

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

**In the Matter of the Adoption of
Amendments to the Higher
Education Services Office
Minnesota Rules, Parts
4830.2200 to 4830.2600.**

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


The Higher Education Services Office (agency) is seeking review and approval of rule amendments adopted by the agency on March 1, 1996, pursuant to Minn. Stat. § 14.26. On March 8, 1996, the Office of Administrative Hearings received all of the documents from the agency required to be filed 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: that

1. the agency has the statutory authority to adopt the rule;
2. the rule was adopted in compliance with the procedural requirements of chapter 14 and Minn. R., chapter 1400;
3. the record demonstrates a rational basis for the need for and reasonableness of the adopted rule;
4. the adopted rule is not substantially different from the rule as originally proposed; and
5. the adopted rule amendment under Minn. R. 4830.2300 is **DISAPPROVED** as to its legality under Minn. R. 1400.2100, items E and F. The remaining amendments of the adopted rule are approved as to legality.

Dated this 22nd day of March, 1996.



George A. Beck
Administrative Law Judge

MEMORANDUM

Under Minn. Stat. § 14.26, the Administrative Law Judge is authorized to review adopted rules submitted by agencies as to their legality. As stated in the above order the rules have met the statutory authority, procedural requirements, substantial difference, and rational basis requirements of Minn. Stat. § 14.26 and Minn. R. 1400.2100. However, the rule is being disapproved as to the agency's amendment in Minn. R. 4830.2300 as not meeting the constitutional standards under Minn. R. 1400.2100, item E and as an improper delegation of the agency's powers to another agency, person, or group under item F.

The amendment to Minn. R. 4830.2300, provides as follows:

A school shall determine if a student is eligible for a work-study grant. To be eligible a student must meet the requirements of part 4830.0100, subpart 5, items B, C, D (as defined in Minnesota Statutes, section 136A.101, subdivision 7b), E, and F. The student must also be in good standing and making satisfactory academic progress, as defined by the school. Priority must be given to students enrolled for at least 12 credits. A student employed during periods of nonenrollment must sign a statement of intent to enroll at least half-time for the next term or provide proof of registration for the next term.

The agency explains that the amendment removes the requirement that a post-secondary institution (school) must follow the statutory standards for "satisfactory academic progress" and permits schools to apply their own institutional standard for "good standing" and "satisfactory academic progress" for purposes of the work study program. The agency explains that this amendment will provide some flexibility for schools to better meet the needs of students who otherwise do not demonstrate sufficient financial need to receive other forms of federal or state financial aid.

The judge finds that by allowing the schools to apply their own institutional definitions to "good standing" and "satisfactory academic progress," it violates the constitutional standards under Minn. R. 1400.2100, item E, by granting excessive discretion to the schools. The rule grants excessive discretion to the schools by allowing the schools to individually establish part of the eligibility standards for the work study program. To avoid excessive discretion, the agency should set forth in the rule specific criteria for schools as to the terms "good standing" and "satisfactory academic progress" The inclusion of specific criteria in the rule will also ensure that the rule will be applied in a consistent manner between the schools. Blocher Outdoor Advertising Co. v. Minnesota Dep't of Transp., 347 N.W.2d 88, 91 (Minn. Ct. App. 1984)

The agency itself is aware of the importance of providing consistency between schools in administrating the program. In its Statement of Need and Reasonableness the agency states that one of the purposes of having student eligibility requirements

specified in the rule is for purposes of completeness and to ensure the equitable treatment of students applying for work study awards no matter which eligible Minnesota post-secondary institution they attend. (Statement of Need and Reasonableness, p. 5.) However, by allowing the schools to individually define "good standing" and "satisfactory academic progress," the agency is defeating that purpose by permitting inconsistent treatment of students between schools.

By not providing specific criteria on the eligibility standards in the rule, the agency has not given students complete information or guidelines on how they may qualify for work-study programs throughout the state. Under the amended rules, the student would have to look to each school to find the criteria. The result of this discretion is that this will allow schools to treat students in similar situations differently. By letting the schools define "good standing" and "satisfactory academic progress," a student who meets the criteria at one school may not necessarily meet the criteria at another school.

In addition, by not providing specific criteria in the rule for "good standing" and "satisfactory progress," the agency has improperly delegated the agency's powers to another agency in violation of Minn. R. 1400.2100, item F. The rule as adopted improperly delegates to the schools the authority to determine part of the eligibility standards of the work study program.

Under Minn. Stat. § 14.26, subd. 3 and Minn. R. 1400.2300, subpart 6, if a rule is disapproved, the Administrative Law Judge must recommend what changes are necessary for approval. Therefore, in order to overcome the above defects, the judge recommends two options. The first option would be for the agency to remove the requirement that allows schools to individually define the eligibility standards with respect to "satisfactory academic progress," and to reinstate the statutory definition of "satisfactory academic progress" as it appears in Minn. Stat. § 136A.101, subd. 10 (1994). This would return the rule back to its original reading prior to the adopted amendments.

The second option recommended by the judge is for the agency to incorporate the federal standards for good standing and satisfactory academic progress for purposes of the work study program. This option is recommended because in its Statement of Need and Reasonableness, the agency states that many schools already use the federal standards and that the state work study program has been patterned after the federal program as much as possible.

The judge concludes that by adopting one the above two options, the above defects would be overcome. Pursuant to Minn. Stat. § 14.26, subd. 3(b) and Minn. R. 1400.2300, subp. 6, this order will be submitted to the chief administrative law judge for approval.

G.A.B.