

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA HIGHER EDUCATION SERVICES OFFICE

In the Matter of the Adoption of
the Rules of the Minnesota Higher
Education Services Office, Minn. R.
Chapters 4830 and 4850.

ORDER ON REVIEW OF
RULES UNDER MINN.
STAT. § 14.26

The Minnesota Higher Education Services Office ("Agency") is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26. On August 5, 1999, the Office of Administrative Hearings received the documents that must be filed by the agency under Minn. Stat. § 14.26 and Minn. R. 1400.2310. Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY ORDERED:

1. The agency has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
3. The adopted rules are not substantially different from the rule as originally proposed.
4. The record for the adopted rules demonstrates a rational basis for the need and reasonableness of the proposed rules.
5. The following provisions of the adopted rules are being **DISAPPROVED** as not meeting the requirements of Minn. R. 1400.2100, items D, E, and F: 4830.0140, paragraph A; 4830.0150; and 4830.0180, paragraph A. (See Memorandum). All other rule parts are approved.

Dated this 12th day of August, 1999.

PHYLLIS A. REHA
Administrative Law Judge

MEMORANDUM

Pursuant to Minn. Stat. § 14.26, the agency has submitted these rules to the Administrative Law Judge (“ALJ”) for a review of their legality. Proposed Minn. R. parts 4830.0140, paragraph A; 4830.0150; and 4830.0180, paragraph A are disapproved as not meeting the legal standard of Minn. R. 1400.2100, items D, E, and F, as discussed below. All other rule parts are approved.

I. 4830.0140, paragraph A.

This rule part requires that the agency terminate an institution’s program eligibility if an institution “violates a provision of Minnesota statutes or rules governing the program, and fails to correct the violation within 90 days.” This proposed language is vague because it does not specify from what date the 90 days begins to run. This rule part does not inform the public – specifically, the affected institutions – when the 90 days begins in order to correct a cited violation. Paragraph A of proposed rule part 4830.0140 is, therefore, disapproved.

In order to cure this defect, the agency needs to indicate when the 90 days begins to run. The agency indicated that the 90 days referenced in proposed rule part 4830.0140, paragraph A, is linked to, or begins from, the date on the written notification of termination as referenced in proposed rule part 4830.0150, subp. 2. If this is the agency intention, the above defect is cured by referencing proposed rule part 4830.0150, subp. 2 in proposed rule part 4830.0140, paragraph A. The defect is also cured if language similar to the following is added to paragraph A of rule part 4830.0140: “violates a provision of Minnesota statutes or rules governing the program, and fails to correct the violation within 90 days from the date on the written notification of the termination.”

Adoption of the language suggested, or language having the same effect, does not constitute a substantial change, and the resulting subpart is needed and reasonable.

II. Part 4830.0150 Termination Procedure.

Subpart 1 of this proposed rule part states the following: “The office shall, after notice and upon providing an opportunity for a hearing . . . terminate an institution’s eligibility to participate in a program or programs if there is evidence that the institution has been in noncompliance” (emphasis added). Subpart 2 states that: “Prior to termination of an institution’s eligibility to participate in a program, the office shall send the institution written notification of the termination.” (emphasis added). The proposed rule language is vague and confusing and is, therefore, disapproved. Specifically, it is not clear that the above underlined terms refer to two different notification procedures, how notice

in subpart 1 will be provided (written or otherwise), and how the two notification provisions differ in functionality.

The agency indicated that the notice in subpart 1 is intended to serve as its notice of intention to terminate an institution's program eligibility. This notification is provided if there is evidence that an institution is in noncompliance based on the criteria listed in proposed rule part 4830.0140. At the time an institution receives the agency's notice of intent to terminate, the institution is given an opportunity for a pre-termination hearing pursuant to Minnesota Statutes, chapter 14. The agency also indicated that the written notification referenced in subpart 2 is provided after a decision to terminate has been made. Proposed rule part 4830.0150 as written, however, is vague and confusing, and does not clearly and accurately relay the agency's intentions.

To cure the defects, the ALJ suggests that subpart 1 be amended to read as follows:

The office shall provide written notice of its intent to terminate an institution's eligibility to participate in a program or programs if there is evidence that the institution has been in noncompliance based on the criteria under part 4830.0140. At the time the office provides notice of its intent to terminate, it shall also provide an institution an opportunity for a hearing pursuant to Minnesota Statutes, chapter 14.

Adoption of the language suggested, or language having the same effect, would cure the above-noted defect. It would not constitute a substantial change, and the resulting subpart is needed and reasonable.

The ALJ recommends (but does not require)¹ that the agency amend subpart 2 of proposed rule part 4830.0150 to further clarify the agency's intentions. As noted above, the agency indicated that written notification of termination is provided when the agency has decided to terminate an institution's program eligibility. It is recommended that subpart 2 be amended as follow:

~~Prior to termination of an institution's eligibility to participate in a program,~~†The office shall send the institution written notification of the termination of the institution's eligibility to participate in a program. Termination shall be effective 90 days from the date of the written notification.

Adoption of the language suggested, or language having the same effect, would not create a substantially different rule. The resulting subpart is needed and reasonable.

III. Part 4830.0180, paragraph A.

¹ See *infra* note 2.

Paragraph A of proposed rule part 4830.0180 provides the following: “The officer’s director of student financial aid services, the administrative law judge, or the director of the office shall require an institution to remedy a violation of applicable program statutes and rules.” This proposed rule part is disapproved because it improperly delegates the agency’s power to the administrative law judge. The administrative law judge only makes a recommendation regarding a program violation; it is the agency director who renders the final decision and order, as noted in proposed rule part 4830.0170. The agency cannot delegate its decision-making authority and require the administrative law judge to remedy a violation of program statutes and rules. To cure the above-noted defect, the agency should delete the reference to the administrative law judge from proposed rule part 4830.0180, paragraph A. Deleting the reference to the ALJ does not constitute a substantial change, and the resulting subpart is needed and reasonable.

Recommended technical corrections to the rules²:

Part 4830.0200, subp. 1

This subpart provides that: “A request for reinstatement may be made only once in a calendar year.” The agency indicated that this provision is included in order to demonstrate the seriousness of rectifying a violation. The agency also indicated that the once-in-a-calendar-year provision was added to insure that institutions submit a thoughtful request for reinstatement.

The above-quoted rule language, however, has the capacity to affect institutions differently depending on what time of year an institution is denied reinstatement. For example, if an institution requests reinstatement in October and is subsequently denied in November, then the institution only has to wait until January of the next calendar year to reapply for reinstatement. The resulting short waiting period may not insure a thoughtful resubmission by an institution. On the other hand, if an institution requests reinstatement in January, is denied in February, then the institution must wait until the following January to reapply for reinstatement, regardless of whether the institution has fixed the violations.

It is recommended that the agency delete the above-quoted sentence, and that the agency include a specific time limit that institutions must wait before they may request reinstatement if they are initially denied reinstatement. Including a specific time provision may better insure a thoughtful resubmission for reinstatement as desired by the agency. Adopting the change suggested does not constitute a substantial change, and the resulting subpart is needed and reasonable.

P.A.R.

² The recommended technical corrections are not defects in the rules, but are merely recommendations for clarification to the rules. The agency is not obligated to adopt the recommended technical corrections.

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Minn. R. Chapters 4830 and 4850**

**CHIEF ADMINISTRATIVE
LAW JUDGE'S ORDER ON
REVIEW OF RULES UNDER
MINN. STAT. § 14.26 (3)(B)**

The Minnesota Higher Education Services Office ("Agency") has adopted the above-entitled rules pursuant to Minn. Stat. § 14.26. On August 5, 1999, the Office of Administrative Hearings received the documents filed by the Agency as required by Minn. Stat. § 14.26 and Minn. R. 1400.2310. On August 12, 1999, the Administrative Law Judge issued the Order on Review of Rules Under Minn. Stat. § 14.26. As set forth in the August 12, 1999 Order, a portion of the rules was disapproved.

Based upon a review of the written submissions and filings, Minnesota Statutes, Minnesota Rules, and the August 12, 1999 Order on Review of Rules Under Minn. Stat. § 14.26,

IT IS HEREBY ORDERED: that the findings of the Administrative Law Judge in the August 12, 1999 Order on Review of Rules Under Minn. Stat. § 14.26, regarding the disapproval of a portion of the rules is approved. The reasons for the disapproval of the rule and the required changes recommended for the approval of the rule are as set forth in the attached Order.

Dated this 12th day of August, 1999.

KENNETH A. NICKOLAI
Chief Administrative Law Judge