide in the same sport two teams which are separated according to sex when overall athletic opportunities for one sex have previously been limited, but the team for the other sex may only be substantially separated by sex.

When an equal opportunity to participate is not provided to members of a



sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate their demonstrated interest.

**Subp. 4. Try outs for opposite team.** When overall athletic opportunities for one sex have previously been limited, members of that sex shall be permitted to try out and, if successful, to participate on any team in any sport. This part does not prohibit any elementary or secondary school from making participation on a team in a sport dependent upon a demonstrated level of skill and ability. When an educational institution has established a team exclusively for members of the sex whose overall athletic opportunities have previously been limited, members of the other sex may not try out for or participate on that team.

**Statutory Authority:** *MS s 124.15 subd 2a*

### **3535.3300 BIENNIAL DETERMINATION OF STUDENT INTEREST.**

Public and private elementary and secondary schools shall make a biennial determination of student demonstrated interest. Schools shall report the method used to make the determination to the State Department of Education as part of part 3535.3600. The first biennial determination shall be made prior to the end of the 1981-1982 school year. Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of previously excluded sex.

Public and private elementary and secondary schools shall provide equal opportunity for members of each sex to participate in both their intramural and interscholastic athletic program by responding to the following considerations.

The number of opportunities for females to participate on teams is to be comparable to the number of opportunities for males to participate on teams in each school year in the interscholastic athletic program and comparable, as well as in the intramural athletic program. The equipment, supplies, and uniforms for each sport are to be comparable for both sexes. The locker rooms, practice, and competitive facilities are to be comparable for both sexes. The medical services are to be comparable for both sexes. The participation rates for members of both sexes are to be comparable while recognizing the voluntary nature of student involvement in interscholastic and intramural athletics.

**Statutory Authority:** *MS s 124.15 subd 2a*

### **3535.3400 CREATING EQUAL OPPORTUNITY FOR TWO TEAMS.**

When two teams in the same sport are provided pursuant to part 3535.3200, subpart 1, the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary schools shall accomplish this to the extent that they are applicable in a given situation by providing that:

- A. equipment, supplies, and uniforms for each team are comparable;
- B. the games and competitive events for each team are scheduled so that the number of opportunities to perform before an audience are comparable;
- C. the practice sessions and competitive events scheduled for each team are at equally desirable time periods;
- D. the travel and per diem allowances per participant are comparable;
- E. the amount of coaching provided for members of each team is comparable;
- F. the locker rooms, practice, and competitive facilities for each team are comparable;
- G. the medical services for each team are comparable;
- H. the publicity produced by the school for each team is comparable;

and

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I. the expenditure, excluding salary of the coach, per participant on each team is substantially equal. Per participant expenditure excludes gate receipts and other revenues generated by that sport. When an item or items of expense are not separated, the expense shall be prorated to the teams according to the number of participants.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.3500 PENALTY FOR NONCOMPLIANCE.

The penalty for noncompliance with parts 3535.3100 to 3535.3700 by public elementary and secondary schools shall be the reduction of state aids pursuant to procedures of Minnesota Statutes, section 124.15, subdivision 3. In addition, nothing in parts 3535.3000 to 3535.3700 shall be interpreted as limiting the authority of the human rights department over public and nonpublic schools and noncompliance may constitute a violation of Minnesota Statutes, chapter 363, Human Rights Act.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.3600 COMPLIANCE REPORTS AND SUBMISSION OF DATA.

Annually, on or before October 15, each school/school district shall submit to the commissioner of education an elementary and secondary athletic program report containing information about both intramural and interscholastic athletics provided. The report shall contain by building: number of sports offered for each sex, the season each sport is offered for each sex, the number of weeks each sport is offered, the number of teams in each sport, the number of coaches assigned each sport, the number of students by sex participating in each sport, the dollar expenditure per sport, the total unduplicated count of student participation in the intramural program by sex, and the total unduplicated count of student participation in interscholastic programs by sex.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.3700 DUTIES OF THE COMMISSIONER OF EDUCATION.

Upon receipt of an educational institution's athletic program report, the commissioner of education shall evaluate the data contained in the report and forward reports requiring additional attention to the commissioner of human rights, pursuant to Minnesota Statutes, section 124.15, subdivision 2a.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.9910 STATEMENT OF COMPLIANCE.

Assurance of Compliance with State and Federal Law

#### Prohibiting Discrimination

Name of School District

The undersigned hereby affirm that the above named school district is in compliance with the following state and federal laws prohibiting discrimination:

1. Minnesota Statutes, section 363.03, Minnesota Human Rights Act, which prohibits discrimination in education programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

2. Title VI of the Civil Rights Act of 1964 (Public Law Number 88-352), which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the district receives federal financial assistance.

3. Title VII of the Civil Rights Act of 1964 (Public Law Number 88-352),

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as amended by the Equal Employment Opportunity Act of 1972 (Public Law Number 92-261), which prohibits discrimination in employment because of an individual's race, color, religion, sex, or national origin.

4. Title IX of the Education Amendments of 1972 (Public Law Number 92-318), which prohibits discrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance.

5. The Age Discrimination in Employment Act of 1967 (Public Law Number 90-202), which prohibits discrimination on the basis of age (40 through 64).

6. Minnesota Statutes, section 126.21, which prohibits sex discrimination in athletic programs.

7. Part 3500.0500, curriculum, which provides that "No school shall provide any course or activity on the basis of sex. This includes health, physical education, home economics, and industrial education."

8. Parts 3535.0200 to 3535.2200, relating to equality of educational opportunity and school desegregation.

This assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discount, or other federal and state financial assistance extended after the date hereof to the district by the Department of Health, Education, and Welfare and the State Department of Education, including installment payments after such date on applications for federal financial assistance and state aid allotments which were approved before such date. The district recognizes and agrees that such federal and state financial assistance will be extended in reliance on the representations, supporting information required by Minnesota Statutes, section 124.15, subdivision 2a, and agreements made in this assurance. This assurance is binding on the district and the person or persons whose signatures appear below and who are authorized to sign this assurance on behalf of the district.

The attached form, Information Needed to Evidence Compliance, with this assurance statement is made a part thereof.

Dated \_\_\_\_\_ By \_\_\_\_\_  
(School Superintendent)

By \_\_\_\_\_  
(President or Chairman  
of School Board)

By \_\_\_\_\_  
(Clerk of School Board)

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.9920 FORM FOR SCHOOL BOARD ASSURANCE STATEMENT.

In support of its "Assurance of Compliance with State and Federal Law Prohibiting Discrimination," each school board shall affirm annually that it has as reference all documents listed in 1 (a to l) and that it has complied with all items 2 to 16.

Yes No      GENERAL

1. Does the district have a copy of the following documents available for reference in each school building?

\_\_\_ a. Minnesota Statutes, section 363.03, Minnesota Human Rights Act.

\_\_\_ b. Minnesota Statutes, section 126.21, relating

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## EQUAL OPPORTUNITY IN SCHOOLS 3535.9920

to sex discrimination and equal opportunity in athletic programs.

- — c. Minnesota Statutes, section 124.15, relating to reduction of state aid for non-compliance with state and federal law prohibiting discrimination.
- — d. Part 3500.0500, curriculum, relating to course offerings on the basis of sex.
- — e. Parts 3535.0200 to 3535.2200, relating to equality of educational opportunity and school desegregation.
- — f. Regulations under Title VI of the Civil Rights Act of 1964 as amended (Code of Federal Regulations, title 45, Part 80).
- — g. May 25, 1970, Office of Civil Rights memorandum, "Identification of Discrimination and Denial of Service on the Basis of National Origin."
- — h. August 1975, Office of Civil Rights memorandum, "Identification of Discrimination in the Assignment of Children to Special Education Programs."
- — i. Title VII of the Civil Rights Act of 1964 (Public Law Number 88-352), as amended by the Equal Employment Opportunity Act of 1972 (Public Law Number 92-261).
- — j. Record keeping and filing requirements for report EEO-5 (Code of Federal Regulations, title 29, sections 1602.39 to 1602.46).
- — k. Final Title IX regulations implementing education amendments of 1972, prohibiting sex discrimination in education, effective July 21, 1975 (Code of Federal Regulations, title 45, Part 86)
- — l. The Age Discrimination in Employment Act of 1967 (Public Law Number 90-202).
- — 2. Has the district designed and implemented an information program to inform the district staff of its civil rights responsibilities?

### Yes No TITLE VI PROCEDURES

- — 3. Does the district have on file a signed copy of HEW No. 441, Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the

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Civil Rights Act of 1964?

Yes No TITLE IX PROCEDURES

- \_\_\_ \_\_\_ 4. Policy Notification: Has a policy statement of nondiscrimination on the basis of sex been adopted, published, and disseminated to students, parents, employees, applicants for employment, sources of referral, and all unions or professional organizations?
- \_\_\_ \_\_\_ 5. Title IX Coordinator: Has the district designated an employee(s) to coordinate compliance efforts and to investigate complaints of sex discrimination; and has this person's name, office address, and phone number been given to students, parents, and employees?
- \_\_\_ \_\_\_ 6. Grievance Procedures: Has the district adopted and published grievance procedures providing for prompt and equitable resolution of student and employee complaints of possible sex discrimination under Title IX?
- \_\_\_ \_\_\_ 7. Self-Evaluation: Has the district completed and have on file a self-evaluation identifying any policies or practices which may not comply with Title IX; and have modifications and remedial steps been planned or taken to correct non-compliance?
- \_\_\_ \_\_\_ 8. Assurances: Has the district's efforts toward achieving compliance with Title IX been sufficiently well-documented to provide information necessary for assurance statements for applications for federal assistance?

Yes No EDUCATIONAL SERVICES

- \_\_\_ \_\_\_ 9. Access to courses:
- \_\_\_ \_\_\_ a. Are students assigned to required courses without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability in:
- \_\_\_ \_\_\_ - health courses (except portions dealing with human sexuality)?
- \_\_\_ \_\_\_ - physical education courses?
- \_\_\_ \_\_\_ - industrial, business, vocational, technical education courses?
- \_\_\_ \_\_\_ - home economics courses?

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\_\_\_ - music courses (except criteria of  
vocal range or quality)?

- other courses\_\_\_\_\_?

If no, explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ b. Are elective courses open equally to all  
students and are assignment to such classes  
made without regard to race, color, creed,  
religion, national origin, sex, marital  
status, status with regard to public  
assistance, or disability in:

\_\_\_ - health courses (except portions  
dealing with human sexuality)?

\_\_\_ - physical education courses?

\_\_\_ - industrial, business, vocational,  
technical education courses? .

\_\_\_ - home economics courses?

\_\_\_ - music courses (except criteria of  
vocal range or quality)?

- other courses\_\_\_\_\_?

If no, explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### 10. Counseling:

\_\_\_ a. Are all testing and appraisal materials  
the same for all students without regard  
to sex?

\_\_\_ b. Do any classes have a disproportionate  
number (Over 80 percent) of any

\_\_\_ - race?

\_\_\_ - sex?

- other\_\_\_\_\_?

If yes, explain \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ c. If a particular class contains over 80%  
of once sex or race, etc., has the district  
taken steps to assure that such

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## 3535.9920 EQUAL OPPORTUNITY IN SCHOOLS

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disproportion is not the result of discrimination in procedures for assignment to classes, in counseling, or in appraisal materials?

### 11. Treatment of students:

Are students treated equally regardless of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability with reference to:

- \_\_\_ \_\_\_ - extracurricular activities?
- \_\_\_ \_\_\_ - insurance benefits?
- \_\_\_ \_\_\_ - health services?
- \_\_\_ \_\_\_ - employment assistance?
- \_\_\_ \_\_\_ - honors or awards?
- \_\_\_ \_\_\_ - rules for behavior and dress codes?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

### 12. Student marital/parental status?

- \_\_\_ \_\_\_ a. Does the district have a written policy which specifies that pregnant students shall not be excluded from any educational program or activity except when the student requests voluntarily to participate in a separate portion of the program or activity?
- \_\_\_ \_\_\_ b. If a medical certificate is required of pregnant students, is it also required of all other students for physical and emotional conditions requiring the attention of a physician?

### 13. Athletics:

- \_\_\_ \_\_\_ a. Are all athletic programs for the sixth grade and below, or for 11 years old and younger, designated for and open to members of both sexes on an equal basis?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- \_\_\_ \_\_\_ b. Are the district athletic programs for 7th grade and above, or for 12 years old and older, designated for and open to members of

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both sexes on an equal basis (except when separate teams are necessary to provide equal opportunity to members of both sexes?)

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_

c. If the district provides separate teams for each sex, are the number of sports in each season the same for boys and for girls?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

d. If the district provides separate teams for each sex, are the following services equal for members of both sexes)?

\_\_\_

- provision of equipment and supplies?

\_\_\_

- scheduling of games and practice time?

\_\_\_

- travel and per diem allowance?

\_\_\_

- opportunity to receive coaching of equal expertise?

\_\_\_

- assignment and compensation of coaches?

\_\_\_

- provision of athletic facilities, including locker rooms?

\_\_\_

- publicity?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_

e. If the district provides separate teams in the same sport for boys and girls, is the expenditure per student (exclusive of gate receipts) the same for members of each sex?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Yes No EMPLOYMENT PRACTICES

14. Are all employment and personnel practices free from discrimination on the basis of age (40 to 64), race, color, creed, religion, national origin, sex, marital status, status



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## 3535.9920 EQUAL OPPORTUNITY IN SCHOOLS

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with regard to public assistance, or disability (except when based on a bona fide occupational qualification) as follows:

- \_\_\_ a. Are district employment application forms free from all reference to any of the above categories?
- \_\_\_ b. Are district salary schedules free from any differential compensation on the basis of any of the above categories?
- \_\_\_ c. Are district fringe benefits free from any differential treatment on the basis of any of the above categories?
- \_\_\_ d. Are district procedures for recruitment, selection, assignment (including extra-duty assignment), transfer, referral, promotion, retention, and dismissal applied without regard to the above categories?
- \_\_\_ e. Are position descriptions and job classifications free from all references to the above categories except when based on a bona fide occupational qualification?

If no, explain \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

- \_\_\_ 15. a. Does the district preserve all personnel and employment records for at least two years, as required by Code of Federal Regulations, title 29, section 1602.40?
- \_\_\_ b. Has the record of applicant flow for the past two years been examined to assure that all district employment policies, criteria, and procedures are being applied in compliance with state and federal laws prohibiting discrimination?
- \_\_\_ 16. Do position descriptions, job classifications, and salary schedules:
  - \_\_\_ - ensure job-relatedness of employment criteria?
  - \_\_\_ - ensure equity in compensation classification?
  - \_\_\_ - ensure equity in compensation for comparable jobs?

**Statutory Authority:** *MS s 124.15 subd 2a*

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**EQUAL OPPORTUNITY IN SCHOOLS 3535.9930**

## **3535.9930 HEW MEMORANDUM ON DISCRIMINATION AND DENIAL OF SERVICES.**

DEPARTMENT OF HEALTH, EDUCATION,

AND WELFARE

Office of the Secretary

Washington, D.C. 20201

May 25, 1970

### MEMORANDUM

**TO:** School Districts with More Than Five Percent  
National Origin-Minority Group Children

**FROM:** J. Stanley Pottinger  
Director, Office for Civil Rights

**SUBJECT:** Identification of Discrimination and Denial of  
Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (Code of Federal Regulation, title 45, part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portuguese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national

origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.

**Statutory Authority:** *MS s 124.15 subd 2a*

### 3535.9940 HEW MEMORANDUM ON DISCRIMINATION IN SPECIAL EDUCATION PROGRAMS.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

Washington, D.C. 20201

AUGUST, 1975

#### MEMORANDUM FOR CHIEF STATE SCHOOL OFFICERS AND LOCAL SCHOOL DISTRICT SUPERINTENDENTS

**SUBJECT:** Identification of Discrimination in the Assignment of Children to Special Education Programs

Title VI of the Civil Rights Act 1964 and the Departmental Regulation (45 CFR Part 80) promulgated thereunder require that there be no discrimination on the basis of race, color, or national origin in the operation of any programs benefiting from federal financial assistance. Similarly, Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in education programs or activities from federal financial assistance.

Compliance reviews conducted by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity on the basis of race, color, national origin, or sex in the assignment of children to special education programs.

As used herein, the term "special education programs" refers to any class or instructional program operated by a state or local education agency to meet the needs of children with any mental, physical, or emotional exceptionality including, but not limited to, children who are mentally retarded, gifted and talented, emotionally disturbed or socially maladjusted, hard of hearing, deaf, speech-impaired, visually handicapped, orthopedically handicapped, or to children with other health impairments or specific learning disabilities.

The disproportionate over- or underinclusion of children of any race, color, national origin, or sex in any special program category may indicate possible

noncompliance with Title VI or Title IX. In addition, evidence of the utilization of criteria or methods of referral, placement or treatment of students in any special education program which have the effect of subjecting individuals to discrimination because of race, color, national origin, or sex may also constitute noncompliance with Title VI and Title IX.

In developing its standards for Title VI and Title IX compliance in the area of special education, the Office for Civil Rights has carefully reviewed many of the requirements for state plans contained in Section 613 of the Education Amendments of 1974 (Public Law Number 93-380), which amended Part B of the Education of the Handicapped Act.

Based on the above, any one or more of the following practices may constitute a violation of Title VI or Title IX where there is an adverse impact on children of one or more racial or national origin groups or on children of one sex:

1. Failure to establish and implement uniform nondiscriminatory criteria for the referral of students for possible placement in special education programs.

2. Failure to adopt and implement uniform procedures for insuring that children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation, and educational placement including, but not limited to the following:

a. prior written and oral notice to parents or guardians in their primary language whenever the local or state education agency proposes to change the educational placement of the child, including a full explanation of the nature and implications of such proposed change;

b. an opportunity for the parents or guardians to obtain an impartial due process hearing, examine all relevant records with respect to the classification of the child, and obtain an independent educational evaluation of the child;

c. procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or the child is a ward of the state, including the assignment of an individual, who is not an employee of the state or local educational agency involved in the education of children, to act as a surrogate for the parents or guardians;

d. provisions to insure that the decisions rendered in the impartial due process hearing referred to in part (b) above shall be binding on all parties, subject only to appropriate administrative or judicial appeal; and

e. procedures to insure that, to the maximum extent appropriate, exceptional children are educated with children who are not exceptional and that special classes, separate schooling, or other removal of exceptional children from the regular education environment occur only when the nature or severity of the exceptionality is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

3. Failure to adopt and implement procedures to insure that test materials and other assessment devices used to identify, classify and place exceptional children are selected and administered in a manner which is nondiscriminatory in its impact on children of any race, color, national origin or sex.

Such testing and evaluation materials and procedures must be equally appropriate for children of all racial and ethnic groups being considered for placement in special education classes. In that regard procedures and tests must be used which measure and evaluate equally well all significant factors related to the learning process, including but not limited to consideration of sensorimotor, physical, sociocultural and intellectual development, as well as adaptive behavior. Adaptive behavior is the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of her or his age and cultural group. Accordingly, where present testing and evaluation materials and procedures have an adverse impact on members of a particular race, national origin, or sex, additional or substitute materials and

procedures which do not have such an adverse impact must be employed before placing such children in a special education program.

4. Failure to assess individually each student's needs and assign her or him to a program designed to meet those individually identified needs.

5. Failure to adopt and implement uniform procedures with respect to the comprehensive reevaluation at least once a year of students participating in special education programs.

6. Failure to take steps to assure that special education programs will be equally effective for children of all cultural and linguistic backgrounds. School officials should examine current practices in their districts to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately devise and implement a plan of remediation. Such a plan must not only include the redesign of a program or programs to conform to the above outlined practices, but also the provision of necessary reassessment or procedural opportunities for those students currently assigned to special education programs in a way contrary to the practices outlined. All students who have been inappropriately placed in a special education program in violation of Title VI or Title IX requirements must be reassigned to an appropriate program and provided with whatever assistance may be necessary to foster their performance in that program, including assistance to compensate for the detrimental effects of improper placement.

Some of the practices which may constitute a violation of Title VI or Title IX may also violate Section 504 of the Rehabilitation Act of 1973 (Public Law Number 93-112), as amended by the Rehabilitation Act of 1973 (Public Law Number 93-516) which prohibits discrimination on the basis of handicap; and other practices not addressed by this memorandum and not currently prohibited by Title VI or Title IX may be prohibited by that Section. The Office for Civil Rights is currently formulating the regulation to implement Section 504.

School districts have a continuing responsibility to abide by this memorandum in order to remain in compliance with Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

Martin Gerry  
Acting Director  
Office for Civil Rights

**Statutory Authority:** *MS s 124.15 subd 2a*

**3535.9950 HEW ASSURANCE OF COMPLIANCE FORM.**

HEW Form No. 441

ASSURANCE OF COMPLIANCE WITH THE  
DEPARTMENT OF HEALTH, EDUCATION,  
AND WELFARE REGULATION UNDER TITLE VI  
OF THE CIVIL RIGHTS ACT OF 1974

\_\_\_\_\_ (Name of Applicant) (hereinafter called the "Applicant")

HEREBY AGREES THAT it will comply with Title VI of the Civil Rights Act of 1964 (Public Law Number 88-352) and all requirements imposed by or pursuant to the Regulation of the Department of Health, Education, and Welfare (Code of Federal Regulations, title 45, part 80) issued pursuant to that title, to the end that, in accordance with Title VI of that Act and the Regulation, no

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person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives federal financial assistance from the Department; and **HEREBY GIVES ASSURANCE THAT** it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the Applicant by the Department, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant for the period during which the federal financial assistance is extended to it by the Department.

**THIS ASSURANCE** is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts, or other federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Applicant.

Dated \_\_\_\_\_

\_\_\_\_\_  
(Applicant)

By \_\_\_\_\_  
President, Chairman of  
Board, or comparable  
authorized official)

\_\_\_\_\_  
\_\_\_\_\_  
(Applicant's Mailing Address)

**Statutory Authority:** *MS s 124.15 subd 2a*