

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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Special Assistant Attorney General
Public Welfare

11-7-77

- DPW 1 and DPW 3

STATEMENT OF COMPLIANCE WITH
MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Tibor M. Gallo, do hereby declare that I have examined the proposed amendments to DPW Rules 1 and 3 and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: November 3, 1977.

Tibor M. Gallo

TIBOR M. GALLO

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER HOMES AND GROUP FAMILY FOSTER HOMES.

ORDER ADOPTING RULES

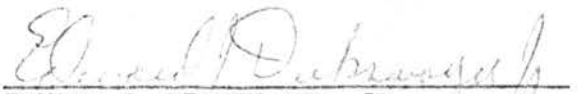
The above-entitled matter came on for hearing before Peter C. Erickson, Office of Hearings Examiners of the State of Minnesota, on the second day of May, 1977, at 9:00 a.m. in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, after proper notice required by M.S. 1976, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules and the reasonableness thereof.

We adopt herein by reference the Findings of Fact, Conclusions, and Recommendations of the Hearing Examiner.

NOW, THEREFORE, IT IS ORDERED that these rules are adopted this twenty-fourth day of August, 1977, pursuant to authority vested in me by M.S. 245.802 (1976).

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE



EDWARD J. DIRKSWAGER, JR.
ACTING STATE WELFARE COMMISSIONER

FAMILY FOSTER CARE

GROUP FAMILY FOSTER CARE

MINN. RULE DPW 1 .

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FORMAT OF RULE

RULE: the entire document with the exception of those paragraphs listed under "REASON".

REASON: an explanation of the reason behind the rule; a guideline, not a regulation.

SATISFACTORY COMPLIANCE: method or methods a Family Foster Home must follow in order to be in full compliance with the rule. Depending on the nature of the rule, SATISFACTORY COMPLIANCE may include a single requirement, several requirements, or alternative requirement for satisfying the rule.

When the rule is self-explanatory, REASON and/or SATISFACTORY COMPLIANCE are not included.

A. DEFINITIONS:

1. AGENCY - Unless qualified, means the county social service agency, or human service board, or licensed voluntary child placing-child caring agency; the agency is the duly delegated representative of the Commissioner.

2. AGENCY REQUIREMENT - Those portions of the rule binding upon the agency but not upon the provider, and so marked. Failure of the agency to meet one or more agency requirements is not a defense for the provider's failure to meet provider requirements.

3. APPLICANT - Individual(s) who have submitted a signed and dated application form (DPW-138) to an agency.

4. CHILD - Any person under the age of eighteen years.

5. COMMISSIONER - Unless qualified, means the Commissioner of the Department of Public Welfare or any representative of the Commissioner.

6. DEPARTMENT - Unless qualified, means the Department of Public Welfare.

7. FOSTER FAMILY HOME (FFH) - A family home licensed to provide one or more of the following types of care for children who are unrelated to the family and who are cared for twenty-four hours a day:

a. INTERIM HOME - An FFH caring for children expected to return home within one year or to be placed for adoption within two years.

b. PERMANENT HOME - An FFH caring for children (whether state wards or not) under written agreement for planned care until child reaches majority.

c. EMERGENCY SHELTER HOME - An FFH designated primarily for time-limited emergency placements, usually lasting no longer than thirty days for any child.

d. SPECIAL SERVICES HOME - An FFH able to provide extraordinary care or services, by virtue of training, experience or special skills.

e. RESTRICTED HOME - An FFH licensed for a specific child. An FFH licensed as a Restricted Home may not accept children other than the specifically named child(ren).

f. GROUP FAMILY FOSTER HOME - An FFH providing care for no more than ten children, including the family's own children.

8. HANDICAP - Condition of mental retardation, mental illness, physical handicap, sight or hearing deficiency, or chemical dependency.

9. LICENSE - The document issued by the Commissioner and authorizing the applicant to provide foster care.

10. LICENSED CAPACITY - Maximum number of foster children who can live in a foster home at any given time.

11. PROVIDER - Person(s) giving care to foster child(ren) in a licensed FFH. The provider is responsible for meeting and maintaining minimum licensing requirements in cooperation with the agency.

12. RELATED - Any of the following persons related to the child by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, niece, nephew, uncle, aunt. It also includes a legally appointed guardian.

13. SUBSTITUTE CAREGIVER - The person(s) providing temporary care for the foster child(ren) in the absence of the foster parent(s). Arrangements for substitute care must have the approval of the agency and the foster parent(s).

14. WAIVER - Written permission from either the Department or designated Agency to disregard a particular section of a licensing rule for no longer than twelve months.

B. LICENSING LAWS AND PROCEDURES:

1. A FOSTER FAMILY HOME (FFH), MUST BE LICENSED BY THE DEPARTMENT, WITH THE FOLLOWING EXCLUSIONS:

a. A HOME PROVIDING CARE AND SUPERVISION ONLY TO CHILDREN RELATED TO THE FAMILY.

b. A HOME PROVIDING CARE AND SUPERVISION FOR A TOTAL PERIOD OF LESS THAN 30 DAYS IN ANY TWELVE-MONTH PERIOD.

c. A HOME PROVIDING CARE AND SUPERVISION ONLY TO CHILD(REN) PLACED IN THAT HOME BY AN AGENCY FOR THE PURPOSE OF LEGAL ADOPTION, UNLESS THE ADOPTION HAS NOT BEEN COMPLETED WITHIN TWO YEARS OF PLACEMENT.

d. A HOME PROVIDING CARE AND SUPERVISION ONLY FOR ONE UNRELATED CHILD OF SIXTEEN OR SEVENTEEN YEARS WHO HAS BEEN INDEPENDENTLY PLACED BY HIMSELF OR HIS RELATIVE FOR PURPOSES OF EDUCATION OR WORK.

2. APPLICATION FOR A LICENSE SHALL BE MADE TO THE AGENCY ON THE FORM ISSUED BY THE DEPARTMENT. THIS FORM SHALL BE OBTAINED FROM THE PUBLIC AGENCY IN THE COUNTY WHERE THE APPLICANT RESIDES OR FROM A LICENSED VOLUNTARY CHILD PLACING-CHILD CARING AGENCY.

3. THE SIGNED AND COMPLETED APPLICATION FORM, INCLUDING ALL SUPPORTING DOCUMENTATION, SHALL BE EVALUATED WITHIN 90 DAYS BASED UPON THESE RULES AND REGULATIONS. A PROSPECTIVE FFH MEETING THESE STANDARDS SHALL BE RECOMMENDED TO THE COMMISSIONER FOR ISSUANCE OF AN FFH LICENSE. NO FFH LICENSE MAY BE ISSUED FOR MORE THAN ONE YEAR. (AGENCY REQUIREMENT)

4. EVERY LICENSE SHALL SPECIFY THE KIND OF LICENSE AND THE MAXIMUM NUMBER OF FOSTER CHILDREN TO BE PROVIDED CARE AT ANY ONE TIME.

5. NO CHILD SHALL BE PLACED BY AN AGENCY IN AN UNLICENSED HOME UNTIL THAT HOME HAS BEGUN THE REQUIRED ORIENTATION, AND UNTIL THAT HOME HAS BEEN EVALUATED FOR COMPLIANCE WITH THE FOLLOWING SECTIONS OF THE RULE: D.1.a., F.3., F.5.a,b,c,d,e. (AGENCY REQUIREMENT)

6. EVERY APPLICANT FOR AN FFH LICENSE SHALL BE FURNISHED BY THE AGENCY WITH A COPY OF THIS RULE AND A COPY OF THE FORM "AGREEMENT BETWEEN FOSTER PARENTS AND PLACEMENT AGENCY". (AGENCY REQUIREMENT)

7. NOTICE OF THE CLOSURE OF AN FFH MUST BE SENT TO THE DEPARTMENT. (AGENCY REQUIREMENT)

8. THE COMMISSIONER OR AGENCY SHALL HAVE ACCESS TO THE FFH FOR EVALUATION AT ANY TIME DURING NORMAL WORKING HOURS AND AT OTHER TIMES BY MUTUAL AGREEMENT. FOR THE PURPOSE OF INVESTIGATING COMPLAINTS CONCERNING THE HEALTH AND SAFETY OF THE FOSTER CHILDREN, THE COMMISSIONER OR AGENCY SHALL HAVE ACCESS TO THE HOME AT ANY TIME DURING THE TWENTY-FOUR HOUR DAY.

9. ANY COMPLAINT CONCERNING AN FFH SHALL BE INVESTIGATED IMMEDIATELY. (AGENCY REQUIREMENT)

10. ANY APPLICANT WHOSE APPLICATION FOR A LICENSE IS DENIED AND ANY PROVIDER WHOSE LICENSE IS REVOKED OR NOT RENEWED FOR CAUSE MAY APPEAL TO THE COMMISSIONER IN ACCORDANCE WITH MINNESOTA STATUTES, CHAPTER 15. THE AGENCY SHALL NOTIFY BY CERTIFIED MAIL ANY FFH WHOSE LICENSE IS DENIED, SUSPENDED, REVOKED, OR NOT RENEWED. THIS NOTIFICATION SHALL STATE THE GROUNDS FOR SUCH ACTION AND SHALL INFORM THE APPLICANT OR OPERATOR OF HIS RIGHT TO APPEAL THE ACTION. APPEALS HEARINGS SHALL BE HEARD BY THE STATE OFFICE OF HEARING EXAMINERS.

11. STATE LAW PROVIDES THAT ANY PERSON WITHOUT A LICENSE WHO OPERATES AN FFH REQUIRED TO BE LICENSED, SHALL BE GUILTY OF A MISDEMEANOR AND SUBJECT TO A FINE OF UP TO THREE HUNDRED DOLLARS. A HOME, NOT OTHERWISE EXEMPT FROM LICENSURE, IS REQUIRED TO APPLY FOR A LICENSE WITHIN 30 DAYS OF ACCEPTING AN UNRELATED CHILD IF THE CHILD IS EXPECTED TO REMAIN IN THE HOME FOR 30 DAYS OR LONGER.

12. SPECIFIC REGULATIONS MAY BE WAIVED WITH THE APPROVAL OF THE DEPARTMENT ACCORDING TO THE PROCEDURE ESTABLISHED FOR SUCH WAIVER, PROVIDED THAT THE HEALTH AND SAFETY OF THE CHILDREN IS ASSURED. THE GRANTING OF A WAIVER SHALL NOT CONSTITUTE A PRECEDENT FOR ANY OTHER FFH. NO WAIVER SHALL BE VALID FOR MORE THAN ONE YEAR.

13. FOSTER CHILDREN MAY BE ACCEPTED INTO OR REMOVED FROM AN FFH ONLY UNDER AUTHORIZATION OF A COUNTY WELFARE DEPARTMENT OR A LICENSED AGENCY OR THE COURT IN THE COUNTY WHERE THE CHILD RESIDES.

14. FAILURE, INABILITY OR REFUSAL TO COMPLY WITH THIS RULE SHALL BE CAUSE FOR DENIAL, NONRENEWAL OR REVOCATION OF LICENSE.

15. AN FFH MAY NOT CONCURRENTLY HOLD A LICENSE FOR FAMILY DAY CARE, GROUP FAMILY DAY CARE, OR GROUP DAY CARE WITHOUT THE PRIOR APPROVAL OF THE AGENCY.

16. AN FFH SHALL NOT BE LICENSED THROUGH MORE THAN ONE AGENCY AT A TIME.

17. ALL CURRENTLY LICENSED HOMES SHALL BE FURNISHED WITH A COPY OF THIS RULE AFTER IT BECOMES EFFECTIVE.

C. LIMITATIONS OF LICENSE:

1. A FAMILY FOSTER HOME SHALL BE LIMITED TO THE FOLLOWING, INCLUDING THE HOME'S OWN CHILDREN: (See also APPENDIX B)

Reason: The abilities of parent(s) to provide care to foster children differ greatly. The maximum number of children allowed in foster homes must be flexible. But the maximums set must also allow foster family parents to devote sufficient time to each child.

a. INTERIM AND PERMANENT HOMES - LESS THAN TWO YEARS EXPERIENCE AS A FOSTER HOME: NO MORE THAN THREE FOSTER CHILDREN; NO MORE THAN FIVE CHILDREN, TOTAL.

b. INTERIM AND PERMANENT HOMES - TWO OR MORE YEARS EXPERIENCE AS A FOSTER HOME: NO MORE THAN FIVE CHILDREN, TOTAL.

c. EMERGENCY SHELTER HOMES (DESIGNATED) - NO MORE THAN SEVEN CHILDREN, TOTAL.

d. SPECIAL SERVICES HOMES (DESIGNATED) - NO MORE THAN FOUR FOSTER CHILDREN; NO MORE THAN FIVE CHILDREN, TOTAL.

e. WHERE THE FOSTER CARE PROVIDER HAS NOT COMPLETED THE REQUIRED ANNUAL TRAINING AT THE TIME OF RELICENSURE, NO FURTHER PLACEMENTS MAY BE MADE IN THAT HOME UNTIL THE PROVIDER HAS COMPLIED WITH THE TRAINING REQUIREMENTS. THE LICENSE WILL BE RESTRICTED TO THE CHILDREN CURRENTLY PLACED IN THAT HOME. (AGENCY REQUIREMENT)

f. NO FFH MAY CARE FOR MORE THAN TWO CHILDREN UNDER THE AGE OF TWO YEARS, UNRELATED TO THE FFH PROVIDER(S).

2. EXCEPTIONS TO THE MAXIMUM NUMBER OF FOSTER CHILDREN WILL BE ALLOWED WHEN:

a. SIBLINGS NEED PLACEMENT TOGETHER AS DETERMINED BY THE AGENCY. MAXIMUM NUMBER: SEVEN CHILDREN.

b. THE HOME HAS FIVE OR SIX CHILDREN OF ITS OWN UNDER AGE 18. MAXIMUM NUMBER: SEVEN CHILDREN.

c. A CHILD NEEDS TO BE PLACED AGAIN IN THE SAME HOME AS DETERMINED BY THE AGENCY. MAXIMUM NUMBER: SEVEN CHILDREN.

3. ALL FFH PROVIDERS MUST BE AT LEAST 21 YEARS OF AGE AT THE TIME OF LICENSURE.

4. A LICENSE IS NOT TRANSFERABLE TO ANOTHER PROVIDER OR SITE.

5. THE AGENCY MUST BE NOTIFIED, IN ADVANCE, OF ANY CHANGES THAT WOULD AFFECT THE TERMS OF THE LICENSE, SUCH AS A CHANGE OF ADDRESS OR ADDITIONAL PERSONS IN THE HOME.

6. AN FFH MAY NOT HAVE ADULT ROOMERS OR BOARDERS UNRELATED TO THE FFH PROVIDER WITHOUT SPECIAL PERMISSION OF THE AGENCY. THE FFH SHALL KEEP THE AGENCY INFORMED ABOUT ALL PERSONS LIVING IN THE HOME AND ALL OTHERS HAVING REGULAR CONTACT WITH THE FOSTER CHILD IN THE FOSTER HOME.

D. FFH QUALIFICATIONS AND TRAINING:

1. FFH APPLICANTS SHALL BE KIND, MATURE, AND RESPONSIBLE PEOPLE WITH A GENUINE LIKING FOR CHILDREN. THEY SHALL POSSESS CONSISTENT AND HEALTHY METHODS FOR HANDLING THE LIFE-STYLE UNIQUE TO THEIR OWN FAMILIES. EVALUATION OF APPLICANTS SHALL CONSIDER CULTURAL DIFFERENCES.

Reason: Children who must live apart from their own homes are uniquely in need of stable, understanding families. Many children needing placement are emotionally, mentally, or physically handicapped. These children need extra understanding and parenting to cope with their problems.

a. Satisfactory Compliance: An FFH license shall not be issued or renewed where any person (except foster children) living in the household has any of the following characteristics:

(1) A conviction for, or admission of, or substantial evidence of an act of assault, or child battering, or child abuse, or child molesting, or child neglect.

(2) Chemical dependency, unless the individual(s) identified as chemically dependent has been chemically free for at least twelve months.

(3) Residence of the family's own children in foster care, correctional facility, or residential treatment for emotional disturbance within the previous twelve months if, in the judgment of the agency, the functioning of the family has been impaired.

(4) A conviction for any offense involving moral turpitude within the previous five years, and at the discretion of the agency within the previous ten years.

(5) Felony conviction within the previous five years, and at the discretion of the agency within the previous ten years.

b. Satisfactory Compliance: In order to protect children in foster care and assure them the maximum opportunities for growth and development, each family caring for children shall be evaluated on the following essential elements:

(1) Have established and are comfortable with their own identity to the degree that meeting their own needs does not interfere with their meeting the needs of foster children.

(2) Have optimism, a sense of humor, resiliency, and ability to enjoy life.

(3) Be in touch with their own feelings, be able to express these feelings, and have a capacity to look at themselves realistically as to the kinds of children they can accept and work with.

(4) Have health and vigor to meet the needs of children placed with them.

(5) Have meaningful extended family, neighborhood, cultural and community ties.

(6) Have the ability to deal with anger, sorrow, frustration, conflict, and other emotions in a manner which will build positive interpersonal relationships rather than in a way that could be emotionally or physically destructive to other persons.

(7) Have the ability to give positive guidance, care and training to a child according to his stage of growth, special abilities and limitations.

(8) Have the ability to use discipline in a constructive rather than destructive way.

(9) Understand, accept and seek to nurture cultural, spiritual, racial, and affectional ties of the child.

(10) Have the ability and flexibility to accept a child in placement who has special needs, treat a foster child as a member of their family, recognizing that a foster child has other family ties.

(11) Have the ability to accept the foster child's own family and maintain an understanding relationship with them.

(12) Have the ability to work with the agency and other community resources.

(13) Have a capacity and willingness to involve themselves in ongoing educational opportunities, as well as other learning experiences.

(14) Be able to constructively resolve problems when difficulties arise.

(15) Be comfortable in relating to professional treatment personnel of all kinds, including the ability to discuss differences of viewpoint, and to be an advocate for the foster child when indicated.

(16) Have an ability to openly discuss their attitudes about persons with differing life styles and philosophies and a capacity to accept people who are different from themselves.

2. FFH APPLICANTS AND AGENCIES MUST BE ABLE TO WORK IN PARTNERSHIP.

Reason: The agency has overall responsibility for planning with the child. The service of foster parents is an integral and important part of that plan. The relationship between the FFH and the agency must be one of mutual trust and respect.

Satisfactory Compliance:

a. The FFH applicant and agency must sign and abide by the terms of the Foster Parent Agreement.

b. An FFH shall be visited at least once a month by a representative of the agency for the first six months after the first placement. (AGENCY REQUIREMENT)

c. An evaluation visit shall be made by the agency at least once every twelve months for as long as the FFH provider maintains an FFH license. A copy of the written evaluation report shall be given to the FFH provider. (AGENCY REQUIREMENT)

d. The FFH has a right to know the policy, procedure, and intentions of the agency towards placement of children in that FFH. The FFH may request and receive such information from the agency at the time of licensure and at any time that FFH has been without a placement for a twelve-month period. (AGENCY REQUIREMENT)

e. Training opportunities shall be made available and accessible to all applicants and FFH providers. Substitute caregivers shall be eligible for the same training as the licensed FFH providers. (AGENCY REQUIREMENT)

f. There shall be a grievance mechanism for resolving differences between the agency and the FFH. The FFH provider shall be given a written statement of grievance procedures. Grievance procedures shall address those areas of disagreement not included in the appeal procedures set forth by the Department. (AGENCY REQUIREMENT)

3. AGE OR PHYSICAL HANDICAP OF FFH PROVIDERS SHALL BE A CONSIDERATION ONLY AS IT AFFECTS THEIR ABILITY TO PROVIDE ADEQUATE CARE TO FOSTER CHILDREN OR MAY AFFECT AN INDIVIDUAL CHILD'S ADJUSTMENT TO THE FAMILY.

4. THE AGENCY MAY REQUEST CONSULTATION FROM SPECIALISTS IN EVALUATING THE ABILITIES OF PROSPECTIVE FFH PROVIDERS, BUT MUST EVALUATE EACH APPLICANT ON AN INDIVIDUAL BASIS. (AGENCY REQUIREMENT)

5. WHEN ALL ADULTS IN THE FFH ARE EMPLOYED OR OTHERWISE OCCUPIED FOR SUBSTANTIAL AMOUNTS OF TIME AWAY FROM HOME, THE PLANS FOR CARE AND SUPERVISION OF THE FOSTER CHILDREN MUST BE APPROVED IN ADVANCE BY THE AGENCY.

6. THE HEALTH OF PERSONS LIVING IN THE FFH SHALL NOT BE A HAZARD TO THE CHILDREN.

Satisfactory Compliance:

a. The applicant shall supply evidence to the agency:

(1) Sometime during the twelve months prior to initial licensure, each person living in the home has had a negative Mantoux test or chest X-ray.

(2) A statement from the applicant's physician dated within the six months prior to licensure that either:

(a) Members of the family have received a physical examination and are physically able to provide care to children.

or

(b) Members of the family are receiving all necessary continuing medical care and are physically able to provide care to children.

(c) This statement may not be necessary for children who are members of the foster family if current school reports indicate good health.

b. The agency may, at its own discretion, require a physical examination of any person living in the home.

c. The FFH shall make the agency immediately aware of any communicable or infectious disease in the FFH.

d. When, in the opinion of the agency, any person in the home exhibits a mental health problem, the agency may require an evaluation of that person by a mental health specialist as a requirement for license.

7. FAMILY FOSTER CARE PROVIDERS SHALL PARTICIPATE IN TRAINING TO DEVELOP AND ENHANCE THEIR SKILLS.

Reason: The vast majority of children needing placement are children with problems. Many children are emotionally, mentally, or physically handicapped.

The intent of an ongoing training program is to build on the foster parents' initial interest in providing service and to maximize their ability to provide the highest quality services to children. The aim of this training is to transfer information about foster care and foster children.

Orientation and in-service training can, and should, take place in a variety of settings and through a variety of methods. For example: group sessions offered by local agencies or foster parent associations; regular courses offered by vocational schools, colleges, or universities; TV or correspondence courses; agricultural extension classes; organizational activities such as conferences, conventions, and seminars; special sessions offered by local school districts or mental health centers; Red Cross training; one-to-one "tutoring" by agency staff or experienced foster parents.

Satisfactory Compliance:

a. Every applicant for an FFH license shall begin the minimum of six hours of orientation prior to receiving the first child in placement.

b. An FFH provider who wishes to take a "leave of absence" from foster care for up to twelve months, may have the annual training requirement waived for that twelve-month period.

c. Every FFH, except those providing exclusively Permanent Home care or Restricted Home care, shall participate in a minimum of twelve hours annual of training related to foster care. The twelve hours may be shared among the adult FFH providers in the home.

d. Training opportunities shall include, but not be limited to:

(1) Child and adolescent development
(2) Communication skills
(3) Roles and relationships in foster care
(4) Community services for children
(5) Methods of discipline
(6) Constructive problem solving
(7) The meaning of a foster child's natural parents
(8) Basic first aid
(9) Home safety
(10) Trauma of separation and skills for handling
(11) Human sexuality

e. An FFH with five consecutive years of experience as an FFH may be exempted from mandatory annual training at the discretion of the agency.

f. In addition to regular training requirements, every FFH licensed as an Emergency - Shelter Home or a Special Services Home or a Group Family Foster Home shall participate in a minimum of six hours annually of additional training related to the special needs of these children.

8. NO CHILD SHALL BE SUBJECTED TO PHYSICAL OR PSYCHOLOGICAL ABUSE.

Reason: Although families differ in their approach to discipline, harsh or threatening methods are particularly damaging to children in foster care. Discipline should be defined as an overall plan for teaching acceptable behavior; punishment is, more narrowly, negative reinforcement for unacceptable behavior. The carrying out of the individual plan for a foster child or the contract between the child and the foster parents involving specified consequences should not be construed as imposing punishment on that child.

Satisfactory Compliance:

a. Methods of discipline to be used in the FFH shall be discussed with the agency during the application process. Child training and discipline shall be handled with kindness and understanding.

b. No child in care shall be subjected to unusual, severe, or cruel punishment.

c. No child in care shall be subjected to verbal abuse, derogatory remarks about himself or members of his family, or to threats to expel the child from the foster home.

d. Isolation, when used as discipline, shall not exceed ten minutes for any child under six years of age. Isolation shall not exceed one hour for a child six years of age or older. Isolation shall be in a light, well-ventilated room of at least 50 square feet, and within hearing of an adult. An adult shall periodically check, at least every 10 minutes, on a child in isolation. No child shall be isolated in a closet or a locked room.

e. No child shall be punished for bed-wetting or with regard to toilet training.

f. No child in care shall be deprived of meals, mail, or family visits as a method of discipline.

g. Punishment shall not be delegated to another child.

h. Methods of discipline shall be periodically evaluated by the FFH and the agency.

i. Corporal punishment is prohibited. Corporal punishment includes but is not limited to hitting, slapping, spanking, pinching, shaking, kicking or biting.

9. PRIVATE DATA ABOUT THE CHILD OR HIS FAMILY SHALL BE KEPT PRIVATE.

E. HEALTH:

1. THE FFH PROVIDER SHALL BE PREPARED TO COPE WITH HEALTH EMERGENCIES.

Satisfactory Compliance:

a. The FFH provider shall have a plan approved by the agency for meeting medical emergencies; this plan shall include the name and phone number of the child's physician, as provided by the agency.

b. The FFH provider shall have first-aid supplies readily available to treat minor injuries.

c. No foster child shall be given prescription medicine not specifically prescribed for him. Any medicine prescribed for a foster child shall be given exactly as prescribed and shall be given by an adult.

d. The FFH provider shall have written instructions from a licensed physician or dentist prior to the administration of any prescription medication. Medication with current prescription information on the label shall constitute such instructions.

2. FFH HOMES THAT HAVE HOUSE PETS SHALL ENSURE THAT SUCH PETS HAVE HAD ALL NECESSARY SHOTS; FFH HOMES SHALL NOT HAVE TURTLES, CHICKENS, OR DUCKS AS HOUSE PETS.

3. THE FFH PROVIDER SHALL REPORT IMMEDIATELY TO THE AGENCY THE OCCURRENCE OF AN UNUSUAL ACCIDENT SUCH AS THE DEATH OR SERIOUS INJURY OR SERIOUS ILLNESS OF A FOSTER CHILD. A SERIOUS INJURY OR ILLNESS SHALL BE DEFINED AS ONE REQUIRING PROFESSIONAL MEDICAL ATTENTION.

4. THE FFH PROVIDER SHALL BE RESPONSIBLE FOR CARRYING OUT THE AGREED-UPON PLAN FOR MEDICAL AND DENTAL CARE FOR THE FOSTER CHILD(REN).

5. THE FFH PROVIDER SHALL HAVE A MEANS FOR CONTACTING THE AGENCY TWENTY-FOUR HOURS PER DAY, SEVEN DAYS PER WEEK. (AGENCY REQUIREMENT)

F. PHYSICAL ENVIRONMENT:

1. CONSIDERATION SHALL BE GIVEN TO VARYING-LIFE STYLES AND DIFFERENT CULTURES WHEN DETERMINING WHETHER APPLICANTS MEET THE STANDARDS. IF APPROVAL WOULD REQUIRE DEVIATION FROM THE REGULATION, THE AGENCY MUST REQUEST A WAIVER IN WRITING FROM THE DEPARTMENT, TAKING INTO CONSIDERATION THE HEALTH AND SAFETY OF CHILD(REN) IN PLACEMENT. (AGENCY REQUIREMENT)

Reason: All children deserve a safe and healthy environment. But equally important is the preservation of cultural heritage. To promote the establishment of foster homes representing all cultures, the agency must consider the cultural standards.

2. THERE MUST BE A SAFE WATER AND MILK SUPPLY.

3. THE HOUSE AND PREMISES SHALL BE REASONABLY CLEAN, REASONABLY NEAT, AND FREE FROM HAZARDS THAT JEOPARDIZE HEALTH AND SAFETY.

Satisfactory Compliance:

a. FFH premises shall be inspected by the agency. (AGENCY REQUIREMENT)
b. House and premises shall be clean, reasonably neat, and free from accumulations of dirt, rubbish, or peeling paint.
c. All medicines, chemicals, cleaning supplies, and other toxic substances shall be stored out of the reach of children. They must not be stored with or immediately beside food products.
d. The use of potentially hazardous materials and tools shall be supervised.
e. Outdoor play space shall be enclosed, if necessary, to provide protection.
f. The FFH provider shall maintain personal cleanliness while preparing food.
g. Food and cooking utensils shall be stored to protect from dust, vermin, leakage from pipes, or other contamination.
h. Food needing refrigeration shall be stored at a temperature that will prevent spoilage and bacterial growth. (40° recommended.)
i. Appliances regularly used in the storage and preparation of food shall be safe and in good working order.
j. The use of homecanned fruits and vegetables is permitted.
k. Measures shall be taken to protect against the entrance into the home or breeding of vermin and insects.

4. CHILDREN IN CARE SHALL BE ADEQUATELY SUPERVISED AT ALL TIMES.

5. THE FFH HOME SHALL BE SAFE FROM FIRE AND STRUCTURAL HAZARDS.

Satisfactory Compliance:

a. An inspection for fire safety using the Fire Safety Check List shall be made jointly by the applicant and the agency before licensure and annually thereafter before relicensure. The agency may request a fire marshal inspection of any FFH. (AGENCY REQUIREMENT)

b. An FFH to be located in a mobile home must be inspected by a fire marshal or codes officer.

c. Any bedroom for a foster child located in a room fifty percent or more below ground level must be inspected by a fire marshal or codes officer. It must have two means of exit.

d. Unvented gas or oil heaters shall not be permitted.

e. No stove or heater shall be located where it would block escape in case of a fire.

f. A portable A-B-C fire extinguisher shall be provided for the kitchen and cooking areas.

g. Combustible items shall not be located near the furnace area or other sources of heat.

h. Fireplaces, space heaters, steam radiators, and hot surfaces, such as steam pipes, shall be shielded against accidental contact.

i. Every closet door latch shall be one that can be opened from the inside.

j. Any bathroom door lock shall be designed to permit the opening of the locked door from the outside in an emergency.

k. A report shall be made to the agency after the occurrence of a fire that requires the services of a fire department.

l. Emergency procedures shall be planned, written, and posted. They shall include a plan for evacuation, temporary shelter, and meeting place to determine if anyone is missing. Emergency procedures shall be reviewed at least annually by the FFH provider and agency.

m. An UL listed products of combustion detection unit (smoke or ionization), either battery or electrically operated, shall be installed in the corridor or hallway leading to the sleeping area(s) of the FFH.

6. THE FFH PROVIDER SHALL BE PREPARED TO COPE WITH EMERGENCIES.

Satisfactory Compliance:

a. The FFH provider shall make arrangements, approved by the agency, for substitute care during emergencies.

b. A list of emergency telephone numbers shall be prominently posted, including police, fire, doctor, hospital, ambulance, and emergency social service.

c. The FFH provider shall notify the agency as soon as it has been determined that a foster child has run away or is missing.

G. NUTRITION:

1. THE FFH PROVIDER SHALL CONSULT WITH A PHYSICIAN ABOUT THE DIET FOR CHILDREN WITH SPECIAL DIETARY NEEDS, SUCH AS INFANTS UNDER ONE YEAR OF AGE, CHILDREN WITH ALLERGIES, CHILDREN WHO ARE OVER OR UNDER WEIGHT, CHILDREN WHO ARE HYPERACTIVE.

2. WELL-BALANCED MEALS SHALL BE SERVED DAILY.

Reason: Balanced nutrition is basic to the attainment of good health. A child grows and develops rapidly. This growth and development is related to nutrition.

Satisfactory Compliance: Each days menu shall include servings from each of the basic four food groups as indicated in the Daily Food Guide. (Appendix A)

H. DAILY ACTIVITIES:

EVERY FOSTER CHILD SHALL BE TREATED AS A MEMBER OF THE FFH. THE FOSTER CHILD SHALL SHARE IN THE PRIVILEGES AND RESPONSIBILITIES OF THE HOME AS APPROPRIATE TO THE CHILD'S AGE AND ABILITIES. ACTIVITIES SHALL FOSTER OPTIMUM PHYSICAL, SOCIAL, MENTAL, AND EMOTIONAL DEVELOPMENT OF CHILDREN. ACTIVITIES THAT ENHANCE THE CHILD'S APPRECIATION OF HIS CULTURAL HERITAGE SHALL BE SUPPORTED AND ENCOURAGED.

1. INFANTS

a. EACH INFANT MUST BE HELD DURING BOTTLE FEEDINGS UNTIL HE IS SAFELY ABLE TO HOLD HIS OWN BOTTLE.

Reason: An infant's first sense of security is closely related to his food. Being held during feeding helps him to develop a trust relationship with others. It is possible for a young infant to choke on milk or water from a propped bottle.

b. EACH INFANT MUST BE HELD, ROCKED, CUDDLED, AND PLAYED WITH DURING EACH DAY OF CARE.

Reason: Physical closeness to others is indispensable as a first step in social relationships.

c. INFANT'S ATTEMPTS TO COMMUNICATE MUST BE RESPONDED TO.

Reason: Baby sounds are the beginning of speech and language development. Socialization is encouraged when the infant receives a response to his babbling.

d. THE INFANT MUST HAVE AMPLE OPPORTUNITIES FOR FREEDOM OF MOVEMENT EVERY DAY.

Reason: The infant needs large-muscle activity in order to develop properly, physically and mentally. The infant learns by exploring his environment.

Satisfactory Compliance:

(1) The noncreeping infant shall spend part of each day outside of crib and playpen.

(2) The creeping infant shall have freedom to explore outside of crib or playpen. A crib or playpen shall be used only for sleeping or for short periods of time when needed for safety. During the infant's waking hours, a playpen shall be placed where the infant can see others.

e. THE INFANT MUST BE PROVIDED WITH AN ENVIRONMENT THAT STIMULATES ALL OF HIS SENSES.

Reason: The infant develops in response to stimuli; normal development can be retarded by a lack of stimulation.

Satisfactory Compliance: Infants should be provided with (commercial, homemade, or natural):

(1) Things to look at (e.g., crib mobile).
(2) Things to listen to (e.g., rattle, FFH provider's voice).
(3) Things to feel (e.g., a soft ball).
(4) Things to smell (e.g., newly baked cookies).
(5) Things to taste (e.g., clean objects that are nontoxic and too large to swallow or choke him).

2. TODDLERS, PRESCHOOLERS, AND SCHOOL-AGE CHILDREN

a. EACH CHILD SHALL BE ALLOWED AS MUCH INDEPENDENCE AS HE CAN SAFELY HANDLE.

Reason: The child needs to establish his own identity; children learn through exploring and manipulating their environment.

b. EACH CHILD SHALL BE PROVIDED WITH LIMITS CONSISTENT WITH HIS AGE AND UNDERSTANDING.

Reason: The child needs to learn rules for his own and others' safety.

Satisfactory Compliance: Each child shall be taught to avoid behavior that would be dangerous to himself or to others.

c. EACH CHILD SHALL BE ENCOURAGED TO COMMUNICATE VERBALLY.

Reason: Speech and language development occurs through practice and encouragement. Socialization is encouraged when the child receives a response.

d. EACH CHILD SHALL BE GIVEN PHYSICAL SIGNS OF AFFECTION AS APPROPRIATE FOR AGE AND MATURITY.

Reason: The child needs physical closeness although he may reject it at times because of his growing need for independence. This independence must be respected, but rocking, hugging, and other physical signs of affection must be offered.

e. EACH CHILD SHALL BE PROVIDED WITH MATERIALS AND EQUIPMENT THAT WILL ENHANCE HIS PHYSICAL, MENTAL, AND EMOTIONAL DEVELOPMENT.

Reason: Appropriate materials and equipment encourage activities among children.

Satisfactory Compliance: The FFH home shall provide commercial, homemade, or natural materials and equipment of sound construction and working, that encourage and stimulate:

(1) Large-muscle activities (e.g., large blocks, cardboard cartons).
(2) Small-muscle activities (e.g., manipulative toys, craft materials).
(3) Creative activities (e.g., dress-up clothes, art supplies).
(4) Cognitive activities (e.g., puzzles, books).
(5) Social activities (e.g., games).

f. TOILET TRAINING SHALL BE UNDERTAKEN ONLY WHEN APPROPRIATE TO EACH CHILD'S AGE AND STAGE OF DEVELOPMENT.

Satisfactory Compliance:

(1) Toilet training by the FFH provider shall be within the limits of the licensing rules.
(2) No child shall be punished for accidents occurring during toilet training. (See also D.8.)
(3) The agency shall offer consultation and training to providers about toilet training.

g. EACH CHILD SHALL NAP OR REST AS APPROPRIATE TO HIS AGE AND STAGE OF DEVELOPMENT.

Reason: Children's needs for naps differ even at similar ages.

3. ADOLESCENTS

Reason: The view of adolescence on which the following is based is that of adolescence being a segment of continuing human development. Adolescents are persons with specific qualities and characteristics who have a participatory and responsible role to play, tasks to perform, skills to develop at that particular time of life. The degree or extent to which an adolescent experiences such responsible participation will determine and maximize human development.

CONDITIONS FOR HEALTHY DEVELOPMENT SHOULD PROVIDE YOUNG PEOPLE WITH OPPORTUNITIES:

a. TO PARTICIPATE AS CITIZENS, AS MEMBERS OF A HOUSEHOLD, AS WORKERS, AS RESPONSIBLE MEMBERS OF SOCIETY.

Reason: Adolescents are growing, developing persons in a particular age group - not pre-adults, pre-parents, or pre-workers, but human beings participating in the activities of the world around them.

Satisfactory Compliance: The agency and the foster child shall discuss house rules with the foster parent(s). The foster child(ren) are expected to live by these house rules.

b. TO GAIN EXPERIENCE IN DECISION-MAKING.

Reason: In our complex society, youth must develop the capacity to make decisions in many areas: school interests, work interests, use of discretionary time, the kind of friends they want to cultivate, etc.

Satisfactory Compliance: Each child shall be provided practical learning opportunities.

c. TO INTERACT WITH PEERS AND ACQUIRE A SENSE OF BELONGING.

Reason: Adolescents are moving toward wider interdependence with their peers, need to have a sense of belonging to their own age groups, as well as to adults. They need to acquire the ability to handle their sexuality, to develop and maintain friendship, to experience closeness.

Satisfactory Compliance: Each child shall have the opportunity to participate in a variety of activities.

d. TO REFLECT ON SELF IN RELATION TO OTHERS AND TO DISCOVER SELF BY LOOKING OUTWARD, AS WELL AS INWARD.

Reason: Adolescents encounter conflicting values in a rapidly changing world and should have the opportunity to thrash out their reactions, consider the pluses and minuses, and try to determine where they themselves stand.

Satisfactory Compliance: Each child shall be encouraged to participate in open discussion, with adults exposing, but not imposing, their value systems on the child.

e. TO DISCUSS CONFLICTING VALUES AND FORMULATE THEIR OWN VALUE SYSTEM.

Satisfactory Compliance: Each child shall be provided opportunity for significant experiences and careful examination and reflection of those experiences for their moral development.

f. TO EXPERIMENT WITH THEIR OWN IDENTITY, WITH RELATIONSHIPS TO OTHER PEOPLE, WITH IDEAS: TO TRY OUT VARIOUS ROLES WITHOUT HAVING TO COMMIT THEMSELVES IRREVOCABLY.

Reason: Adolescents should be able to try out various roles without being obligated to pursue a given course.

Satisfactory Compliance: Each child shall be allowed opportunities to experiment, within the constraints of law, with his own identity in a nonjudgmental atmosphere.

g. TO DEVELOP A FEELING OF ACCOUNTABILITY IN THE CONTEXT OF A RELATIONSHIP AMONG EQUALS.

Reason: Genuine participation and genuine responsibility go hand in hand. A basic tenet of our social system is: for every right, there is a corresponding responsibility, resulting in the commitment necessary in a mature society.

Satisfactory Compliance: Each child shall be provided opportunities for participation and accountability in a family relationship.

h. TO CULTIVATE A CAPACITY TO ENJOY LIFE.

Reason: Maturity includes enjoyment, being creative, frivolous, doing things on one's own, learning to interact with all kinds of people.

Satisfactory Compliance: Each child should have a family accepting of other person's life styles and values, having flexibility and a sense of humor, and a sense of the joy of living.

4. SPECIAL ACTIVITIES RELATED TO A CHILD'S RELIGIOUS OR CULTURAL HERITAGE SHALL BE AVAILABLE TO HIM.

5. SPECIAL ACTIVITIES RELATED TO A CHILD'S NATURAL FAMILY SHALL BE AVAILABLE TO HIM, BASED ON THE AGENCY'S PLAN.

I. RECORDS

1. THE AGENCY SHALL ESTABLISH AND MAINTAIN AN INDIVIDUAL RECORD FOR THE FOSTER FAMILY HOME. (AGENCY REQUIREMENT)

Reason: The foster home record serves as the basis of evaluation both of foster home quality and of agency practice. Recommendations to the Department about the foster home must be substantiated through the agency's records.

Satisfactory Compliance: The agency record shall contain:

a. A copy of the application for licensure signed by the applicant. (DPW-138)

b. A Foster Parent Agreement Form signed by both the applicant and the agency. (DPW-139)

c. A physician's statement concerning the physical health of persons in the FFH.

d. A current completed Fire Safety Check List (DPW-644) plus a written report from the fire marshal on any special fire hazards (if required by agency).

e. The prelicensing home study.

f. References from persons who can evaluate the applicant(s) as potential foster care providers. If the applicant(s) have been licensed through another agency within the previous five years, the agency shall request a reference from that agency.

g. An annual evaluation of the FFH, done jointly by provider and agency, covering services provided by both FFH and agency. It shall be based on a complete review of this rule and on the years placement experiences. Any disagreement about the evaluation between the FFH and the agency shall also be entered into the record.

h. Documentation for any waiver of licensing regulations.

i. Record of training received by the foster parents.

2. INDIVIDUAL CASE RECORDS FOR CHILDREN PLACED IN FOSTER CARE SHALL BE KEPT SEPARATELY FROM THE LICENSING RECORD. (AGENCY REQUIREMENT)

3. FFH DATA CLASSIFIED AS PRIVATE SHALL BE MAINTAINED AS PRIVATE. FFH PROVIDERS SHALL HAVE ACCESS TO PRIVATE DATA CONCERNING THEMSELVES. (AGENCY REQUIREMENT)

J. SPECIAL SERVICES HOME (ADDITIONAL REQUIREMENTS):

Reason: Children with special needs require a special understanding. FFH providers who undertake to care for these children must possess more than ordinary abilities. Such children require extraordinary care.

Opportunities for achieving the special knowledge and skills can include observation of children with special needs, meeting with other foster parents who have cared for children with special needs, discussions with specialists and community resource people, and attending conferences.

1. PRIOR TO LICENSURE FOR SPECIAL SERVICES, THE FFH PROVIDER MUST HAVE STRUCTURED OPPORTUNITIES FOR ACHIEVING KNOWLEDGE AND SKILLS NECESSARY AND PERTINENT TO SPECIFIC SPECIAL NEED OR HANDICAP:

a. THREE YEARS' EXPERIENCE AS A LICENSED FFH PLUS TWELVE HOURS OF TRAINING RELATED TO CHILDREN WITH SPECIAL NEEDS.

OR

b. ONE YEAR EXPERIENCE IN WORKING WITH CHILDREN WITH SPECIAL NEEDS, WHICH MAY INCLUDE THEIR OWN CHILDREN, PLUS SIX HOURS OF TRAINING RELATED TO CHILDREN WITH SPECIAL NEEDS.

OR

c. TWENTY-FIVE HOURS OF TRAINING RELATED TO CHILDREN WITH SPECIAL NEEDS.

2. WITHIN THIRTY DAYS AFTER PLACEMENT OF A CHILD WITH SPECIAL NEEDS IN AN FFH, A WRITTEN INDIVIDUALIZED PROGRAM PLAN MUST BE DEVELOPED BY THE FFH PROVIDER AND THE AGENCY. THIS PLAN SHALL BE EVALUATED AND UPDATED REGULARLY, BUT NO LESS OFTEN THAN EVERY SIX MONTHS. (AGENCY REQUIREMENT)

Reason: The growth and development of children with special needs or handicaps must be planned and evaluated regularly.

Satisfactory Compliance:

a. At least the FFH provider and agency must participate in program planning. The school district shall be invited to participate, and given reasonable notice.

b. Other agencies and community resources shall be called upon as indicated by the particular needs of the individual child.

c. The individual program plan must be available for use by the FFH provider, the agency, and the school district.

d. There shall be a regular evaluation of the child's progress at intervals mutually agreed upon by provider agency. Progress shall be recorded by the agency.

e. The individualized program plan shall contain specific, objective, time-limited goals. These goals shall be dated. The goals shall be updated as needed at the times of evaluation. Goals shall relate to the care and welfare of the foster child.

3. COMMUNITY RESOURCES AND SERVICES MUST BE MADE KNOWN TO AND UTILIZED BY THE FFH, AS INDICATED BY THE NEEDS OF THE CHILDREN.

4. A PLAN FOR REGULAR TIME-OFF FOR PROVIDERS SHALL BE DEVELOPED BY THE AGENCY AND THE FFH PROVIDER. (AGENCY REQUIREMENT)

5. THE ENVIRONMENT AND STRUCTURE OF THE HOME SHALL BE APPROPRIATE TO THE NEEDS OF THE FOSTER CHILD(REN).

K. GROUP FAMILY FOSTER HOMES (ADDITIONAL REQUIREMENTS):

Reason: Not all foster homes fit into neat categories. There are families with many children of their own. There is a need to develop innovative ways of caring for children away from their own families -- such as emergency shelters and teen-age peer groups. It is both necessary and desirable to provide flexibility and room for innovation in the field of foster care, while still ensuring the basic needs of children.

1. THE GROUP FAMILY FOSTER HOME, IN CONJUNCTION WITH THE AGENCY, SHALL DEFINE, IN WRITING, A DESCRIPTION OF THE AGES AND KINDS OF CHILDREN TO BE SERVED, AS WELL AS THE SCOPE OF SERVICES TO BE PROVIDED BY THE GROUP FAMILY FOSTER HOME.

2. THE GROUP FAMILY FOSTER HOME AND AGENCY SHALL HAVE A WRITTEN AND SIGNED AGREEMENT CONTAINING: (AGENCY RESPONSIBILITY)

a. ADMISSION AND DISCHARGE POLICY FOR THE CHILDREN.
b. INDIVIDUALIZED PROGRAM PLANS FOR THE CHILDREN AND DESIGNATED RESPONSIBILITY FOR DEVELOPING AND IMPLEMENTING THESE PLANS.
c. THE TIME LIMITS OF THE AGREEMENT.
d. THE RESPONSIBILITIES OF THE AGENCY AND THE GFFH.
e. THE RATE TO BE PAID THE HOME FOR ITS SERVICES, INCLUDING ANY SPECIAL PAYMENTS FOR CLOTHING, MEDICAL EXPENSES, AND SPECIAL SERVICES.
f. THE RESPONSIBILITY FOR ARRANGING FOR ALL NECESSARY SERVICES AND RESOURCES IN THE COMMUNITY.
g. THE ARRANGEMENTS FOR SUBSTITUTE PROVIDERS FOR EMERGENCY SITUATIONS, VACATIONS, ILLNESS, AND REGULAR TIME-OFF.
h. THE ARRANGEMENTS FOR PROVIDING ADMINISTRATIVE, CONSULTATIVE, AND SOCIAL SERVICES FOR THE GFFH.

3. THERE SHALL BE A MINIMUM OF ONE ADULT IN RESIDENCE FOR EVERY FIVE CHILDREN IN THE GROUP FAMILY FOSTER HOME.

4. THE GROUP FAMILY FOSTER HOME SHALL CARE FOR NO MORE THAN TEN CHILDREN, INCLUDING THEIR OWN CHILDREN.

5. PHYSICAL FACILITY:

a. THERE SHALL BE THIRTY-FIVE SQUARE FEET OF LIVING SPACE PER CHILD, EXCLUDING BATHROOMS, HALLS, BEDROOMS, KITCHEN, AND LAUNDRY OR FURNACE ROOM.
b. THE DINING AREA MUST BE ABLE TO COMFORTABLY ACCOMMODATE, AT ONE TIME, ALL THE CHILDREN PLUS THE FAMILY.
c. EVERY SLEEPING ROOM ACCOMMODATING ONE FOSTER CHILD SHALL HAVE AT LEAST EIGHTY SQUARE FEET OF FLOOR SPACE.
d. EVERY SLEEPING ROOM ACCOMMODATING MORE THAN ONE FOSTER CHILD SHALL HAVE AT LEAST SIXTY SQUARE FEET OF FLOOR SPACE PER CHILD.
e. NO SLEEPING ROOM SHALL ACCOMMODATE MORE THAN FOUR CHILDREN.
f. EACH CHILD SHALL HAVE ADEQUATE SPACE FOR HIS CLOTHING AND PERSONAL POSSESSIONS.

6. THE APPLICATION FOR LICENSURE SHALL BE SIGNED BY BOTH THE AGENCY AND THE APPLICANT.

7. A GROUP FAMILY FOSTER HOME MAY NOT CARE FOR MORE THAN TWO UNRELATED CHILDREN WHO ARE NONAMBULATORY, NONMOBILE, SEVERELY MENTALLY RETARDED, OR PROFOUNDLY MENTALLY RETARDED AT ANY ONE TIME.

APPENDIX A

DAILY FOOD GUIDE

FOOD	SERVING PER DAY	AVERAGE SIZE SERVING BY AGE*				
		1-3yrs	3-6yrs	6-9yrs	9-12yrs	12-18yrs
MILK GROUP:						
Milk	2-3servings	1/2-1cup	1/2-1cup	1 cup	1 cup	1 cup
Cheese and ice cream occasionally						
MEAT GROUP:						
Meat, poultry, fish, and, as alternatives, dried beans or peas or peanut butter	1-2servings	1-3 oz.	2-4 oz.	4-5 oz.	4-6 oz.	4-6 oz.
Egg	3-4/week	1	1	1	1	1
VEGETABLE & FRUIT GROUP:						
Dark green vegetables and deep yellow vegetables and fruits for Vitamin A	1serving	2-3tblsp.	2-4tblsp.	1/4cup	1/2cup	1/2cup
Fruit for Vitamin C - citrus, tomato, cabbage	1serving	1/3-2/3cup	1/3-2/3cup	1/2cup	1/2cup	1/2cup
Other fruits and vegetables	2servings	1/4-1/3cup	1/4-1/2cup	1/2cup	1/2cup	1/2cup
BREAD AND CEREAL GROUP:						
Bread and cereal, whole grain or enriched	4servings	1/2-1slice 1/4 cup cereal	1/2-1 1/2 slices 1/2 cup cereal	2-3slices 1/2 cup cereal	2-3slices 3/4 cup	2-3slices 1 cup
OTHER						
Butter or margarine	as spread or seasoning				2tblsp.	2-4tblsp.

*Size of serving will differ with individual children; some may want smaller amounts and some larger.

Source: USDA, Consumer & Food Economics Research Division - 1963 Minnesota Department of Health

TYPE OF HOME	EXPERIENCE	ANNUAL TRAINING	NUMBER OF "OWN" CHILDREN	NUMBER OF FOSTER CHILDREN	TOTAL NUMBER OF CHILDREN
1. Interim & Permanent (3 foster - 5 total) Exclusively Permanent or Restricted	Licensed less than 2 years	12 hours No Requirement	0-2	3 absolute	5
			3	2 limit in	5
			4	1 this	5
			5	2 category	7
			6	1	7
2. Interim & Permanent (5 children total) Exclusively Permanent or Restricted	Licensed 2 or more years	12 hours No Requirement	0	5	5
			1	4	5
			2	3	5
			3	2	5
			4	1	5
			5	2	7
			6	1	7
3. Emergency Shelter (7 children total)		12 hours 6 hours (Special needs)			7
4. Special Services (Handicapped or Extraordinary Care) (4 foster - 5 total)	(See page 22) a) Licensed 3 years + 12 hours related trng. OR b) Experience - 1 year with handicapped + 6 hours related training OR c) 25 hrs. related training	12 hours 6 hours (Special needs)	0	4	4
			1	4	5
			2	3	5
			3	2	5
			4	1	5
5. Group Family (10 children total)		12 hours 6 hours (Special needs)			10 (No more than 2 children with severe handicaps at one time - page 23)

EXCEPTIONS: a) Siblings need placement together. Maximum Number: Seven children total.
b) Home has five or six children of its own under age 18. Maximum Number: Seven children total.
c) Child needs to be placed again in the same home. Maximum Number: Seven children total.

APPROVED AS TO FORM AND LEGALITY

NOV 04 1977 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 4 1977
Joan Anderson Growe
Secretary of State

12:30 p. m.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED AMENDMENTS OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF GROUP DAY CARE CENTERS.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Peter C. Erickson, Office of Hearings Examiners of the State of Minnesota, on the second day of May, 1977, at 9:00 a.m. in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, after proper notice required by M.S. 1976, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules and the reasonableness thereof.

We adopt herein by reference the Findings of Fact, Conclusions, and Recommendations of the Hearing Examiner.

NOW, THEREFORE, IT IS ORDERED that these rules are adopted this twenty-fourth day of August, 1977, pursuant to authority vested in me by M.S. 245.802 (1976).

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

Edward J. Dirkswager Jr.

EDWARD J. DIRKSWAGER, JR.
ACTING STATE WELFARE COMMISSIONER

DPW 3 Standards for group day care of preschool and school-age children.

(a) Definitions. Health and safety license. A group-day-care center program that has received an exemption from licensure from the commissioner of education must, in addition, possess a health and safety license from the Department of Public Welfare under DPW Rule 3. The following regulations shall be met:

	Requirements	Exemptions
(a) Definitions	*All*	*None*
(b) Licensing laws and procedures	(1) through (6)	(17)
(c) Facility	(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (14)	(13) (15)
(d) Program	(4) (5) (6)	(1) (2) (3) (7)
(e) Health	(1) (2) (3)	None
(f) Admissions	(2)	(1) (3)
(g) Staff	(3) (4) (Staff: Child Ratio)	(1) (2) (5) (4) (Staff distribution and group size)
(h) Organization	(3) (5)	(1) (2) (4) (6)
(i) Handicapped	(1), (2) ((bb) (cc) (33)), (3)	(2) ((aa) (dd)), (4)
Appendices	A (Minimum Equipment - Infants & Toddlers)	A (Minimum Equipment - Preschoolers). (Minimum Equipment - School-Age)
	B (Health Care Summary)	
	C (Daily Food Guide)	

Accredited Course: A course that is offered by or through an institution with an accreditation. Courses need not be taken for credit, but must have an assigned credit value by the institution. An accredited course is considered to be three university or college quarter credits or 30 vocational-technical clock hours of training.

Aide. See Staff -- Child Care Assistant.

Affirmative Action Plan. Statement explaining how a center intends to recruit persons without discrimination.

Age groupings:

Infant. Child aged six weeks through 15 months.

Toddler. Child aged 16 months through 30 months.

Preschool child. Child aged 31 months through five years.

Primary school child. Child aged six through eight years.

Intermediate school child. Child aged nine through 12 years.

Child development training. Child development training ~~may include, but is not limited to:~~ *shall include courses that are relevant to the programs. All training should not be in one area. The following are examples of areas of training and courses which may be taken:*

Areas of Training	Examples *of Courses*
Child growth and development	Child psychology
Family relationships	Parent effectiveness training
Preschool methods and curriculum development	Music, art
Human relations	Sensitivity training, study of ethnic backgrounds
Food and nutrition	Menu planning
Administration of programs	Budget, management

~~(Training may be offered by day care centers, groups of centers, related organizations (including professional organization activities such as conventions and seminars), businesses, agencies, vocational schools, or colleges or universities.)~~

To be considered in *entry level* staff qualification, training must be offered through an accredited~~, or approved by the Minnesota Child Care and Development Advisory Council~~ *body*. ~~One approved child development training course equals approximately three university or college credits, or 30 clock hours in a vocational technical institute.~~ These child development training courses qualify staff for group-day-care centers but do not imply certification by the State Department of Education.

Child development assistant training program. Program offered by vocational-technical institutes, junior colleges, and the University Technical Institute, involving a minimum of 1,080 hours of activities and courses oriented to and focused on the practical application of child development.

Child Development associate. Person meeting the skill and competency requirements by the Office of Child Development.

Commissioner. Commissioner of Public Welfare

Day care. The care of children outside of their home for part of a 24-hour day by persons unrelated to them by blood or marriage. Day care includes group day care, family day care, and group-family day care (see also DPW Rule 2).

Drop-In care. There are two types of drop-in care:

1. Combined program. The acceptance of additional children into a licensed child care program on an irregular basis (not more than one-fifth of the center's week) but not to exceed the facility's licensed capacity during any part of the day. Ther percentage of drop-in children shall not exceed ten percent of the total attendance.

2. Total drop-in program. Center whose total licensed capacity is based primarily on children who attend on an irregular basis.

Facility. Physical environment in which a group-day-care program takes place.

Group-day-care center. Any program that, for compensation or otherwise, provides day or night care for six or more children at one time. The term includes, but is not limited to, programs for children known as nursery schools, day nurseries, child care centers, play groups, day care centers for school-age children, after-school programs, infant day care centers, cooperative day care centers, and Head Start programs.

~~In-Service-Training----Program-of-practical-education,-formal-or-informal, for-individuals-or-groups-working-with-young-children-for-the-purpose-of job-orientation,-attitude-development,-learning-or-improving-work-techniques, and-upgrading-standards.~~

Licensed capacity. Maximum number of children who can be in attendance at a center at a given time.

Persons (operating a group-day-care facility). Includes an individual, association, corporation, partnership, any political subdivision of the state, and any agency, board, or department of such a political subdivision.

Program. Combination of activities that, taken together, constitute the non-physical environment of a center. Materials and staff necessary to carry out the activities of the center are part of the program.

Department. Department of Public Welfare.

Staff:

Director. Person responsible for all aspects of the operation of the group-day-care center (e.g., administrative duties, staff supervision and training, record keeping, program planning, budgeting, liaison with state and local agencies, etc.).

Teacher. Person responsible for planning and implementing the program of the group-day-care center (e.g., plans and conducts daily program activities, prepares program materials, supervises and trains other staff, etc.). Other titles used to designate persons with these responsibilities include teacher-director, head teacher, and lead teacher.

Assistant Teacher. Works with the guidance of the teacher and director to carry out the program of the center.

Child Care Assistant. Assists the teacher or assistant teacher with all aspects of the planned program (Other titles: aide, child-care aide.)

Volunteers. Persons offering their services to a group-day-care facility without reimbursement other than for expenses.

Staff Development. ~~Program of practical education, formal or informal, for individuals or groups working with young children for the purpose of job orientation, attitude development, learning or improving work techniques, and upgrading standards. Training may be offered by day care centers, groups of centers, related organizations (including professional organization activities such as conventions and seminars), businesses, agencies, vocational schools, or colleges or universities.~~

Programs of practical education, e.g., workshops, courses, seminars, which focus on a specific topic without a designated leader or facilitator for the purpose of job orientation, attitude development, learning or improving work techniques, curriculum development and upgrading standards. Training may be on-site at the center or away from the center. It may be offered by a variety of sources such as individual centers, community sources, local school systems, professional groups, vocational colleges or universities.

Waiver. Temporary permission to disregard a particular licensing requirement or rule.

Parent Cooperative. A nonprofit group-child-care program that is governed by a board of at least 70 percent parent-users of the group-child-care program. The board must meet at least every six weeks, and minutes of these board meetings shall be available for inspection by a representative of the Department. This board shall make all continuing operational decisions about staff, program, budget, and organization structure.

Parent cooperative shall be specifically exempt from regulations in the following sections:

(a)	Definitions	no exemptions
(b)	Licensing Laws and Procedures	no exemptions
(c)	Facility	no exemptions
(d)	Program	(1) (cc) (ee), (2) (4) (ee), (7)
(e)	Health, Nutrition, and Safety	no exemptions
(f)	Admissions	no exemptions
(g)	Staff	(1), (2), (3) (aa) (bb) (dd), (4) staff distribution and group size), (5), (7)
(h)	Organization and Administration	(2) (bb-*ii*), D (2)

If a parent cooperative employs staff in the positions of director, teacher, and/or assistant teacher who are not parent members, hired staff shall not be exempt from:

(g)	Staff	(1), (2), (3), (5)

Within the first year of licensure and annually thereafter, information on the exempted sections shall be submitted to the Department.

(g) Staff.

(1) Each staff person must be appropriately qualified through training, experience, and personal qualities for the age group and cultural background with which he works. (Note: For an explanation of the term "Child Development Training Course." used in this section, see "Definitions". The qualifications indicated for staff positions relate strictly to group-day-care positions and do not imply certification by the State Department of Education.)

Reasons: The relationships that a child develops with important adults are considered as vital for his emotional security, intellectual development, and health psychological growth.

Satisfactory Compliance:

(aa) Director: (of all programs) Person or persons responsible for administration of a program must have administrative and supervisory experience or capability as well as knowledge of program, staff relationships, and day care operations. Administrators with teaching duties must also possess the qualifications of a teacher. The director shall be at least 18 years of age and shall be a mature responsible person.

Satisfactory Compliance:
(bb) Teacher - Alternatives for Qualification

	TRAINING		EXPERIENCE	NUMBER OF ~~APPROVED~~ *ACCREDITED* CHILD DEVELOPMENT TRAINING COURSES *OF HOURS*
(i)	Post-secondary certificate in Child Development Assistant Training Program (minimum of 1080 hours)	PLUS	One year (1560 hours) Assistant Teacher **	PLUS 1 *course or 30 hours*
OR *(ii)*	(no requirement	PLUS	Two years (3120 hours) as Assistant Teacher **	PLUS 3 *courses or 90 hours*
OR *(iii)*	BA or BS in any field from an accredited college or university	PLUS	** *	PLUS 6 *courses or 180 hours* (May be included as part of BA or BS degree)
OR *(iv)*	A degree in Child Development or Nursery Kindergarten Education from an accredited college or university	PLUS	**	(no requirement)
OR *(v)*	Certification by the State Department of Education for Nursery School	PLUS	**	(no requirement)
OR *(vi)*	Compliance with the competency level requirements of Child Development Associate		(no requirement)	(no requirement)
OR *(vii)*	INFANT-TODDLER ONLY (no requirement)		Three years (4680 hours) as a licensed Family Day Care Provider or Group Family Day Care Provider	PLUS 3 *courses or 90 hours*
OR *(viii)*	SCHOOL-AGE ONLY Certification by the State Department of Education for Elementary or Secondary Education		(no requirement)	(no requirement)

** INFANT-TODDLER ONLY - Three months (480 hours) of required experience must be in an infant and/or toddler program.

* SCHOOL-AGE ONLY - Six months (600 hours) experience in a related field (e.g., playground leader, tutor, student teaching, teacher's aide).

Satisfactory Compliance:

(cc) Assistant Teacher - Alternatives for Qualification

	TRAINING	EXPERIENCE	NUMBER OF ~~APPROVED~~ *ACCREDITED* CHILD DEVELOPMENT TRAINING COURSES OR HOURS
(i)	Post-secondary certificate in Child Development Assistant PLUS Training Program (minimum of 1080 hours)	**	(no requirement)
OR *(ii)*	(no requirement)	Six months (780 as Child Care Assistant (Child Care Aide) or Student Teacher	PLUS 3 *courses or 90 hours*
OR *(iii)*	Two years of post-secondary education PLUS	**	PLUS 3 *courses or 90 hours*
OR *(iv)*	INFANT-TODDLER ONLY	Six months (780 hours) with infants and/or toddlers as a licensed Family Day Care Provider or a Group-Family Day Care Provider	PLUS 3 *courses or 90 hours*
OR *(v)*	SCHOOL-AGE ONLY	One year (1200 hours) in a related field (e.g., playground leader, tutor, student teaching, teacher's aide).	(no requirement)

** INFANT-TODDLER ONLY - 150 hours of experience in an infant and/or toddler program.

(dd) Teachers and assistant teachers employed on the date of promulgation of these standards must comply with one of the alternatives for qualification within three years after that date.

~~(ee) To maintain the position of teacher, three approved courses in child development training are required every two years.~~

~~(ff) To maintain the position of assistant teacher, one approved course in child development training is required every year.~~

~~(gg)~~ (ee) Child Care Assistant (Child Care Aide) for all age groupings:

(i) The following alternatives are available for qualification:
High school vocational child care training course, *or*
Orientation training course in the center

~~(ii) To maintain the position, one approved Child Development Training Course is required every year.~~

~~(iii)~~ *(ii)* The Child Care Assistant must be at least 15 years of age.

~~(hh)~~ *(ff)* Volunteers for all age groupings:
To be counted in the staff-to-child ratio, volunteers must:
(i) Be at least 15 years of age
(ii) Participate in an orientation to the program
(iii) Participate in any in-service training given to paid staff by the center.

(2) ~~In-service~~ Staff development training for all regular administrative, teaching, and support services staff members, including volunteers, must be a part of every center's educational program.

Reason: Proper preparation and continuous training of the total staff will better ensure development and maintenance of high-quality day care services.

Satisfactory Compliance:

~~(aa) A center or a group of centers must plan and arrange a minimum of two percent of each staff member's working time to be spent in an in-service program.~~

(aa) *Each center shall be responsible for working out a plan* ~~for the equivalent of a minimum of three percent of each staff member's time to be spent in staff development.~~ *with each staff person with direct teaching responsibilities or direct responsibility for supervision of that staff, e.g., director for a minimum of the equivalent of 2% of his/her work hours to be spent in staff development.*

(bb) This training can be provided by individual centers, a sponsoring agency, community sources, local school systems, professional groups, colleges, universities, or area vocational schools.

~~(cc) This training may be used to satisfy all or part of the qualifying and/or continuing requirements for teacher and assistant teacher. (see Section (g), (1) ((ee and ff)).~~

(cc) All other administrative staff, volunteers not counted in staff ratios, and support staff, e.g., cook, bus drivers, must receive an orientation to the program including appropriate licensing standards within the two weeks of employment.

(3) All personnel in regular contact with children, including volunteers and drivers, shall be physically, mentally, and emotionally competent to care for children and free from serious communicable disease.

Satisfactory Compliance:

(aa) References must be required by the director from all child care staff relating to their ability to care for young children.

(bb) Prior to employment, the paid employee must submit a statement signed by his source of medical care and based on a thorough examination within three months. Statements must be submitted every two years thereafter.

(cc) All staff must submit evidence of freedom from tuberculosis before employment and annually.

(dd) A probation period must be set for new employees, during which physical, mental and emotional competence to care for children is evaluated and discussed with the employee by the employer.

(ee) Employees with communicable disease presenting an important health hazard to the group shall be excluded.

(ff) No person shall be hired or retained as a staff member, paid or volunteer, who has:

(i) Been convicted of or admitted to or been the subject of substantial evidence of an act of child battering, child abuse, or child molesting.

(ii) Used alcohol or drugs such that its effects are apparent during the hours that children are in care, or

(iii) Been convicted for or admitted to any felony or any offense involving moral turpitude.

(4) Staff ratio must be met and maintained by operators of all programs: appropriate distribution of staff shall include a team that has individuals with competences of a teacher, assistant teacher and child care assistant. Volunteers under supervision may be counted in the staff ratio. The staff member must be with the children to be included in the staff-to-child ratio. When there are children of different ages in same group, the ratio for the youngest age group shall prevail. Janitors and bus drivers shall not be counted in the staff ratio when performing these duties.

Reason: The administering agency must ensure that capable staff in the recommended ratio is always present and is capable of providing for health and safety of each child and that each member of the staff has a clear understanding of his responsibility as explained in orientation sessions and provided in a written form.

Satisfactory Compliance:

(aa) Infants: six weeks through 15 months

Staff Ratio: one to four

Group Size: no more than eight in an activity group.

Staff Distribution: one teacher for every 16 children

+

one teacher or assistant teacher for every group.

+

child care assistants and volunteers as needed to meet staff ratio.

(bb) Toddlers: 16 months through 30 months.

Staff Ratio: one to seven.

Group size: No more than 14 children in an activity group.

Staff Distribution: one teacher for every 28 children.

+

one teacher or assistant teacher for every group,

+

child care assistants and volunteers as needed to meet staff ratio.

(cc) Pre-School: 31 months through five years

Staff Ratio: one to ten

Group Size: No more than 20 children in an activity group

Staff Distribution: one teacher for every 40 children,

+

one teacher or assistant teacher for every group,

+

child care assistants and volunteers as needed to meet staff ratio.

Note: There shall be no more than ten-two and one-half year olds in any activity group of 20 children.

(dd) School-Age: six years through twelve years.

Staff Ratio: one to 15

Group Size: No more than 30 children in an activity group.

Staff Distribution: one teacher for every 60 children,

+

one teacher or assistant teacher for every group,

+

child care assistants and volunteers as needed to meet staff ratio.

(5) Each center with more than one staff member must set personnel policies relating to health, working conditions, in-service training, probation period, evaluation, sick leave, vacation benefits, and salary increments. Policies shall comply with appropriate state and federal laws.

Reason: It is important that there be a clear understanding between administration and staff about the work situation and the responsibilities of both the administration and the staff member.

Satisfactory Compliance:

Each center with more than one staff member must have a written statement of personnel policies. This statement shall include:

(aa) Policies in accordance with Fair-Employment laws and regulations.

(bb) Job description for all staff

(cc) Description of probation period and method of staff evaluation

(dd) A clearly defined in-service training program

(ee) Policies on hiring, firing, promotions, and salary increments

(6) In centers providing sleep care of four to five hours or more, staff ratios specified in (g) (4) shall be maintained until the children are settled for sleep. While children are sleeping, a minimum number of adults must remain awake and available to the children throughout the sleep period.

Satisfactory Compliance:

(aa) One adult for every four sleeping infants but no fewer than two adults for the center

(bb) One adult for every ten sleeping toddlers but no fewer than two adults for the center

(cc) One adult for every 20 sleeping preschoolers but no fewer than two adults for the center

(dd) One adult for every 25 sleeping school-age children but no fewer than two adults for the center

The director shall make arrangements in advance for substitute staff.

DS/ghdd

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APPROVED AS TO FORM AND LEGALITY

NOV 04 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 4 1977
Joan Anderson Growe
Secretary of State

12:30 p.m.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

September 7, 1977

Mr. Tibor M. Gallo
Special Assistant Attorney General
Minnesota Department of Public Welfare
Centennial Office Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Licensing of Family Foster Care, and Group Family Foster Care, Rule DPW-1, and Standards for Group Day Care of Preschool and School-Age Children, Rule DPW-3. DPW-77-037-PE

Dear Mr. Gallo:

Enclosed please find the entire record which you submitted to us for review on the issue of substantial change together with the Report of the Chief Hearing Examiner, pursuant to Minn. Stat. § 15.052, Subd. 3.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Encs.

AN EQUAL OPPORTUNITY EMPLOYER

DPW 7-037-PE

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRESCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 2, 1977, before Peter C. Erickson, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Public Welfare on June 23, 1977; and

WHEREAS, the Department of Public Welfare has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Public Welfare has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Public Welfare has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Public Welfare has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 7th day
of September, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

D. P. W. Ex. 9

RECEIVED
APR 6 1977
OFFICE OF HEARING
EXAMINERS

PROPOSED CHANGES

STANDARDS FOR GROUP-DAY CARE

OF

PRESCHOOL AND SCHOOL-AGE CHILDREN

DPW RULE 3

(a) DEFINITIONS:

HEALTH AND SAFETY LICENSE -- A GROUP-DAY-CARE CENTER PROGRAM THAT HAS RECEIVED AN EXEMPTION FROM PROGRAM LICENSURE FROM THE COMMISSIONER OF EDUCATION MUST, IN ADDITION, POSSESS A HEALTH AND SAFETY LICENSE FROM THE DEPARTMENT OF PUBLIC WELFARE UNDER DPW RULE #3. THE FOLLOWING REGULATIONS SHALL BE MET:

	Requirements	Exemptions
(a) Definitions	*All*	*None*
(b) Licensing laws and procedures	(1) through (16)	(17)
(c) Facility	(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (14)	(13) (15)
(d) Program	(4) (5) (6)	(1) (2) (3) (7)
(e) Health	(1) (2) (3)	None
(f) Admissions	(2)	(1) (3)
(g) Staff	(3) (4) (Staff: Child Ratio)	(1) (2) (5) (4)(staff distribution and group size)
(h) Organization	(3) (5)	(1) (2) (4) (6)
(i) Handicapped children	(1), (2) ((bb) (cc) (ee)), (3)	(2) ((aa) (dd)), (4)
Appendices	A (Minimum Equipment - Infants & Toddlers)	A (Minimum Equipment - Preschoolers) (Minimum Equipment - School-Age)
	B (Health Care Summary)	
	C (Daily Food Guide)	

Accredited Course - A course that is offered by or through an institution with an accreditation. Courses need not be taken for credit, but must have an assigned credit value by the institution.

Aide - See Staff - Child Care Assistant.

Affirmative Action Plan - Statement explaining how a center intends to recruit persons without discrimination.

Age Groupings:

Infant - Child aged six weeks through 15 months.
Toddler - Child aged 16 months through 30 months.
Preschool Child - Child aged 31 months through five years.
Primary School Child - Child aged six through eight years.
Intermediate School Child - Child aged nine through twelve years.

Child Development Training - Child development training may include, but is not limited to:

	Examples
Child growth and development	Child psychology
Family relationships	Parent effectiveness training
Preschool methods and curriculum development	Music, art
Human relations	Sensitivity training, study of ethnic backgrounds
Food and nutrition	Menu planning
Administration of programs	Budget, management

~~Training may be offered by day care centers, groups of centers, related organizations (including professional organization activities such as conventions and seminars), businesses, agencies, vocational schools, or colleges or universities.~~

To be considered in *entry level* staff qualification, training must be *offered through an* accredited~~, or approved by the Minnesota Child Care and Development Advisory Council~~ *body*. One *approved* child development training course equals approximately three university or college credits, or 30 clock hours in a vocational-technical institute. These child development training courses qualify staff for group-day-care centers but do not imply certification by the State Department of Education.

Child Development Assistant Training Program - Program offered by vocational-technical institutes, junior colleges, and the University Technical Institute, involving a minimum of 1,080 hours of activities and courses oriented to and focused on the practical application of child development.

Child Development Associate - Person meeting the skill and competency requirements by the Office of Child Development.

Commissioner - Commissioner of Public Welfare.

Day Care - The care of children outside of their home for part of a 24-hour day by persons unrelated to them by blood or marriage. Day care includes group day care, family day care, and group-family day care (see also DPW Rule 2).

Drop-In Care - There are two types of drop-in care:

1. Combined Program: The acceptance of additional children into a licensed child care program on an irregular basis (not more than one-fifth of the center's week) but not to exceed the facility's licensed capacity during any part of the day. The percentage of drop-in children shall not exceed ten percent of the total attendance.

2. Total Drop-in Program: Center whose total licensed capacity is based primarily on children who attend on an irregular basis.

Facility - Physical environment in which a group-day-care program takes place.

Group-Day-Care Center - Any program that, for compensation or otherwise, provides day or night care for six or more children at one time. The term includes, but is not limited to, programs for children known as nursery schools, day nurseries, child care centers, play groups, day care centers for school-age children, after-school programs, infant day care centers, cooperative day care centers, and Head Start programs.

~~In-Service Training -- Program of practical education, formal or informal, for individuals or groups working with young children for the purpose of job orientation, attitude development, learning or improving work techniques, and upgrading standards.~~

Licensed Capacity - Maximum number of children who can be in attendance at a center at a given time.

Person (operating a group-day-care facility) - Includes an individual, association, corporation, partnership, any political subdivision of the state, and any agency, board, or department of such a political subdivision.

Program - Combination of activities that, taken together, constitute the non-physical environment of a center. Materials and staff necessary to carry out the activities of the center are part of the program.

Department - Department of Public Welfare.

Staff:

Director - Person responsible for all aspects of the operation of the group-day-care center (e.g., administrative duties, staff supervision and training, record keeping, program planning, budgeting, liaison with state and local agencies, etc.).

Teacher - Person responsible for planning and implementing the program of the group-day-care center (e.g., plans and conducts daily program activities, prepares program materials, supervises and trains other staff, etc). Other titles used to designate persons with these responsibilities include teacher-director, head teacher, and lead teacher.

Assistant Teacher - Works with the guidance of the teacher and director to carry out the program of the center.

Child Care Assistant - Assists the teacher or assistant teacher with all aspects of the planned program (Other titles: aide, child-care aide).

Volunteers - Persons offering their services to a group-day-care facility without reimbursement other than for expenses.

Staff Development - Program of practical education, formal or informal, for individuals or groups working with young children for the purpose of job orientation, attitude development, learning or improving work techniques, and upgrading standards. Training may be offered by day care centers, groups of centers, related organizations (including professional organization activities such as conventions and seminars), businesses, agencies, vocational schools, or colleges or universities.

Waiver - Temporary permission to disregard a particular licensing requirement or rule.

Parent Cooperative:

A nonprofit group-child-care program that is governed by a board of at least 70 percent parent-users of the group-child-care program. The board must meet at least every six weeks, and minutes of these board meetings shall be available for inspection by a representative of the Department. This board shall make all continuing operational decisions about staff, program, budget, and organization structure.

Parent cooperative shall be specifically exempt from regulations in the following sections:

(a) Definitions	no exemptions
(b) Licensing Laws and Procedures	no exemptions
(c) Facility	no exemptions
(d) Program	(1) (cc) (ee), (2) (4) (ee), (7)
(e) Health, Nutrition, and Safety	no exemptions
(f) Admissions	no exemptions
(g) Staff	(1), (2), (3) (aa) (bb) (dd), (4) staff distribution and group size), (5), (7)
(h) Organization and Administration	(2) (bb-*ii*), D (2)

If a parent cooperative employs staff in the positions of director, teacher, and/or assistant teacher who are not parent members, hired staff shall not be exempt from:

(g) Staff	(1), (2), (3), (5)

Other regulations for group-day care-programs may be waived for a parent cooperative as long as the health and safety of children is not endangered (see Section b, 14).

Within the first year of licensure and annually thereafter, information on the exempted sections shall be submitted to the Department.

(g) STAFF:

(1) EACH STAFF PERSON MUST BE APPROPRIATELY QUALIFIED THROUGH TRAINING, EXPERIENCE, AND PERSONAL QUALITIES FOR THE AGE GROUP AND CULUTURAL BACKGROUND WITH WHICH HE WORKS. (NOTE: For an explanation of the term Child Development Training Course, used in this section, see "Definitions". The qualifications indicated for staff positions relate strictly to group-day-care positions and do not imply certification by the State Department of Education.)

Reason: The relationships that a child develops with important adults are considered as vital for his emotional security, intellectual development, and health psychological growth.

Satisfactory Compliance:

(aa) Director: (of all programs) Person or persons responsible for administration of a program must have administrative and supervisory experience or capability as well as knowledge of program, staff relationships, and day care operations. Administrators with teaching duties must also possess the qualifications of a teacher. The director shall be at least 18 years of age and shall be a mature responsible person.

Satisfactory Compliance:

(bb) Teacher - Alternatives for Qualification

		TRAINING		EXPERIENCE		NUMBER OF ~~APPROVED~~ *ACCREDITED* Child DEVELOPMENT TRAINING COURSES
	(i)	Post-secondary certificate in Child Development Assistant Training Program (minimum of 1080 hours)	PLUS	One year (1560 hours) Assistant Teacher**	PLUS	1
OR	*(ii)*	(no requirement)		Two years (3120 hours) as Assistant Teacher**	PLUS	3
OR	*(iii)*	BA or BS in any field from an accredited college or university	PLUS	** *	PLUS	6 (May be included as part of BA or BS degree)
OR	*(iv)*	A degree in Child Development or Nursery Kindergarten Education from an accredited college or university	PLUS	**		(no requirement)
OR	*(v)*	Certification by the State Department of Education for Nursery School	PLUS	**		(no requirement)
OR	*(vi)*	Compliance with the competency level requirements of Child Development Associate		(no requirement)		(no requirement)
OR	*(vii)*	INFANT-TODDLER ONLY (no requirement)		Three years (4680 hours) as a licensed Family Day Care Provider or Group Family Day Care Provider	PLUS	3
OR	*(viii)*	SCHOOL-AGE ONLY Certification by the State Department of Education for Elementary or Secondary Education		(no requirement)		(no requirement)

**INFANT-TODDLER ONLY - Three months (480 hours) of required experience must be in an infant and/or toddler program.

* SCHOOL-AGE ONLY - Six months (600 hours) experience in a related field (e.g., playground leader, tutor, student teaching, teacher's aide).

Satisfactory Compliance:

cc. Assistant Teacher - Alternatives for Qualification

		TRAINING		EXPERIENCE		NUMBER OF ~~APPROVED~~ *ACCREDITED* CHILD DEVELOPMENT TRAINING COURSES
	(i)	Post-secondary certificate in Child Development Assistant Training Program (minimum of 1080 hours)	PLUS	**		(no requirement)
OR	*(ii)*	(no requirement)	PLUS	Six months (780 hours) as Child Care Assistant (Child Care Aide) or Student Teacher	PLUS	3
OR	*(iii)*	Two years of post-secondary education	PLUS	**	PLUS	3
OR	*(iv)*	INFANT-TODDLER ONLY		Six months (780 hours) with infants and/or toddlers as a licensed Family Day Care Provider or a Group-Family Day Care Provider	PLUS	3
OR	*(v)*	SCHOOL-AGE ONLY		One year (1200 hours) in a related field (e.g., playground leader, tutor, student teaching, teacher's aide).	(no requirement)	

**INFANT-TODDLER ONLY - 150 hours of experience in an infant and/or toddler program.

(dd) Teachers and assistant teachers employed on the date of promulgation of these standards must comply with one of the alternatives for qualification within three years after that date.

~~(ee) To maintain the position of teacher, three approved courses in child development training are required every two years.~~

~~(ff) To maintain the position of assistant teacher, one approved course in child development training is required every year.~~

(ee) Child Care Assistant (Child Care Aide) for all age groupings:

(i) The following alternatives are available for qualification:
High school vocational child care training course
Orientation training course in the center

~~*(ii)* To maintain the position, one approved Child Development Training Course is required every year.~~

(ii) The Child Care Assistant must be at least 15 years of age.

(ff) Volunteers for all age groupings:
To be counted in the staff-to-child ratio, volunteers must:

(i) Be at least 15 years of age
(ii) Participate in an orientation to the program
(iii) Participate in any in-service training given to paid staff by the center.

(2) IN-SERVICE *STAFF DEVELOPMENT* TRAINING FOR ALL REGULAR ADMINISTRATIVE, TEACHING, AND SUPPORT SERVICES STAFF MEMBERS, INCLUDING VOLUNTEERS, MUST BE A PART OF EVERY CENTER'S EDUCATIONAL PROGRAM.

Reason: Proper preparation and continuous training of the total staff will better ensure development and maintenance of high-quality day care services.

Satisfactory Compliance:

(aa) ~~A center or a group of centers must plan and arrange a minimum of two percent of each staff member's working time to be spent in an in-service program.~~
Each center shall be responsible for working out a plan for the equivalent of a minimum of three percent of each staff member's time to be spent in staff development.

(bb) This training can be provided by individual centers, a sponsoring agency, community sources, local school systems, professional groups, colleges, universities, or area vocational schools.

~~(ee) This training may be used to satisfy all or part of the qualifying and/or continuing requirements for teacher and assistant teacher. (see Section (g), (1) ((ee and ff)).~~

(3) ALL PERSONNEL IN REGULAR CONTACT WITH CHILDREN, INCLUDING VOLUNTEERS AND DRIVERS, SHALL BE PHYSICALLY, MENTALLY, AND EMOTIONALLY COMPETENT TO CARE FOR CHILDREN AND FREE FROM SERIOUS COMMUNICABLE DISEASE.

Satisfactory Compliance:

(aa) References must be required by the director from all child care staff relating to their ability to care for young children.

(bb) Prior to employment, the paid employee must submit a statement signed by his source of medical care and based on a thorough examination within three months. Statements must be submitted every two years thereafter.

(cc) All staff must submit evidence of freedom from tuberculosis before employment and annually.

(dd) A probation period must be set for new employees, during which physical, mental, and emotional competence to care for children is evaluated and discussed with the employee by the employer.

(ee) Employees with communicable disease presenting an important health hazard to the group shall be excluded.

(ff) No person shall be hired or retained as a staff member, paid or volunteer, who has:
(i) Been convicted of or admitted to or been the subject of substantial evidence of an act of child battering, child abuse, or child molesting.
(ii) Used alcohol or drugs such that its effects are apparent during the hours that children are in care, or
(iii) Been convicted for or admitted to any felony or any offense involving moral turpitude.

(4) STAFF RATIO MUST BE MET AND MAINTAINED BY OPERATORS OF ALL PROGRAMS: APPROPRIATE DISTRIBUTION OF STAFF SHALL INCLUDE A TEAM THAT HAS INDIVIDUALS WITH COMPETENCES OF A TEACHER, ASSISTANT TEACHER AND CHILD CARE ASSISTANT. VOLUNTEERS UNDER SUPERVISION MAY BE COUNTED IN THE STAFF RATIO. THE STAFF MEMBER MUST BE WITH THE CHILDREN TO BE INCLUDED IN THE STAFF-TO-CHILD RATIO. WHEN THERE ARE CHILDREN OF DIFFERENT AGES IN SAME GROUP, THE RATIO FOR THE YOUNGEST AGE GROUP SHALL PREVAIL. JANITORS AND BUS DRIVERS SHALL NOT BE COUNTED IN THE STAFF RATIO WHEN PERFORMING THESE DUTIES.

Reason: The administering agency must ensure that capable staff in the recommended ratio is always present and is capable of providing for health and safety of each child and that each member of the staff has a clear understanding of his responsibility as explained in orientation sessions and provided in a written form.

Satisfactory Compliance:

(aa) Infants: six weeks through 15 months
Staff Ratio: one to four
Group Size: no more than eight in an activity group.
Staff Distribution: one teacher for every 16 children
+
one teacher or assistant teacher for every group.
+
child care assistants and volunteers as needed to meet staff ratio.

(bb) Toddlers: 16 months through 30 months.
Staff Ratio: one to seven.
Group Size: No more than 14 children in an activity group.
Staff Distribution: one teacher for every 28 children,
+
one teacher or assistant teacher for every group,
+
child care assistants and volunteers as needed to meet staff ratio.

(cc) Pre-School: 31 months through five years
Staff Ratio: one to ten
Group Size: No more than 20 children in an activity group
Staff Distribution: one teacher for every 40 children,
+
one teacher or assistant teacher for every group,
+
child care assistants and volunteers as needed to meet staff ratio.

Note: There shall be no more than ten two and one-half year olds in any activity group of 20 children.

(dd) School-Age: six years through twelve years.
Staff Ratio: one to 15
Group Size: No more than 30 children in an activity group.
Staff Distribution: one teacher for every 60 children,
+
one teacher or assistant teacher for every group,
+
child care assistants and volunteers as need to meet staff ratio.

(5) EACH CENTER WITH MORE THAN ONE STAFF MEMBER MUST SET PERSONNEL POLICIES RELATING TO HEALTH, WORKING CONDITIONS, IN-SERVICE TRAINING, PROBATION PERIOD, EVALUATION, SICK LEAVE, VACATION, BENEFITS, AND SALARY INCREMENTS. POLICIES SHALL COMPLY WITH APPROPRIATE STATE AND FEDERAL LAWS.

Reason: It is important that there be a clear understanding between administration and staff about the work situation and the responsibilities of both the administration and the staff member.

Satisfactory Compliance:

Each center with more than one staff member must have a written statement of personnel policies. This statement shall include:

(aa) Policies in accordance with Fair-Employment laws and regulations
(bb) Job description for all staff
(cc) Description of probation period and method of staff evaluation
(dd) A clearly defined in-service training program
(ee) Policies on hiring, firing, promotions, and salary increments

(6) IN CENTERS PROVIDING SLEEP CARE OF FOUR TO FIVE HOURS OR MORE, STAFF RATIOS SPECIFIED IN (g) (4) SHALL BE MAINTAINED UNTIL THE CHILDREN ARE SETTLED FOR SLEEP. WHILE CHILDREN ARE SLEEPING, A MINIMUM NUMBER OF ADULTS MUST REMAIN AWAKE AND AVAILABLE TO THE CHILDREN THROUGHOUT THE SLEEP PERIOD.

Satisfactory Compliance:

(aa) One adult for every four sleeping infants but no fewer than two adults for the center
(bb) One adult for every ten sleeping toddlers but no fewer than two adults for the center
(cc) One adult for every 20 sleeping preschoolers but no fewer than two adults for the center
(dd) One adult for every 25 sleeping school-age children but no fewer than two adults for the center

(7) THE DIRECTOR SHALL MAKE ARRANGEMENTS IN ADVANCE FOR SUBSTITUTE STAFF.

CR/hhd

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

DPW-77-037-PE

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 24th day of June 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 24th day of June, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Licensing of Family Foster Care, and Group Family Foster Care, Rule DPW-1, and Standards for Groups Day Care of Preschool and School-Age Children, Rule DPW-3.	REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson at 9:00 a.m. on Monday, May 2, 1977, in the Veterans Service Building, St. Paul, Minnesota.

Tibor Gallo, Special Assistant Attorney General, Fourth Floor, Centennial Office Building, St. Paul, appeared as counsel on behalf of the Department of Public Welfare. Barbara Kaufman, director of licensing, and Cheryl Nyhus, supervisor of non-residential licenses, testified on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), this Report shall be available for review to all affected individuals upon request for at least ten days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On April 1, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On March 28, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1413.

3. On March 30, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On April 6, 1987, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through May 23, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 242.802 (1976).

7. Proposed DPW 1 is a completely rewritten version of existing Rule 1 which was promulgated in 1956. Minn. Stat. § 245.802, subd. 2, requires that the agency review its licensing rules at least every five years. In the spring of 1974, Commissioner Vera Likins of the State Welfare Department appointed an advisory committee to review and revise the state's licensing rule for family foster care. This advisory committee was chaired by Mrs.

Roberta Ellis, herself a foster parent and a teacher. The committee, as mandated by Minnesota Statute § 245.802, represented foster parents, agency staff, relevant professional groups, and other state agencies concerned about foster care of children.

The first act of this committee was to send a letter over Mrs. Ellis' signature to every licensed foster home in Minnesota. Each foster parent was informed that the rule for licensing was to be revised. Their opinions and concerns were solicited. Only 66 of these foster parents (out of 4,600) replied.

The advisory committee reviewed licensing standards from other states, guidelines from the Child Welfare League of America, all of the suggestions and comments from Minnesota citizens and put together a first draft of new foster care regulations. This first draft was mailed to over five hundred hundred agencies and individuals for their comments and suggestions. From these comments, the advisory committee put together a second draft. This draft was taken to the people through a series of six regional meetings. Every interested person was invited to comment upon the proposed rule at meetings held in Duluth, Brainerd, Minneapolis, Moorhead, Mankato, and Rochester.

This draft of Rule 1, the third, for public hearing is a combination of ideas from the advisory committee, the agencies and foster parents of this state, and the state agencies involved. The format of the rule is designed to do two things. It gives an explanation where reasons are not obvious. It also permits a general statemnt of principle along with specific ways to carry out that principle.

8. Proposed DPW 1, Section A, Definitions, spells out the terms used in the rule to avoid confusion and misunderstanding for both the agency and the foster parent.

a. John Graf, representing Hennepin County Welfare Department, proposed that the definition of "waiver" be amended by allowing local agencies to grant waivers. The definition would then read, "Written permission from either the Department or its designated local agencies to disregard...." The Department concurred in this proposal as it would coincide with current policies

to permit greater flexibility in local agency decision making.

9. Proposed Section B, Licensing Laws and Procedures, sets out the basic provisions of the law which affect Foster Family Homes (FFH). It describes the licensing procedure; notes exemptions from licensure; mandates that every applicant be furnished with a copy of the Rule (DPW 1); and states the right to appeal agency licensing decisions.

a. Mr. Graf proposed that the exemption in B.1.a. be modified to specifically exclude legally appointed guardians of children. The Department responded that this exclusion is already dealt with in the definition of "related" in A.12.

b. Several comments were made regarding the "shortness" of the 60-day evaluation period and the two-year license renewal. The Department responded to these comments by proposing to amend B.3 by eliminating 3.a. and 3.b. and changing 3. to read:

> The signed and completed application form, including all supporting documentation, shall be evaluated within 90 days based upon these rules and regulations. A prospective FFH meeting these standards shall be recommended to the commissioner for issuance of an FFH license. No FFH license may be issued for more than one year. (agency requirement)

This amendment will allow for the statutory 90-day evaluation period and make each FFH accountable each year for license renewal.

c. Several comments were made that the requirement that no children be placed in an unlicensed home until orientation has been completed would make placement too hard for local agencies. DPW responded by proposing to amend B.5. to read:

> B.5. No child shall be placed by an agency in an unlicensed home until the required orientation is begun and until that home has been evaluated for compliance with the following sections of the rule:
>
> D.1.a. - Qualifications of Foster Parents
> F.3. - Health and Safety
> F.6.a,b,c,d,e - Fire Safety

d. Orville Peterson, President of the Minnesota Foster Parents Association, proposed that B.6. be amended so that all existing foster homes, as well as applicants, receive a copy of the new rule.

e. Mr. Graf contends that local agencies should not

assume responsibility for notifying any FFH of denial, revocation or non-renewal of licenses without approbation by DPW. He asserts there is no statutory authority for the local agencies to act on behalf of the Commissioner.

10. Proposed Section C, Limitations of License, is necessary to establish limits as to the occupancy of a FFH and set age requirements for providers.

a. Several comments were directed at the minimun age requirement set out in C.3. The comments were in favor of more flexibility for qualified younger persons. The Department responded that all sections of DPW 1 are subject ot the waiver provision in B. 12.

b. Several comments suggested that the phrase "and all regular visitors to the home" be stricken from C.6. as it is very subjective and would be impossible to administer. The Department proposed to amend C.6. to read, "...and all others having regular contact with the foster child in the foster home."

11. Proposed Section D, FFH Qualifications and Training, is necessary to set out suitability requirements for all homes and providers. The rule mandates a minimum of six hours of orientation for providers and twelve hours annually of training related to foster care. Certain groups of people, e.g. convicted criminals, alcoholics, etc., are excluded from being providers. The essential qualities of providers are enumerated.

a. Mr. Theodore Hecht, manager of the Ramsey County Welfare Department, stated that the information referred to in D.1.a. should be supplied on the application form. Also, that a time frame should be established for the disqualifying conduct set out in D.1.a.(a) and (2). DPW contends that no time frame should be established for (1) as the acts described are so serious in nature. The "waiver" provision could be used for an exceptional case where a license is warranted. DPW does concur with Ramsey County on setting a time frame for (2). The Department proposes to amend (2) to read:

> (2) Chemical dependency, unless the individual(s) identified as chemically dependent has been chemically free for at least twelve months.

b. Mr. Noel T. Koenigs, Swift County Welfare Department, suggested that D.2.b. be amended by replacing the word "visited" with contacted. This change would enable the local agency to make either a home or phone visit.

c. A question was raised as to the extent of the report to be supplied to providers as set out in D.2.c. The Department responded that a copy of the entire evaluation, including the workers' notes, be provided.

d. Questions were raised as to the scope of the grievance procedures set out in D.2.f. The Department stated that areas subject to appeal are spelled out in Minn. Stat. § 245.801 - § 245.805. DPW suggested to clarify the rule by amending D.2.f. to read:

> Grievance procedures shall address those areas of disagreement not included in the appeal procedures set forth by the Department.

e. Both Mr. Graf and Mr. Hecht suggested that a "retirement" age be set for providers in D.3. They contend that the language as it is now written will be very difficult to administer. DPW argued that because of the great variance in ability of older persons, a maximum age should not be set. That even with the waiver provision, local agencies would find it very difficult to justify granting waivers to some elderly and not to others.

f. Mr. Graf stated that D.6.a. - c. does not cover any mental health aspects of persons living in the FFH. DPW agreed that mental health should be dealt with and proposed to add a new paragraph, 6.d., to read:

> d. When, in the opinion of the agency, any person in the home exhibits a mental health problem, the agency may require an evaluation of that person by a mental health specialist as a requirement for license.

g. Ms. Audrey Briggs, Group Home Coordinator for Ramsey County, suggested that all foster children coming into a home be required to have a physical examination within a specified period after entering. The Department stated that this area is already covered in DPW 204.

h. Questions were asked about the hours and subjects

for training. DPW stated that:

> The first year requirement is 18 hours: 6 hours of orientation plus 12 hours of training. Subsequent years require on the 12 hours of annual training. All of the subjects listed are to be available, but not all subjects need be taught every year. Local agencies may add subjects for training to meet local needs at their discretion.

Kelly K. Kumm, Pope County Family Service Department, commented that the training requirement will be very expensive and difficult for rural counties. Karen Johnson suggested that alcoholism and chemical dependency should be enumerated as a specific training subject in D.7.d.

i. DPW proposed to add the following sentence to D.8. as a charifying amendment:

> The carrying out of the individual plan for a foster child or the contract between the child and the foster parents involving specified consequences should not be construed as imposing punishment on that child.

j. Because of the many questions as to what "corporal punishment" includes, the Department proposed to amend D.8.i. as follows:

> Corporal punishment is prohibited. Corporal punishment includes but is not limited to hitting, slapping, spanking, pinching, shaking, kicking or biting.

12. Proposed Section E, Health, is necessary to insure that providers are prepared to meet emergency medical problems and regular medical maintenance.

13. Proposed Section F, Physical Environment, prescribes minimum physical safety standards for foster homes. Also, the rule mandates adequate supervision for all foster children.

a. A question was raised as to the requirement for a "safe water and milk supply." DPW stated that:

> In the initial draft of this rule, this was spelled out as pasturized milk and tested well water. The specific requirement was found to be unreasonable in many rural areas. Thus it was changed to the more general statement and left to the discretion of the agency.

b. Several comments suggested that F.4. be deleted because of its unenforceability and that F.5. actually states the desired goal. The Department concurred in this proposed amendment.

c. Questions were raised as to local agency responsibility for fire inspections. The Department stated that it is not feasible for fire marshals to inspect every FFH. That the rule includes the basics of fire safety for which the local agency and the provider are responsible. Fire marshal inspection is required, however, when mobile homes or basement bedrooms are to be used.

d. DPW proposed to amend F.6.c. to clarify what is meant by a bedroom "below ground level" as follows:

> "...in a room fifty percent or more below gound level.

14. Proposed Section G, Nutrition, mandates that foster children be fed a balanced diet. Appendix A, Daily Food Guide, is included for explanatory purposes.

15. Proposed Section H, Daily Activities, is necessary to insure that the foster child is surrounded by a physical and human environment that will permit him to develop intellectually, socially and emotionally. Interpersonal activities and relationships are enumerated.

a. It was suggested in several comments that Section H not be included as part of the rule but rather be retained only as guidelines for providers.

b. The Department proposed to amend H.2.d. by adding the language "as appropriate for age and maturity." This amendment clarifies the intent of the rule.

c. DPW proposed to amend H.3.e. by deleting the reason given for the rule because of its questionable validity.

16. Proposed Section I, Records, sets out which records must be kept by the local agency regarding the FFH. The rule mandates that the provider participate in the annual evaluation and be permitted to make his objections to the evaluation report a part of the report.

a. Mark Muellerleide commented that merely an initial physician's statement on each person in the FFH may not be sufficient over an extended foster care period. The Department responded that:

> In section D.6.b. and c. the agency is given authority to require additional physical examinations at its own dis-

cretion. And the FFH providers are required to notify the agency about infectious or contagious illnesses. We feel these are sufficient safeguards over physical health without requiring foster parents to go to the additional expense of annual or regular physical examinations.

b. Comments were also made concerning the necessity for a fire inspection at regular intervals rather than merely an inspection before a license is granted. DPW responded as follows:

> Although Section F.6.a. requires a check for fire safety initially and "whenever a fire hazard appears to be present" it does not mandate a regular review. We suggest that section F.6.a. (page 14) be changed to:
>
> "An inspection for fire safety using the Fire Safety Check List shall be made jointly by the applicant and the agency before licensure and annually thereafter before relicensure."
>
> Then section I.1.d. should be changed to read:
>
> "A current completed Fire Safety Check List...."

17. Proposed Section J. defines and regulates a special kind of FFH, a Special Services Home.

a. The Minnesota Department of Education proposed to insert a statement that if a child has a physical or emotional or other handicapping condition, the environment and structure of the home must be appropriate.

b. The Department of Education commented further as follows:

> Special Services Home 2., p. 22. An Individual Program Plan (IPP) is required for each handicapped child. We support this provision. The proposed rule mandates the involvement of the school district. While this is desirable, the Commissioner of Welfare does not have the authority to regulate the actions of public schools. Also, what is the content of the IPP to be? Education Rule EDU 125 B. specifies that the public school has a responsibility to develop an Individual Educational Program Plan (IEP) for each handicapped child in need of special education instruction and services. Will the IEP developed by the school district and the parent or surrogate parent (see EDU 123 for assignment of surrogate parent) replicate the IPP? Can the IEP be developed in lieu of the IPP? Can the IEP be developed in lieu of the IPP? The IEP will include the areas of verbal, behavioral/emotional, acedemic, motor and adaptive behavior areas. For example, those would include speaking (verbal), acting out (behavioral), reading (academic), walking (motor), dressing, feeding, toileting (self help skills).
>
> Recommendation

J.2. should be amended to include the following:

1. The public school should be invited to attend the conference(s) to develop the IPP, but not be a mandatory participant.

2. The public school receive at least 5 days prior written notice of the conference.

3. The IPP be developed to include objectives relating to the welfare and care of the child as opposed to the educational needs of the child.

c. Mr. Graf proposed to amend Section J. to provide for an agency compensated respite for FFH providers. DPW responded as follows:

> The suggestion was made that foster parents should be paid for respite care in Special Services Homes. While we would not argue with that for a moment, this regulation cannot deal with issues of payment -- how much or for what. Thus we feel the rule should be left as is.

d. The Department of Education proposed that, pursuant to Minn. Stat. § 120.17, subd. 3a., a statement should be included in the rule which would require a foster parent who has been appointed surrogate parent to respond to school district notices of conferences and participate in those conferences.

18. Proposed Section K, Group Family Foster Homes, defines and regulates a new classification of family foster home. This new kind of home provides for an intermediate category of foster care.

a. Mr. Hecht proposed to amend K.3. and 4. to read <u>five</u> and <u>ten</u> children respectively. He asserts that in the light of his experience, these numbers are reasonable. The Department concurred in this proposal and has offered the following amendment:

K.3. should read: "...One adult in residence for every <u>five</u> children...";

K.4. should read: "...No more than <u>ten</u> children...".

b. Several comments were directed at the fact that because of the great difference in degrees of handicapping conditions, K.7. should be more specific to be reasonable. DPW offered the following amendment:

> "A group family foster home may not care for more than two unrelated children who are <u>nonambulatory, nonmobile, severely mentally retarded or profoundly mentally retarded</u> at <u>any</u> one time."

19. Kelly Kumm states that, "our agency (Pope County) would

be very happy with this DPW rule implemented as guidelines only...However, the extra burdens that this will place on licensing workers from rural counties who have multiple case loads, is prohibitive."

20. In December of 1973, DPW 3 was revised to mandate that group day care staff meet specific staff qualification and training requirements by April, 1977. DPW is now proposing changes in the requirements for two reasons:

(1) Both licensing staff and day care center staff think, after much deliberation, that the requirements are too stringent.

(2) There is administrative difficulty in having an advisory group determining what constitutes "approved" child care courses.

The proposed changes have met with the approval of the Minnesota Child Care and Development Advisory Council. This groups makes recommendations on day care licensing to the Commissioner of Public Welfare.

The proposed changes would:

(1) Substitute "accredited" for "approved". It is not feasible, at this time, to have the MCCDAC make recommendations on what constitutes an approved course. The proposed change does make this section of the requirements slightly more stringent by limiting the options of available training.

(2) Delete the ongoing course requirements. These requirements are unreasonable in terms of the time, expense, and availability of courses for child care staff.

(3) Substitute "staff development" for "in-service" training and increase the staff development time from 2% to 3% of the equivalent of the hours of staff employment. This increase would compensate slightly for the deleted course requirements, and also allow for much flexibility in training plans.

21. Matti J. Liiste, president of Mrs. Liiste's Montessori Schools, Inc., proposed that staff qualification requirements for Montessori teschers and assistants be included in DPW 3.

22. Ms. Andrea M. Hukee and Ms. Pricilla Williams commented as follows:

> The addition of the definition of "accredited course" will help us better determine what

kinds of training will be acceptable to meet DPW rules. The term and definition are more understandable and workable than the previously considered "approved" courses. We do feel, however, that the definition is incomplete. On page 6 and 7 of the "proposed changes" the left hand column refers to the number of accredited courses needed to meet satisfactory compliance of teacher and assistant teacher. The definition does not clearly state that 3 college or university quarter credits or 30 vo-tech clock hours are equivalent to one course, although this is how the rule has been interpreted to us. To clarify this point we feel the addition of "an accredited course is considered to be 3 university or college quarter credits or 30 vocational-technical clock hours of classroom training," is necessary.

23. Several comments spoke to the inappropriateness of the language, "One approved child development training course..." on page 2. The Examiner was also puzzled as to the inconsistency of that language. After checking the State Register, it was discovered that DPW Exhibit No. 9, the proposed amendments to DPW 3, is in error. The word "approved" should have been stricken and not italicized as in the copies supplied by the Department. Ms. Hukee and Williams suggested that the entire sentence be stricken in accordance with their proposal for amendment set out in Finding No. 22.

24. Ms. Hukee and Williams proposed to amend the "Child Development Training" section to read:

> "- Child development training should include courses that are relevant to the program needs. All training must not be in one area. The following are examples of areas of training and courses which may be taken."

25. Several comments suggested that both staff meetings and parent meetings should be included in Staff Development on page 4.

26. Ms. Hukee and Williams commented on Staff Development as follows:

> The use of the term "staff development" for in-service training is a more definitive and acceptable term. We would like to see this term more precisely defined. Our suggestion is that staff development be defined as "workshops, accredited courses, and seminars each of which has a specific topic and designated facilitator. Staff Development training may be either on-site or away from the center." The proposed definition that is in italics should be viewed as further clarification of the content

that can be included in these workshops, accredited courses and seminars, and who can offer this training. Because we have more accurately defined staff development the words "formal or informal" are superfluous and irrelevant. After the phrase "learning or improving work techniques" we would also like to insert "program and curriculum development" as being not only a legitimate but necessary topic for training. There have been discussions with licensing consultants that this should not be considered a topic because program planning is a regular part of the preschool routine that should take place in addition to staff development. It is our contention that planning scheduling, revising and evaluating curriculum and program techniques is the core from which quality programs are developed and should be included. This does not imply, however, that the daily implementation of these methods be part of staff development.

27. A minor clarifying amendment was proposed to (ee)(i) on page 7 to read, "...training course or Orientation...."

28. Ms. Hukee and Williams proposed that (2) on page 8 be amended to read, "Opportunities for staff development training for all regular administrative and teaching staff members must be provided by every center." They support this change and additional changes as follows:

> Part two (2) requires that in-service training be required for all staff on a continuous basis. We find it difficult, and in certain instances, impossible to comply with this regulation. The specific categories of staff that this directly affects are supportive staff, particularly cooks, bus drivers, bus aides and substitute staff. First, let us point out that these staff members are often hired on an hourly basis. A substitute may, for example, only work in a center three to six hours a month. Requiring training for this amount of time is not enforceable. We cannot regulate whether or not a substitute participates in training and cannot require it on their own time. Cost of training for subs is prohibitive. Additionally, with the huge turnover in substitutes, monitoring training cannot be accomplished. In some programs, cooks are only hired for an hour and a half per day. Continuous training for such people infringes on their personal time and cannot be required by us. Bus drivers and aides are two other categories that are even more difficult to regulate. The question arises as to what kind of training can be provided, especially when the most relevant training is required prior to employment.
>
> We therefore recommend that staff development training for supportive staff be separated. Instead, we suggest that a new section be added and read "each supportive staff member will receive an orientation to the program."
>
> The remainder of the revised portion on staff development under 2(aa) "satisfactory compliance" creates a problem, even with the new changes. We would like to

suggest that the deletions remain but that the italicized portion be changed to read "each staff person (excluding supportive staff, substitutes, and volunteers) shall be responsible for writing out an individual plan for meeting a minimum of 2% of his/her work hours to be spent in staff development." This would follow from the new definition we suggested for "staff development." Because the type of training suggested in our definition is now more specific and formalized we feel it will also be more qualitative than 3% of informal training thus accomplishing the same purpose more efficiently. Furthermore, it is easier and more objective to monitor training that has a defined content, and topic. By requiring that each individual develop his/her own training plan, rather than the center, a staff member has the opportunity to participate in a greater variety of training offered by various agencies that may be more compatible with his/her individual training needs. The center, of course, would still be obligated by law to retain only those staff members who meet the staff development requirements. This then, would be similar to the school teacher who has to personally renew his/her teaching certificate.

29. Many other comments, both in writing and in the transcript, objected to the staff development requirements being applicable to all support staff and to the "excessive" three percent figure. At hearing, DPW admitted that the staff development requirement should not be mandated for all personnel.

30. Several comments suggested that (2)(aa) be amended to read, "Each individual staff member shall be responsible for submitting evidence of having spent a minimum of one percent of his/her employed time in staff development."

31. Several comments spoke to structural and substantive changes in Staff qualifications on pages 6 and 7; see transcript pp. 84-85, Ms. Suzanne Francis; and written comments submitted by Ms. Hukee and Williams, and Suzanne Monroe.

32. Ms. Hukee and Williams also proposed amendments to the Staff ratio section on page 9.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Public Welfare. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it

is the duty of the Hearing Examiner to: "...(4) make a report on each proposed agency action ... taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that proposed DPW 1 be amended as set out in Findings 8a; 9b, c; 10b; 11a, d, f, i, j; 13b, d; 15b, c; 16b; and 18a, b for the reasons stated therein. The need for and reasonableness of those amendments has been demonstrated.

4. Because proposed DPW 1 is a major revision of the existing rule, the Examiner concludes that Mr. Peterson's proposal, as set out in Finding 9d, is needed and reasonable. Section B.6. should be amended by adding a new sentence to read, "After this rule becomes effective, all existing foster homes shall be furnished with a copy."

5. Pursuant to Minn. Stat. § 245.802, the Commissioner has statutory authority to promulgate rules for the suspension and revocation of licenses. Mr. Graf's assertion that there is no authority to make local agencies responsible for mailing notices, as set out in Finding 9e, is without merit.

6. Mr. Koenigs' suggestion, as set out in Finding 11b, to change the word "visited" to contacted in D.2.b. may have a pronounced effect on the agency-home relationship and the foster care itself. This proposal cannot be adopted without more evidence to support the reasonableness of this proposal.

7. Section D.2.c. clearly states that a "copy of the written evaluation report" be given to providers. The Department's interpretation, as set out in Finding 11c, that this includes workers' notes and other non-report materials, cannot be read into the rule. If those things are intended to be furnished, it must be spelled out; however, the reasonableness of furnishing more than the written report seems questionable.

8. Kelly Kuum's comments regarding the difficulty and expense for rural counties to comply with the proposed rule should

be examined closely by the Department. However, it was not shown at hearing that this rule will place an unreasonable burden on local agencies.

9. Minnesota Statutes, Chapter 15, mandates that all agency statements (policies, guidelines, etc.) of general applicability be promulgated as rules pursuant to that Chapter. Consequently, the suggestion that Section H be retained only as guidelines, see Finding 15a, is not viable. Section H is subjective and informational in nature and does, in fact, just set guidelines for the care of foster children.

10. The Examiner concludes that Section J be amended as set out in Finding 17a. A statement of this nature will enumerate the obvious necessity of an appropriate physical environment for children with special needs.

11. DPW does not have authority to mandate participation by school districts in the preparation of an IPP. The language in J.2.a. should be changed to include the school district as a voluntary participant. The Examiner concludes that the other changes suggested by the Department of Education, see Findings 17b and d, are reasonable; however, DPW may act on them as they deem appropriate. The proposed rule, as written, is reasonable.

12. The proposed amendments to DPW 3 do not speak to the inclusion or exclusion of Montessori teachers. The notice of hearing said nothing about that issue. To take any action in regard to Montessori teachers at this time would be a substantial change in the rule. The Department should consider this topic for possible future action.

13. The proposed amendments to DPW 3 do not deal with changes in Staff qualifications or Staff ratios. Comments regarding amendments in these areas, see Findings 31 and 32, go beyond the noticed scope of the hearing. The Department should consider these comments for possible future action.

14. The Examiner concludes that the definition of "accredited course" should be amended as set out in Finding 22. Also, that the sentence on page 2 that begins, "One approved child development..." should be stricken as is set out in Finding 23. These changes are both needed and reasonable for the clarity of the rule.

15. The Examiner concludes that the amendment proposed in Finding 24 is reasonable should DPW choose to adopt it.

16. The Examiner concludes that Staff Development on page 4 be amended as set out in Finding 26 for the reasons stated therein.

17. The Examiner concludes that (ee)(i) on page 7 be amended as set out in Finding 27.

18. The Examiner concludes that the 3 percent figure in (2)(aa) on page 8 would place an unreasonable burden on day-care center staff. Also, that applying a continuing development requirement on all staff is unreasonable. The Examiner concludes that the amendments proposed in Finding 28 are reasonable and page 8 should be amended accordingly. At hearing, DPW recognized the problems with this section of the rule; however, they did not supply an amendment to the Examiner for consideration.

19. The Examiner concludes that the Department has documented its statutory authority to promulgate the proposed rules.

20. The Examiner concludes that the Department has demonstrated the need for and reasonableness of DPW 1 and DPW 3, as recommended to be modified in this Report, by an affirmative presentation of facts.

21. The Examiner concludes that the amendments he is suggesting to the rules make the rules more reasonable and that none of these amendments constitute a substantial change.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Public Welfare adopt the proposed rules as recommended to be amended in this Report.

Dated: June 23, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

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APR 1 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on May 2, 1977 commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

/s/ Lloyd J. Likins

Date: March 25, 1977

D.P.W. Ex. 7

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APR 6 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Veterans Service Building, Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, on May 2, 1977, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter C. Erickson, Hearing Examiner, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, 612-296-8118, either before the hearing or within 20 days after the close of the hearing.

The proposed Rule 1, if adopted, would set minimum standards for the provision of twenty-four hour foster care services by families to protect foster children from harm to their health, safety, and well being. The proposed rule outlines a) the responsibilities of local agencies to their foster family homes; b) maximum number of children permitted under various conditions; c) qualifications and training of family foster care providers; and d) different types of foster care such as emergency homes, group family foster homes and special service homes. The proposed amendment to Rule 3, if adopted, would make staff qualifications and training requirements less stringent, yet allow for a flexible plan for continuing staff development. Copies of the proposed rule are now available and one free copy may be obtained by writing to Sharon Helberg, Department of Public Welfare, Licensing Division, Fourth Floor, Centennial Office Building, St. Paul, Minnesota 55155. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes §245.802. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officals. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone 612-296-5615.

Vera J. Likins

VERA J. LIKINS, Commissioner

Date: March 14, 1977

D. P. W. Ex. 4

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APR 6 1977
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Susan A. Wilford, being duly sworn on oath deposes and says:

1) That she is an employee of the Department of Public Welfare for the State of Minnesota.

2) That on the 28th day of March, 1977, she went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M. S. 15.0412.

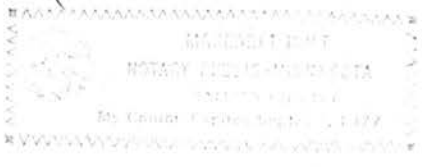
3) That on the 29th day of March, 1977, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Susan Wilford

Subscribed and sworn to before me this 5th day of April, 1977.

Margaret Holtz



D.P.W. Ex. 3

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APR 6 1977
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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

CERTIFICATE OF DELIVERY
SECRETARY
OF STATE LIST

I hereby certify that the attached 503 labels + 4 1/4 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:00 o'clock P. M. this 29th day of March, 1977, have requested pursuant to M.S. 1976 Sec. 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

BY Ceil Dieve

D.P.W. Ex. 5

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EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

AFFIDAVIT OF MAILING

Susan A. Wilford, being first duly sworn, deposes and says:

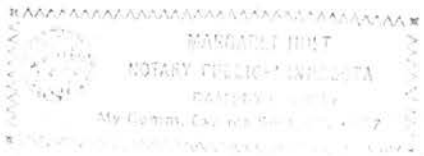
That on the 30th day of March, 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States Mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Susan Wilford

Subscribed and sworn to before me

this 5th day of April, 1977.

Margaret Holt



Copy

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

DPW-77-037-PE

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 24th day of June 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice to Interested Persons

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the Hearing Register who indicated thereon that they wished to be notified when the Examiner's Report was submitted to the Agency.

Susan Wojcik

Subscribed and sworn to before me
this 24th day of June, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

D.P.W. Ex. 1

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APR 6 1977
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

STATEMENT OF NEED

The above-captioned Rule 1 is a complete rewrite of existing Rule 1 of the Department of Public Welfare. Existing Rule 1 which was promulgated in 1956 will be repealed upon the adoption of the new Rule 1.

The above-captioned Rule 3 is an amendment to existing Rule 3. The last time Rule 3 was amended was May 8, 1975.

The need to adopt a new Rule 1 arises because the last major revision of this rule was promulgated in 1956 -- 21 years ago. Minnesota Statute 245.802, Subdivision 2, requires that the agency review its licensing rules at least every five years. By that standard alone, Minnesota Rule DPW 1 needs revision.

There have been regular problems with the existing Rule 1. The language is general. This provides a problem for agencies who must determine what is really meant by phrases such as "an accepting and understanding attitude".

It is also a problem for the foster parent who must determine exactly what is expected by the agency.

Problems have occurred never anticipated in 1956: families with criminal histories applying for foster care licenses; increased use of drugs by both foster children and sometimes foster families themselves; the need for emergency shelters for children; the use of family foster homes for children with many different types of handicaps; and the growth of professionalism among foster parents.

It has also become apparent that there is too big a gap between family foster care of up to five children and the group foster home concept. Group foster homes licensed under a different rule are expected to provide care and treatment for up to ten children.

The statutory authority to promulgate Rule 1 is in Minnesota Statute 245.802 (specific part of 245.781 - 245.813).

In the spring of 1974, Commissioner Vera Likins of the State Welfare Department appointed an advisory committee to review and revise the state's licensing rule for family foster care. This advisory committee was chaired by Mrs. Roberta Ellis, herself a foster parent and a teacher. The committee,

as mandated by Minnesota Statute 245.802, represented foster parents, agency staff, relevant professional groups, and other state agencies concerned about foster care of children.

The first act of this committee was to send a letter over Mrs. Ellis' signature to every licensed foster home in Minnesota. Each foster parent was informed that the rule for licensing was to be revised. Their opinions and concerns were solicited. Only 66 of these foster parents (out of 4600) replied.

The advisory committee reviewed licensing standards from other states, guidelines from the Child Welfare League of America, all of the suggestions and comments from Minnesota citizens and put together a first draft of new foster care regulations. This first draft was mailed to over five hundred agencies and individuals for their comments and suggestions. From these comments, the advisory committee put together a second draft. This draft was taken to the people through a series of six regional meetings. Every interested person was invited to comment upon the proposed rule at meetings held in Duluth, Brainerd, Minneapolis, Moorhead, Mankato, and Rochester.

This draft of Rule 1, the third, for public hearing is a combination of ideas from the advisory committee, the agencies and foster parents of this state, and the state agencies involved. The format of the rule is designed to do two things. It gives an explanation where reasons are not obvious. It also permits a general statement of principle along with specific ways to carry out that principle.

Proposed Minnesota Rule DPW 1 is divided into 11 sections.

Section A is definitions. It is important for clarity that a licensing rule spell out the terms to be used in that rule. This avoids confusion and misunderstanding for both the agency and the foster parent.

Section B is entitled Licensing Laws and Procedures. Since not every foster parent has read the state's licensing law, it is only fair that the provision of that law affecting them be made known. So, this section identifies families exempt from licensure. It also identifies the right of applicants to a copy of the licensing rule and the right to appeal agency licensing decisions. These rights are based on Minnesota Statute 245.781 - .813, as well as Chapter 15 of Minnesota Laws.

Minnesota Statute 245.783, Subdivision 3, requires that the Commissioner grant licenses to those who "substantially meet" the licensure requirements. This phrase implies that there may be sections of the rule not met by the applicant. To implement this policy, the rule contains a waiver provision whereby a section of the rule may be suspended for a particular applicant as long as the child's health and safety is not adversely affected.

Two other points in Section B deserve special note. B.5. forbids agencies to place foster children in unlicensed homes until, at least, that home has completed its orientation training as a part of the application process. At first glance, one might assume that agencies should never place children in unlicensed homes. And perhaps philosophically that is exactly right. But the need for foster care is often an emergency situation. Frequently, agencies find children in foster care who have essentially placed themselves. In the judgment of the advisory committee and the Department of Public Welfare, the rule strikes a realistic compromise by requiring that the prospective foster home be involved in the application process before agency placement. This position is further supported by Minnesota Rule DPW 204 (II.A.1.).

Although Minnesota Statute 245.804 gives the Commissioner the right of entry and inspection to day care and residential programs during the hours of operation, it is clear that foster homes are "operating" 24 hours a day. It would not appear either fair or reasonable to authorize drop-in visits to foster homes both night and day, except when there is reason to believe that the child's health or safety is in jeopardy. Thus, B.8. further explains this section in law as it should pertain to family foster homes.

Section C of this proposed rule is entitled Limitations of License. Much of the section is devoted to limits on the number of foster children allowed under particular circumstances. This topic was the subject of much discussion both by the advisory committee and by other foster parents and agencies. The current proposal represents a compromise among widely differing views. It is also a radical departure from the previous rule which allowed five children, period.

We recognize that families and circumstances differ. While the rule of five children may be easier to enforce, it is not always realistic. The rule tries to recognize different types of foster care:

1. Homes with not much experience (less than two years as foster parents). Fewer foster children should be allowed when the foster parents have not had much experience. It is a traumatic experience as a newly licensed foster parent to be asked to cope with five troubled children.

2. Homes with more experience (two or more years as foster parents). More children can be allowed when foster parents have had experience with their roles.

3. Homes to be used as emergency shelter facilities - children are usually to be placed in emergency care for no longer than 30 days.

4. Special Service Homes, licensed especially for children with special needs or handicaps, should have fewer foster children because these children need more care and attention.

5. Special situations where flexibility must be built in, such as homes for brothers and sisters together, families who have five or six of their own children.

6. Infant care, limited to two children under two years at one time, because of the intense amount of care and mothering necessary for very young children.

These maximum numbers are philosophically consistent with the recommendations of the American Public Welfare Association. This organization has systematically examined the practice of foster care for children. In 1975, they published "Standards for Foster Family Service Systems". Many of their guidelines are incorporated into this rule.

The proposed rule introduces the concept of a Restricted Foster Home. This term would be used for a family who refused to participate in the required minimum training. The rule would limit this home to the children currently in placement in that home, unless and until the family chose to participate in training. To penalize such a family by removing the foster children or not renewing the license would do violence to best interests of the foster child in many instances. Yet, participation in training (to be discussed in Section D) is an important part of providing good foster care.

The minimum age for licensure as a foster parent is proposed as 21. The age of majority has changed from 21 to 18 since this rule was last promulgated. But foster parenting demands maturity. (See "Foster Care of Children: Nurture and Treatment" by Draza Kline and Helen-Mary Forbush Overstreet, published by the Columbia University Press in 1972 - page 223 ff.)

Section D deals with the Qualifications and Training for Family Foster Home providers. There is no argument about the fact that the single most salient factor in the success or failure of a foster home is the personal quality of the foster parents themselves. These positive personal qualities are described in D.1. - kindness, maturity, responsibility, a liking for children, and the ability to deal with problems in a healthy way. These are fine qualities. But they are virtually unmeasurable.

We can, on the other hand, objectively define those families who through their own actions have disqualified themselves for the care of foster children:

-- people who have been involved in crimes of assault, child abuse or neglect, child molesting;

-- people who are currently chemically dependent;

-- people who have been convicted of felonies or sex crimes.

If, as is stated in Minnesota Laws 1976, Chapter 243, Purpose, the reason for this proposed rule on foster care is the protection of children, then we must rule out such families as an unacceptable risk for children.

Beyond simply ruling out unsuitable families, we also need to define as well as we can those intangible factors that describe the kind, mature, responsible foster family. The importance of these factors is underscored by Kline and Overstreet (p. 239 ff.) and by Martin Wolins in "Selecting Foster Parents" published by the Columbia University Press in 1963, pages 48-49, and 100. It is also supported by the Child Welfare League of America in its 1974 book, "Five Models of Foster Family Group Homes" (p. 9 ff.).

Another critical area is the ability of the agency and the foster parents to work closely together. Successful foster parenting cannot be done by the foster parents alone, or by the agency alone. It is always the result of a partnership between those two. (See Kline and Overstreet, p. 215 ff.) These responsibilities are set forth in D.2. including, but not limited to, the Agreement between Foster Parents and Agency (DPW-139). This agreement has been Departmental policy for many years. It was last revised in 1974. The proposed rule makes this agreement a part of the rule and regulation.

The rule, for the first time, would make training mandatory for foster parents with some specified exceptions. These exceptions are, for the most part, responsive to the suggestions of both foster parents and agency workers. Excepted from mandatory training would be:

-- people who want to take a "vacation" from foster care for a while;

-- people who are providing only Permanent Home care (that is, a child is placed permanently with the family to stay until the age of majority);

-- foster parents who have been licensed for five years or more and who don't need additional training in the agency's judgment.

There is fairly general agreement among foster parents and agency workers that training for foster parents is needed. Foster children are troubled people. Without exception, the foster child suffers from the grief of separation from his own family. Many foster children have other physical, mental or emotional problems. The rule suggests a variety of sources and methods for acquiring this training -- certainly not limited to college-type courses.

The rule proposes a minimum of six hours of orientation for each new foster home applicant plus 12 hours annually of training related to foster care. Additional training would be required for those homes designated as Special Services, Emergency Shelters, or Group Family Foster Homes.

Support for the need for training can be found in "Five Models of Foster Family Group Homes" published by the Child Welfare League of America in 1974 (p. 16 ff.).

The penalty attached to not participating in this annual training would not be loss of license or loss of children already in the home. It would be a restriction on any new placements in that home until the training was completed.

The need for foster parent training is also attested to by Kline and Overstreet (p. 223 and p. 237 ff.).

Section D.8. deals with the discipline of foster children. There are certain kinds of punishment that must be either ruled out completely, such as locking children in closets, or strictly controlled, such as isolation. Corporal punishment has been forbidden since 1974 when it was incorporated into the Foster Parent Agreement. This part of the rule is based upon Minnesota Statute 245.813 which forbids neglect or abuse of persons in licensed programs. It is underscored by Fritz Redl in his book "When We Deal With Children", published by Macmillan in 1966, page 355 ff. It is fair to say that when a family applies for a license to care for someone else's children, we can expect more of them than perhaps we would of the natural family.

Section E pertains to health care and health emergencies. It ensures that the foster family is prepared to deal with emergencies, that only prescribed medications will be given to the foster child, and that the agency will be made aware of accidents and injuries to the foster child. This is in accord with Minnesota Rule DPW 204: II.a.6.

Section F prescribes minimum physical safety requirements. It is not feasible for the State Department of Health nor the Office of the State Fire Marshal to inspect each of this state's 5,000 foster homes. With the advice of these departments, certain fire and health standards have been proposed. Some of these standards may appear to be self-evident. But it is exactly to ensure basic safety that foster homes are licensed in the first place.

Some fire hazards, in the opinion of the State Fire Marshal, are important enough to require specific fire inspections: mobile homes and basement bedrooms. In these instances, the rule would require an inspection by the fire authority. The rule also requires the installation of a smoke detector (E.6.m.).

This section would require supervision of foster children as appropriate for age and stage of development.

Section G concerns nutrition. A basic factor in a child's health is proper diet. The rule mandates a balanced diet in accord with the Minnesota Department of Health's standards on nutrition. It is further explained in Appendix A.

Section H is entitled Daily Activities. The purpose of this section is to ensure that the foster child is surrounded by the physical and human environment that will permit him to develop intellectually and socially and emotionally. Research has shown that the lack of a stimulating environment will actually stunt children's growth and development. (See "On Rearing Infants and Young Children in Institutions", Children's Bureau Research Report #1,

published in HEW in 1967.) Kline and Overstreet emphasize the child's need for relationships with adults, for structure and reliability, and for the meeting of his emotional needs. (p. 69 ff., p. 147 ff., p. 226 ff.)

Although much of the Daily Activities section may appear self-evident, it would not be self-evident to everyone applying for a foster care license. If only one foster mother does not know that babies must be cuddled or that toddlers need a variety of playthings to develop their senses and their bodies, then Section H becomes a key factor in child development.

Also included in Section H are requirements aimed at ensuring preservation of the child's religious and cultural heritage, as well as his relationship with his own biological family.

Section I defines the records that must be kept by the local agency about the foster family home. The only real change in this section is the mandate to include the foster parent in the annual evaluation of the home so that it becomes a joint review. The foster parent is also specifically permitted to enter into the foster home record any disagreements with the agency's evaluation or conclusions.

Section J defines and regulates a special kind of foster home, to be called a Special Services Home. These are homes where the foster parents have special knowledge and/or experience in working with children who have special needs. These needs could be physical disabilities, emotional problems, or other special needs as defined already in Minnesota Rule DPW 44 (3.d.). Rule 44 mandates special rates of payment to foster homes based on a Difficulty of Care schedule. The Department sees it desirable to link together standards for licensure with standards for payment. Thus, Special Services Homes will be eligible for extra pay.

This rule does not limit local agencies to placing children with special needs in a Special Services Home. It does encourage it.

The foster parents in a Special Services Home are required to have either additional training or additional experience or some combination of the two. Individual program plans are required for the children. Foster parents are to be given regular time off. These requirements are also supported by Minnesota Rule DPW 204 (II.B.1.).

Section K is the last section in the rule. It pertains to an entirely new classification of family foster home, Group Family Foster Care. At this moment, residential care for children falls into two basic categories: care for up to five children in a family; care for more than five children in a group treatment setting. This is unnecessarily rigid and inflexible. Group Family Foster Care provides an intermediate category. It's not a treatment setting, but more than five children can be accommodated.

The Department advocated this same type of intermediate category in day care programming by inserting a Group Family Day Care Home between Family Day Care and Group Day Care. The results have been encouraging. It has

permitted more flexibility. In the foster care program, where very diverse needs of children must be met, we see the same flexibility as desirable.

The additional requirements for Group Family Foster Care include a minimum of one adult to every four children, and minimum sleeping and living space.

There is also a limit on the number of handicapped children that can be placed in a Group Family Foster Home. This is a point on which there has been much diverse testimony. But the prevailing opinion appears to be that it's not good to have too many children with handicaps in one home. It's hard on the foster parents; it doesn't provide a "normal" model for the child with a handicap.

Throughout this proposed rule, there are sections which partly pertain to the foster home itself and partly to the local agency who supervises the home and places the foster children. This is intentional. It is also a point that has been much debated by the advisory group and others. Foster care services cannot be provided by the local agency alone, nor by the foster family alone. It is the working combination of the two that makes for a successful program. This working combination must be based on mutual trust and respect, as well as knowledge of what part each is to perform. It is absolutely vital that foster parents know what the agency's role and responsibility is. And there is nowhere else foster parents can be absolutely sure of finding out.

Therefore, you will find throughout the rule, sections marked "Agency Requirement". The carrying out of these agency responsibilities is just as important for successful foster care as the efforts of foster parents themselves.

The need to amend Minnesota Rule DPW 3 arises because an extensive revision of Rule 3, promulgated in December, 1973, mandated that group day care staff meet specific staff qualification and training requirements by April, 1977. The Commissioner of Public Welfare has the statutory authority in Minnesota Statute 245.802 to promulgate DPW Rule 3.

DPW is now proposing some changes in these requirements for two reasons:

1. Both licensing staff and day care center staff think, after much deliberation, that the requirements are too stringent.

2. There is administrative difficulty in having an advisory group determining what constitutes "approved" child care courses.

The proposed changes have met with the approval of the Minnesota Child Care and Development Advisory Council. This group makes recommendations on day care licensing to the Commissioner of Public Welfare.

The proposed changes would:

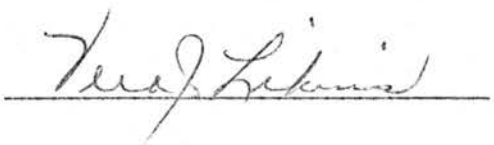
1. Substitute "accredited" for "approved". It is not feasible, at

this time, to have the MCCDAC make recommendations on what constitutes an approved course. The proposed change does make this section of the requirements slightly more stringent by limiting the options of available training.

2. Delete the ongoing course requirements. These requirements are unreasonable in terms of the time, expense, and availability of courses for child care staff.

3. Substitute "staff development" for "in-service" training and increase the staff development time from 2% to 3% of the equivalent of the hours of staff employment. This increase would compensate slightly for the deleted course requirements, and also allow for much flexibility in training plans.

COMMISSIONER OF PUBLIC WELFARE



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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC WELFARE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRE-SCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104 and in support thereof the Minnesota Department of Public Welfare will introduce the following evidence:

Minnesota Rule DPW-1

Representing the agency: Barbara Kaufman, Director of Licensing

1. Minn. Rule DPW-1 currently in effect was promulgated in 1956. In that period of twenty-one years changes have occurred in the field of foster care and problems have emerged, particularly with the general vagueness of the rule.

2. The drafting of a new foster care licensing rule was begun in the spring of 1974, through the appointment of an advisory committee representing all the relevant interested parties: foster parents; public and voluntary agencies; child care professionals; consumer representatives; minority groups. More than 500 people throughout the state were involved in the drafts through mailings and regional meetings.

3. Testimony will be offered by the agency to show the need and reasonableness of:
   --licensing and inspection procedures for Family Foster Homes to protect the client and to observe due process;
   --limitations on the maximum number of foster children in different types of homes to assure the care and protection of foster children;
   --personal and experiential qualifications for foster parents to ensure the appropriate care for foster children;
   --mandatory annual training for foster parents, with certain exceptions, to ensure proper care for children with problems;
   --minimum standards for discipline of foster children to prevent abuse;
   --control over health conditions and practices to ensure protection from health hazards;
   --minimum physical health and safety requirements to ensure protection from safety hazards;
   --basic nutrition requirements and daily care requirements to promote normal growth and development of foster children;
   --special types of foster homes to provide flexibility in meeting the needs of foster children;
   --agency requirements to ensure cooperation and coordination between foster home and agency for the best service to foster children and to safeguard the rights of foster homes to due process.

We will be citing the following statutes and case law:

1. Statutory citations Minn. Stat. 245.781 - 245.813
   Minn. Laws Chapter 15

2. Rule citations: Minn. Rule DPW-44
Minn. Rule DPW-204

3. Other citations: "Standards for Foster Family Service Systems"
(American Public Welfare Association, March, 1975)
"Five Models of Foster Family Group Homes"
(Child Welfare League of America, 1974)
"On Rearing Infants and Young Children in Institutions"
(Children's Bureau Research Report #1, HEW, 1967)
"Selecting Foster Parents"
(Martin Wolins, Columbia University Press, 1963)
"Foster Care of Children: Nurture and Treatment"
(Draza Kline and Helen-Mary Forbush Overstreet,
Columbia University Press, 1972)
"When We Deal With Children"
(Fritz Redl, Macmillan, 1966)

Minnesota Rule DPW-3

Representing the agency: Cheryl Nyhus

1. Rule DPW-3, promulgated in December 1973, mandates specific staff qualification and training requirements. There is a need to amend some of these requirements becuase of their stringency and administrative difficulty in implementation.

2. The proposed changes were approved by the Minnesota Child Care and Development Advisory Council and were developed with the assistance of a task force of the Council.

3. Testimony will be offerred by the agency to show the need and reasonableness of:

--a housekeeping item of inserting "Requirements" and "Exemptions" specifications in section (a) Definitions.
--defining an accredited course to clarify which types of courses are acceptable for the entry level qualifications.
--Changing the in-service training definition to "staff development" to more accurately reflect the broad range of training acceptable in meeting these requirements.
--requiring accredited courses in the entry level staff qualifications because of the administrative problems in implementing a mechanism for approving courses.
--deleting the on-going course requirements which are now very stringent and would become more stringent since there is no mechanism for approving courses.
--increasing the staff development time from 2% to 3% of each staff member's time to compensate for the deletion of the on-going course requirement, yet providing for a flexible training plan for child care staff.

4. Statutory base: Minn. Statutes 245.78 - 245.813.

Barbara S. Luhman

Dated: 4-4-77

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

June 24, 1977

TO ALL INTERESTED PARTIES:

RE: IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PUBLIC WELFARE GOVERNING LICENSING OF FAMILY FOSTER CARE, AND GROUP FAMILY FOSTER CARE, RULE DPW-1, AND STANDARDS FOR GROUP DAY CARE OF PRESCHOOL AND SCHOOL-AGE CHILDREN, RULE DPW-3. Docket No. DPW-77-037-PE

The Report of the Hearing Examiner in the above-entitled matter has been submitted to the Department of Public Welfare. Please note that the Report is a recommendation only and that the Department may accept, modify or reject any part of it. However, the Department may not take any final action on the proposed rule until at least ten days have expired. During that time, the Department and the Office of Hearing Examiners will make a copy of the Report available for review by any interested individual. Copies will be furnished by the Office of Hearing Examiners for $2.50 each. Please use the enclosed order form.

A copy of the Report has also been filed with the Legislative Reference Library.

Yours very truly,

Susan K. Derus

SUSAN K. DERUS
Administrative Assistant

SKD/eag
Enc.1

AN EQUAL OPPORTUNITY EMPLOYER

TO: Office of Hearing Examiners
Room 300
1745 University Avenue
St. Paul, Minnesota - 55104

Please send me _____ copy(ies) of the Report of the Hearing Examiner in Docket No. DPW-77-037-PE . I have enclosed a check in the amount of $_____ made payable to: State Treasurer - Hearing Examiners' account.

_____ (name)

_____ (address)

_____ (city)

(Please type or print the above information clearly.)

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

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LEGAL SERVICES

June 24, 1977

Mr. Tibor Gallo
Special Assistant Attorney General
Office of the Attorney General
Fourth Floor, Centennial Office Building
Saint Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Licensing of Family Foster Care, and Group Family Foster Care, Rule DPW-1, and Standards for Group Day Care of Preschool and School-Age Children, Rule DPW-3. Docket No. DPW-77-037-PE

Dear Mr. Gallo:

I enclose herewith and serve upon you by mail the Report of the Hearing Examiner in the above-entitled matter. I also enclose the official record, and I am herewith closing our file in this matter.

Sincerely,

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

PCE:sw
Enclosure(s)

cc: Ms. Barbara Kaufman
cc: Ms. Cheryl Nyhus

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

DPW-77-037-PE

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 24th day of June 1977, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat., § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me
this 24th day of June, 1977.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PUBLIC WELFARE

In the Matter of the Proposed Adoption of Rules of the Department of Public Welfare Governing Licensing of Family Foster Care, and Group Family Foster Care, Rule DPW-1, and Standards for Groups Day Care of Preschool and School-Age Children, Rule DPW-3.	REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson at 9:00 a.m. on Monday, May 2, 1977, in the Veterans Service Building, St. Paul, Minnesota.

Tibor Gallo, Special Assistant Attorney General, Fourth Floor, Centennial Office Building, St. Paul, appeared as counsel on behalf of the Department of Public Welfare. Barbara Kaufman, director of licensing, and Cheryl Nyhus, supervisor of non-residential licenses, testified on behalf of the Department. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), this Report shall be available for review to all affected individuals upon request for at least ten days.

The Department shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. This submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Department shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On April 1, 1977, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On March 28, 1977, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 1413.

3. On March 30, 1977, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On April 6, 1987, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need; and
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

5. The record remained open through May 23, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 242.802 (1976).

7. Proposed DPW 1 is a completely rewritten version of existing Rule 1 which was promulgated in 1956. Minn. Stat. § 245.802, subd. 2, requires that the agency review its licensing rules at least every five years. In the spring of 1974, Commissioner Vera Likins of the State Welfare Department appointed an advisory committee to review and revise the state's licensing rule for family foster care. This advisory committee was chaired by Mrs.

Roberta Ellis, herself a foster parent and a teacher. The committee, as mandated by Minnesota Statute § 245.802, represented foster parents, agency staff, relevant professional groups, and other state agencies concerned about foster care of children.

The first act of this committee was to send a letter over Mrs. Ellis' signature to every licensed foster home in Minnesota. Each foster parent was informed that the rule for licensing was to be revised. Their opinions and concerns were solicited. Only 66 of these foster parents (out of 4,600) replied.

The advisory committee reviewed licensing standards from other states, guidelines from the Child Welfare League of America, all of the suggestions and comments from Minnesota citizens and put together a first draft of new foster care regulations. This first draft was mailed to over five hundred hundred agencies and individuals for their comments and suggestions. From these comments, the advisory committee put together a second draft. This draft was taken to the people through a series of six regional meetings. Every interested person was invited to comment upon the proposed rule at meetings held in Duluth, Brainerd, Minneapolis, Moorhead, Mankato, and Rochester.

This draft of Rule 1, the third, for public hearing is a combination of ideas from the advisory committee, the agencies and foster parents of this state, and the state agencies involved. The format of the rule is designed to do two things. It gives an explanation where reasons are not obvious. It also permits a general statemnt of principle along with specific ways to carry out that principle.

8. Proposed DPW 1, Section A, Definitions, spells out the terms used in the rule to avoid confusion and misunderstanding for both the agency and the foster parent.

a. John Graf, representing Hennepin County Welfare Department, proposed that the definition of "waiver" be amended by allowing local agencies to grant waivers. The definition would then read, "Written permission from either the Department or its designated local agencies to disregard...." The Department concurred in this proposal as it would coincide with current policies

to permit greater flexibility in local agency decision making.

9. Proposed Section B, Licensing Laws and Procedures, sets out the basic provisions of the law which affect Foster Family Homes (FFH). It describes the licensing procedure; notes exemptions from licensure; mandates that every applicant be furnished with a copy of the Rule (DPW 1); and states the right to appeal agency licensing decisions.

a. Mr. Graf proposed that the exemption in B.1.a. be modified to specifically exclude legally appointed guardians of children. The Department responded that this exclusion is already dealt with in the definition of "related" in A.12.

b. Several comments were made regarding the "shortness" of the 60-day evaluation period and the two-year license renewal. The Department responded to these comments by proposing to amend B.3 by eliminating 3.a. and 3.b. and changing 3. to read:

> The signed and completed application form, including all supporting documentation, shall be evaluated within 90 days based upon these rules and regulations. A prospective FFH meeting these standards shall be recommended to the commissioner for issuance of an FFH license. No FFH license may be issued for more than one year. (agency requirement)

This amendment will allow for the statutory 90-day evaluation period and make each FFH accountable each year for license renewal.

c. Several comments were made that the requirement that no children be placed in an unlicensed home until orientation has been completed would make placement too hard for local agencies. DPW responded by proposing to amend B.5. to read:

> B.5. No child shall be placed by an agency in an unlicensed home until the required orientation is begun and until that home has been evaluated for compliance with the following sections of the rule:
>
> D.1.a. - Qualifications of Foster Parents
> F.3. - Health and Safety
> F.6.a,b,c,d,e - Fire Safety

d. Orville Peterson, President of the Minnesota Foster Parents Association, proposed that B.6. be amended so that all existing foster homes, as well as applicants, receive a copy of the new rule.

e. Mr. Graf contends that local agencies should not

assume responsibility for notifying any FFH of denial, revocation or non-renewal of licenses without approbation by DPW. He asserts there is no statutory authority for the local agencies to act on behalf of the Commissioner.

10. Proposed Section C, Limitations of License, is necessary to establish limits as to the occupancy of a FFH and set age requirements for providers.

a. Several comments were directed at the minimun age requirement set out in C.3. The comments were in favor of more flexibility for qualified younger persons. The Department responded that all sections of DPW 1 are subject ot the waiver provision in B. 12.

b. Several comments suggested that the phrase "and all regular visitors to the home" be stricken from C.6. as it is very subjective and would be impossible to administer. The Department proposed to amend C.6. to read, "...and all others having regular contact with the foster child in the foster home."

11. Proposed Section D, FFH Qualifications and Training, is necessary to set out suitability requirements for all homes and providers. The rule mandates a minimum of six hours of orientation for providers and twelve hours annually of training related to foster care. Certain groups of people, e.g. convicted criminals, alcoholics, etc., are excluded from being providers. The essential qualities of providers are enumerated.

a. Mr. Theodore Hecht, manager of the Ramsey County Welfare Department, stated that the information referred to in D.1.a. should be supplied on the application form. Also, that a time frame should be established for the disqualifying conduct set out in D.1.a.(a) and (2). DPW contends that no time frame should be established for (1) as the acts described are so serious in nature. The "waiver" provision could be used for an exceptional case where a license is warranted. DPW does concur with Ramsey County on setting a time frame for (2). The Department proposes to amend (2) to read:

> (2) Chemical dependency, unless the individual(s) identified as chemically dependent has been chemically free for at least twelve months.

b. Mr. Noel T. Koenigs, Swift County Welfare Department, suggested that D.2.b. be amended by replacing the word "visited" with contacted. This change would enable the local agency to make either a home or phone visit.

c. A question was raised as to the extent of the report to be supplied to providers as set out in D.2.c. The Department responded that a copy of the entire evaluation, including the workers' notes, be provided.

d. Questions were raised as to the scope of the grievance procedures set out in D.2.f. The Department stated that areas subject to appeal are spelled out in Minn. Stat. § 245.801 - § 245.805. DPW suggested to clarify the rule by amending D.2.f. to read:

> Grievance procedures shall address those areas of disagreement not included in the appeal procedures set forth by the Department.

e. Both Mr. Graf and Mr. Hecht suggested that a "retirement" age be set for providers in D.3. They contend that the language as it is now written will be very difficult to administer. DPW argued that because of the great variance in ability of older persons, a maximum age should not be set. That even with the waiver provision, local agencies would find it very difficult to justify granting waivers to some elderly and not to others.

f. Mr. Graf stated that D.6.a. - c. does not cover any mental health aspects of persons living in the FFH. DPW agreed that mental health should be dealt with and proposed to add a new paragraph, 6.d., to read:

> d. When, in the opinion of the agency, any person in the home exhibits a mental health problem, the agency may require an evaluation of that person by a mental health specialist as a requirement for license.

g. Ms. Audrey Briggs, Group Home Coordinator for Ramsey County, suggested that all foster children coming into a home be required to have a physical examination within a specified period after entering. The Department stated that this area is already covered in DPW 204.

h. Questions were asked about the hours and subjects

for training. DPW stated that:

> The first year requirement is 18 hours: 6 hours of orientation plus 12 hours of training. Subsequent years require on the 12 hours of annual training. All of the subjects listed are to be available, but not all subjects need be taught every year. Local agencies may add subjects for training to meet local needs at their discretion.

Kelly K. Kumm, Pope County Family Service Department, commented that the training requirement will be very expensive and difficult for rural counties. Karen Johnson suggested that alcoholism and chemical dependency should be enumerated as a specific training subject in D.7.d.

i. DPW proposed to add the following sentence to D.8. as a charifying amendment:

> The carrying out of the individual plan for a foster child or the contract between the child and the foster parents involving specified consequences should not be construed as imposing punishment on that child.

j. Because of the many questions as to what "corporal punishment" includes, the Department proposed to amend D.8.i. as follows:

> Corporal punishment is prohibited. Corporal punishment includes but is not limited to hitting, slapping, spanking, pinching, shaking, kicking or biting.

12. Proposed Section E, Health, is necessary to insure that providers are prepared to meet emergency medical problems and regular medical maintenance.

13. Proposed Section F, Physical Environment, prescribes minimum physical safety standards for foster homes. Also, the rule mandates adequate supervision for all foster children.

a. A question was raised as to the requirement for a "safe water and milk supply." DPW stated that:

> In the initial draft of this rule, this was spelled out as pasturized milk and tested well water. The specific requirement was found to be unreasonable in many rural areas. Thus it was changed to the more general statement and left to the discretion of the agency.

b. Several comments suggested that F.4. be deleted because of its unenforceability and that F.5. actually states the desired goal. The Department concurred in this proposed amendment.

c. Questions were raised as to local agency responsibility for fire inspections. The Department stated that it is not feasible for fire marshals to inspect every FFH. That the rule includes the basics of fire safety for which the local agency and the provider are responsible. Fire marshal inspection is required, however, when mobile homes or basement bedrooms are to be used.

d. DPW proposed to amend F.6.c. to clarify what is meant by a bedroom "below ground level" as follows:

> "...in a room fifty percent or more below gound level.

14. Proposed Section G, Nutrition, mandates that foster children be fed a balanced diet. Appendix A, Daily Food Guide, is included for explanatory purposes.

15. Proposed Section H, Daily Activities, is necessary to insure that the foster child is surrounded by a physical and human environment that will permit him to develop intellectually, socially and emotionally. Interpersonal activities and relationships are enumerated.

a. It was suggested in several comments that Section H not be included as part of the rule but rather be retained only as guidelines for providers.

b. The Department proposed to amend H.2.d. by adding the language "as appropriate for age and maturity." This amendment clarifies the intent of the rule.

c. DPW proposed to amend H.3.e. by deleting the reason given for the rule because of its questionable validity.

16. Proposed Section I, Records, sets out which records must be kept by the local agency regarding the FFH. The rule mandates that the provider participate in the annual evaluation and be permitted to make his objections to the evaluation report a part of the report.

a. Mark Muellerleide commented that merely an initial physician's statement on each person in the FFH may not be sufficient over an extended foster care period. The Department responded that:

> In section D.6.b. and c. the agency is given authority to require additional physical examinations at its own dis-

cretion. And the FFH providers are required to notify the agency about infectious or contagious illnesses. We feel these are sufficient safeguards over physical health without requiring foster parents to go to the additional expense of annual or regular physical examinations.

b. Comments were also made concerning the necessity for a fire inspection at regular intervals rather than merely an inspection before a license is granted. DPW responded as follows:

> Although Section F.6.a. requires a check for fire safety initially and "whenever a fire hazard appears to be present" it does not mandate a regular review. We suggest that section F.6.a. (page 14) be changed to:
>
> "An inspection for fire safety using the Fire Safety Check List shall be made jointly by the applicant and the agency before licensure and annually thereafter before relicensure."
>
> Then section I.1.d. should be changed to read:
>
> "A current completed Fire Safety Check List...."

17. Proposed Section J. defines and regulates a special kind of FFH, a Special Services Home.

a. The Minnesota Department of Education proposed to insert a statement that if a child has a physical or emotional or other handicapping condition, the environment and structure of the home must be appropriate.

b. The Department of Education commented further as follows:

> Special Services Home 2., p. 22. An Individual Program Plan (IPP) is required for each handicapped child. We support this provision. The proposed rule mandates the involvement of the school district. While this is desirable, the Commissioner of Welfare does not have the authority to regulate the actions of public schools. Also, what is the content of the IPP to be? Education Rule EDU 125 B. specifies that the public school has a responsibility to develop an Individual Educational Program Plan (IEP) for each handicapped child in need of special education instruction and services. Will the IEP developed by the school district and the parent or surrogate parent (see EDU 123 for assignment of surrogate parent) replicate the IPP? Can the IEP be developed in lieu of the IPP? Can the IEP be developed in lieu of the IPP? The IEP will include the areas of verbal, behavioral/emotional, acedemic, motor and adaptive behavior areas. For example, those would include speaking (verbal), acting out (behavioral), reading (academic), walking (motor), dressing, feeding, toileting (self help skills).
>
> Recommendation

J.2. should be amended to include the following:

1. The public school should be invited to attend the conference(s) to develop the IPP, but not be a mandatory participant.

2. The public school receive at least 5 days prior written notice of the conference.

3. The IPP be developed to include objectives relating to the welfare and care of the child as opposed to the educational needs of the child.

c. Mr. Graf proposed to amend Section J. to provide for an agency compensated respite for FFH providers. DPW responded as follows:

> The suggestion was made that foster parents should be paid for respite care in Special Services Homes. While we would not argue with that for a moment, this regulation cannot deal with issues of payment -- how much or for what. Thus we feel the rule should be left as is.

d. The Department of Education proposed that, pursuant to Minn. Stat. § 120.17, subd. 3a., a statement should be included in the rule which would require a foster parent who has been appointed surrogate parent to respond to school district notices of conferences and participate in those conferences.

18. Proposed Section K, Group Family Foster Homes, defines and regulates a new classification of family foster home. This new kind of home provides for an intermediate category of foster care.

a. Mr. Hecht proposed to amend K.3. and 4. to read <u>five</u> and <u>ten</u> children respectively. He asserts that in the light of his experience, these numbers are reasonable. The Department concurred in this proposal and has offered the following amendment:

K.3. should read: "...One adult in residence for every <u>five</u> children...";

K.4. should read: "...No more than <u>ten</u> children...".

b. Several comments were directed at the fact that because of the great difference in degrees of handicapping conditions, K.7. should be more specific to be reasonable. DPW offered the following amendment:

> "A group family foster home may not care for more than two unrelated children who are <u>nonambulatory, nonmobile, severely mentally retarded or profoundly mentally retarded</u> at <u>any</u> one time."

19. Kelly Kumm states that, "our agency (Pope County) would

be very happy with this DPW rule implemented as guidelines only...However, the extra burdens that this will place on licensing workers from rural counties who have multiple case loads, is prohibitive."

20. In December of 1973, DPW 3 was revised to mandate that group day care staff meet specific staff qualification and training requirements by April, 1977. DPW is now proposing changes in the requirements for two reasons:

(1) Both licensing staff and day care center staff think, after much deliberation, that the requirements are too stringent.

(2) There is administrative difficulty in having an advisory group determining what constitutes "approved" child care courses.

The proposed changes have met with the approval of the Minnesota Child Care and Development Advisory Council. This groups makes recommendations on day care licensing to the Commissioner of Public Welfare.

The proposed changes would:

(1) Substitute "accredited" for "approved". It is not feasible, at this time, to have the MCCDAC make recommendations on what constitutes an approved course. The proposed change does make this section of the requirements slightly more stringent by limiting the options of available training.

(2) Delete the ongoing course requirements. These requirements are unreasonable in terms of the time, expense, and availability of courses for child care staff.

(3) Substitute "staff development" for "in-service" training and increase the staff development time from 2% to 3% of the equivalent of the hours of staff employment. This increase would compensate slightly for the deleted course requirements, and also allow for much flexibility in training plans.

21. Matti J. Liiste, president of Mrs. Liiste's Montessori Schools, Inc., proposed that staff qualification requirements for Montessori teschers and assistants be included in DPW 3.

22. Ms. Andrea M. Hukee and Ms. Pricilla Williams commented as follows:

> The addition of the definition of "accredited course" will help us better determine what

kinds of training will be acceptable to meet DPW rules. The term and definition are more understandable and workable than the previously considered "approved" courses. We do feel, however, that the definition is incomplete. On page 6 and 7 of the "proposed changes" the left hand column refers to the number of accredited courses needed to meet satisfactory compliance of teacher and assistant teacher. The definition does not clearly state that 3 college or university quarter credits or 30 vo-tech clock hours are equivalent to one course, although this is how the rule has been interpreted to us. To clarify this point we feel the addition of "an accredited course is considered to be 3 university or college quarter credits or 30 vocational-technical clock hours of classroom training," is necessary.

23. Several comments spoke to the inappropriateness of the language, "One approved child development training course..." on page 2. The Examiner was also puzzled as to the inconsistency of that language. After checking the State Register, it was discovered that DPW Exhibit No. 9, the proposed amendments to DPW 3, is in error. The word "approved" should have been stricken and not italicized as in the copies supplied by the Department. Ms. Hukee and Williams suggested that the entire sentence be stricken in accordance with their proposal for amendment set out in Finding No. 22.

24. Ms. Hukee and Williams proposed to amend the "Child Development Training" section to read:

> "- Child development training should include courses that are relevant to the program needs. All training must not be in one area. The following are examples of areas of training and courses which may be taken."

25. Several comments suggested that both staff meetings and parent meetings should be included in Staff Development on page 4.

26. Ms. Hukee and Williams commented on Staff Development as follows:

> The use of the term "staff development" for in-service training is a more definitive and acceptable term. We would like to see this term more precisely defined. Our suggestion is that staff development be defined as "workshops, accredited courses, and seminars each of which has a specific topic and designated facilitator. Staff Development training may be either on-site or away from the center." The proposed definition that is in italics should be viewed as further clarification of the content

that can be included in these workshops, accredited courses and seminars, and who can offer this training. Because we have more accurately defined staff development the words "formal or informal" are superfluous and irrelevant. After the phrase "learning or improving work techniques" we would also like to insert "program and curriculum development" as being not only a legitimate but necessary topic for training. There have been discussions with licensing consultants that this should not be considered a topic because program planning is a regular part of the preschool routine that should take place in addition to staff development. It is our contention that planning scheduling, revising and evaluating curriculum and program techniques is the core from which quality programs are developed and should be included. This does not imply, however, that the daily implementation of these methods be part of staff development.

27. A minor clarifying amendment was proposed to (ee)(i) on page 7 to read, "...training course or Orientation...."

28. Ms. Hukee and Williams proposed that (2) on page 8 be amended to read, "Opportunities for staff development training for all regular administrative and teaching staff members must be provided by every center." They support this change and additional changes as follows:

> Part two (2) requires that in-service training be required for all staff on a continuous basis. We find it difficult, and in certain instances, impossible to comply with this regulation. The specific categories of staff that this directly affects are supportive staff, particularly cooks, bus drivers, bus aides and substitute staff. First, let us point out that these staff members are often hired on an hourly basis. A substitute may, for example, only work in a center three to six hours a month. Requiring training for this amount of time is not enforceable. We cannot regulate whether or not a substitute participates in training and cannot require it on their own time. Cost of training for subs is prohibitive. Additionally, with the huge turnover in substitutes, monitoring training cannot be accomplished. In some programs, cooks are only hired for an hour and a half per day. Continuous training for such people infringes on their personal time and cannot be required by us. Bus drivers and aides are two other categories that are even more difficult to regulate. The question arises as to what kind of training can be provided, especially when the most relevant training is required prior to employment.
>
> We therefore recommend that staff development training for supportive staff be separated. Instead, we suggest that a new section be added and read "each supportive staff member will receive an orientation to the program."
>
> The remainder of the revised portion on staff development under 2(aa) "satisfactory compliance" creates a problem, even with the new changes. We would like to

> suggest that the deletions remain but that the italicized portion be changed to read "each staff person (excluding supportive staff, substitutes, and volunteers) shall be responsible for writing out an individual plan for meeting a minimum of 2% of his/her work hours to be spent in staff development." This would follow from the new definition we suggested for "staff development." Because the type of training suggested in our definition is now more specific and formalized we feel it will also be more qualitative than 3% of informal training thus accomplishing the same purpose more efficiently. Furthermore, it is easier and more objective to monitor training that has a defined content, and topic. By requiring that each individual develop his/her own training plan, rather than the center, a staff member has the opportunity to participate in a greater variety of training offered by various agencies that may be more compatible with his/her individual training needs. The center, of course, would still be obligated by law to retain only those staff members who meet the staff development requirements. This then, would be similar to the school teacher who has to personally renew his/her teaching certificate.

29. Many other comments, both in writing and in the transcript, objected to the staff development requirements being applicable to all support staff and to the "excessive" three percent figure. At hearing, DPW admitted that the staff development requirement should not be mandated for all personnel.

30. Several comments suggested that (2)(aa) be amended to read, "Each individual staff member shall be responsible for submitting evidence of having spent a minimum of one percent of his/her employed time in staff development."

31. Several comments spoke to structural and substantive changes in Staff qualifications on pages 6 and 7; see transcript pp. 84-85, Ms. Suzanne Francis; and written comments submitted by Ms. Hukee and Williams, and Suzanne Monroe.

32. Ms. Hukee and Williams also proposed amendments to the Staff ratio section on page 9.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and filed by the Department of Public Welfare. All other substantive and procedural requirements of statute or rule have been complied with.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1976), it

is the duty of the Hearing Examiner to: "...(4) make a report on each proposed agency action ... taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts."

3. The Examiner concludes that proposed DPW 1 be amended as set out in Findings 8a; 9b, c; 10b; 11a, d, f, i, j; 13b, d; 15b, c; 16b; and 18a, b for the reasons stated therein. The need for and reasonableness of those amendments has been demonstrated.

4. Because proposed DPW 1 is a major revision of the existing rule, the Examiner concludes that Mr. Peterson's proposal, as set out in Finding 9d, is needed and reasonable. Section B.6. should be amended by adding a new sentence to read, "After this rule becomes effective, all existing foster homes shall be furnished with a copy."

5. Pursuant to Minn. Stat. § 245.802, the Commissioner has statutory authority to promulgate rules for the suspension and revocation of licenses. Mr. Graf's assertion that there is no authority to make local agencies responsible for mailing notices, as set out in Finding 9e, is without merit.

6. Mr. Koenigs' suggestion, as set out in Finding 11b, to change the word "visited" to contacted in D.2.b. may have a pronounced effect on the agency-home relationship and the foster care itself. This proposal cannot be adopted without more evidence to support the reasonableness of this proposal.

7. Section D.2.c. clearly states that a "copy of the written evaluation report" be given to providers. The Department's interpretation, as set out in Finding 11c, that this includes workers' notes and other non-report materials, cannot be read into the rule. If those things are intended to be furnished, it must be spelled out; however, the reasonableness of furnishing more than the written report seems questionable.

8. Kelly Kuum's comments regarding the difficulty and expense for rural counties to comply with the proposed rule should

be examined closely by the Department. However, it was not shown at hearing that this rule will place an unreasonable burden on local agencies.

9. Minnesota Statutes, Chapter 15, mandates that all agency statements (policies, guidelines, etc.) of general applicability be promulgated as rules pursuant to that Chapter. Consequently, the suggestion that Section H be retained only as guidelines, see Finding 15a, is not viable. Section H is subjective and informational in nature and does, in fact, just set guidelines for the care of foster children.

10. The Examiner concludes that Section J be amended as set out in Finding 17a. A statement of this nature will enumerate the obvious necessity of an appropriate physical environment for children with special needs.

11. DPW does not have authority to mandate participation by school districts in the preparation of an IPP. The language in J.2.a. should be changed to include the school district as a voluntary participant. The Examiner concludes that the other changes suggested by the Department of Education, see Findings 17b and d, are reasonable; however, DPW may act on them as they deem appropriate. The proposed rule, as written, is reasonable.

12. The proposed amendments to DPW 3 do not speak to the inclusion or exclusion of Montessori teachers. The notice of hearing said nothing about that issue. To take any action in regard to Montessori teachers at this time would be a substantial change in the rule. The Department should consider this topic for possible future action.

13. The proposed amendments to DPW 3 do not deal with changes in Staff qualifications or Staff ratios. Comments regarding amendments in these areas, see Findings 31 and 32, go beyond the noticed scope of the hearing. The Department should consider these comments for possible future action.

14. The Examiner concludes that the definition of "accredited course" should be amended as set out in Finding 22. Also, that the sentence on page 2 that begins, "One approved child development..." should be stricken as is set out in Finding 23. These changes are both needed and reasonable for the clarity of the rule.

15. The Examiner concludes that the amendment proposed in Finding 24 is reasonable should DPW choose to adopt it.

16. The Examiner concludes that Staff Development on page 4 be amended as set out in Finding 26 for the reasons stated therein.

17. The Examiner concludes that (ee)(i) on page 7 be amended as set out in Finding 27.

18. The Examiner concludes that the 3 percent figure in (2)(aa) on page 8 would place an unreasonable burden on day-care center staff. Also, that applying a continuing development requirement on all staff is unreasonable. The Examiner concludes that the amendments proposed in Finding 28 are reasonable and page 8 should be amended accordingly. At hearing, DPW recognized the problems with this section of the rule; however, they did not supply an amendment to the Examiner for consideration.

19. The Examiner concludes that the Department has documented its statutory authority to promulgate the proposed rules.

20. The Examiner concludes that the Department has demonstrated the need for and reasonableness of DPW 1 and DPW 3, as recommended to be modified in this Report, by an affirmative presentation of facts.

21. The Examiner concludes that the amendments he is suggesting to the rules make the rules more reasonable and that none of these amendments constitute a substantial change.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the Department of Public Welfare adopt the proposed rules as recommended to be amended in this Report.

Dated: June 23, 1977.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner