OAH Docket No. 9-1303-12186-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE LOLA AND RUDY PERPICH
MINNESOTA CENTER FOR ARTS EDUCATION

In the Matter of the Adoption of the Rules of the Minnesota Center for Arts Education, Minn. R. Ch. 3600.	**ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26**

The Lola and Rudy Perpich Minnesota Center for Arts Education ("Agency") is seeking review and approval of the above-entitled rules, which were adopted by the agency pursuant to Minn. Stat. § 14.26. On June 18, 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 rule.

2. The rules were adopted in compliance with the procedural requirements of Minn. Stat., chapter 14 and Minn. R., 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 and E: 3600.0010, subpart 6; and 3600.0030, subpart 2 and subpart 6, item A. (See Memorandum). All other rule parts are approved.

Dated this _____ day of July, 1999.

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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 3600.0010, subpart 6; and 3600.0030, subpart 2 and subpart 6, item A are disapproved as not meeting the legal standard of Minn. R. 1400.2100, items D and E, as discussed below. All other rule parts are approved.

I. 3600.0010, subpart 6. Definition of school record.

This rule part defines "school record." It is defined as "information requested of the applicant by the center to help determine the appropriateness of the applicant's admission . . . ." Proposed rule part 3600.0010, subp. 6 lists examples of what a school record might include. The above-quoted language in this rule part grants too much discretion to the agency. The way the proposed rule is written, it allows the center to request any information of the applicant it wishes in order to help determine whether the applicant should be admitted. Proposed rule part 3600.0010, subpart 6 lacks standards to which requested information must relate. A rule that grants discretionary authority to an agency must include a reasonably clear policy or standard of action. The rule should have specific criteria to avoid possible abuse of agency discretion. Therefore, adequate guidelines are needed to ensure that the rule will be applied in a consistent manner.[1]

In order to correct the above defect, the agency needs to include qualifying language that limits the scope of information requested by the center. The ALJ suggests a change similar to the following: "'School record' means the information requested of the applicant by the center to help determine the appropriateness of the applicant's admission. The information requested must relate to the arts review process as described in part 3600.0045, and includes for example . . . ." The above defect is also cured if the agency requires that the information requested relate to proposed rule part 3600.0030, subp. 6, areas of review. Language similar to the following is an option: "'School record' means the information requested of the applicant by the center to help determine the appropriateness of the applicant's admission. The information requested must relate to the areas of review as described in part 3600.0030, subpart 6, and includes for example . . . ."

Proposed rule part 3600.0010, subp. 6 also states, in part, the following: "a certified record from the applicant's previous secondary schools regarding grades and standards completed and <u>recommendations</u>." (Emphasis supplied). The underlined language is vague. In particular, it is unclear who should be completing the recommendation on the applicant's behalf. For example, should

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[1] <u>Blocher Outdoor Advertising Co. v. Minnesota Dep't of Transp.</u>, 347 N.W.2d 88, 91 (Minn. Ct. App. 1984).

an individual familiar with the applicant's academic background, such as a teacher, complete the recommendation? Or should an individual familiar with the applicant's community or extracurricular involvement, such as a community leader or member, complete the recommendation? In order to cure the defect, the agency either needs to state the purpose served by the recommendation(s), or state who should complete the recommendation(s). The agency could include a definition of "recommendation" in the definition section (for example, add a subpart 7), or expound on the purpose of the recommendation within part 3600.0010, subpart 6.

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. 3600.0030 Application Process.

Subpart 2. Application process.

This subpart states, in part, the following: "Students whose applications or school records are not completed by the deadline established annually by the executive director or the executive director's designee shall not be considered further for enrollment." (Emphasis supplied). The underlined language is not sufficiently specific because it fails to inform the public where or when it can find out about the annual deadline. It is appropriate that the agency set application deadlines and that the director establishes the deadline on an annual basis. The applicant, however, is penalized if s/he does not complete the application by the annual deadline. Subpart 2 of proposed rule part 3600.0030, therefore, must at least state where the public can find out the application deadline. For example, the deadline may be stated on yearly application forms or published in an agency publication. Where the deadline is announced is the agency's decision, but this proposed rule subpart must state where the public can find out this important information.

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.

Subpart 6. Areas of review.

Item A of this proposed rule subpart states that an applicant must be evaluated on "the arts review process in part 3600.0040." (Emphasis supplied). The proposed rules specifically repeal subparts 1 and 2 of existing rule part 3600.0040. The proposed rules also incorporate subparts 3, 4 and 5 of existing rule part 3600.0040 into proposed rule part 3600.0045. Consequently, if the proposed rules are adopted, there will be no rule part numbered 3600.0040. It is assumed, therefore, that the above underlined citation is incorrect, and that the correct citation should be proposed rule part 3600.0045. This defect is cured if

the agency replaces the citation to part 3600.0040 to proposed rule part 3600.0045.

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.

***Recommended technical corrections to the rules*:**

Part 3600.0030, subpart 4. Number of applications.

This subpart provides that an applicant "may apply up to two times for admission into the center . . . ." A review of the SONAR reveals that the agency intends to limit a student to applying to the center no more than two times in one year. The ALJ recommends changing the underlined language to "no more than two times." This would make it clear that a student may, in fact, submit a second application.

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.

Part 3600.0055. Academic Interview Process.

This proposed rule part states that once the arts review process is complete, an applicant must be interviewed. The language in this proposed rule part, however, does not limit the number of interviews (it states "interview or interviews"). Since an applicant may choose two areas of specialty, it is reasonable for the agency to require at least two interviews. The ALJ recommends, however, clarifying this proposed rule part. For example, the agency could limit the number of interviews to no more than two, or the agency could state that the interviews relate to the areas of specialty chosen by the applicant. 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.

The above technical corrections are not defects in the rules but are merely recommendations for clarification to the rules.

P.A.R.

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FOR THE LOLA AND RUDY PERPICH
MINNESOTA CENTER FOR ARTS EDUCATION

In the Matter of the Adoption of the Rules of the Minnesota Center for Arts Education, Minn. R. Ch. 3600.	**CHIEF ADMINISTRATIVE LAW JUDGE'S ORDER ON REVIEW OF RULES UNDER MINN. STAT. § 14.26 (3)(B)**

The Lola and Rudy Perpich Minnesota Center for Arts Education ("Agency") has adopted the above-entitled rules pursuant to Minn. Stat. § 14.26. On June 18, 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 July 2, 1999, the Administrative Law Judge issued the Order on Review of Rules Under Minn. Stat. § 14.26. As set forth in the July 2, 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 July 2, 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 July 2, 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 _____ day of July, 1999.

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KENNETH A. NICKOLAI
Chief Administrative Law Judge