

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Air File #605.

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 6/16 DUE DATE 7/6 (7/8)

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State (7/7)
b. Approved (7/6) Date Sent Back to Agency 7/7

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓ 11.19.79
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓ one copy submitted
    At least 30 days prior to hearing ✓ 10.15.79
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ copy of changes to rules as proposed is attached
14. Certificate of Board's Resolution Adopting Rules, where applicable ✓
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A.

ATTORNEY GENERAL

RUTH A. MYERS, President
State Board of Education

Attn: MICHAEL J. BRADLEY

JOANNE E. HINDERAKER
Special Assistant
Attorney General

The Proposed Adoption of Rules of the State Board of Education Governing Education Computer Systems and Repeal of EDU 641 Governing Veterans Refund Policy

The repeal of EDU 641 and the renumbering of EDU 640 and 642 have been approved by this office and filed with the Secretary of State's Office. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

However the rules of the Board of Education governing education computer systems have not been approved by this office for the following reasons:

1. The rules at 5 MCAR secs. 1.0900-1.0903 were drafted, proposed and adopted in light of the statutory requirements of Minn. Stat. secs. 121.90-121.92 (1978) as amended in the 1979 Supplement and are based upon Minn. Stat. sec. 16.93 (1979 Supp.). In the most recent legislative session the statutory requirements of Minn. Stat. Ch. 121 were amended at Minn. Laws 1980 Ch. 609, Art. 7, secs. 1-20. Minn. Stat. sec. 16.93 was repealed. The statutory changes have an obvious impact on the rules. This office has not undertaken an exhaustive study of the changes in the legislation which affect the rules. However it appears that there are at least the following inconsistencies between the education computer systems rules and the new statutory amendments:

A. The definition of "ESV-IS" at 5 MCAR sec. 1.0900 A. 6, and the definition of "District" at 5 MCAR sec. 1.0900 A. 4 differ from the statutory definitions included in Minn. Stat. sec. 121.93 (Minn. Laws 1980, Ch. 609, Art. 7, sec. 9).

B. The reference to Minn. Stat. sec. 16.93 in 5 MCAR sec. 1.0900 A. 15 is improper as that statute has been repealed. Furthermore, it appears that the legislature at Minn. Stat. 121.931 subd. 4 (Minn. Laws 1980 Ch. 609, Art. 7, sec.10) has imposed specific long range planning requirements on the Board of Education which differ from those previously described in Minn. Stat. sec. 16.93. The new provision for a long range plan is included in the

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

July 3, 1980

As stated in the Department of Administration's letter of June 16, 1980

EQUAL OPPORTUNITY EMPLOYER

newly enacted criteria listed at Minn. Stat. 121.937 (Minn. Laws 1980, Ch. 609, Art. 7, sec. 16) and must be included in the rules relating to plan and region approval pursuant to Minn. Stat. sec. 121.931, subds. 7, 8. (Minn. Laws 1980, Ch. 609, Art. 7, sec. 10).

C. The rules before this Office frequently refer to the review or approval of the "Commissioner". (See 5 MCAR sec. 1.0901 D., H., I., J., K., 5 MCAR sec. 1.0902 A). Yet the new legislation refers to the approval of the state board, with advice and assistance of the ESV computer council at Minn. Stat. sec. 121.931, subd. 7 (Minn. Laws 1980 Ch. 609, Art. 7, sec. 10)or to state board approval at Minn. Stat. sec. 121.935, subds. 3, 4 (Minn. Laws 1980, Ch. 609, Art. 7, sec. 14).

Based upon only the aforementioned examples it would appear that the Board should re-examine rules 5 MCAR secs. 1.0900, 1.0901 and 1.0902 in light of the recent legislative amendments to address these differences between the statute and the rules. The Board should also address any other distinctions that may exist as a result of the recent statutory amendments.

2. It does not appear to this Office that rules 5 MCAR sec. 1.0903 and sec. 1.0904 are affected by the change in the relevant statutes. However the Board should also reconsider the language of these rules in light of the recent legislative changes. The Board may ~~which~~ wish to consider severing these rules from the other rules submitted to this Office. If these rules are resubmitted, the Board must provide written justification for a decision to sever the rules.

Any resubmission to this Office should be designated as such. The Board must resubmit 3 copies of the amended rules together with 3 copies of amended findings and order adopting rules. This Office has retained copies of all other jurisdictional documents.

If you have any questions in this regard, please contact me.

JEH/bw
Encl.
cc: Susan Robertson
Duane Harves

2. The customer notice letter should be meaningful and informative. It should adequately notify a customer of the impact of Northwestern Bell's restructured private line tariff on the customer's cost of service. Increases in rates of 500-1000% and more are increases for which the average private line customer cannot economically make reasonable adjustment. The most effective and reasonable method of fully apprising private line customers of the effect of the private line tariff on their services is to provide each customer with the calculation of the effect of the proposed tariff on each customer's bill. If the notice fails to provide such calculations any number of customers may be misinformed, confused and effectively precluded from making an informed decision as to whether to challenge the tariff. It

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT: Education
736 Capitol Square Bldg.

TO : Joanne E. Hinderaker
Special Ass't. Attorney General
G25 Administration Bldg.

DATE: June 16, 1980

FROM : Lois E. Steinhaus LES
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for Rules Governing Education Computer Systems (5 MCAR §§1.0900 1.0904 and Repeal of Rule EDU 641 Governing Veterans Refund Policy (EDU-80-002-JL)

Enclosed is the complete record of the hearing.

Also enclosed are four copies of the rules as adopted and four copies of the order for hearing. In addition, are three copies each of the following:

1. Proposed rule
2. Notice of hearing
3. Affidavit of receipt of secretary of state's list
4. Certificate of delivery secretary of state's list
5. Affidavit of mailing
6. Statement of need and reasonableness (2)
7. Findings of fact and Order adopting.....
8. Certificate of board's authorizing resolution
9. Certificate of board's adoption of rules resolution
10. Chief hearing examiner's and hearing examiner's reports
11. One copy of the mailing list
12. One copy indicating changes from the proposed rules to the adopted rules

Please call me when this is ready to be returned, so that I can send some one to pick it up. Thank you.

PRINTED ON RECYCLED PAPER

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Education

Office Memorandum

TO : Judith Wehrwein
Office of Attorney General

DATE: 6-23-80

FROM : Lois E. Steinhaus
Lois E. Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Corrections to be made in Rules as Adopted - Chapter Forty-Two:
Computer Systems - Rules of the State Board of Education

page 1-5 MCAR §1.0900 - A.1. delete "means"

page 2-5 MCAR §1.0900 - A.16. delete "8"

page 3-5 MCAR §1.0901 - D.8. delete "30"

page 3-5 MCAR §1.0901 - I. delete "and"

page 5-5 MCAR §1.0902 - A.3.e. delete "period" and "comma" after 9 and place the "comma" after 8

Thank you very much.

PRINTED ON RECYCLED PAPER

AG copy

Rules as Adopted

Chapter Forty-Two: Computer Systems

5 MCAR § 1.0900 Definitions.

A. Definitions. For the purpose of these rules, the following definitions are used:

1. "Board" means refers to the State Board of Education.

2. "Commissioner" refers to the Commissioner of Education.

3. "Department" refers to the Department of Education.

4. "District" means any independent, special, or common school district including the area vocational-technical institutes. Intermediate vocational-technical institutes shall be treated as separate districts for purposes of these rules.

5. "ESV" refers to the elementary, secondary, and vocational education system in Minnesota and includes all school districts as defined above.

6. "ESV-IS" is the Elementary, Secondary, and Vocational Information System which is sometimes referred to as the "State-wide software" or the "software developed by MECC for the Department of Education".

7. "ESV-FIN" is the financial subsystems of the ESV-IS.

8. "ESV-PPS" is the personnel payroll subsystem of the ESV-IS.

9. "ESV-SSS" is student support subsystem of the ESV-IS.

10. "Member", "member district", "membership" means affiliation through a joint powers agreement with one or more other districts or with an Educational Cooperative Service Unit which will provide the computer services required by these rules through a management information center.

11. "MECC" is the Minnesota Educational Computing Consortium.

12. "Region" and "regional management information center" is the administrative organization created to provide computer services to its membership.

13. "Data element" is any representation of information such as alphabetic characters, or numbers or signs to which meaning may be assigned and which is suitable for communication, interpretation or processing by humans or by automated means.

14. "Data acquisition calendar" is the list of forms, applications, memoranda, or other instruments through which the districts are required to collect, record or report data, and indicates the date when such data are due to the Department.

cf. 121.931

15. "State computing plan" is the plan referenced in Minn. Stat. § 16.93.

changed see HE ¶16 + F. of F #7

16. "UFARS" is the Uniform Financial Accounting and Reporting System established in 5 MCAR §§ 1.0760-1.0769 adopted by the Board pursuant to Minn. Stat. §§ 121.90-121.928.

17. "Computer hardware and related equipment" is electronic equipment containing a central processing unit or associated components necessary for its operation; disk or tape storage devices; data communications processors or controllers; data sets, modems, multiplexers and other devices used to connect processing units or terminal devices to other processing units or terminal devices; data input/output devices, visual display units or printers; and terminal devices with or without firmware or processing capability.

added per HE ¶2 + HE ¶2 + F of F. ¶9

5 MCAR § 1.0901 Region plans and budgets. — must coincide w/ §121.935 + 121.937 criteria (see .931 sub 7. which refers to the State B

A. By February 1 of each year each district shall submit to the regional management information center of which it is a member, a proposed budget and plan for computer services identifying the computer equipment, computer software, and staff it will use, the costs related to those items and any service fees or other computer related costs which will be incurred by the district and will not be provided by the region.

B. By April 1 of each year, each regional management information center shall submit an annual plan and budget on behalf of its member districts, which has been approved by the governing board of that region, to the Commissioner for his approval.

121.931 sub 7

C. Each region's plan and budget shall be on forms and in the format prescribed by the Commissioner and shall conform to UFARS.

D. Each region's plan shall contain sufficient information so that it can be determined by the Commissioner that:

What about 121.937 sub 2? re: State plan

1. The region has conducted a survey of each member district and has developed a statement of the needs for computer services, including data processing systems, equipment and facility utilization, for each of the member districts. The statement shall contain the following information for each district:

a. The systems within the ESV-IS which each district desires to use.

b. Other computer systems and related applications and operating software which the district desires or intends to use.

c. Data communications systems including but not limited to telecommunications, voice communications, equipment, and delivery services which each district desires or intends to use.

d. Modifications and enhancements to the current ESV-IS which each district intends to make or desires to have made by the region, the department, or MECC.

e. Training, workshops, and other personnel related services which each district desires to have provided by the region.

f. Such other items as the districts or the region determine should be included.

2. That each district will after July 1, 1980 fully participate in the comprehensive financial reporting system utilizing the ESV-FIN system and that each district has an opportunity to participate to the extent of desired participation in the ESV-PPS, or ESV-SSS, through the availability of hardware, ESV-IS software, and staff specialists to operate these systems during the normal working hours of the regional computer centers. Nothing herein shall be construed to prevent a district from purchasing services from another region when those services are not otherwise available in the district's region.

3. There is staff, computer hardware and related equipment to provide the computer services requested by the member districts and approved by the regional governing board, and that the hardware and related equipment is compatible with the hardware and communication equipment used by the ESV-IS and the department.

4. Where the services requested by a district are different from those approved by the regional governing board, the plan shall specify the difference, and why the requested services will not be provided by the region.

5. There are sufficient funds to support the staff, hardware, communication and other related costs of the regional management information center. In determining whether funds are sufficient, the Commissioner shall consider whether the amount of projected revenues and expenditures are realistic, and whether those revenues, as adjusted, will be at least as great as the expenditures as adjusted.

6. The region has the ability to provide information required by the annual data acquisition calendar and by the Rules of the Board on behalf of its member districts by securing and operating such equipment and using the software designed by, for, or on behalf of the Department as is required to produce computer tapes which are machine readable on the computer designated by the Department.

7. The region has a data base which it maintains for each school district which contains the data elements in the data element dictionary and the region has the necessary equipment and software to report to the Department, within 15 days, information based on these data elements using software designed by, for, or on behalf of the Department, on computer tape, which is machine readable on the computer designated by the Department.

8. The region has the ability to receive from member districts, store and report, within 90 days, after the date of notification information requested by the Department, based on data elements not contained in the data element dictionary.

E. Each district shall collect, and shall store on the region computer, for reporting to the Department, the data elements contained in the data element dictionary.

F. Prior to the transmittal of any data to the department by the region, each district shall review and certify or comment on the accuracy of its data.

G. By April 1 of each even numbered year, each existing region and any proposed region shall submit a proposed biennial budget approved by its governing board or by the proposed governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

H. Any district or region proposing to acquire computer hardware and related equipment by any means must first receive the approval of the Commissioner. The Commissioner shall review any proposed equipment acquisition to determine whether the services provided by such equipment justify the expenditures; and will review all costs to determine whether they are justified by the level of services to be provided.

I. The Commissioner shall make a determination whether there are sufficient funds to implement the annual or biennial plan and budget as presented and shall determine whether or not the services to be provided by the region can be provided in a more cost effective manner as determined under the criteria contained in § 1.0902 A.4. The Commissioner and shall notify the region of his decision by June 1 of each year or within 15 days following the adjournment of the legislature, whichever is later.

J. Any change in level of service provided by the region or proposed equipment changes which occur after a plan and budget has been approved must be separately approved by the Commissioner.

K. During the course of any year, the Commissioner may revoke a previously granted approval of a plan and budget on the basis that:

1. There has been an amendment to the plan or budget which materially affects the provision of services to members of the region and which has not been reported to and approved by the Commissioner.

2. The region no longer has the ability to provide services according to the standards established in 5 MCAR § 1.0901 and 5 MCAR § 1.0902 necessary for the creation of a region.

5 MCAR § 1.0902 Creation of regions.

A. Criteria for new regions.

Two or more districts which desire to establish a new regional management information center shall submit to the Commissioner the following information:

1. Names, addresses and numbers of the districts desiring to participate in the new region.

2. A plan and budget which meets the requirements of 5 MCAR § 1.0901.

3. A statement showing how the proposed region conforms to the state computing plan in that:

a. The hardware and the operating software proposed for the region is compatible to the hardware and operating software specified in the state computing plan.

b. The applications software used is the ESV-IS software.

c. The staff is or will be trained on the ESV-IS and will be able to provide user coordination and data control services to the districts.

d. Services to intermediate AVTI districts included within the region are separately included in the proposed region plan and budget.

e. The governance structure of the proposed region shall include a governing board which conforms to Minn. Stat. § 471.59., or § 123.58 whichever is appropriate.

4. The determination of whether the proposed region is cost effective will be based upon the following information:

a. The cost for data communications, hardware, staff, space rental, and other associated costs compared with projected costs if instead the member districts were to belong to existing regions that are in proximity to the member districts. Where the level and types of services in the proposed region differ from those which have been provided by regions in proximity to the member districts, those differences along with the costs associated with those differences must be documented.

b. Any continuing financial obligations where member districts are withdrawing from a previously existing region.

c. Any additional cost to other districts where a member district withdraws from an existing region, and the ability of the existing region to reduce those costs by the utilization of different hardware, and staff, while still meeting its obligations under 5 MCAR § 1.0901. If the existing region cannot continue in a cost effective manner, the ability of the remaining member districts to join different regions or the ability and willingness of other districts to join the existing region in order to meet their needs as specified in the existing plan filed pursuant to 5 MCAR § 1.0901, and the costs related to such a change.

d. The anticipated membership fees and service charges for the member districts compared with the membership fees and service charges if instead the member districts were to belong to existing regions that are in proximity to the member districts. Any difference in level of service between the proposed region and the regions in proximity must be documented.

B. Upon examination of the evidence presented in support of the creation of a new region, and after consultation with the Elementary, Secondary, and Vocational Computer Services Advisory Task Force, the Commissioner shall make a recommendation to the Board for its determination.

C. Any new region which is approved pursuant to this rule shall come into existence on the July 1 of the next odd numbered year after its creation or when the Legislature makes express appropriations of regional subsidies for the region, whichever occurs first.

D. Any district which seeks to terminate membership in an existing region and affiliate with another existing region must file the same documentation and complete the same process as provided for the creation of a new region.

5 MCAR § 1.0903 Data element dictionary. — Sense this stuff?

A. The purpose of the data element dictionary is to provide a standardized table of data elements which districts are required to collect, store and report either directly to the Department or through the regional management information center.

B. The criteria for inclusion of a data element in the data element dictionary are:

1. The data are needed in order for the Department to properly disburse funds in support of the elementary, secondary, and vocational educational system in Minnesota; or

2. The data are needed to make reports defined or required by state or federal statute, rules, or regulations; or

3. The data are needed to meet the goals and objectives assigned to the department by the Board, the governor or the legislature; or

4. The data are needed in order to provide information required by the Board, the governor, the legislature or the federal government; or

5. The data are needed for the implementation of research or special projects in education, and which have been approved by the Commissioner.

C. Each data element in the data element dictionary shall contain:

1. The standard names of the data element.

2. The description of the physical characteristics of the data element.

3. The definition of the data element.

4. The purpose for which the data element is collected.

D. The Commissioner shall establish an ad hoc data acquisition review committee with representation from school districts as well as from the department. The committee shall review each proposed data element and make recommendation to the Commissioner whether:

1. It is appropriate for the Department to collect the data described by the data element.

2. The data element meets the criteria described in 5 MCAR § 1.0903 B.

3. The data element is not already contained in the data element dictionary.

4. The costs to collect the data does not exceed the benefits obtained from collecting the data, except in the instance where state or federal statute or rule requires collection of the data.

5. The collection of data conforms to the Minnesota Government Data Practices Act.

Notice of the review of the proposed data element shall be sent to each region prior to the date of review.

E. Each data element contained in the data element dictionary shall be reviewed by the committee not less than once every three years. Notification of the review shall be sent to each region and an opportunity shall be given them to review and comment on the need to continue to collect the data described in the data element.

F. After receiving the recommendation of the data acquisition review committee, the Commissioner shall determine whether to include or delete a data element from the data element dictionary.

G. At least 180 days notice to the region shall be given prior to the collection of any new data element.

5 MCAR § 1.0904 Data acquisition calendar.

A. By September 1 of each year, the Department shall transmit to each district and region an annual data acquisition calendar specifying the reports which school districts are required to submit either directly to the Department or through the regional management information center. Amendments may be made to the calendar each quarter thereafter.

B. The data acquisition calendar shall contain, at a minimum, the name and description of the form and the date when it is due to the Department.

C. Only data elements contained in the data element dictionary shall be included in the form and shall be used according to the standards established in the data element dictionary.

D. Proposed forms to be included or deleted from the data acquisition calendar shall be approved only after each data element has been approved by the Commissioner as provided in 5 MCAR § 1.0903.

Rules as Adopted

Chapter Thirty-Two: Veterans' Education

EDU 640 Renumber as 5 MCAR §1.0640.

EDU 641 Veterans refund policy. Repealed.

EDU 642 Renumber as 5 MCAR §1.0642.

original

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE JON L. LUNDE
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption of Rules of the State Board of Education Governing Education Computer Systems - 5 MCAR §§ 1.0900-1.0904 and Repeal of Rule EDU 641 Governing Veterans Refund Policy

FINDINGS OF FACT AND ORDER ADOPTING RECOMMENDATION OF HEARING EXAMINER AND RULES

The above-entitled matter came on for hearing on November 19, 1979, at St. Paul, Minnesota before Jon L. Lunde, Hearing Examiner appointed by the Chief Hearing Examiner after proper notice required by Minnesota Statutes, 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 reviewed all of the testimony, having considered all the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Hearing Examiner's Findings dated January 23, 1980 and having confirmed the need for the above captioned rules, the State Board hereby accepts as its own, rejects or modifies the findings and recommendations of the Hearing Examiner as set forth below:

1) Accepts the findings contained in sections 1 through 11 of the Hearing Examiner's Report.

2) Accepts the findings of the Hearing Examiner in section 12 of his report, including the proposed definition set forth in footnote 6 on page 8. However, it is suggested by the Hearing Examiner that such a definition might be a substantial change. Such a position is unsupported by the law. A substantial change would have occurred only if the definition resulted in a broader application of the rules. However, as is set forth below, the added language makes no change in the rules. Omitting the added language: "Intermediate vocational-technical institutes shall be treated as separate districts for purposes of these rules", changes nothing. Whether the language is included or excluded, intermediate vocational-technical institutes must be treated as separate districts as a matter of law. Minn. Stat. § 121.92 (Supp. 1979) makes computerized financial accounting and reporting mandatory for all school districts. Minn. Stat. § 16.93 (Supp. 1979) provides the mechanism by which compliance with section 121.92 is obtained.

A review of the authorizing legislation for the three intermediate school districts indicates that they are hybrid organizations. They have some of the powers and duties of their member school districts, but they are indeed school districts for the purpose of being regulated under the general laws that apply to school districts. See Joint Independent School District No. 287. The City of Brooklyn Park, 256 N.W.2d 512 (1972). See also, Minn. Laws 1967 ch. 822, Minn. Laws 1969 chs. 775 and 1060.

The exclusion of those three districts would render vast portions of data collected on vocational or special education programs meaningless. The alternative would be to collect the data from the member school districts--something which neither the Department, the member districts, nor the intermediate districts would desire.

The general understanding concerning the applicability of sections 121.92 and 16.93 to intermediate districts is shown by the previous compliance with the requirements of those sections by the intermediate districts. Those districts have, like all other school districts, submitted annual plans and budgets since 1976. In addition, all three intermediate districts presently belong to existing regional management information centers.

At the rule making hearing, the Department set forth its efforts to meet with affected school districts concerning these rules. Those efforts included intermediate area vocational technical institutes. Therefore, those institutes were fully on notice of not only the rules but also the intent of the Department to apply those rules to the intermediate districts.

If it is determined that an additional hearing is required because of this language change, the State Board hereby declares that the language shall revert to that which was originally proposed for hearing.

3) Accepts the recommendation of the Hearing Examiner in section 13 of his Report.

4) Rejects the conclusion of the Hearing Examiner in section 14 that the need for section 1.0902A, 3, e, requiring the use of joint boards, has not been demonstrated. At no time did any person or organization object to the requirement of a joint board. The question raised was whether a particular regional management center could continue in existence as a non-profit corporation. The Department indicated that it would raise no objection to the continuation of that non-profit corporation as long as all of the requirements of the rules were met, including the existence of a board of directors that would satisfy the provision of Minn. Stat. § 471.59, subd. 2 (1978), the Joint Powers Act.

However, the Hearing Examiner has made that position no longer possible. It is axiomatic that school districts only have powers expressly granted to them. But for the general joint powers act of section 471.59, or a special joint powers act, such as Minn. Stat. § 123.58 (1978) (establishing ECSU's), school districts would have no authority to enter into joint enterprises. See for example, Ops. Atty. Gen. 6-A-10, December 12, 1955; 159-B-1, January 27, 1954. Therefore, if school districts desire to act jointly, they must do so pursuant to state law. There is no authority for school districts to form non-profit corporations.

The need for a joint board is obvious. Such boards provide a uniform governance structure in all of the regions; a method by which the region may act as a single entity; a mechanism whereby a single meeting of member representatives may resolve a problem or take a position rather than await the actions of all member districts; and an avenue by which representatives are more likely to spend the time and effort necessary to gain the degree of expertise that such centers will require, rather than expecting all board members of all member districts to obtain such expertise.

In conclusion, the requirement of following the joint powers act or utilizing section 123.58 is a legislative mandate. Minn. Stat. § 16.93 (Supp. 1979). No challenge was received with regard to the reasonableness of requiring a single set of representatives of the member districts being responsible for the regional management information center. Such a requirement is both reasonable and authorized by statutory authority.

5) Accepts the findings of the Hearing Examiner in section 14 of his Report. The recommendation of the Hearing Examiner, in section 14, page 11, that additional language be added relative to the purchase of services by a school district from a regional management center to which the district does not belong is also accepted. Therefore, the following language is added to section 1.0901D, 2: "Nothing herein shall be construed to prevent a district from purchasing services from another region when those services are not otherwise available in the district's region."

However, the language suggested by the Hearing Examiner concerning the availability of different types of membership in regions is rejected. The suggested language reiterates the rights of a school district to select those services which it desires to receive. This subject is already adequately handled by section 1.0901D, 2, and the additional language would be confusing.

6) Accepts the findings contained in section 15 of the Hearing Examiner's Report.

7) Accepts the recommendation of the Hearing Examiner in section 16 to delete specific reference to the documents which comprise the state plan. However, the alternative definition proposed by the Hearing Examiner is too narrow, because subjects beyond the mere sharing of data are covered by the state plan. Therefore, the following definition supersedes that presently contained in section 1.0900A, 15: "'State computing plan' is the plan referenced in Minn. Stat. § 16.93."

8) Accepts the findings contained in sections 17, 18, and 19 of the Hearing Examiner's Report.

9) Accepts the findings of the Hearing Examiner contained in section 20 of the Report and accepts the recommendation that a definition of hardware and related equipment should be inserted in the Rule.

Proposes the following definition as section 1.0900, A, 17 "Computer hardware and related equipment is electronic equipment containing a central processing unit or associated components necessary for its operation; disk or tape storage devices; data communications processors or controllers; data sets, modems, multiplexers and other devices used to connect processing units or terminal devices to other processing units or terminal devices; data input/output devices, visual display units or printers; and terminal devices with or without firmware or processing capability."

As the hearing examiner suggests, this definition will "avoid some unnecessary disputes down the line" and also implement the examiner's recommendation in section 25, page 23, to define "computer hardware and related equipment."

10) Accepts the findings contained in section 21 of the Hearing Examiner's Report, except that the inclusion of the word "end" should be deleted from the additional language which is to be included in section 1.0901, D, 5, as set forth at the top of page 18.

11) Accepts the findings of the Hearing Examiner contained in section 22 of his Report.

12) Accepts the findings of the Hearing Examiner and the recommended change in section 23, striking the word "collect" from section 1.0901, D, 8, and substitute the language "receive from member districts". Rejects the Hearing Examiner recommendation to substitute other language for the word "collect" in section 1.0901, E since the district does in fact "collect" data, as indicated by the Hearing Examiner on page 19.

13) Accepts the findings and recommendation of the Hearing Examiner contained in section 23 of his Report to delete the last sentence of section 1.0901, E.

14) Accepts the findings of the Hearing Examiner with regard to section 24 of his Report. However, the State Board rejects the legal conclusion that the 1979 amendments to Minn. Stat. § 16.93 do not specifically require regions to transmit data to the Department. It is the State Board's belief that section 16.93 does in fact require regions to transmit data to the Department.

15) Accepts the findings of the Hearing Examiner with regard to section 25, and specifically adopts the recommendation of the Hearing Examiner, in section 25, page 23 of his Report, to more fully define "computer hardware and related equipment," and inserts section 1.0900, A, 17 to the rules (see finding 9 above). In addition, the language "computer equipment" used in section 1.0901, H is changed to "computer hardware and related equipment" to conform to the language in the definition section 1.0900, A, 17.

16) Accepts the findings of the Hearing Examiner with regard to section 26, and specifically adopts the additional language proposed by the Department in response to the public testimony, as set forth in section 26 of the Hearing Examiner's Report.

17) Rejects the recommendation of the Hearing Examiner with regard to section 27, page 25. Since the public hearing, the study of the SDE-IS and ES-IS, required by Minn. Laws 1979, ch. 334, art. VI, § 33, has been completed and a completely different approach to the planning and control of the systems and the regions have been proposed in that report. The language "In the instance where the decision of the Commissioner is adverse to the desires of the region, the region may have the matter referred to the Minnesota Educational Computing Consortium for a final determination" is deleted from sections 1.0901, I and 1.0901, K, 2, until such time as a legislative reaction to that report has been received. Any appeal of the commissioner's decision would be performed according to existing statutes until that legislative reaction has occurred.

18) Accepts the findings of the Hearing Examiner as set forth in section 28 of his Report.

19) Accepts the findings of the Hearing Examiner in section 29 of his Report. However, the State Board declines to set forth a specific "collection period" as suggested on p. 28. The 180 day period is the minimum time frame in which a district will be required to supply data. In fact, the district may not be requested to actually supply specific data for 18 months or more. As such, a specific collection period cannot be stated, because it will depend on the type of data requested.

20) Accepts the findings of the Hearing Examiner as set forth in section 30 of his Report.

21) There were a number of minor changes recommended by the Department to the Hearing Examiner which were not addressed by the Hearing Examiner in his Report. Those additions are hereby approved for the reasons set forth by the Department in its submissions to the Hearing Examiner. The specific changes are as follows:

Section 1.0901, D, 3 is amended to add the language "and the department" to the end of the paragraph.

Section 1.0900, A, 7 is amended to delete the word "accounting" from the definition.

Section 1.0900, A, 11 is amended to change the word "Education" to "Educational".

Section 1.0902, A, 3, d is amended to change "schools" to "districts".

Section 1.0903, 13, 1-6 is amended to change "data is" to "data are" wherever it occurs.

22) The department has repeatedly received comments from school districts and their representatives expressing concern that data will be transmitted to the department without being authorized by the district. Traditionally, the districts have individually transmitted the data using forms provided by the department. In this new environment, with data transmitted electronically by the region. The proposed rules provided that the districts only have an opportunity to review data prior to its transmittal. The department is concerned that, should the district be required to approve the transmittal of any data, simple inaction by the district would prevent the region from complying with the law which requires that it transmit data within 15 days of a request. The Hearing Examiner's Report reviewed this concern and concluded that the department does have the authority to require data to be transmitted by the region without first having gotten the approval of the district. The department, having received these comments now concludes that it is in the better interests of the state to continue the traditional process until the experience of districts show them that their fears are unfounded. Therefore, § 1.0901, F is revised to read: "Prior to the transmittal of any data to the department by the region, each district shall review and certify or comment on the accuracy of its data."

NOW THEREFORE, BE IT RESOLVED that the State Board of Education hereby adopts and incorporates herein the changes to the above titled matters as set forth below:

Chapter Forty-Two: Computer Systems

5 MCAR § 1.0900 Definitions.

A. Definitions. For the purpose of these rules, the following definitions are used:

1. "Board" ~~means~~ refers to the State Board of Education.

2. "Commissioner" refers to the Commissioner of Education.

3. "Department", refers to the Department of Education.

4. "District" ~~is defined as~~ means any independent, special, or common school district, including the area vocational-technical institutes. Intermediate vocational-technical institutes shall be treated as separate districts for purposes of these rules.

5. "ESV" refers to the elementary, secondary, and vocational education system in Minnesota and includes all school districts as defined above.

6. "ESV-IS" is the Elementary, Secondary, and Vocational Information System which is sometimes referred to as the "State-wide software" and or the "software developed by MECC for the Department of Education".

7. "ESV-FIN" is the financial ~~accounting~~ subsystems of the ESV-IS.

8. "ESV-PPS" is the personnel payroll subsystem of the ESV-IS.

9. "ESV-SSS" is student support subsystem of the ESV-IS.

10. ~~"ESV-IMS" is the instructional management subsystem of the ESV-SSS.~~ "Member", "member district", "membership" means affiliation through a joint powers agreement with one or more other districts or with an Educational Cooperative Service Unit which will provide the computer services required by these rules through a management information center.

11. "MECC" is the Minnesota ~~Education~~ Educational Computing Consortium.

12. "Region" and "regional management information center" is the administrative organization created to provide computer services to its membership. ~~the school districts within the region and designated as a regional management information center by the Department of Education.~~

13. "Data element" is any representation of information such as alphabetic characters, or numbers or signs to which meaning may be assigned and which is suitable for communication, interpretation or processing by humans or by automated means.

14. "Data acquisition calendar" is the list of forms, applications, memoranda, or other instruments through which the districts are required to collect, record or report data, and indicates the date when such data ~~is~~ are due to the Department.

15. "State computing plan" is the ~~following collection of documents:~~ Plan referenced in Minn. Stat. § 16.93.

~~a. "A proposed educational computing services organization: its facilities and services" revised edition February 15, 1973.~~

~~b. "Minnesota educational computing consortium 'MECC' report 1974" February, 1974.~~

~~c. "MECC update" September, 1974.~~

~~d. "Minnesota educational data processing to 1980" October, 1974.~~

~~e. "Summary of Minnesota educational computing plans and budget for the 1977-79 biennium" November, 1976.~~

~~f. "Summary of Minnesota educational computing plans and budgets for the 1979-81 biennium" November, 1978.~~

~~g. "Minnesota area vocational technical institutes state plan for instructional data processing" July 1, 1979.~~

~~h. Such other documents as the State Board of Education may from time to time designate as an amendment to the State Plan.~~

16. "UFARS" is the Uniform Financial Accounting and Reporting System established in 5 MCAR §§ 1.0760-1.0769 adopted by the Board pursuant to Minn. Stat. §§ 121.90-121.928.

17. "Computer hardware and related equipment" is electronic equipment containing a central processing unit or associated components necessary for its operation; disk or tape storage devices; data communications processors or controllers; data sets, modems, multiplexers and other devices used to connect processing units or terminal devices to other processing units or terminal devices; data input/output devices, visual display units or printers; and terminal devices with or without firmware or processing capability.

5 MCAR § 1.0901 Region plans and budgets.

A. ~~D.~~ By February 1 of each year each district shall submit to the regional management information center of which it is a member, a proposed budget and plan for computer services identifying the computer equipment, computer software, and staff it will use, the costs related to those items and any service fees or other computer related costs which will be incurred by the district and will not be provided by the region.

B. ~~A.~~ By April 1 of each year, each regional management information center shall submit an annual plan and budget on behalf of its member districts, which has been approved by the governing board of that region, to the ~~Department of Education~~ Commissioner for ~~its~~ his approval.

C. ~~B.~~ ~~This~~ Each region's plan and budget shall be on forms and in the format prescribed by the Commissioner and shall conform to UFARS.

D. ~~C.~~ ~~The~~ Each region's plan shall contain sufficient information so that it can be determined by the ~~Department~~ Commissioner that:

1. The region has conducted a survey of each member district and has developed a statement of the needs for computer services, including data processing systems, equipment and facility utilization, for each of the member districts. The statement shall contain the following information for each district:

a. The systems within the ESV-IS which each district desires to use.

b. Other computer systems and related applications and operating software which the district desires or intends to use.

c. Data communications systems including but not limited to telecommunications, voice communications, equipment, and delivery services which each district desires or intends to use.

d. Modifications and enhancements to the current ESV-IS which each district intends to make or desires to have made by the region, the department, or MECC.

e. Training, workshops, and other personnel related services which each district desires to have provided by the region.

f. Such other items as the districts or the region determine should be included.

2. That each district will after July 1, 1980 fully participate in the comprehensive financial reporting system utilizing the ESV-FIN system and that each district has an opportunity ~~to fully participate or has an opportunity~~ to participate to the extent of desired participation in the ESV-PPS, or ESV-SSS, ~~and/or ESV-IMS~~ through the availability of hardware, ESV-IS software, and staff specialists to operate these systems during the normal working hours of the regional computer centers. Nothing herein shall be construed to prevent a district from purchasing services from another region when those services are not otherwise available in the district's region.

3. There is ~~sufficient~~ staff, computer hardware and related equipment to ~~meet the needs expressed~~ provide the computer services requested by the member districts and approved by the regional governing board, and that the hardware and related equipment is compatible with the hardware and communication equipment used by the ESV-IS. and the department.

4. Where the services requested by a district are different from those approved by the regional governing board, the plan shall specify the difference, and why the requested services will not be provided by the region.

5. ~~4.~~ There are sufficient funds to support the staff, hardware, communication and other related costs of the regional management information center. In determining whether funds are sufficient, the Commissioner shall consider whether the amount of projected revenues and expenditures are realistic, and whether those revenues, as adjusted, will be at least as great as the expenditures as adjusted.

6. ~~5.~~ The region has the ability to provide information required by the annual data acquisition calendar and by the Rules of the Board on behalf of its member districts by securing and operating such equipment and using the software designed by, for, or on behalf of the Department as is ~~necessary~~ required to produce computer tapes which are machine readable on the computer designated by the Department.

7. ~~6.~~ The region has a data base which it maintains for each school district which contains the data elements in the data element dictionary and the region has the necessary equipment and software to report to the Department, within 15 days, information based on these data elements using software designed by, for, or on behalf of the Department, on computer tape, which is machine readable on the computer designated by the Department.

8. ~~7.~~ The region has the ability to ~~collect,~~ receive from member districts, store and report, within ~~30~~ 90 days, after the date of notification information requested by the Department, based on data elements not contained in the data element dictionary.

E. Each district shall collect, and shall store on the region computer, for reporting to the Department, the data elements contained in the data element dictionary. ~~Each region shall maintain a database for each school district, data elements in the data element dictionary in the format according to the standards contained in 5 MCAR § 1.0903, subdivision 6.~~

~~F. The region shall submit a proposed annual budget approved by its governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.~~

F. Prior to the transmittal of any data to the department by the region, each district shall review and certify or comment on the accuracy of its data.

G. By April 1 of each even numbered year, each existing region and any proposed region shall submit a proposed biennial budget approved by its governing board or by the proposed governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

H. Any district or region proposing to acquire computer and related equipment by any means must first receive the approval of the Commissioner. The Commissioner shall review any proposed equipment acquisition to determine whether the services ~~requested~~ provided by such equipment justify the expenditures; and will review all costs to determine whether they are justified by the level of services to be provided.

I. The Commissioner shall make a determination whether there are sufficient funds to implement the annual or biennial plan and budget as presented and shall determine whether or not the services to be provided by the region can be provided in a more cost effective manner as determined under the criteria contained in § 1.0902 A,4. The Commissioner ~~and~~ shall notify the region of his decision by June 1 of each year or within 15 days following the adjournment of the legislature, whichever is later. ~~In the instance where the decision of the Commissioner is adverse to the desires of the region, the region may have the matter referred to the Minnesota Educational Computing Consortium for a final determination.~~

J. Any change in level of service provided by the region or proposed equipment ~~or~~ changes ~~that~~ which occur after a plan and budget has been approved must be separately approved by the Commissioner.

K. During the course of any year, the Commissioner may revoke a previously granted approval of a plan and budget on the basis that:

1. There has been an amendment to the plan or budget which materially affects the provision of services to members of the region and which has not been reported to ~~or~~ and approved by the ~~Department.~~ Commissioner.

2. The region no longer has the ability to provide services according to the standards established in 5 MCAR § 1.0901 and 5 MCAR § 1.0902 necessary for the creation of a region.

5 MCAR § 1.0902 Creation of regions.

A. Criteria for new regions.

Two or more districts which desire to establish a new regional management information center shall submit to the Commissioner the following information:

1. Names, ~~and~~ addresses and numbers of the districts ~~who desire~~ desiring to ~~operate~~ participate in the new region.

2. A plan and budget which meets the requirements of 5 MCAR § 1.0901.

3. A statement showing how the proposed region conforms to the state computing plan in that:

a. The hardware and ~~its~~ the operating software proposed for the region is compatible to the hardware and operating software specified in the state computing plan.

b. The applications software used is the ESV-IS software.

c. The staff is or will be trained on the ESV-IS and will be able to provide user coordination and data control services to the districts.

d. Services to intermediate AVTI ~~schools located~~ districts included within the region are separately included in the proposed region plan and budget.

~~e.--Communication-networks-are-configured-in-the-least-costly-manner.~~

e. ~~f.~~ The governance structure of the proposed region shall include a governing board which conforms to Minn. Stat. § 471.59~~.~~, or § 123.58 whichever is appropriate.

4. The determination of whether the proposed region is cost effective will be based upon the following information:

a. The cost for data communications, hardware, staff, space rental, and other associated costs compared with projected costs if instead the member districts were to belong to existing regions that are in proximity to the member districts. Where the level and types of services in the proposed region differ from those which have been provided by regions in proximity to the member districts, those differences along with the costs associated with those differences must be documented.

b. Any continuing financial obligations where member districts are withdrawing from a previously existing region.

c. Any additional cost to other districts where a member district withdraws from an existing region, and the ability of the existing region to reduce those costs by the utilization of different hardware, and staff, while still meeting its obligations under 5 MCAR § 1.0901. If the existing region cannot continue in a cost effective manner, the ability of the remaining member districts to join different regions ~~who will~~ or the ability and willingness of other districts to join the existing region in order to meet their needs as specified in the existing plan filed pursuant to 5 MCAR § 1.0901, and the costs related to such a change.

d. The anticipated membership fees and service ~~fees~~ charges for the member districts compared with the membership fees and service ~~fees~~ charges if instead the member districts were to belong to existing regions that are in proximity to the member districts. Any difference in level of service between the proposed region and the regions in proximity must be documented.

B. Upon examination of the evidence presented in support of the creation of a new region, and after consultation with the Elementary, Secondary, and Vocational Computer Services Advisory Task Force, the Commissioner shall make a recommendation to the Board for its determination.

C. Any new region which is approved pursuant to this rule shall come into existence on the July 1 of the next odd numbered year after its creation or when the Legislature makes express appropriations of regional subsidies for the region, whichever occurs first.

D. Any district which seeks to terminate membership in an existing region and affiliate with another existing region must file the same documentation and complete the same process as provided for the creation of a new region.

5 MCAR § 1.0903 Data element dictionary.

A. The purpose of the data element dictionary is to provide a standardized table of data elements which districts are required to collect, store and report either directly to the Department or through the regional management information center.

B. The criteria for inclusion of a data element in the data element dictionary are:

1. The data are needed in order for the Department to properly disburse funds in support of the elementary, secondary, and vocational educational system in Minnesota; or

2. The data ~~is~~ are needed to make reports defined or required by state or federal statute, rules, or regulations; or

3. ~~The data is needed for the planning of educational programs; or~~ The data ~~is~~ are needed to meet the goals and objectives assigned to the department by the Board, the governor or the legislature; or

4. ~~The data is needed for the evaluation of educational programs; or~~ The data are needed in order to provide information required by the Board, the governor, the legislature or the federal government; or

~~5. The data is needed for adequate management of the Department; or~~

5. ~~6.~~ The data ~~is~~ are needed for the implementation of research or special projects in education, and which have been approved by the Commissioner.

C. Each data element in the data element dictionary shall contain:

1. The standard names of the data element.

2. The description of the physical characteristics of the data element.

3. The definition of the data element.

4. The purpose for which the data element is collected.

D. The Commissioner shall establish an ad hoc data acquisition review committee with representation from school districts as well as from the department. The committee shall review each proposed data element and make recommendation to the Commissioner whether:

1. It is appropriate for the Department to collect the data described by the data element.

2. The data element meets the criteria described in 5 MCAR § 1.0903 B.

3. The data element is not already contained in the data element dictionary.

4. The costs to collect the data does not exceed the benefits obtained from collecting the data, except in the instance where state or federal statute or rule requires collection of the data.

5. The collection of data conforms to the Minnesota Government Data Practices Act.

Notice of the review of the proposed data element shall be sent to each region prior to the date of review.

E. Each data element contained in the data element dictionary shall be reviewed by the committee not less than once every three years. Notification of the review shall be sent to each region and an opportunity shall be given them to review and comment on the need to continue to collect the data described in the data element.

F. ~~D. Data elements proposed for inclusion in, or deletion from, the data element dictionary shall be reviewed and approved by the Commissioner.~~ After receiving the recommendation of the data acquisition review committee, the Commissioner shall determine whether to include or delete a data element from the data element dictionary.

G. At least ~~90~~ 180 days notice to the region shall be given prior to the collection of any new data element.

5 MCAR § 1.0904 Data acquisition ~~plan.~~ calendar.

A. By ~~June 1~~ September 1 of each year, the Department shall transmit to each district and region an annual data acquisition calendar specifying the reports which school districts are required to submit either directly to the Department or through the regional management information center. Amendments may be made to the calendar each quarter thereafter.

B. The data acquisition calendar shall contain, at a minimum, the name and description of the form and the date when it is due to the Department.

C. Only data elements contained in the data element dictionary shall be included in the form and shall be used according to the standards established in the data element dictionary.

D. Proposed forms to be included or deleted from the data acquisition calendar shall be approved only after each data element has been approved by the Commissioner as provided in 5 MCAR § 1.0903.

The State Board of Education finds all the amendments reasonable and necessary.

THEREFORE, IT IS ORDERED that the rules identified as 5 MCAR §§ 1.0900 - 1.0904 as amended are adopted and that EDU 641 is repealed this 10th day of March, 1980, pursuant to authority vested in us by Laws of 1979, Chapter 334, Article VI, Section 1, and Minn. Stat. §§ 121.11, subd. 12 and 121.21, subd. 6.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Ruth A. Myers
Ruth A. Myers
President
State Board of Education

Department of Education
School Management Services Division

State of Minnesota
Board of Education

Statement of Need and Reasonableness Adoption 5 MCAR §§ 1.0900-0904

Concerning: The proposed adoption of rules governing the approval of regional plans and budgets, the creation of regional management information centers, criteria for the data element dictionary and criteria for the data acquisition calendar.

Introduction

In 1973, it was proposed that there should be created, under the authority of Minn. Stat. § 471.59, a joint powers organization consisting of the Minnesota Department of Education, the University of Minnesota, State University System, Minnesota Community College System and the Minnesota Department of Administration for the purpose of reviewing school districts' biennial computer budgets and plans, establishing technical standards for educational computing, providing training, consultation, software development and maintenance of educational computer systems and operating general computers for service to the school districts. This plan was adopted and a joint powers organization with these members was established. The organization was called the Minnesota Educational Computer Consortium (MECC).

The plan also proposed that school districts would report the data needed by the Department through one of seven regional computing centers. These centers are now established and fully operational. During the 1979 legislative session, questions were raised by some school districts who expressed an interest in creating a separate region or withdrawing from the region in which they were located. The legislature amended Minn. Stat. § 16.93 to provide for the creation of additional regions, and mandated the Department to establish rules under which new regions could be established Rule 5 MCAR § 1.0901 is proposed to meet that mandate.

The law was further amended to require the Department to establish criteria and to promulgate rules for approving the computer plans and

budgets of school districts and of the regional management information centers. Rule 5 MCAR § 1.0902 is proposed to satisfy that requirement.

The Minnesota state computing plan adopted by the Board of Education provides for a system which is designed to include the automated transfer of data from school district data bases residing at regional management information centers to the Department. In order to provide for the uniformity of the data elements, the collection of data in a timely manner, and the collection of only that data which is needed, the 1979 Legislature amended Minn. Stat. § 16.93 to require the Department to establish a data element dictionary and a data acquisition calendar and to promulgate rules on the criteria and process for inclusion of data elements in the data elements dictionary and reports in the data acquisition calendar. 5 MCAR § 1.0903 and § 1.0904 are proposed to meet those requirements.

These rules were developed with much input from the public and affected persons. The department published a "request for outside opinion" in the State Register June 25, 1979. Then an ad hoc committee composed of known interested school districts, various professional educational associations, the ESV Computer Services Advisory Task Force, MECC, and Department staff was formed. The initial set of rules were examined by this ad hoc committee on September 7, 1979. Based upon their input and the recommendations received from others, changes were made to the initial proposed temporary rules and presented to the committee on October 24, 1979. These changes were incorporated into the proposed adopted temporary rules.

Since the temporary rules have expanded certain sections and clarified the meaning of certain paragraphs, they are being substituted for the original proposed permanent rules.

This statement of need and reasonableness has been organized around the substituted temporary rules, which are attached and made a part of this statement.

Proposed Chapter Forty-two: Computer Systems

5 MCAR § 1.0900 Definitions

Introduction

This section provides definitions of terms used in the rules in order to provide clarity and make the meaning of the rules more clear.

5 MCAR § 1.0900 through § 1.0901.A.4. The terms which are defined in 5 MCAR § 1.0901.A.1-4 are the generally accepted definitions used in statute and common practice.

5 MCAR § 1.0900.A.5 defines the term "ESV" in its vernacular.

5 MCAR § 1.0900.A.6-9 defines "ESV-IS" as the general computer system, the associated subsystems as they are abbreviated and referred to by the designers and users of the systems.

5 MCAR § 1.0901.A.10 defines the terms "member", "member district", and "membership" using the concept of "belonging to" or "a part of" an association, or organization as used in Webster's New World Dictionary (1966 edition). The affiliation is with one of two types of organizations: Educational Cooperative Service Units (ECSU) or by joint powers as provided in Minn. Stat. § 471.59. The purpose of this affiliation is to provide computer services. The need for affiliation through a joint powers agreement is stated in Minn. Stat. § 471.59 and Laws of 1979, Chapter 334, Article VI, Section 1.

5 MCAR § 1.0900.A.11. The abbreviation "MECC" is defined as it is used in its generally accepted and legal manner by the Minnesota Educational Computing Consortium.

5 MCAR § 1.0900.A.12. In the generally accepted parlance of the elementary, secondary and vocational educational system, the term "region" is used to refer to the administrative organization and geographic area which was described by the designers of the state computing plan. There are seven regions:

1. ESV Region I, with administrative offices in Moorhead, is comprised

of economic development regions 1,2, and .

2. ESV Region II, with administrative offices in Duluth, is comprised of economic development region 3.

3. ESV Region III, with administrative offices in St. Cloud, is comprised of economic development regions 5, 7E, and 7W.

4. ESV Region IV, with administrative offices in Marshall, is comprised of economic development regions 6E, 6W, and 8.

5. ESV Region V, with administrative offices in Mankato, is comprised of economic development regions 9 and 10.

6. ESV Region VI, also known as METRO II, with administrative offices located in St. Paul, is comprised of a number of school districts located within economic development district 11.

7. ESV Region VII, also known as TIES, with administrative offices located in Roseville, is comprised of those districts not members of ESV Region VI located in economic development region 11.

The term "regional computer center" is taken from the legislation which mandated the promulgation of these rules (Laws of 1979, Chapter 348, § VI) and was intended to mean the same as the ESV regions.

5 MCAR § 1.0900.A.13. There is no term called "data element" in the American National Dictionary for Information Processing, American National Standards Committee, September 1977, which is an official dictionary of data processing professionals. The definition used here is derived from several terms which resemble what is meant by the term "data element" as used in the legislation. While this definition resembles the definition used for the term "data", a substitute definition has not been offered, so this definition is presented.

5 MCAR § 1.0900.A.14. The term "data acquisition calendar" is the title of a booklet which has been distributed by the department and is referenced in Laws of 1979, Chapter 348, § VI.

5 MCAR § 1.0900.A.15 a-b. This is a collection of documents which in combination form the totality of the state computing plan. Some early documents have portions which have been superceded by later publications, however, since they contain portions which are still valid, they have been included in the list. It is the intent of the department to review each document and consolidate the pertinent portions into a single document. Until that can be accomplished, all of these documents should be referenced as the state computing plan.

5 MCAR § 1.0900.A.16. This is the statutory reference to "UFARS" which is defined in law.

Introduction

Laws of 1979, Chapter 334, Article VI, Section 1 states: "A school district may expend funds for computerization of administrative, instructional, or other activities only after a regional management information center of which the district is a member submits and obtains approval of an annual plan and budget on behalf of its member districts... No regional management information center may expend funds for computer activity unless it files an annual plan and budget for its activities with the Department of Education and receives approval from the Department of Education. Criteria for approving the ... plan and budget of a regional management information center shall include: The provisions of the state computing plan adopted by the State Board of Education; the cost effectiveness of the center and its plan and budget; the ability of the center in a timely manner to provide information required by the annual data acquisition calendar or by rules of the State Board of Education on computer tape which is machine readable using software designed by the Department of Education; the ability of the center within 15 calendar days to respond to requests for information based on data elements in the data element dictionary on computer tape which is machine readable using the software designed by the Department of Education; and the ability of the center to operate the uniform financial accounting and reporting standards...every regional center shall make available to its member districts the opportunity to participate fully in the comprehensive financial reporting personnel payroll reporting and student reporting information system developed by the Minnesota Educational Computing Consortium... The State Board of Education shall adopt rules prescribing the criteria for approval of regional plans and budgets." This rule is designed to comply with the provision of this statute.

5 MCAR § 1.0901.A. In order for the region to submit a budget to the department, the region must receive information from its member districts in a timely manner. In our deliberations to establish a reasonable schedule, we began with the budget schedule for school districts. Minn. Stat. § 121.903, subd. 3(a) requires that each school district adopt its revenue and expenditure budget for the next school year by July 1. Since the district budget would show expenditures for computer services, and since the adoption of the budget would normally occur no later than the June

Board meeting, the Department would have to notify the region of its approval or disapproval of the region's plan and budget no later than June 1 of any year. In order for the Department to have time to properly analyze and synthesize the region budgets, the Department should receive them no later than April 1 of each year. Since some regions have as many as 100 district budgets to review and approve, at least 60 days should be allowed for the region to consolidate and develop its plan and budget for submission to the Department. Working backwards in this manner, the districts will have to submit their plan and budget to the region by February 1 of each year.

The content of the district plan at a minimum are the items needed by the region in order for it to meet its reporting requirements as identified in 5 MCAR § 1.0901.D of this rule.

5 MCAR § 1.0901.B. As noted in § 1.0901.A above, the Commissioner will need to receive an annual plan and budget from each region by April 1 of each year in order to have sufficient time to examine it and make a determination that it complies with the provisions of the law and of these rules. In order to avoid confusion and to insure that the department is receiving an officially adopted plan and budget, the further requirement is made that the plan and budget be approved by the regional governing board.

5 MCAR § 1.0901.C. In order to provide uniformity and comparability of the information received from the regions, the forms and the format of the regional plans and budgets needs to be identical. State law (Minn. Stat. § 121.90 - 121.92) and rules of the Board of Education (5 MCAR § § 1.0710 - 1.0769) require that all budgets are submitted according to UFARS. It is inserted here for emphasis and reference.

5 MCAR § 1.0901.D. In this section the details of the information required by the Commissioner are spelled out. The general content of the regional plans and budget is to provide sufficient detail so that the Commissioner can insure that the region complies with the appropriate statutes and rules of the Board, and common management practices for the operation of the region.

5 MCAR § 1.0901.D.1. In order for a region to provide the services which

its member districts desire, especially as it relates to the requirement that each member district be able to participate fully in the ESV-IS, it is advisable to have documentation which shows what the district wants and needs. Requiring that an annual survey of the needs of its member districts would fulfill this requirement. Each of the items listed in a - f is a generally accepted grouping around which discussions on district and regional operations revolve.

5 MCAR § 1.0901.D.2. Minn. Stat. § 121.92 "MANDATORY UTILIZATION OF COMPUTER SYSTEMS", Subdivision 1. "On or before July 1, 1980, all Minnesota school districts shall convert financial accounting and reporting operations to a computer based financial management accounting and reporting system utilizing regional or other computing facilities and utilizing multi-dimensional accounts and records defined in accordance with the uniform financial accounting and reporting system for Minnesota school districts.

Subd. 2. After July 1, 1980, participation in a computer based financial management accounting and reporting system shall be determined as provided in Section 16.93."

Minn. Stat. § 16.93 was amended by the 1979 legislature in Chapter 334, Article VI to require all school districts to become a member of a regional management information center, and that, before any district funds may be expended for data processing services, the region must submit and have approved a plan and budget for the region. The region must operate the uniform financial management accounting system. The embodiment of this system is the ESV-FIN system. Therefore, in order to meet the mandate in Section 121.92 each district will need to use the ESV-FIN system. In order to make it clear and to avoid any ambiguity this rule mandates specifically that the ESV-FIN system is used.

The law is also quite clear that each district have an opportunity to use the ESV-PPS and the ESV-SSS to the extent desired. In order to insure that the region provides this opportunity by having the ESV-IS on the computer at times when the system is attended to by computer operators.

5 MCAR § 1.0901.D.3. Basically, there are two types of services which are requested of the region by the districts:

1. Those services which are a part of the ESV-IS
2. Those services which are not a part of the ESV-IS and would be considered as unique to the district or the region

It is possible that the annual survey would identify problem areas and enhancements to the ESV-IS which should be made on a statewide basis or may be unique to the region. Any modification of this nature must meet the standards established in the ESV-IS so that it is transportable to other regions.

For those services which are not a part of the ESV-IS, it is necessary that the hardware, software, communications equipment, and other related equipment must be compatible with the Burroughs equipment and related systems. By compatible, it is meant that the Burroughs family of equipment is used and that purchases be made under the master contract established with the Burroughs Corporation. It is also meant that equipment not in the master contract must be of a type which will interface with the Burroughs equipment without any major modification to equipment and without any major development or purchase of computer software.

This section also provides that any services which are provided must be approved by the regional board. Since districts are represented on the regional board, it is expected that the needs of the districts as identified in the survey will be considered by the board and will be provided to the extent the board feels appropriate.

5 MCAR § 1.0901.D.4. This requirement is included in order that the Commissioner can determine what services are requested but are not provided by the region. By securing this information the Commissioner can set priorities and substantiate rationale for presentation to the legislature.

5 MCAR § 1.0901.D.5. Once it has determined the level of service which it will provide to its member districts, the region will need to determine costs and show that it has sufficient funds coming into the region to meet these costs. Not only is this good management, it is also required by UFARS.

5 MCAR § 1.0901.D.6. The major purpose of the development of the statewide software is to assure uniformity and, through uniformity, achieve cost efficiencies. This purpose would be negated if districts and regions were

not required to use the statewide software and compatible equipment. The law is very specific in this regard and says "provide information required by the annual data acquisition calendar or by the rules of the state board of education on computer tape which is machine readable using the software designed by the department of education." (Laws of 1979, Chapter 334, Article VI, Section 1). The phrase "software designed by the department" is misleading because part of the software which reads computer tapes is called "operating software" and is designed specifically to the machines which are in use. In the original version of the legislation and in the discussions with the legislators, the phrase "designated by the department" was used. In this rule, this language, "designed by, for, or on behalf of the department" is used to incorporate the concept of the term "designated" and include both the operating software as well as the applications software which is specifically designed by the department, its contractors, or by MECC for the department.

5 MCAR § 1.0901.D.7. There is a requirement in the Laws of 1979, Chapter 334, Article VI, Section 1 that the region make reports to the state within 15 days using data identified in the data element dictionary. In order to meet that requirement it is necessary to assure that space on the computer is available and that the region has the necessary equipment and software to operate the computer programs which will generate the reports. The requirements stated in this paragraph will allow the department to make a determination whether the region can meet that requirement.

5 MCAR § 1.0901.D.8. The law specified only that data which is based on data elements contained in the data element dictionary must be reported within 15 days. The department receives mandates and requests for data not based on the data element dictionary from the federal government, state legislature, and other agencies wherein it is desirable to collect the data and not incorporate it into the data element dictionary. These would be one-time reports or surveys. In order to place a time frame on the collection of this data, give the school districts ample warning of the intent to collect the data, and require proper preparation for the collection of data, a period of ninety days after the date of notification is proposed as an appropriate period of time during which the region can notify the district of the need for the data, write or modify any computer programs it needs, process the data and send it to the department.

Originally it was proposed that a period of 30 days be allowed for this, however, after consultation with the ESV Computer Services Advisory Task Force, who recommended that 90 days was reasonable, it has been changed.

5 MCAR § 1.0901.E. This paragraph specifies that, not only must the district place its data on the regional computer, but also the region must provide space for the data at no cost to the district. The cost of this storage is considered as part of the region's obligation in return for the reporting subsidy appropriated by the legislature. This also assures that the region will have district data available to report to the department as required by 5 MCAR § 1.0901.D.7.

A second condition of this paragraph requires the region to maintain the data in a specific format. This not only assures uniformity in definition of data but also allows for the transfer of data from one computer to another throughout the state.

A third requirement is that the data meet the standards contained in the data element dictionary. This means that the data element dictionary will be considered as the final authority in describing the attributes of the data elements and in assigning names to the data elements. It is generally agreed by the directors of the regions, and other data processing professionals, that there should be a standard naming convention. While a specific convention still needs to be adopted, this paragraph places the responsibility to establish the names upon the department.

5 MCAR § 1.0901.F. There is a fear that, because of the requirement to make reports to the department, the region may submit data which is incomplete, inaccurate, or otherwise not ready for transmittal. In order to guard against such an eventuality, the region is required to notify the district of the transmittal of the data and provide an opportunity for the district to review it and if necessary make any adjustments to it which may be needed. At least the district will be able to state, for the record, that the data is not in the condition it would have preferred sending to the department. It was suggested that the data should not be released until the district approved release of the data. This condition is not appropriate since the district could, by inaction, place the region in violation of the law, and place the department in a position

of punishing a region for actions outside of its control. In addition, a district does not have the authority to withhold information except as provided by the Minnesota Data Privacy Act. The requirement that the superintendent make reports to the Commissioner is contained in Minn. Stat. § 123.35(9).

5 MCARS § 1.0901.G. The purpose of this paragraph is to develop a biennial budget for presentation to the legislature. It is envisioned that this budget will simply be an extension of the annual budget into the following two year period. In effect, this rule combines two separate budget building processes into one.

5 MCARS § 1.0901.H. The region's decision to acquire equipment can occur at any time during the course of a year although it should be planned and incorporated as a part of the budget building process. In order to accomplish this, the approval process should be completed prior to the development of the budget for the year of acquisition, so that it can be incorporated into the budget. The state also has master contracts for most of the types of equipment which would be used by a district or a region. Equipment not included in one of the master contracts does need to be evaluated separately to insure that maximum cost effectiveness is achieved. For these reasons, equipment purchases are considered separately in these rules.

5 MCAR § 1.0901.I. The Laws of 1979, Chapter 334, Article VI, Section 1 states that "a school district may expend funds for computerization of administrative, instructional, or other activities only after a regional management information center of which the district is a member submits and obtains approval of an annual plan and budget on behalf of its member districts... No regional management information center may expend funds for computer activities unless it files an annual plan and budget for its activities with the department and receives approval of the plan and budget from the department of education. Criteria for approving the creation of a regional management information center and the plan and budget of a regional management information center shall include: the provisions of the state computing plan adopted by the state board of education; the cost effectiveness of the center and its plan and budget; the effect on existing regional management information centers; the ability of the center in a timely manner to provide information required by the annual data acquisition calendar or by the rules of the state board of education on

computer tape which is machine readable using the software designed by the department of education; the ability of the center within 15 calendar days to respond to requests for information based on the data elements in the data element dictionary on computer tape which is machine readable using the software designed by the department of education; and the ability of the center to operate the uniform financial management accounting system... Every regional center shall make available to its member districts the opportunity to participate fully in the comprehensive financial reporting, personnel payroll reporting and student reporting and student reporting information system developed by the Minnesota Educational Computing Consortium."

This section provides that the Commissioner evaluates each plan and budget in conformance to the law. Since the law says that the criteria for approval of the plan and budget and the creation of regions is the same, the criteria established in this rule references the criteria used to create a new region. These criteria are contained in 5 MCAR § 1.0902.

The UFARS law provides that a school district must have an approved budget by July 1 of each year. In order for the district and region to budget for computer services, June 1 of each year is set as the latest date when the Commissioner can notify the region of his approval or denial. This date is reasonable in that:

1. It provides a maximum of sixty days for the review process. Should there be any differences of opinion or further clarification or consultation with other agencies (such as MECC) the full sixty days will be needed to complete the process.

2. In every odd number year the legislature does not adjourn until approximately May 22. Appropriations which contain the regional subsidy funds are not approved until the last days of the legislative session. Experience has shown that the legislature can make last minute changes which would affect the budgets of the districts and regions.

3. In even number years, the legislature does not generally pass appropriation legislation, however, it can and in recent years did pass legislation which affected the operation of the regions. While in even number years the legislature generally adjourns in

March and would not cause a delay in the approval process, any legislation which is passed would have to be considered in the budget approval process.

Therefore, this schedule provides sufficient time to review and approve the budgets and take into consideration the effect of any last minute changes by the legislature.

This section provides for a review by MECC of the decision of the Commissioner in the event the district or region does not agree with his decision. This is provided for two reasons:

1. Without such a review the only recourse for a region or district is to appeal to the courts.

2. In the event that the notice is sent to the region near or after June 1, there would be very little time to appeal through the courts while an appeal through MECC could be more quickly arranged.

There is nothing in this rule which prohibits or denies the district or the region from appealing directly to the courts or from eventually appealing to the courts after a appeal to MECC.

The question has arisen relative to the appropriateness of an appeal to MECC compared to an appeal to the Board. The argument is made an appeal to the Board is more proper because:

1. The Board has authority over the Commissioner and can direct his decisions.

2. The Board is a policy making body.
3. The Board is more accountable to the electorate since it is appointed by the governor to represent each legislative region of the state.

4. There is precedent to appeal the decisions of the Commissioner to the Board.

On the other hand, the argument is made that an appeal is more properly made to MECC because:

1. MECC has members who are not involved with the department and therefore would be more impartial.

2. MECC has the technical expertise to evaluate equipment and computer system capabilities and has considerable experience in managing a computer center.

3. MECC reviews budgets and prepares an analysis of the budgets of each of its member systems for each legislative session. MECC already has a review process established for its member system.

4. MECC is involved in a daily basis with the regional operations and therefore has an insight of the impact which the plan, budget and resulting decision will have.

These are good and valid reasons for either approach. It is the opinion of the Board that the final appeal prior to court action should be made by persons more technically involved in computer science than is available through the Board, so the appeal process is assigned to MECC.

5 MCAR § 1.0901.J. A situation may occur that, because of natural disaster, traumatic management changes, or negotiated changes, there occurs a change in the level of services provided by the region. Such change should recieve the approval of the Commissioner so that he can take whatever steps are necessary to ameliorate the impact of any degredation of services.

5 MCAR § 1.0901.K. This paragraph provides the option of revocation of previously granted approval based on only two conditions:

1. The region changes its operations without securing prior approval. In this instance, the Commissioner can take action to avoid any degradation of services to districts or to avoid costly expenditures or liabilities to the districts.

2. In the event the regional structure should collapse, for whatever reason, the Commissioner can immediately take steps to continue services to the member districts.

Since there may be a disagreement on the decision, an opportunity for appeal prior to an appeal to the courts is afforded on the same basis and with the same argumentation as contained in 5 MCAR § 1.0901.H.

5 MCAR § 1.0902 Creation of Regions

Introduction

The Laws of 1979, Chapter 334, Article VI, Section 1 state, "Any group of two or more school districts may, with the approval of the state board of education create a regional management information center pursuant to section 471.59 to provide computer services to the member districts". The law then specifies the criteria for the creation of regions.

It is our interpretation of the law and the intent of the legislature that this section is enabling legislation for school districts to initiate the formation of additional districts, subject to their operation 1) being cost effective, 2) not being detrimental to existing regions and 3) being able to provide certain prescribed services to its members and the department. It is also our interpretation that the board's approval is based solely on the determination that the group of school districts does or does not meet these criteria.

The same law also provides that the board shall adopt rules prescribing the criteria for the creation of regions.

This rule is designed to meet that mandate.

In the following paragraphs, whenever reference is made to the "Law" it refers to Laws of 1979, Chapter 334, Article VI, Section 1 Computerization by School Districts. References to other statutes will be specifically cited.

5 MCAR § 1.0902.A. This section establishes that the group of two or more districts who desire to form a region must submit substantiating documentation to the Commissioner for his review. Without this information the board would have no basis upon which to make a decision.

5 MCAR § 1.0902.A.1. The Law states, "any group of two or more school districts". This identifies who are those districts.

5 MCAR § 1.0902.A.2. This section provides the information necessary to identify the cost of operating the proposed region and the income to

meet those costs. Because it is in the same form and format as provided by other regions, it will provide a basis for comparison and therefore assist in determining the cost effectiveness of the proposed region, a condition prescribed in the Law.

5 MCAR § 1.0902.A.3. The Law provides the the proposed region plan must meet the provisions of the state computing plan. The sections of the plan which the proposed region must meet are:

1. compatible hardware
2. ESV-IS software
3. staff trained in the use of the software
4. the inclusion of intermediate AVTI districts as separate units
5. appropriate governance structure.

It should be noted that the state computing plan is composed of a number of documents as identified in the definition of the State Computing Plan. It is the intent of the department to consolidate those documents but such a consolidation has not been possible within the time frame for developing these rules. When such a consolidation is accomplished, these rules will be amended to incorporate the revised edition.

5 MCAR § 1.0902.A.3.a. The hardware and operating software prescribed in the state computing plan is specified by the development of a master contract with Burroughs Corporation for most of the types of equipment which is used in a regional center. This contract provides for a 40.9% discount at the present time, making the cost of the equipment considerably less expensive than it would cost on the open market. It is the intent of this section that any new region would use the equipment and software which is included in the master contract.

The term "compatible" means the same type of equipment from the same manufacturer as contained in the master contract and does not provide an option to use other manufacturer's computer equipment of a similar size, capacity, or capability. The plan provides that, in the event of a serious disruption at one computer center, its data bases could be transferred to another center and data processing could continue. This would not be possible within a reasonable time frame if the equipment of different manufacturers were used. In addition, the cost of programming on different computer equipment would duplicate costs and therefore is not

in the best interest of the state taxpayer.

5 MCAR § 1.0902.A.3.b. Applications software are the computer programs which process the individual data items. This software has been developed at MECC and is used throughout the state. By providing a single set of software used in each of the computer centers, only one group of systems analysts and programmers will be needed to maintain it, thereby avoiding duplicating costs.

In addition the users of information derived from the data will have an assurance that information is comparable from one district to another because it would have been processed by the same system.

5 MCAR § 1.0902.A.3.c. The key to successfully providing comparable data processing is by having staff trained on the system and by having staff available to work with districts. For a new region, staff will need to be trained. This section requires a plan showing how the proposed region intends to staff itself, thereby making it possible to determine if the districts will be able to have the services they need or want.

5 MCAR § 1.0902.A.3.d. There are three intermediate AVTI districts in the state. Should any of them desire to form a region in conjunction with other districts, they would be considered as a separate district. Other AVTI's are included in the plan and budget of the district in which they are located.

5 MCAR § 1.0902.A.3.e. The Law provides that districts must conform to the Minn. Stat. 471.59 which is the statute governing joint powers agreement. The state computing plan specifies that there be a governing board for each region, however, Minn. Stat. § 471.59 includes a governing board as a option and specifies conditions only if the option is exercised. This rule requires that option in conformance with the state computing plan.

One of the existing regions (Region IV) is established as a part of an ECSU. This rule provides for the continuance of that organizational arrangement so that when the Commissioner reviews that region's plan and budget as provided in 5 MCAR § 1.0901, it will be in conformance on this issue.

5 MCAR § 1.0902.A.4.a-d. The Law states that "criteria for approving the creation of a regional management information center... shall include... the cost effectiveness of the center and its plan and budget, the effect on existing regional management information centers." Cost effectiveness is measured by comparing the costs of data communications, hardware, staff, space and other associated costs to the expenditures of other regions for equivalent services, noting and justifying differences. It also includes the cost of financial obligations remaining should the districts leave a region and the anticipated costs of services to the districts in the proposed region. These are reasonable cost factors since the creation of a new region should not degredate services to districts in existing regions, should not be more expensive solely because of the creation of a new region, and should not allow districts to avoid financial obligations by leaving a region.

This section also provides for the possibility that an existing region might collapse if enough districts decide to form a new region, so an analysis of that eventuality is provided for consideration in the final decision. This would allow the Commissioner to decide whether to take over a region if it were to collapse or to combine the remaining districts with an existing region.

5 MCAR § 1.0902.B. This section provides that the Commissioner shall consult with the ESV Computer Services Advisory Task Force prior to making a recommendation to the Board. This task force is composed of two members from each of the seven regional governing boards. As such they have an immediate interest in the creation of any new regions, and can give the Commissioner insights into the effect which the proposed region will have on their region. It can be argued that they would present a biased viewpoint, which is probably true, however, it would be extremely difficult to get an unbiased view. It should also be pointed out that this task force was created expressly for the purpose of advising the Commissioner on such matters and that they are an advisory group, not decision makers.

5 MCAR § 1.0902.C. This section is taken verbatium from the law and is self explanatory.

5 MCAR § 1.0902.D. Since the Law specifies that there be two or more districts to create a new region, it will probably occur that one district will wish to disaffiliate from one region and affiliate with another.

This rule provides for that possibility by requiring the same documentation as though a new region is being created. It is hypothesized that in most cases the effect of such a disaffiliation would be negligible, however, the process should be followed so to avoid any serious mistake which might occur. The amount of documentation needed to transfer a single district would be substantially less than that required if a totally new region were created.

5 MCAR § 1.0903 Data Element Dictionary

Introduction

The Laws of 1979, Chapter 334, Article VI, Section 1, provides that a data element dictionary shall be established and produced by January 1, 1980. It further provides that while the data elements themselves are exempt from the rule making process, the board shall promulgate rules on the criteria for inclusion of the data elements in the data element dictionary and the process by which data elements are included in the dictionary. This section is presented to satisfy those requirements.

5 MCAR § 1.0903.A. This paragraph states the purpose for which a data element dictionary is established. It establishes the dictionary as the standard guide and set of data elements required of districts. This is important in order to avoid confusion, and to provide uniformity throughout the system by having a common set of names and definitions used by users of the data, systems analysts, programmers, and systems designers.

5 MCAR § 1.0903.B. Listed are five criteria for inclusion in the dictionary. These are sufficiently specific to be specific and yet broad enough to allow a degree of freedom in developing additional data elements.

5 MCAR § 1.0903.B.1. One of the primary functions of the department is to disperse funds in support of the educational system in Minnesota. Legislation on the manner and the formula for the dispersal of funds is volumnous. Throughout the laws of 1979, Chapter 334, there are references to the formulae to be used. In order to calculate the formula, data is required and is a basic purpose for collecting it.

5 MCAR § 1.0903.B.2. This criteria relates to the various laws, rules, and regulations of both the federal and state government which specifically require the collection of data for purposes of making information available to the public and decision makers. Since these are mandates, the data specified must be collected in order to stay in conformity with the law.

5 MCAR § 1.0903.B.3. The department has established purposes, goals and objectives in its budget which have been approved by the legislature. These purposes, goals and objectives had been reviewed and approved by

the Board, the departments of adminsitration and the governor's office. In order to meet these goals and objectives it is sometimes necessary to secure data from districts to determine the effectiveness and outcome of the department's to meet its goals. Such data elements can be related to specific goals and objectives, so inclusion of this criteria is appropriate.

5 MCAR § 1.0903.B.4. The department is mandated to carry out and implement programs by the state and federal government for which there is no statutory language to collect data but where the successful or efficient operation of the program requires data. Establishing this as a criteria is reasonable in that these programs can be specifically identified. The need for the data can be individually identified and evaluated against this criteria.

5 MCAR § 1.0903.B.5. Occasionally there are special or research projects which last over an extended period and require data from districts for the successful implementation of the project. In order to control the collection of this kind of data, there would be specific approval of the project by the Commissioner and an additional approval by the Commissioner for the collection of the data. It is appropriate to review these data items separately in order to minimize the amount of data collection during a project, to set termination dates for the collection effort to correspond to the termination of the project, and to maintain an inventory of data collection activities involving such projects.

5 MCAR § 1.0903.C. This section contains the attributes of the data elements contained in the data element dictionary and provides that a notice is sent to each region when a data element will be reviewed. The notice is sent to the region rather than the districts because of the cost of mailing and because the regional staff has the professional expertise to evaluate the impact of collecting the data by the districts which the staff serves.

5 MCAR § 1.0903.C.1. There are more than one name assigned to a data element. The names may be:

1. full English name
2. abbreviation commonly used
3. computer program name

4. MEDID abbreviation

Each of these would be required in the dictionary and therefore used whenever the element is used. By establishing names in this document, there would also be established a naming convention which would bring uniformity and compatibility to the system, especially when modifications are undertaken.

5 MCAR § 1.0903.C.2. The physical characteristics of a data element include length, type of characters, sign, and other characteristics specific to computer processing. These are needed in order to provide commonality among the systems which process the data.

5 MCAR § 1.0903.C.3. The definition of the data element is needed in order to insure commonality and comparability of information contained in the report. At the state level the definition may be stated in terms of an aggregation of several other data elements which are maintained by the district but which are not used by the state. In such an event, the detail data element would be listed in the dictionary as well as the aggregated data element. Doing this will assure uniform use of the data and accuracy throughout the system.

5 MCAR § 1.0903.C.4. The purpose listed for each data element is a record of the criteria which it met. This will allow for the efficient review and evaluation of the data elements.

5 MCAR § 1.0903.D. One of the reasons legislation established the data element dictionary was in response to criticism that the department proposed and enforced collection of data without any review of the need for the data by district personnel. This section establishes that process. The committee is "ad hoc" because a permanent committee would not be able to be sufficiently representative of the various areas in which data is collected. With an ad hoc committee, representatives from each specialty area can be placed on the committee or on subcommittees for better input to the recommendation which goes to the Commissioner.

5 MCAR § 1.0903.D.1. This is a subjective statement based upon the perception of the committee and its professionalism.

5 MCAR § 1.0903.D.2. This is the committee's recommendation after it has analyzed the statement of purpose for which the data element is collected.

5 MCAR § 1.0903.D.3. This determination prevents duplication of effort in the collection of data.

5 MCAR § 1.0903.D.4. This section will require that each data element be assessed as to the cost of collecting it and a determination made that the cost is justified. The exception provides for those instances where the cost must be ignored because of legislative mandates.

5 MCAR § 1.0903.D.5. This requirement is already in law but is restated to provide for a deliberate analysis of the provisions of that law. In this way, data which is considered private will not be inadvertantly collected, or if it is collected, will have the proper safeguards, since the act provides that the classification of the data follows the data rather than the organization.

5 MCAR § 1.0903.E. The purpose for this section is to provide for a systematic review of each data element to keep the dictionary current to the needs for data collection. Three years is considered reasonable both in terms of the current frequency of forms revision and in terms of the work load placed on the staff.

This section provides for notification and opportunity for review and comment by the regions.

5 MCAR § 1.0903.F. This establishes that the Commissioner makes the final determination after the data acquisition review committee has made its recommendation. The material accompanying the recommendation should provide the Commissioner with sufficient information to make an appropriate determination.

5 MCAR § 1.0903.G. In order to insure that sufficient time is available to make computer program changes, form changes and writing instructions to the districts, six months is established as a reasonable time frame for this effort. It was originally proposed that 90 days was sufficient however, after consultation with the regions, it was agreed that 180 days was more appropriate.

5 MCAR § 1.0904 Data Acquisition Calendar

Introduction

This rule is being established in conformance with the Laws of 1979, Chapter 334, Section 1 which requires the board to adopt rules relating to the inclusion of reports in the data acquisition calendar. The rule is relatively short simply because it establishes four points:

1. maintenance of the calendar
2. minimum content
3. standards of the reports
4. the approval process

This section is closely related to the 5 MCAR § 1.0903 because reports are aggregations of data elements. In fact, eventually, only a few report forms will be used, and these mostly narratives, since long range plans provide for the mechanical transfer of data from the regions to the department

5 MCAR § 1.0904.A. By September 1, of each year, a data acquisition calendar must be sent to each district. This will allow the district to schedule its data collection efforts to meet the due dates of the reports. Since the amendments are made quarterly, the September 1 date will probably fade in importance.

5 MCAR § 1.0904.B. These items are needed to properly identify each form and provide sufficient information for the district to meet its obligation. Additonal information may be provided at the option of the department but not less.

5 MCAR § 1.0904.C. Since all forms are composed of data elements, and the standards for data elements are established in 5 MCAR § 1.0903, there is no need to elaborate here except by reference.

5 MCAR § 1.0904.D. This rule provides that the approval process of the form is the same as provided for data elements as described in 5 MCAR § 1.0903. Since forms are composed of data elements, no special process is needed other than reference to that process.

Rule as Proposed (all new material)

Chapter Forty-Two: Computer Systems

5 MCAR § 1.0900 Definitions.

A. Definitions. For the purpose of these rules, the following definitions are used:

1. "Board" means the State Board of Education.

2. "Commissioner" refers to the Commissioner of Education.

3. "Department" refers to the Department of Education.

4. "District" is defined as any independent, special, or common school district.

5. "ESV" refers to the elementary, secondary, and vocational education system in Minnesota and includes all school districts as defined above.

6. "ESV-IS" is the Elementary Secondary and Vocational Information System which is sometimes referred to as the "State-wide software" and the "software developed by MECC for the Department of Education".

7. "ESV-FIN" is the financial accounting subsystems of the ESV-IS.

8. "ESV-PPS" is the personnel payroll subsystem of the ESV-IS.

9. "ESV-SSS" is student support subsystem of the ESV-IS.

10. "ESV-IMS" is the instructional management subsystem of the ESV-SSS.

11. "MECC" is the Minnesota Education Computing Consortium.

12. "Region" and "regional management information center" is the administrative organization created to provide computer services to the school districts within the region and designated as a regional management information center by the Department of Education.

13. "Data element" is any representation of information such as alphabetic characters, or numbers or signs to which meaning may be assigned and which is suitable for communication, interpretation or processing by humans or by automated means.

14. "Data acquisition calendar" is the list of forms, applications, memoranda, or other instruments through which the districts are required to collect, record or report data, and indicates the date when such data is due to the Department.

15. "State computing plan" is the following collection of documents:

a. "A proposed educational computing services organization: its facilities and services" revised edition February 15, 1973.

b. "Minnesota educational computing consortium 'MECC' report--1974" February, 1974.

c. "MECC update" September, 1974.

d. "Minnesota educational data processing to 1980" October, 1974.

e. "Summary of Minnesota educational computing plans and budget for the 1977-79 biennium" November, 1976.

f. "Summary of Minnesota educational computing plans and budgets for the 1979-81 biennium" November, 1978.

g. "Minnesota area vocational-technical institutes state plan for instructional data processing" July 1, 1979.

h. Such other documents as the State Board of Education may from time to time designate as an amendment to the State Plan.

16. "UFARS" is the Uniform Financial Accounting and Reporting System established in 5 MCAR §§ 1.0760-1.0769 adopted by the Board pursuant to Minn. Stat. §§ 121.90-121.928.

5 MCAR § 1.0901 Region plans and budgets.

A. By April 1 of each year, each regional management information center shall submit an annual plan and budget on behalf of its member districts to the Department of Education for its approval.

B. This plan and budget shall be on forms and in the format prescribed by the Commissioner.

C. The plan shall contain sufficient information so that it can be determined by the Department that:

1. The region has conducted a survey of each member district and has developed a statement of the needs for computer services for each of the member districts.

2. That each district will fully participate in the comprehensive financial reporting system utilizing the ESV-FIN system and that each district has an opportunity to fully participate or has an opportunity to participate to the extent of desired participation in the ESV-PPS, and/or ESV-SSS, and/or ESV-IMS through the availability of hardware, ESV-IS software, and staff specialists to operate these systems during the normal working hours of the regional computer centers.

3. There is sufficient staff, computer hardware and related equipment to meet the needs expressed by the member districts and that the hardware and related equipment is compatible with the hardware and communication equipment used by the ESV-IS.

4. There are sufficient funds to support the staff, hardware, communication and other related costs of the regional management information center.

5. The region has the ability to provide information required by the annual data acquisition calendar and by the Rules of the Board on behalf of its member districts by securing and operating such equipment using the software designed by, for, or on behalf of the Department as is necessary to produce computer tapes which are machine readable on the computer designated by the Department.

6. The region has a data base which it maintains for each school district which contains the data elements in the data element dictionary and the region has the necessary equipment and software to report to the Department, within 15 days, information based on these data elements using software designed by, for, or on behalf of the Department, on computer tape, which is machine readable on the computer designated by the Department.

7. The region has the ability to collect, store and report within 30 days, information requested by the Department, based on data elements not contained in the data element dictionary.

D. By February 1 of each year each district shall submit to the regional management information center a proposed budget and plan for computer services identifying the computer equipment, computer software, and staff it will use, the costs related to those items and any service fees or other computer related costs which will be incurred by the district and will not be provided by the region.

E. Each district shall collect, and shall store on the region computer, for reporting to the Department, the data elements contained in the data element dictionary. Each region shall maintain a database for each school district of data elements in the data element dictionary in the format according to the standards contained in 5 MCAR § 1.0903, subdivision C.

F. The region shall submit a proposed annual budget approved by its governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

G. By April 1 of each even numbered year, each existing region and any proposed region shall submit a proposed biennial budget approved by its governing board which shall conform to the Uniform Financial Accounting and Reporting Standards as contained in 5 MCAR §§ 1.0760-1.0769 and Minn. Stat. §§ 121.90-121.92.

H. The Commissioner shall review any proposed equipment acquisition to determine whether the services requested justify the expenditures; and will review all costs to determine whether they are justified by the level of services to be provided.

I. The Commissioner shall make a determination whether there are sufficient funds to implement the annual or biennial plan and budget as presented and shall notify the region of his decision. In the instance where the decision of the Commissioner is adverse to the desires of the region, the region may have the matter referred to the Minnesota Educational Computing Consortium for a final determination.

J. Any change in level of service provided by the region or proposed equipment or changes that occur after a plan and budget has been approved must be separately approved by the Commissioner.

K. During the course of any year, the Commissioner may revoke a previously granted approval of a plan and budget on the basis that:

1. There has been an amendment to the plan or budget which materially affects the provision of services to members of the region and which has not been reported to or approved by the Department.

2. The region no longer has the ability to provide services according to the standards established in 5 MCAR § 1.0901 and 5 MCAR § 1.0902 necessary for the creation of a region.

5 MCAR § 1.0902 Creation of regions.

A. Criteria for new regions.

Two or more districts which desire to establish a new regional management information center shall submit to the Commissioner the following information:

1. Names and addresses of the districts who desire to operate the new region.

2. A plan and budget which meets the requirements of 5 MCAR § 1.0901.

3. A statement showing how the proposed region conforms to the state computing plan in that:

a. The hardware and its operating software proposed for the region is compatible to the hardware and operating software specified in the plan.

b. The software used is the ESV-IS software.

c. The staff is or will be trained on the ESV-IS and will be able to provide user coordination and data control services to the districts.

d. Services to AVTI schools located within the region are included in the proposed region plan and budget.

e. Communication networks are configured in the least costly manner.

f. The governance structure of the proposed region conforms to Minn. Stat. § 471.59.

4. The determination of whether the proposed region is cost effective will be based upon the following information:

a. The cost for data communications, hardware, staff, space rental, and other associated costs compared with projected costs if instead the member districts were to belong to existing regions that are in proximity to the member districts. Where the level and types of services in the proposed region differ from those which have been provided by regions in proximity to the member districts, those differences along with the costs associated with those differences must be documented.

b. Any continuing financial obligations where member districts are withdrawing from a previously existing region.

c. Any additional cost to other districts where a member district withdraws from an existing region, and the ability of the existing region to reduce those costs by the utilization of different hardware, and staff while still meeting its obligations under 5 MCAR § 1.0901. If the existing region cannot continue in a cost effective manner, the ability of the remaining member districts to join different regions who will meet their needs as specified in the existing plan filed pursuant to 5 MCAR § 1.0901, and the costs related to such a change.

d. The anticipated membership and service fees for the member districts compared with the membership and service fees if instead the member districts were to belong to existing regions that are in proximity to the member districts. Any difference in level of service between the proposed region and the regions in proximity must be documented.

B. Upon examination of the evidence presented in support of the creation of a new region, and after consultation with the Elementary Secondary and Vocational Computer Services Advisory Task Force, the Commissioner shall make recommendation to the Board for its determination.

C. Any new region which is approved pursuant to this rule shall come into existence on the July 1 of the next odd numbered year after its creation or when the Legislature makes express appropriations of regional subsidies for the region, whichever occurs first.

D. Any district which seeks to terminate membership in an existing region and affiliate with another existing region must file the same documentation and complete the same process as provided for the creation of a new region.

5 MCAR § 1.0903 Data element dictionary.

A. The purpose of the data element dictionary is to provide a standardized table of data elements which districts are required to collect, store and report either directly to the Department or through the regional management information center.

B. The criteria for inclusion of a data element in the data element dictionary are:

1. The data is needed in order for the Department to properly disburse funds in support of the elementary, secondary and vocational educational system in Minnesota; or

2. The data is needed to make reports defined or required by state or federal statute, rules, or regulations; or

3. The data is needed for the planning of educational programs; or

4. The data is needed for the evaluation of educational programs; or

5. The data is needed for adequate management of the Department; or

6. The data is needed for the implementation of research or special projects in education, and which have been approved by the Commissioner.

C. Each data element in the data element dictionary shall contain:

1. The standard names of the data element.

2. The description of the physical characteristics of the data element.

3. The definition of the data element.

4. The purpose for which the data element is collected.

D. Data elements proposed for inclusion in, or deletion from, the data element dictionary shall be reviewed and approved by the Commissioner. At least 90 days notice to the region shall be given prior to the collection of any new data element.

5 MCAR § 1.0904 Data acquisition plan.

A. By June 1 of each year, the Department shall transmit to each district and region an annual data acquisition calendar specifying the reports which school districts are required to submit either directly to the Department or through the regional management information center. Amendments may be made to the calendar each quarter thereafter.

B. The data acquisition calendar shall contain, at a minimum, the name and description of the form and the date when it is due to the Department.

C. Only data elements contained in the data element dictionary shall be included in the form and shall be used according to the standards established in the data element dictionary.

D. Proposed forms to be included or deleted from the data acquisition calendar shall be approved only after each data element has been approved by the Commissioner as provided in 5 MCAR § 1.0903.

Rules as Proposed

Chapter Thirty-Two: Veterans' Education

EDU 640 Renumber as 5 MCAR §1.0640.

~~EDU-641-Veterans refund policy.~~

~~A.--Institutions-offering-courses-approved-under-section-1775,-chapter 36,-Title-38,-United-States-Code-on-an-accredited-basis-will-have-an maintain-a-policy-for-the-refund-of-the-unused-portion-of-tuition,-fees, and-other-charges-in-the-event-the-eligible-person-fails-to-enter-the course-or--withdraws-or-is-discontinued-therefrom-at-any-time-prior-to completion-and-such-policy-must-provide-that-the-amount-charged-to the-eligible-person-for-tuition,-fees,-and-other-charges-for-a-portion-of the-course-shall-not-exceed-the-approximate-pro-rate-fees-and-other charges-that-the-length-of-the-completed-portion-of-the-course-bears-to its-total-length.--This-requirement-applies-only-to-veterans-and-other eligible-persons-enrolling-on-or-after-February-1,-1972.~~

~~B.--Veterans-and-other-eligible-persons-must-be-given-a-copy-of-the veterans-refund-policy-upon-their-enrollment.~~

EDU 642 Renumber as 5 MCAR §1.0642.

EDU-80-002-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing EDucation Computer Systems - 5 MCAR §§ 1.0900 -1.0904 and Repeal of Rule EDU 641 Governing Veterans Refund Policy.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner on Monday, November 19, 1979, in Conference Room D, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, 55155, pursuant to Notice of Hearing dated September 18, 1979.

Michael J. Bradley, Special Assistant Attorney General, 303 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55155, appeared as counsel for the Minnesota Board of Education (hereinafter the "Board"), and the Department of Education (hereinafter the "Department"). Appearing as witnesses on benalf of the Board were Romaine S. Foss, Veterans Training Supervisor of the Special Services Division, who testified only as to the repeal of EDU 641, Ronald J. Laliberte, Assistant Commissioner, Division of School Management Services, Donald R. Thomas, Director, Education Data Systems, and Erwin Chorn, Assistant Director, Education Data Systems.

Fourteen persons signed the hearing register and the hearing continued until all persons present had had an opportunity to be heard. The record remained open for 20 calendar days after the close of the hearing through Monday, December 10, 1979, for the submission of written comments from interested persons. Three public comments on the proposed rules were received by the Hearing Examiner prior to the date of the hearing, and in addition to the comments received at the hearing itself, 16 public comments on the proposed rules were received by the Hearing Examiner subsequent to the hearing, while the record remained open. Subsequent to the hearing, the Hearing Examiner also received 19 separate responses to public comments from Mr. Chorn on behalf of the Department.

At tne request of Mr. Laliberte and the Hearing Examinr, the Chief Hearing Examiner extended the due date of this Report to January 23, 1980, pursuant to Minn. Stat. § 15.0412(4) (1978).

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five working days before the Board takes any final action on the proposed rules. Thereafter, the Board of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4 (1978). The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his re-

port to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 (1978) within ten calendar days. The Board will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

Procedural Requirements

1. On September 19, 1979, the Board of Education filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.
(e) Certificate of Board's authorizing resolution.

2. On Monday, October 15, 1979, a Notice of Hearing and a copy of the proposed rules including the rule to be repealed, was published at 4 State Register 573-577.

3. On October 18, 1979, the Board of Education 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 October 24, 1979, the Board of Education filed the following documents:

(a) The Order for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 4 State Register 2273, October 25, 1979.

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 December 10, 1979 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. The Board of Education did not submit the names of personnel who would represent it at the hearing on these rules or the names of any other witnesses solicited by it to appear on its behalf as required by 9 MCAR § 2.105 A. However, no one requested that information from the Hearing Examiner prior to the hearing, and no one was prejudiced by the Board's failure to comply with the rule in that respect. As a result, technical non-compliance with that section was insubstantial and harmless in this case and does not render the proceedings invalid.

Statutory Authority

7. The Minnesota State Board of Education serves as the State Board for Vocational Education pursuant to Minn. Stat. § 121.11 (1978), and also as the

state approving agency approving educational institutions for purposes of federal laws relating to educational benefits for veterans and other persons pursuant to Minn. Stat. § 124.625 (1979 Supp.).

The Board of Education has general rulemaking authority which it derives from Minn. Stat. § 121.11, subd. 12 (1978), which provides as follows:

> Administrative regulations. The state board shall have power from time to time to make and enforce such rules and regulations, consistent with this code, as may be appropriate for the administration and enforcement thereof.

In addition, as the State Board for Vocational Education, it has other specified rule-making authority as set forth in Minn. Stat. § 121.21, subd. 6 (1979 Supp.) which provides in part as follows:

> "The state board for vocational education shall promulgate, pursuant to chapter 15, such rules governing the operation and maintenance of schools so classified as will afford the people of the state an equal opportunity to acquire public vocational and technical education. . . .
>
> The rules shall provide for, but are not limited to, the following: . . .
>
> (e) General administrative matters."

8. The necessity for repealing rule EDU 641 and of adopting rules pertaining to education computer systems is based, however, on more specific statutory provisions. Laws of Minnesota 1979, Ch. 334, Art. V, § 20, amending Minn. Stat. § 124.565, subd. 3 (1978), pertaining to tuition at post-secondary vocational-technical schools provides in part as follows:

> "A full refund [to students in post-secondary vocational-technical school] shall be provided to a student who withdraws on or before the 15th day of the quarter. No refunds shall be provided for withdrawal after the 15th day of the quarter."

Laws of Minnesota 1979, Ch. 334, Art. VI, § 1, amending Minn. Stat. § 16.93 (1978) provides in part as follows regarding the duties of the State Board of Education:

> "The state board of education shall adopt rules prescribing the criteria for approval of regional plans and budgets and of the creation of regions and specifying the criteria and the process for determining which data and data elements are included in the data element dictionary and the data acquisition calendar developed pursuant to subdivisions 6 and 7. To the extent permitted by available resources, the commissioner of administration may furnish staff and other assistance to the department of education and the Minnesota educational computing consortium in conjunction with their performance of the duties imposed by this section."

Repeal of EDU 641.

9. As the State Approving Agency, the Board of Education was required to enforce prior federal regulations requiring a pro rata tuition reimbursement when a veteran withdrew from particular unaccredited schools or unaccredited courses. Consequently, in 1974, it adopted a rule (EDU 641) requiring such a pro rata reimbursement to veterans who withdrew from unaccredited schools or courses. However, the Board at that time believed that veterans should be treated alike whether they withdrew from an accredited or unaccredited program. Therefore, they extended the pro rata tuition reimbursement rule to both accredited and unaccredited programs.

Laws of Minnesota 1979, Ch. 334, Art V, § 20, amending Minn. Stat. § 124.565, subd. 3, established a state refund policy applicable to vocational-technical schools which conflicts with current rule EDU 641. The statutory provision previously cited provides that a full refund must be given to students who withdraw on or before the 15th day of the quarter and that no refund shall be provided for withdrawal after the 15th day of the quarter. This section is contrary to the rule previously adopted by the Board.

Moreover, new federal regulations applicable to private trade schools were adopted effective January 1, 1980 which preempt state laws applicable to tuition payments and reimbursements in those schools. See, 16 C.F.R § 438.

Since the Legislature has not sought to treat veterans attending accredited schools differently than other students, either in Minn. Stat. Ch. 141, relating to private business and trade schools, or in Minn. Stat. § 124.565 (1979 Supp.), relating to vocational-technical schools, but, in fact, has adopted a different refund policy than that contained in the Board's rule and since federal regulations apply to private trade schools, effective January 1, 1980, the Board concluded that its rule should be repealed.

The Board of Education, as the State Board for Vocational Education, clearly has authority to adopt rules and to repeal those rules which run counter to state and federal laws, and since its current rule, EDU 641, is inconsistent with Minnesota Statutes, its decision to repeal the instant rule is, therefore, both reasonable and necessary under the circumstances.

The repeal of this rule was completely uncontroversial. The Hearing Examiner received no written comments whatsoever concerning its repeal, and no one attended the hearing to present argument against its repeal or to ask questions concerning it.

Education Computer System Rules

10. In 1967, 19 metropolitan school districts, realizing the advantages of computers for the storage, maintenance and processing of information they regularly gathered and used, organized, pursuant to the so-called joint powers act,[1] a Board called the Minnesota School District Data Processing Joint Board, commonly known and hereinafter referred to as "TIES" (taken from Total Information for Educational Systems). By creating a joint board, the member districts were able to avoid duplicating many of the costs associated with computerization and still reap the many advantages concomitant thereto. Their pioneering efforts in educational computerization have served as a model for other districts and other state governmental units, both within and without the state of Minnesota.

In 1973, following TIES' example, the Minnesota Department of Education, the University of Minnesota, the State University System, and the Minnesota Community College System formed a similar joint board under the Act "for the purpose of reviewing school districts' biannual computer budgets and plans, establishing technical standards for educational computing, providing training, consultation, software development and maintenance of educational comput-

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[1]Minn. Stat. § 471.59, which permits governmental units by agreement to jointly exercise common powers and create joint boards in order to do so.

er systems and operating general computers for service to the school districts."[2] This Board was called the Minnesota Educational Computer Consortium (commonly known and hereinafter referred to as "MECC"), and it continues to function as a joint board of the named parties, even though efforts have been made to convert it to an official agency of state government.

At the time MECC was created, it was also proposed that all school districts within the state should report data required by the Department of Education through one of seven regional computer centers similar to TIES. Since that time, the seven regional centers have been established and are currently operating.[3] These regional centers are, like TIES, organized under the Joint Powers Act or under Minn. Stat. § 123.58 (1978), which designated ten educational cooperative service units (hereinafter called "ECSU"). In addition, at least one non-profit corporation has been established to provide these functions to member school districts. ECSU generally follow the geographic boundaries of economic development regions as set forth in the statute designating them.

Recent laws have further clarified the function of the seven existing regional computer centers and the obligations of the State Board in regulating their activities. Laws of Minnesota 1979, Ch. 334, Art. VI, § 1, amending Minn. Stat. § 16.93 (1978),[4] requires every school district to become a member of a regional management information center (hereinafter variously described as "Center", "Regional Center", and "Regional Information Center"), and to submit to that regional center information required by the data acquisition calendar, the data element dictionary, and State Board rules. It continues to authorize school districts to expend funds for the computerization of its various activities but only after the regional center of which it is a member submits and obtains approval of an annual plan and budget on behalf of its member districts. The law provides for the creation of new regional centers and sets forth identical criteria for approval of an existing region's

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[2]See Statement of Need and Reasonableness, p. 1

[3]The seven regional computer centers, as established in the state computing plan, consists of the following:

1. ESV Region I with administrative offices in Moorhead, is comprised of economic development regions 1, 2 and 4;
2. EVS Region II with administrative offices in Duluth, is comprised of economic development region 3;
3. ESV Region III with administrative offices in St. Cloud, is comprised of economic development regions 5, 7E and 7W;
4. ESV Region IV with administrative offices in Marshall, is comprised of economic development regions 6E, 6W and 8;
5. ESV Region V with administrative offices in Mankato, is comprised of economic development regions 9 and 10;
6. ESV Region VI, also known as METRO II, with administrative offices located in Roseville, is comprised of those districts not members of ESV Region VI located in economic development 11. See Statement of Need and Reasonableness, p. 3.

[4]Prior to the 1979 amendment, this section, originally enacted in 1971, authorized school districts to expend funds for the computerization of its activities only after filing an annual plan and budget with the Department of Education for approval. Approval criteria were the state plan and cost effectiveness.

annual plan and budget as it does for the creation of a new regional center. The law further provides for specified subsidies to the regional centers and requires the Board of Education to adopt specified rules.

The rules must set forth the criteria for approval of regional plans and budgets, the criteria for the creation of new regions, and the criteria and process for determining which data and data elements are to be included in the data element dictionary and the data acquisition calendar. The rules proposed by the Board, and which comprise the subject matter of this Report (5 MCAR § 1.0900-1.0904, inclusive) deal with these required subjects and are a necessary exercise of the Board's authority in order to comply with the duties imposed upon it by law. Since the Board was directed to adopt these rules, the only question that remains for consideration is, therefore, whether the Rules it proposes to adopt are a reasonable exercise of its duty and authority.

Although many specific comments were made concerning the proposed rules, including grammatical and spelling corrections, not every comment has been covered in this Report. However, all comments involving substantial questions of law and policy are considered.

11. Several separate comments were received which related to the scope of the proposed rules and the timing of their proposed adoption. Thus, Donald J. McGuire, Superintendent, Lakeville Public Schools, and Lee J. Rodel, Data Processing Specialist, Hopkins Public Schools, both suggested that these rules were being considered prematurely in view of the evaluation of regional management information systems currently in progress by Peat, Marwick, Mitchell & Company on behalf of the Governor pursuant to Laws 1979, Ch. 334, Art. VI, § 33. Since the results of this evaluation are due to be completed by January 15, 1980, both parties felt that the Report should be considered before permanent rules were adopted.

In his reponse to that suggestion, Mr. Chorn noted that the Department has been working in the evaluation of the regional management information systems undertaken by this company and that since the study was commissioned by the Legislature, he would assume that any changes suggested in the Report would be discussed and acted upon by the Legislature, and any resulting statutory changes would be reflected in amendments to these rules.

August Rivera, Director of the Information Services Center for the Minneapolis Public Schools, expressed a different reason why the Board should not adopt permanent rules at this time. He suggested that it would be more prudent for the Board to operate under the temporary rules adopted in the Fall of 1979 for a sufficient period of time in order to gain some experience and insight into the process and problems needed to be corrected before permanent rules were adopted. His suggestion certainly has a rational basis, but amendments that might be necessary in view of the experience or insight gained operating under the rules would be necessary to permanent rules or temporary rules, and the Board, in its discretion, can commence immediate proceedings for the adoption of permanent rules. This has the advantage of eliminating some duplication of effort which would otherwise occur if wholly separate proceedings were undertaken, and it provides a better forum for public participation in the rulemaking process at the earliest possible stages.

Carter Christie, Director of Business Affairs for the Prior Lake Schools, felt that adoption of the temporary rules and presumably the permanent rules under consideration herein should be delayed until the data element dictionary was finally adopted. She felt that it was extremely difficult to determine the impact of the proposed rules without knowing the contents of the data element dictionary. Her professed inability to make a reasoned evaluation of some sections of the rules, such as § 1.0901 D.6. - D.7., and § 1.0901 E., were expressed by other administrators who suggested that no permanent rules should be adopted until the data element dictionary was adopted.[5]

Mr. Chorn's response to these statement was that the data elements that will be contained in the data element dictionary are not new data elements but those which are currently being reported to the Department by the various districts, and those which are currently contained in the ESV-IS. He also noted that the Legislature required the Department to concurrently establish the dictionary and the rules and implied that the dictionary could not, therefore, be adopted first.

It appears from the statute, as amended in 1979, that since the Board is required to adopt rules "specifying the criteria and process for determining which data and data elements are included in the data element dictionary, and the data acquisition calendar", that the rules must be in effect before the dictionary and calendar can be adopted. Consequently, the difficulties previously mentioned by Mr. Rodel and others cannot be avoided and they do not, therefore, render the procedural time table followed by the Board inappropriate.

12. 5 MCAR § 1.0900 contains the definitions adopted by the Board for purposes of the proposed rules. Except as specified below, these definitions are a necessary and reasonable exercise of the Board's rulemaking authority under Minn. Stat. § 16.93 (1979 Supp.).

The word "District" was originally defined in § 1.0900 A.4. as "any independent, special or common school district." After publication and prior to the hearing in this matter, the Board proposed to amend the definition of the word "district" to "any independent, special or common school district and includes the area of vocational-technical institutes." It avers that this is the generally accepted definition used in statutes and common practice and that it is consistent with the definition of school districts as defined in Minn. Stat. § 120.02. Since area vocational-technical schools are operated by independent or special school districts, they are within the meaning of the term "school districts" as used in § 16.93. Several comments were received recommending that the definition be clarified if it was to include intermediate area vocational-technical institutes which have separate legal status.

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[5]See the comments received from Mr. Lee J. Rodel of the Hopkins School District and Mr. Robert D. Tschirki, Superintendent, Independent School District No. 191 (Burnsville, Eagan, and Savage), and Theodore F. Cunio, Superintendent, White Bear Lake Public Schools.

The Board proposes to further amend the definition of the word to reflect the clarification requested. The proposed amended definition to read as follows:

> "District" is defined as any independent, special, or common school district and includes the area of vocational-technical institutes. Intermediate ATVIs shall be treated as separate school districts for the purpose of these rules.6

complied with page 1

This definition is clearly necessary to clarify the coverage and scope of the rules and is a reasonable exercise of the Board's power. Douglas L. Skor, attorney for TIES, argued at the hearing on these rules that the proposed amendment to the definition of a district constitutes a substantial change in the coverage and scope of the rules and that the amended definition should not, therefore, be adopted. His argument has merit. The whole question of substantial change is one of notice and the purpose of the detailed requirements of the rules pertaining to rulemaking hearings found in 9 MCAR § 2.101 et seq. is to provide advance notice to parties who will be affected by their adoption. In this case, no one was advised prior to hearing that area vocational-technical institutes and intermediate area vocational-technical institutes were within the proposed coverage of the rules, and those institutes did not, therefore, have prior notice that they would be affected by their adoption. Consequently, on his review pursuant to 9 MCAR § 2.110, the Chief Hearing Examiner may find that a substantial change was made in the rules especially if intermediate vocational-technical institutes are included within the definition of the word "Districts."

see F. of F ¶ 2

13. §§ 1.0900 A.6. through A.9. define the general educational computing system in this state and the various "software" computer programs comprising that general system. Only Mr. John Haugo, Executive Director of MECC, commented on these definitions. He was generally of the opinion that they should be broadened, but he had only one specific comment. He thought that the definition of the ESV-FIN subsystem was inappropriate because that system is not simply an accounting subsystem of the ESV-IS but rather an accounting, auditing and reporting subsystem thereof. The Board has accepted his recommendation and now proposes that the definition be amended to read as follows:

> "ESV-FIN" is the financial subsystem of the ESV-IS."

This amendment satisfies Mr. Haugo's particular comment and appropriately clarifies the definition involved.

14. § 1.0900 A.10. defines a member as follows:

> "Member", "member district", "membership" means affiliation through a joint powers agreement with one or more other districts or with an educational cooperative service unit which will provide the computer services required by these rules through a management information center."

6For grammatical purposes, perhaps a better definition would be: "District" means any independent, special or common school district, including the area of vocational-technical institutes. Intermediate vocational-technical institutes shall be treated as separate districts for purposes of these rules.

Mr. Pius Lacher, Superintendent of Schools at Mora, Minnesota,[7] was particularly concerned with this definition. Although joint boards and ECSUs are specifically authorized to operate Regional Management Information Centers, one center is currently operated by a non-profit corporation, and he felt this definition precluded non-profit corporate centers or other legal methods whereby regions might organize. He urged that the rules authorize such alternative forms of organizations to operate as Regional Management Information Centers. Mr. Chorn's response on behalf of the Board was as follows:

> "It is suggested that this rule should recognize all possible forms of organization. Minn. Stat. § 16.93 (1979) [sic] only recognizes organizations formed pursuant to Minn. Stat. § 471.59 1978). In addition, Minn. Stat. § 123.58, subd. 8(c), recognizes that Educational Cooperative Service Units (ECSU) may provide data processing services for their member districts. It is based upon those two provisions that the rule is written. There is a real question of whether a non-profit corporation may even be legally formed when the legislation has established an expressed alternative method of providing services, however, that question need not be answered by these rules or even by the Department of Education. All that need be said is that there is no authorization in the statute to justify any expansion of the rule.[8]

Mr. Lacher did not refer the Hearing Examiner to any general or specific statutory authority pursuant to which two districts could form a region under the proposed rules, and the Hearing Examiner is aware of none other than those mentioned in Mr. Chorn's statement. Consequently, it seems clear that, except for ECSUs, two school districts may form any kind of structure authorized pursuant to the terms of the Joint Powers Act (Minn. Stat. § 471.59). That Act appears to give the contracting parties considerable latitude in drafting their agreement, and the "method" by which the objectives sought to be accomplished and the powers to be exercised will be accomplished. The rules recognize regions formed under the Joint Powers Act or ECSUs but only if they have a joint board (See § 1.0902 A.3.e). According to the Statement of Need and Reasonableness (p. 19), the state computing plan requires that each region have a governing board (joint board) complying with § 471.59. However, as will be discussed in more detail later, the so-called state computing plan has not been formally adopted by the Board and no reasons were presented by the Department showing why regions should be restricted to the use of joint boards. For that reason, it is concluded that the need for and the reasonableness of § 1.0902 A.3.e. requiring the use of joint boards has not been demonstrated

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[7]Mr. Lacher is also a member of Region III MIS governing board, a member of the Commissioner's task force for elementary, secondary and vocational school computing, and a member of the State MECC board.

[8]Mr. Erwin Chorn is the Assistant Director of Education Data Systems of the School Management Services Division of the Department of Education. He was the principal witness testifying on behalf of the adoption of these proposed rules and prepared the Board's responses to comments received on the rules.

and such a requirement should not be adopted. Under the Joint Powers Act, non-profit corporations may be permitted and the board of directors of such a corporation might qualify as a joint board for purposes of the proposed rule. The breadth of that Act is, however, outside the scope of this hearing as was stated by Mr. Chorn.[9]

John W. Bennion, Superintendent of Schools in Bloomington, felt that each member district should be afforded the opportunity to acquire services from a region other than their own member region when the member region does not supply such services and they would be otherwise unavailable. Raymond G. Arveson, Superintendent of Schools in Minneapolis, had a similar comment. He suggested that the state should allow two classes of regional membership, (1) a regular membership which would include costs for operation or management of a region, and another affiliate membership which would include a minimal fee and a usage fee for preparing summary reports to the Department as requested. Mr. Arveson also felt that districts should have some options available to them in selecting regions in the event they received unsatisfactory services or services at an unsatisfactory cost.

In his response to Mr. Arveson, Mr. Chorn stated:

> The suggestion to provide two classes of regional membership is not prohibited by these rules. Currently, the regions provide either a general membership fee and specific service charges or a comprehensive membership fee which includes the cost of providing services. The Department believes this should be decided by the member districts in the regions."

His reponse to Mr. Bennion was not so clear. He said:

> "The concern is expressed that a district should be afforded the opportunity for buying services from another region. These rules make specific reference in that definition of a region is an administrative organization not bound by geographic boundaries, and § 1.0902 D. provides that a district must follow the same process when seeking termination of membership in an existing region and affiliation with another region. It is our understanding that the intent of the Legislature is to specifically provide for this contingency."

Mr. Chorn seems to equate buying services from another region with becoming a member of the other region. It appears, however, that Mr. Bennion wanted to know if it was permissible to buy services from one region while maintaining membership in another. Clearly, this should be permitted under the rules. Districts should not be forced to change regions simply because a particular region, perhaps for good reason, does not provide a particular service or because the district has a particular or even unique need which cannot be met. Allowing such purchases is consistent with the concept of different kinds of memberships, such as "regular" and "affiliate" memberships, and it preserves the geographic boundaries of existing regions which may, as a usual matter,

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[9]The general rule as stated in 62 C.J.S., Municipal Corporation, s 159, is that where a state prescribes the mode and manner in which a power shall be executed, such a prescription is generally mandatory and exclusive of other modes and manners; but where the statute is silent and no prescription is set forth, the power given generally includes the means or mode of procedure as is necessary to effectuate the purposes of the Act and the power may be exercised in any usable, appropriate or reasonable manner. Thus, while regions may have to be ECSUs or organized under the Joint Powers Act, any agreement adopting a reasonable, appropriate, lawful or usable mode of organization as a Regional Management Information System would apparently be authorized. The Joint Powers Act viewed in this light is not an inflexible enactment.

supply almost all needs of all its members. If the Board intends to permit purchases of particular services by non-member districts, it should add a provision to the definition stating, for example, as follows:

see .0901D2 Page 3

> "Nothing herein shall be construed to prevent regions from adopting different classes of membership or from selling services to a non-member district when those services are not otherwise available to it from its region."

15. Mr. Lacher was equally concerned with the language of proposed § 1.0900 A.12. defining "Region" and "Regional Management Information Center" as "the administrative organization created to provide computer services to its membership." In his comment on that section, he stated:

> "If the language means that any district receiving service from a particular region currently, automatically becomes a member of that Region, irrespective of geographic location, the Task Force [Commissioner's Task Force on Elementary, Secondary and Vocational School Computing] has some major problems with this interpretation. We believe the transfer of districts within currently existing Regions as determined by geographic boundaries should be done through a policy or rule that takes into account decisions made since the origin of Regional MIS services within the framework of the temporary policy we currently have. Regional boards must be intimately involved in any transfer inasmuch as long range plans and long range commitments have been made on past policy."

The Superintendents' Advisory Council of the Southwest Central Educational Cooperative Service Unit, and the Region III MIS Board also questioned the absence of any provisions in the rules preserving regional boundaries. The Advisory Council, representing 88 school districts, stated:

> "The school districts in SW & WC ECSU have a long history of cooperating in a number of areas, and they wish to continue his high level of cooperation and mutual support in the operation of the MIS Regional data center. Thus, they strongly support the integrity of the regional boundaries as defined by the economic development region 6E, 6W, and 8 and thus object vigorously to the mechanisms for perpetually forming new alliances and restructuring old alliances as permitted in 5 MCAR § 1.0902 Creation of Region. This ability of districts to transgress existing, long-established regional affiliations could encourage Regional Centers to compete with each other in a non-productive manner. This is destined to interfere with each Regional Center's ability to provide service to best meet the unique needs of the school districts within their Region. A case in point is the recently legislated mandate which directs ECSUs to utilize a common data base to assist school districts in the Region in their planning. The ability of the ECSU to assist school districts in such a planning function is adversely affected if the data which the ECSU must access is fragmented among a number of Regional data centers. Thus, we recommend specifically that the rules contain a statement which clearly and unambiguously defines each ESV Region in terms of the economic development regions. Thus, in the case of Region IV, such a statement should read, "ESV Region IV, with administrative offices in Marshall, is comprised of all districts in economic regions 6E, 6W, and 8."

Region III's comments were similar:

> "The current interpretation of the proposed rules states that developmental regional boundaries no longer determine currently existing Regions and that schools become members where they currently receive services. This is contrary to the policy by which current Regions have been formed, and has devastating implication on the under-developed Regions which are under-developed through no fault of their own but rather by state policy . Many practical variations can be made by Regional Boards and we would urge that the proposed rules clearly state that geographic

boundaries will be determined by development Regions and that exceptions can be made to the mutual agreement of existing Regions except in cases where a new Region is to be formed. In case of a new Region being formed, geographic boundaries would not pertain."

Mr. Chorn's response to these comments was identical. He stated:

"A concern is raised over the fact that a school district may leave one already existing region and join a different already existing region. The ability to change regions is mandated by Minn. Stat. § 16.93 (1979) [sic]. Whether a region is formed pursuant to Minn. Stat. § 471.59 or § 123.58, there is nothing in law to prevent termination of membership. Minn. Stat. § 471.59, subd. 4, and § 123.58, subd 9(c), expressly recognize that membership in those organizations may be terminated.

"Of course, each time a district seeks to change regions, either by starting a new center or by joining an existing center a new region will be formed. As such, all of the requirements of 5 MCAR § 1.0902 must be satisfied. A significant portion of that rule deals with the financial impact on the center from which a member district seeks to withdraw.

* * *

"Should a district seek to join another region and the requirements of Minn. Stat. § 16.93 (1979)[sic] and these proposed rules are satisfied, not only would the district be entitled by law to make such a change, but from a policy standpoint should be permitted to make the change."

He agreed, however, that Regional Boards must be involved with such transfers because of their existing and continuing economic obligations but felt that these concerns were adequately covered in § 1.0902 A.4.b. and c., and § 1.0902 D. which requires proposed new regions to show the effect their creation or the change of one district's membership would have on existing regions. While the rules do not prohibit the formation of a new region, or the change of a district's membership where there is an adverse economic impact upon existing regions, the extent of that impact is apparently to be considered by the Commissioner in making his recommendation to the Board on the application he reviews. The precise standards the Board will follow in granting its approval of such applications for new regions or the change of membership are not set forth in the rules but the criteria they will consider are specified. No adverse comments were received on these criteria.

Clearly, the 1979 amendments do not require that regions be organized and maintained on geographic boundaries and the proposed rules permitting any two districts to form a new region are clearly a reasonable and necessary implementation of the law. Furthermore, while not favoring geographic regions as such, the rules do protect the economic interests of existing regions by considering the economic effect, the creation of new regions or regional memberships might have. ECSUs are also protected from potentially undesirable economic impact resulting from the withdrawal of a member under Minn. Stat. § 123.58 which requires that the withdrawing school district pay its proportionate share of any expenses already certified to it.

Furthermore, new or existing regions can presumably be protected from certain adverse economic effects of membership withdrawal in their members' organizational agreement, either under Minn. Stat. § 123.58, pertaining to ECSUs, or under § 471.59, pertaining to Joint Powers Agreements. Such Joint

Powers Agreements, at least, which impose economic obligations on withdrawing members are enforceable. See Local Government Information Systems v. Village of New Hope, ____ Minn. ____, 248 N.W.2d 316 (1976).

16. Many comments were received on the proposed "definition" of the state computing plan. Thus, both H. G. Howell, Assistant Superintendent of the St. Cloud Community Schools and Raymond G. Arveson, Superintendent of the Minneapolis Public Schools, felt that the "state computing plan" defined in the rules should be published in one formal document only after appropriate rulemaking proceedings, and Mr. Arveson thought that it was wholly improper to attempt to formalize or legitimize those documents by referring to them in the rules.

Under Minn. Stat. § 16.93, subd. 3 (1979 Supp.), criteria for approval or the creation of a Regional Center, or its annual plan and budget must include the provisions of the state computing plan adopted by the State Board of Education." In § 1.0900 A.15., the Department has defined the "state computing plan" as a collection of seven existing documents and such other documents as might, from time to time, be designated by the Board as an amendment thereto. In its Statement of Need and Reasonableness, the Department indicated that it intends to review each of the seven documents and consolidate the pertinent portions into a single document (rule) at some later date and that until such a consolidation can be accomplished, all seven should be referenced as the state computing plan. Darril Wegscheid, Vice Chairperson of TIES, and its attorney, Douglas L. Skor, echoed Mr. Arveson's opposition to this definition. Mr. Skor elaborated on TIES' position by stating as follows:

> "[t]he 'state computing plan' is one of the major criteria for the approval of the plan and budget of each region. The Department acknowledges the importance of the plan in its response. We do not see how these rules can be adopted or implemented if the plan is not made part of the rules.
>
> "Certainly the plan fits the definition of a 'rule' in Chapter 15. It is unquestionably a document of extreme importance to school districts and regions. The reasonableness of and need for many of the rules cannot really be evaluated without knowing what is contained in the state plan. . . .
>
> "In its response the Department indicates that, in approving the temporary rules, the Attorney General rejected the portion which would have allowed amendments of the state plan from time to time without compliance with Chapter 15. If the rulemaking process is to be followed to designate an amendment to the plan, however, then the reasonableness of and need for the amendment will have to be evaluated. This cannot be done if the plan itself has never been reviewed in the same manner.
>
> "Since the hearing, I have obtained a copy of each of the documents designated as components of the state plan. Together they are nearly three inches thick. From what I can tell, much of the information is obsolete or of no relevance to this subject. Some of it is merely a general description of the historical background and justification for the creation of MECC. One of the most recent documents appears to be nothing more than a summary of the computing plans and budgets already in existence (including those of colleges and universities). ..I fail to see how a district or region could look at these documents and find a 'plan' containing criteria to which it can refer in the development of its own plans and budgets. (Emphasis added)

The state computing plan has been in existence since 1973 and was adopted according to the Department,[10] to provide a system for the "automated transfer of data from school district data bases residing at Regional Management Information Centers to the Department." Unfortunately, the scope, requirements and details of this plan were not discussed in any meaningful detail at the hearing and no copies of the documents comprising this plan were made part of the record, and the need for and reasonableness of the current definition has not been established. The proposed rules define what documents comprise the plan at this time in the definition section, 5 MCAR § 1.0900 A.15. and provide that it includes such other documents as the Board may, from time to time, designate. Strictly speaking, this is not a "definition" of the state computing plan. A definition is generally considered to be "a statement of the meaning of the word or group of words" and is not a reference to a collection of documents which would give some meaning to those words.[11] Under the circumstances, therefore, it is recommended that the various docu- ments referred to in that section be deleted and that the Board substitute a definition of the phrase "state computing plan" such as the following, for instance:

> "State computing plan" refers to the plan adopted by the Board implementing a system for the automated transfer of members' data from the regions to the Department.

Sec. 0900A.15 page 2.

This would apparently resolve most of the objections raised by TIES and other persons and it would clearly be a more appropriate "definition" in the usual sense of that word. Furthermore, it would avoid the appearance that the Board is attempting to finesse the regions and districts by adopting a state computing plan under the guise of a definition thereby avoiding any scrutiny of the plan and any showing of its need or reasonableness.

There are other reasons why the definition should not be adopted in its present form. As it presently exists, it arguably incorporates the seven documents referred to therein by reference. This was clearly not intended. Not only has the Board proposed to adopt the state computing plan after formal rulemaking hearings at a later date, it also failed to seek requisite approval from the Chief Hearing Examiner to incorporate these documents by reference as required under Minn. Stat. § 15.0412, subd. 4 (1978), and 9 MCAR § 2.108. Since no incorporation by reference is intended or permissible, the reference to these documents, which arguably does just that, should be deleted.

The present definition is, as written, subject to changes made by the Board from time to time, and it will remain continuously uncertain just what documents comprise the plan at any particular point in time even if the rule is amended each time a new document was added to or deleted from the list. The use of an actual definition avoids this uncertainty and avoids the necessity for an amendment to the definition each time a new document is added to or deleted from those comprising the state plan. Another sound reason for adopting a definition is that the present listing of documents comprising the plan is unnecessary for an understanding of the rule and only confuses the Board's intention.

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[10]Statement of Need and Reasonableness, p. 2

[11]Webster's New Collegiate Dictionary (1975 Ed., G. C. Merriam & Company)

The state computing plan defined in this section is referred to twice in § 1.0902 A.3. and appears nowhere else in the proposed rules. An understanding of those sections is not enhanced by the current "definition" and it can, therefore, be modified as suggested without any detrimental effect on the meaning of the proposed rule.

The Department has taken the position, in answer to criticism concerning its failure to specify the detailed requirements of the state computing plan, that it is inappropriate to concurrently develop rules pertaining to both regional centers and the computing plan because each deserves the undivided attention of those persons and parties affected and because concurrent consideration would tend to dilute the scrutiny and emphasis each subject deserves. These are rational considerations within the Board's informed discretion. It is not necessary or required that an administrative body adopt all its rules simultaneously or even that it adopt all rules on related subject matters during a single process, especially where, as here, it considers the subject so important as to warrant individual attention. Here, as in other situations, the Board is fully authorized to proceed on a step-by-step basis.[12]

17. Section 1.0901 pertains to the submittal of regional plans and budgets. By February 1 of each year, each member district is required to submit its "proposed" plan and budget to its region, and the region, by April 1 of the same year, in turn submits its plan and budget to the Commissioner for approval (subsec. A., B., and C.). Many comments were received from school districts objecting to the February 1 deadline. While most districts had no particular alternative date, MIS Region III suggested that April 1 was the earliest possible date because on February 1, school districts had not even commenced preparation of their preliminary budget for the next fiscal year. Mr. Tschirki of Independent School District 191 noted, as did others, that the February 1 date is often prior to the date districts know what financial resources are available to them and the St. Cloud Public Schools stated that May 1st was the earliest possible date that a district could submit its proposed budget.

While the February 1 date may impose some burdens on school districts, no later date can be adopted if the district is to be able to enact its annual budget by July 1. As the Department stated in its Statement of Need and Reasonableness, in order for the regions to prepare, submit and obtain approval of their budgets, and in order for the Department to consider the proposed regional budgets by June 1st, which is essential, the February 1 date is required and that deadline is necessary and reasonable in spite of the headaches or uncertainties involved in compliance therewith. Simply stated, no other, later date is workable.

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[12]Of course, pending the formal adoption of the state computing plan in rule form pursuant to relevant provisions of the Administrative procedures Act, there may be no state computing plan enforceable against regions and districts, and provisions in these rules requiring conformity to the state plan may be rendered inoperable or unenforceable until a state computing plan is adopted.

18. In preparing its plan, each region is required to conduct an annual survey of members' needs under § 1.0901 D.1.b. Existing regions, such as TIES and Metro II, maintain a permanent advisory committee which defines the needs of member districts. Both regions felt that such advisory committees constituted an acceptable alternative to the annual survey specified in the rules and suggested that it be accepted as such. In its response, the Department noted that advisory committees are certainly permissible but it insisted that annual surveys of the computer needs of member districts are a necessary and basic tool for the development of an annual plan and should be required. The Department's position in this respect is certainly reasonable and within its discretion. Furthermore, it enables the Department to monitor and evaluate those district needs which are not being met by the regions and it enables the regions to report those unfulfilled needs to the Department as required.

TIES and METRO II also objected to § 1.0901 D.1.d. requiring that regional plans contain a statement showing:

> "Modifications and enhancements to the current ESV-IS which each district intends to make or desires to have made by the region, the Department, or MECC."

They felt that such modifications and enhancements should be defined by the memberships through their advisory committee and "prioritized by a state-wide user advisory structure, yet to be established" by the Department (See comments of Messrs. Seim and Mayer of November 8, 1979 for TIES and Merton Johnson of November 30, 1979 for Metro II). In his response to this suggestion, Mr. Chorn noted that the purpose of the rule is merely a tool for assisting the Department in keeping current on changes being made or desired to be made in the statewide "software" and knowing whether the regions are providing adequate service to their members. As written, the rule is a reasonable and necessary administrative provision and it does not preclude the regional advisory committee actions specified by the commentators.

19. Pursuant to § 1.0901 D.2., each region's annual plan and budget must also show that each district will "fully participate" in the ESV-FIN system and has the "opportunity to participate" in other subsystems of the ESV-IS. Mr. Arveon of the Minneapolis Public Schools questioned the requirement that districts participate in the ESV-FIN system because § 16.93(3) only requires that regions enable districts the "opportunity to fully participate" in the various systems. As was partially noted by the Department, however, under Minn. Stat. § 121.92, subds. 1 and 2, school districts are required to convert financial accounting and reporting operations to a regional center and after July 1, 1980, participating in regional computer based financial management accounting and reporting is mandatory under the law. Clearly, therefore, the Board has authority to adopt this provision and its decision to do so is a reasonable and necessary exercise of its authority. The only question is whether the Board may adopt such a rule with an effective date prior to July 1, 1980. Clearly, such a rule would be inconsistent with the statute and it should, therefore, be amended to read so that the words "after July 1, 1980" be inserted in the first sentence of § 1.0901 D.2. immediately following the fourth word therein so that the section reads as follows:

> "That each district will, after July 1, 1980, fully participate in the comprehensive financial reporting system utilizing the ESV-FIN system . . . ."

complied with page 3.

20. The region's annual plan and budget pursuant to § 1.0901 D.3. must also show that the region has computer hardware and related equipment which is "compatible" with the "hardware and communication equipment used by the "ESV-IS." No one questioned the obvious necessity for such compatibility between the equipment used by the Department and the regions, but Mr. Skor suggested that the word "compatible" be defined and METRO II suggested that the phrase "hardware and communication equipment used by the ESV-IS" be clarified to include within the meaning of computer hardware such things as telecommunication processors, modems and terminal equipment at the regional and district sites. Mr. Chorn's response agreeing to a clarifying amendment was as follows:

> "The definition of hardware and related equipment used by the ESV-IS is defined to mean that kind of equipment which is the same as or of such similar nature to the hardware and related equipment described in the master contracts so that it does not need any modifications to use at a different site with the same equipment, nor does it need any special software or firmware not normally supplied with the equipment. It must be of the same family of equipment which is under a master contract by the state wherein a special discount is provided to purchasers of the equipment. Within this context, it also extends to additional computer equipment not under state contract but used for the operation of the system such as terminals, modems, and other communication equipment. This definition is not restricted to any one location of the equipment whether that be at the district, regional or state level.
>
> "In order to make this more clear, the following language is proposed to be added to § 1.0901.D.3 'and the department,' since it is the equipment which is used to operate the department's information system which must accept the computer tapes from the regions. It should be clearly understood that the equipment used to operate the department's information system would be the family of computer equipment described in the master contracts negotiated by the state on behalf of districts and regions."

The Department's proposed amendment does not eliminate all ambiguities which may arise concerning the kinds of hardware that are involved, but the section, as amended is not unreasonbly vague or unenforceable. Nonetheless, it is suggested that some of the kinds of hardware contemplated by the Department to be within the phrase "hardware and communication equipment" be specified. The specification could state "hardware and communication equipment, including but not limited to telecommunication processes, modems and terminal equipment used by the ESV-IS and the Department." This kind of amendment might avoid some unnecessary disputes down the line. .090123 See page 3

State Representative Phyllis Kahn, Co-chairman of the House Appropriations Committee's Task Force on Telecommunicatin and Information Systems, in her comments on this section, pointed out that the only equipment that needs to be compatible with the State ESV-IS is regional equipment which communicates with it. The Department did not directly respond to her assertions, and it is unclear whether that is the intent of the rule although it does seem like a reasonable position.

21. Section 1.0901 D.5. requires the region to demonstrate in its annual plan and budget that it has sufficient funds to support its operations for the year involved. Both TIES and METRO II felt that some criteria of "sufficiency" should be made a part of the rule. The Department acquiesced and proposes to amend the section by adding a sentence at the end thereof to read as follows:

"In determining whether funds are sufficient, the Commissioner shall consider whether the amount of projected revenues and expenditures are realistic, and whether those revenues, as adjusted, will be at least as great as the end expenditures, as adjusted."

complied with page 3.

This amendment should resolve the ambiguities mentioned by the regions and as so amended, constitutes a reasonable requirement.

22. Section 1.0901 D.7., which refers to the data base each region "maintains" for its member districts, was the source of several comments which reveal a very fundamental dissatisfaction with the tenor of these rules. The crux of these objections was that regions do not "maintain" data bases for districts but merely provide a facility through which each district maintains its own data base. The Department admits that the districts maintain the data on the data base but argues that the regions do "maintain" the structure and the media on which the data resides and that the word "maintain" is, therefore, proper. Clearly, the Department is not placing any obligation on the regions under this section for the content or accuracy of the data involved and the Department's use of the word "maintains" is reasonable in this situation. The objections concerning the use of the word have been pointed out in part because they indicate a general dissatisfaction with the tenor of the rules which arguably places responsibility with the regions for the accuracy, control, collection or maintenance (content) of information stored on regional equipment. Those functions, it has been consistently argued by the regions, lie only with the member districts as is further discussed in the following pages.

23. The annual plan submitted by the region must also demonstrate the region's ability to "collect, store and report" data elements not in the data element dictionary within 90 days after notification pursuant to proposed rule § 1.0901 D.8.[13] Originally, this section was drafted to require a report within 30 days but it was extended to provide more time at the suggestion of the ESV Task Force. Still, several comments were received, such as that from White Bear Lake, which suggested that a 180-day period was more realistic. Other comments, such as that from Mr. Skor, suggested a period ranging from 90 to 180 days. Mr. Chorn's response to these comments was:

"If 90 days is not sufficient to meet reporting requirements, it is incumbent upon the department, the region and the district to work together to meet the reporting requirement in the time which is appropriate. It should be noted that the 90 day provision is a statement of the capacity of the regional center and not a statement of the regional requirement of each request. It should also be noted that 90 days is, in fact, a range of 0 to 90 days.

"One of the purposes of having a uniform system operational throughout the state is to eliminate the need to have each school district or region develop its own computer programs for processing reports from school districts."

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[13]Under proposed § 1.0901 D.7., which implements a requirement of the 1979 amendments, regions must be able to report data elements contained in the data element dictionary within 15 days.

It is apparent that some time period must be adopted as a standard for reporting special information to the Department when it is needed but is not on the data element dictionary. The 90-day period adopted by the rule is a reasonable standard for regional operations.

The other question raised concerning this section is the obligation of the region to "collect" data as that word is normally used. Mr. Skor pointed out:

> Minn. Stat. § 16.93, subd. 3, requires, among other things, that the regional plan demonstrate the "ability of the center within 15 calendar days to respond to requests for information. . ." (Emphasis added.) This does not, as the Department suggests, obligate the region to go out and collect this information when it would otherwise be done by the district. This would alter the fundamental responsibilities of the local district, including those under the Data Privacy Act. Surely the legislature would have explicitly provided for this if it had intended such a result. The language concerning responses within 15 days refers obviously to the center's being able to respond to requests for information which the district has already transmitted to the region. If the Department requires information which is not in the data element dictionary or which has not yet been collected and transmitted to the region, it certainly cannot expect the region to have such informtion to the Department from all of its member districts in 15 days.

The Department did not explicitly explain what it meant by the use of the word "collect". Its normal meaning is to "bring together into one place" or "to gather or exact from a number of person or sources." However, it is unclear whether this rule is intended to place any obligation on regions other than to receive from the district such information as they are able to gather or assemble in response to a Departmental request. Historically, local districts have had the responsibility for collecting (gathering and assembling) information required by the Department of Education and submitting and reporting that information when required. There is nothing in the 1979 amendments which alters that basic district responsibility, and no specific authority is delegated to the Board to regulate regional activities, duties or responsibilities. While the Board may have authority to require regions to actually collect (gather and assemble) data it needs but which is not on the data element dictionary, the Department failed to show that such a requirement is either necessary or reasonable. Consequently, the word "collect", which appears in §§ 1.0901 D.8., and 1.0901 E. should be changed to "accept" or "receive from member districts." This properly defines the region's present and historic functions and eliminates an unnecessary ambiguity in the rule.

complied with see page 3

not complied with see page 4 + F. of F. ¶12

Under proposed § 1.0901 E., regions are required to provide space on their computers for the storage of district data elements. The availability of this space is to be without cost to the district so long as the state provides subsidy funds to the region. The Department noted, in its Statement of Need and Reasonableness, that the "cost of this storage is considered as part of the region's obligation in return for the reporting subsidy appropriated by the legislature." The subsidy referred to apparently comes from Minn. Stat. § 16.93, subd. 4 (1979 Supp.) which provides for regional reporting subsidy grants from the Department calculated in accordance with an unspecified formula. The Department failed, however, to demonstrate its authority to require the regions to furnish these services cost-free or to demonstrate that such a provision was necessary or reasonable. It is unknown whether the amount of

the subsidy is sufficient to cover the costs of providing the storage space for the data elements involved or even what costs were included within the meaning of the rule. Elimination of this clause is also necessary, according to Mr. Skor, because it is "virtually impossible" to determine a region's costs for providing space on their computer. The Department also failed to explain why a reporting subsidy grant should be tied into the region's cost for the storage of information. Those two items are certainly of a different character.

Complied with see p. 4.

24. Section 1.0901 F. generated a great deal of comment which raised basic issues concerning the ownership and control of data elements in the data element dictionary. That section, as proposed, provides as follows:

> "The region agrees that prior to transmittal of any data to the department, the region shall provide the district with an opportunity to review the data and to certify or comment on its accuracy."

The Statement of Need and Reasonableness describing this section provides:

> "There is a fear that, because of the requirement to make reports to the department, the region may submit data which is incomplete, inaccurate, or otherwise not ready for transmittal. In order to guard against such an eventuality, the region is required to notify the district of the transmittal of the data and provide an opportunity for the district to review it and if necessary make any adjustments to it which may be needed. At least the district will be able to state, for the record, that the data is not in the condition it would have preferred sending to the department. It was suggested that the data should not be released until the district approved release of the data. This condition is not appropriate since the district could, by inaction, place the region in violation of the law, and place the department in a position of punishing a region for actions outside of its control. In addition, a district does not have the authority to withhold information except as provided by the Minnesota Data Privacy Act. The requirement that the superintendent make reports to the Commissioner is contained in Minn. Stat. § 123.35(9) [sic]."

Uniformly, the public comments received by the Hearing Examiner challenged the propriety of this rule on the basis that regions have historically been mere custodians of school district information without any independent ownership of the information, or responsibility for its content, accuracy or collection, and without authority to disclose that information except with the district's consent. It was stated, repeatedly, that the rules now make regions more than mere repositories or custodians of the information but actually vest ownership and control over the information stored on the regional equipment while divesting the districts of those rights. In order to clarify and continue prior practice, it was repeatedly suggested that the rule be amended to provide that no information would be released by the region without the prior written consent or authorization of the respective school district. The suggestion offered by METRO II was typical. It provided:

> "The METRO-II districts desire to make all data as easily available as is possible for the S.D.E. within the rules, regulations and laws adopted under the various data privacy provisions. Since the members of METRO-II own and control the data stored on the Host computer, we would propose this language: 'All school district data stored on a Regional computer will be released only on written authorization by each of the districts, or through receipt of a court order requesting the release of specific data stored in the Regional computer. As an option, we

would propose that each Regional governing board adopt a policy on which data may be accessed directly by the S.D.E. without prior written district approval."

The Department vigorously disagrees with the idea of permitting district authority over data on the regional computers or permitting their consent prior to the release of that information. Mr. Chorn's detailed response to METRO II's proposal stated:

"It is not appropriate that the region secure written authorization from the district to release data to the state department because the Laws of 1979, Ch. 334, Art. VI, Sec. 1, requires that the region transmit the data and the proposal by the region would place the region in violation of the law if the district were not to provide any authorization. The rule, § 1.0901 F., already provides notification to the district for review and certification of its data accuracy.

"Further, it appears that the provisions of 5 MCAR § 1.0901 F. are questioned on the grounds that it alters the historical relationship of ownership and responsibility for the data. That contention ignores the multiple purposes of regions. The districts and regions have historically viewed the regional computer centers as existing only for the benefit of the districts. However, a significant additional purpose is to assist in required state reporting.

"Section 121.92 requires that all school districts convert 'financial accounting and reporting operations to a computer based financial management accounting and reporting system....
Minn. Stat. § 121.11, subd. 5 (1978) states in part: 'Beginning in fiscal year 1977, all reports required of school districts by the state board shall be in conformance with the uniform financial accounting and reporting system....'

"Those two provisions formed the historical background for the language contained in section 16.93, subd. 3, which required as a condition of approval that a center have: 'the ability . . . in a timely manner to provide information required by the annual data acquisition calendar . . . the ability of the center within 15 calendar days to respond to requests for information based on the data elements in the data element dictionary. . .'. The region would have those requirements interprested as requiring regions to have the computing capacity to make the reports without a corresponding duty to actually make the reports. Such an interpretation would ignore the logical purpose of requiring a computerized reporting system. It also ignores the vast appropriations made in Minn. Laws 1979, Ch. 335, § 2, Subd. 6(b), to support this activity.

"The Department of Education believes that these rules logically implement legislative intent. 5 MCAR § 0901 E. [sic] requires each school district to collect and store on the center's computer the data elements contained in the data element dictionary. In addition, the region must provide adequate space on the computer to store that data. 5 MCAR § 1.0901 F. merely states that regions must then, upon request, report that stored data. Since districts remain primarily responsible for the accuracy of the data, they are given an opportunity to review the data before it is transmitted.

"The only change in the structure from the past is that the Department need only communicate with the centers, rather than the 437 districts when data is required. That change is amply supported by the above cited legislation.

"In addition, one of the major problems that the Department currently has is getting districts to release data in a timely manner. Section 16.93 requires centers to have the ability to communicate the data within 15 calendar days. By requiring written permission to release the data, the very problems the Department

and the Legislature sought to alleviate will be legitimized by these rules. It will be the duty of the district to ensure the accuracy, if it so desires, within 15 days of the request to the region."

Contrary to the Department's assertions, the 1979 amendments to Minn. Stat. § 16.93 nowhere specifically require regions to transmit data to the Department. Nor does the amendment require such transmittal when it would be contrary to the wishes of the district which has gathered the data and who presumably "owns" it. As owners of this data, local districts have certain rights in its use or disposition and certain responsibilities and possible liabilities as a result of its disclosure or dissemination. While the regions must have the ability to store and report stored data to the Department, it does not necessarily follow that it is required to do so when contrary to the wishes of the owners in a particular case. However, it is clear that such a requirement is administratively convenient by reducing the number of entities the Department must contact in order to procure information and the requirement reduces reporting delays otherwise incident to information procurement by the Department. For these reasons, it cannot be said that the proposed rule is unreasonable or unnecessary when considered in the context of recent legislative amendments to § 16.93, the creation of MECC and the UFARS regulations. The only issue, then, is whether the Board has the authority to require regions to report data stored on their computers to the Department. It is concluded that the Board does have such authority, both express and implied, pursuant to Minn. Stat. § 16.93 (1979 Supp.) and Minn. Stat. § 121.11(5). The authority of the Board or the Department to require reports of regions should be no less than its authority to require reports of the districts, themselves, and since the regions are merely creatures of the district, they are bound by the same constraints under which the districts operate. Essentially, then, once data elements are transferred to the regional equipment, the districts do lose some ownership rights to that data insofar as the Department is concerned. That is not to say that the regions could not, in an appropriate case, refuse to transmit data to the Department when such a transmittal was illegal or improper.

TIES and others have implied that the districts must maintain ownership and control over data stored on regional equipment to avoid violating or in order to perform obligations arising under the Minnesota Government Data Practices Act, Minn. Stat. § 15.1611 et seq. (1979 Supp.). However, no specific inconsistency between the proposed rule and the Act were mentioned. On the contrary, under the Act, private and confidential data on individuals may be used and disseminated to agencies authorized access by law (§ 15.163(4)(b)) or when necessary to carry out an assigned function of the agency (subd. 4(c)). Thus, the reporting of private or confidential data on individuals is generally authorized and a similar provision exists for data classified as not public pursuant to the same section. Furthermore, the classification of data in the hands of the Department is the same as it was while with the region, or the district, under that section, and its reporting to the Department does not cause it to lose its character as private, confidential or not public. For these reasons, there appears to be no conflict with the proposed rules and the Minnesota Government Data Practices Act.

25. Under proposed § 1.0901 H., the regions and districts which propose to acquire "computer equipment" must obtain the Commissioner's approval. Representative Kahn commented on this section as follows:

> "The definition of computer equipment in the proposed rules is not clear. Terminology, cost, and technology relating to information systems are changing so fast at the present time that any definition is difficult to write, but the districts and regions need better parameters so that they know what kinds of equipment need to be approved. Perhaps the rules could use a threshold dollar amount, stating that any equipment costing more than that dollar amount per year would need to be approved.
>
> "This is an area where the law may need to be changed. The law refers to all computer equipment and it was originally designed to put a brake on the costly proliferation of equipment. However, the cost of the equipment is no longer the same kind of concern it was when M.S. 16.93 was originally proposed and it probably no longer makes sense to include all equipment regardless of function. The law may also need to be changed because it requires districts to provide information on what they are doing in instructional computing to the MIS regions, and those regions do not have a role in the present instructional computing network.

Several other comments suggested that the term "computer equipment" be defined and endorsed the idea of including only those purchases in excess of the stated minimum amount in order to avoid approval procedures for insubstantial expenditures. Mr. Chorn noted, in his reponse to these comments, that MECC has a definition of "computer equipment" which will be used and that the definition would include such things as modems, terminals and microcomputers. While the Board has authority to carefully scrutinize computer equipment purchases and require approval for such expenditures, a definition of computer equipment should be adopted so that those persons regulated have some reasonable notion of what is included or how it differs from the "computer hardware and related equipment" referred to in § 1.0901 D.3.

see addition .0900.17 p.2

26. Proposed § 1.0901 I. requires the Commissioner to evaluate each annual or biannual plan and budget to determine whether the services the region proposes to provide can be provided "in a more cost-effective manner". Cost effectiveness is a statutory criteria and a necessary and reasonable requirement, but TIES has suggested that it should be defined in the rules. Mr. Chorn's response restates what the rule implies, namely, that cost effectiveness is the same for existing regions as the standards specified for new regions under § 1.0902 A.4. However, in response to public comment, and in order to clarify the intent of the proposed rule, the Department has now proposed to amend that section to read in part as follows:

complied with page 4

> "The commissioner. . . shall determine whether or not the services to be provided by the region can be provided in a more cost effective manner as determined under the criteria contained in § 1.0902.A.4. . . ." (Omitted material)

27. Once the Commissioner has reviewed the proposed regional budgets, he notifies the regions of his approval or disapproval and where his decision is adverse to the regions, or their desires, they can have the matter referred to MECC for a final decision. This appeal procedure generated uniform criticism

from both regions and districts who stated their desires to have the matter referred to the Board if anywhere.[14]

The Department's position on the matter of appeals to MECC is fully set forth in the Statement of Need and Reasonableness. It provides:

> "The question has arisen relative to the appropriateness of an appeal to MECC compared to an appeal to the Board. The argument is made an appeal to the Board is more proper because:
>
> 1. The Board has authority over the Commissioner and can direct his decisions.
>
> 2. The Board is a policy making body.
>
> 3. The Board is more accountable to the electorate since it is appointed by the governor to represent each legislative region of the state.
>
> 4. There is precedent to appeal the decisions of the Commissioner to the Board.
>
> On the other hand, the argument is made that an appeal is more properly made to MECC because:
>
> 1. MECC has members who are not involved with the department and therefore would be more impartial.
>
> 2. MECC has the technical expertise to evaluate equipment and computer system capabilities and has considerable experience in managing a computer center.
> 3. MECC reviews budgets and prepares an analysis of the budgets of each of its member systems for each legislative session. MECC already has a review process established for its member system.
>
> 4. MECC is involved on a daily basis with the regional operations and therefore has an insight of the impact which the plan, budget and resulting decision will have.
>
> "These are good and valid reasons for either approach. It is the opinion of the Board that the final appeal prior to court action should be made by persons more technically involved in computer science than is available through the Board so the appeal process is assigned to MECC."

Minn. Stat. § 16.93(1) (1979 Supp.) authorizes the Board and the Department to delegate their powers and duties under subdivision 3 of that section to MECC. A delegation is, of course, "the entrusting of another with general power to act for those who depute him". (Black's Law Dictionary, 512 (4h Ed.) 1968)). Therefore, the Department could delegate its general power under subdivision 3 to MECC to approve new regions and regional plans and budgets. Such a delegation would not be unreasonable given MECC's expertise and would, therefore, be a proper exercise of its informed discretion. The Department could just as reasonably authorize the Commissioner to make such approvals and merely permit expert input from MECC, thereby retaining final authority so that important educational policies and goals are not defeated, prejudiced or compromised in a particular case. Mr. Wegscheid who spoke on behalf of TIES at the hearing on this matter took a similar position in the written comments he submitted which opposed appeals to MECC. The basis for his opposition to such a procedure was stated as follows:

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[14] A similar appeal provision appears in § 1.0901 K.2. regarding appeals from the revocation of previously approved plans and budgets. The comments herein cover both such provisions.

1) The issues involved in an appeal will likely be policy issues relating solely to elementary, secondary or vocational education.

2) Any technical or budgetary questions, which the MECC structure could provide comment on should be obtained prior to the Commissioner's decision.

3) The Commissioner appoints the ESV representatives to the MECC board.

The rules, as proposed by the Department, take neither of the two approaches previously mentioned, and as currently drafted, should not be adopted because they are contrary to Chapter 15. The rules neither delegate general power to MECC for approval of new regions or regional plans and budgets, nor exclusively retain that authority within the Department. On the contrary, they authorize the Commissioner to have general power for approval and permit an "appeal" to MECC. Such an appeal would be a contested case within the meaning of Minn. Stat. § 15.0411, subd. 4 (1978), and would involve all the provisions of Chapter 15 applicable to such cases, including a hearing before a State Hearing Examiner. Consequently, if the rules are to provide for an "appeal" to MECC, there should be added to the very end of each of these two sections the words "pursuant to Chapter 15".

not complied with - see p. 4 + F. of F #17

28. 5 MCAR § 1.0902 pertains to the creation of regions. Under the 1979 amendments to § 16.93, any group of two or more districts may, with approval, form a regional management information center and provide computing services to its members. Among other things, the proposed region, in its submittals to the Commissioner for approval, must show that it conforms to various elements of the state computing plan, yet, officially unadopted as was previously mentioned. Subsection A.3.a. and b. list two of the required conformities:

"a. The hardware and the operating software proposed for the region is compatible to the hardware and operating software specified in the state computing plan.

"b. The applications of software used in the ESV-IS software."

This language is similar to that requiring a region's annual plans to show that their computer hardware and related equipment is compatible with the hardware and communication equipment used by the ESV-IS and the Department as is set forth in § 1.0901 D.3. The Department's explanation for these requirements is as follows:

"The hardware and operating software prescribed in the state computing plan is specified by the development of a master contract with Burroughs Corporation for most of the types of equipment which is used in a regional center. This contract provides for a 40.9% discount at the present time, making the cost of the equipment considerably less expensive than it would cost on the open market. It is the intent of this section that any new region would use the equipment and software which is included in the master contract.

"The term 'compatible' means the same type of equipment from the same manufacturer as contained in the master contract and does not provide an option to use other manufacturers' computer equipment of a similar size, capacity, or capability. The plan provides that, in the event of a serious disruption at one computer center, its data bases could be transferred to another center and data processing could continue. This would not be

possible within a reasonable time frame if the equipment of different manufacturers were used. In addition, the cost of programming on different computer equipment would duplicate costs and therefore is not in the best interests of the state taxpayer.

Applications software are the computer programs which process the individual data items. This software has been developed at MECC and is used throughout the state. By providing a single set of software used in each of the computer centers, only one group of systems analysts and programmers will be needed to maintain it, thereby avoiding duplicating costs.

In addition the users of information derived from the data will have an assurance that information is comparable from one district to another because it would have been processed by the same system.

Phyllis Kahn, who also criticized the scope of § 1.0901 D.6., believes that proposed subsection A.3.a. exceeds the legislative intention and TIES alleged that subsection A.3.b. is inconsistent with the statute. According to Mrs. Kahn, the legislative intention of § 16.93 was that regions supply information to the Department so that it could be read by the Department's equipment and software, and that the software used by the region in producing such a machine-readable tape is immaterial and the proposed rules requiring the production of such tapes by the region with certain compatible equipment is, therefore, unauthorized. She pointed out that there are inefficiencies in tying all regions to one vendor for specific periods and that competitive purchasing may be just as cost-effective. According to the Department, however, it is not presently cost-effective for regions to use different vendor hardware. Given that fact, the proposed rule is reasonable, and certainly within the budget and planning approval authority of the Board under the statute.

29. Section 1.0903 pertains to the data element dictionary the Department is required to adopt. Under § 16.93, subd. 6 (1979 Supp.), the development of the dictionary is exempt from rule-making proceedings under Chapter 15 except for the "criteria and process for determining which data elements are included" therein. This section sets forth that criteria and process. The Southwest West Central Education Cooperative Service Unit suggested that no data be requested from regions unless contained in the data element dictionary. However, as Mr. Chorn pointed out, that would place an unnecessary and inefficient burden on the Department when special information needs arise and the Department's refusal to so structure the rule is certainly a reasonable decision.

Five criteria for the inclusion of data in the data element dictionary are specified. They generally provide that the data must be needed to properly disburse funds, to complete legally required reports, to meet assigned goals and objectives, to implement and execute required programs, or to implement research or other special projects approved by the Commissioner. These are all necessary and reasonable criteria developed to fulfill legal requirements, evaluate the effectiveness of existing programs, determine the need for new programs or, in order to implement proposed programs. It is obvious that the Department, in carrying out its various functions, must be in a position to make informed decisions, and in order to do so, it must collect a wide variety of information on a number of different subjects. Its decision to generally describe the types of information it needs and the general purposes for which such information is gathered, is certainly not an arbitrary or unreasonable

approach under the circumstances. Several districts thought that the Department's need for data should be more specifically set out and questioned the breadth of the rules and the Department did, in response to these comments, make some requested clarifications.

The data elements in the data element dictionary must contain its standard name, a description of its physical characteristics, its definition and the purpose for which it is collected pursuant to §1.0903 C. The purpose for which data is collected is merely a statement of the criteria pursuant to which it is included in the data element dictionary under § 1.0903 B.1.-5. Dr. Haugo of MECC suggested that the description should include the use of standard naming conventions and codes for data elements, and in response to his comment, the Department has acknowledged that that was the intention of subsection C.1., and that that will be done.

Several comments were received suggesting that the legal authority for the collection of the data must also be included for purposes of the Minnesota Government Data Practices Act. While the data element dictionary does not cite the legal authority authorizing the collection of each data element, the Department has clearly recognized the applicability of that Act to its collection activities. In that respect, the data described in the data element dictionary is periodically evaluated by a data acquisition review committee to determine inter alia whether its collection conforms to the Act. The Department's decision not to cite its legal authority to collect each separate data element is not unreasonable and is not legally required. It is clear that the Department has authority to collect information from districts, both under Minn. Stat. § 121.11, subd. 5 of 1978, and under § 16.93 (1979 Supp.) which authorized the creation of the data element dictionary itself.

At least every third year, the data acquisition review committee established under the rules must evaluate each data element in the data element dictionary to consider whether it should continue to be included therein. Notice of its review is sent to each region prior to the date of review, and the regions are given an opportunity to examine and comment on a need to collect the data described in the particular data element. Both METRO II and TIES suggested that districts also get notice of this review process for their input, and Mr. Cunio of the White Bear Lake school system suggested that the local education agency personnel be involved in that process. However, as noted by the Department, since most of these rules would be of a routine nature, it is not efficient to notify every district when each data element is reviewed. The Department's decision to limit notice of such reviews is not inconsistent with any statutory provisions and is reasonable under the circumstances. The Department indicated that it would, however, notify districts when particularly controversial items were considered.

Whenever new data elements are included in the data element dictionary, 180 days' prior notice is given to the regions under § 1.0903 D. This period, as stated by Mr. Chorn, is only a notice period prior to commencement of collection of the data element and is not a statement of the collection period itself as some commenters had feared. The actual collection period under the

rules is uncertain, however, and it might be advisable to set forth the duration of that collection period in this rule.[15]

see F. of F ¶19

30. Section 1.0904 pertains to the data acquisition calendar. Under this section, the Department transmits its data acquisition calendar to each district and region by September 1st of each year. The calendar specifies the reports which the districts are required to submit directly to the Department or through the region. Amendments can be made to this calendar on a quarterly basis. While many comments were received suggesting that the districts receive a copy of all forms used for reporting data to the Department, it appears that such a mailing would be an inefficient use of the Department's monies because many districts do not use many of the forms which are submitted to the state and a mailing of each of these forms to each of the districts should not be done. The Department's position in that respect is a reasonable implementation of its discretion.

CONCLUSIONS

1. Due, timely and adequate legal notice of the hearing was properly served and published by the Department.

2. The agency fulfilled all relevant, substantive and procedural requirements imposed by law or rule.

3. With the exceptions noted in the Findings, the Department has demonstrated the need for and the reasonableness of the proposed rules.

4. With the exceptions noted in the Findings, the Department has demonstrated its statutory authority to adopt these rules.

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

RECOMMENDATION

That the proposed rules be modified as suggested in the Findings, and that, as so modified, they be adopted.

Dated this 23 day of January, 1980.

JON L. LUNDE
Hearing Examiner

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[15]s 1.0901 D.7. provides that 15-day "ability" for reporting of data elements on the data element dictionary and subsection D.8. provides a 90-day "ability" for reporting of data not on the data element dictionary.

STATE BOARD OF EDUCATION
DIVISION OF SPECIAL SERVICES

STATEMENT OF NEED AND REASONABLENESS – Repeal of EDU 641

The State Board of Education pursuant to Minn. Stat. §197.78, subd. 2 (1978) served as the State Approving Agency on behalf of the federal government to approve educational programs for veterans. If a program is approved, veterans taking those programs may receive veterans' benefits. Minn. Stat. §197.78, subd. 2 has been repealed by Minn. Laws 1979, Ch. 335 §18. However, the same powers and responsibilities have been continued pursuant to Minn. Laws 1979, ch. 335, §16. Under both the prior law and the current law, the State Board of Education has authority to adopt rules and regulations.

One of the federal rules which the State Approving Agency must enforce is 38 CFR §21.4254(b)(13) and section 21.4255. Both of those regulations require a refund policy for unaccredited courses. The refund policy requires an approximate pro rata portion of the total charges for tuition, fees, and other charges to be returned upon withdrawal from the course. There is no similar requirement under federal law for a refund involving accredited courses.

EDU 641, which establishes a refund policy for accredited programs identical to that established by federal regulation for unaccredited programs, was originally adopted as a policy some time in 1971. It was formalized as a rule in 1974. The basic concept behind the rule was that veterans should be treated alike whether they are taking an accredited program or an unaccredited program. However, certain legislative action has occurred since that date which makes that decision no longer enforceable.

The legislature in Minn. Laws 1979, Ch. 334, art. V, §19 established a refund policy with regard to students attending vocational-technical schools. That law provides that no refund shall be made to a student who withdraws from the program after the fifteenth day.

All private vocational schools must have a refund policy that meets the provisions of Minn. Stat. §141.271 (1978). Furthermore, effective January 1, 1980 all private trade schools must have a refund policy that complies with 16 CFR Part 438. Furthermore, the Federal Trade Commission has taken the position that the federal refund policies pre-empt all state laws. 16 CFR §438.9.

Because the state legislature has not handled veterans attending accredited schools apart from other students in either Minn. Stat. Ch. 141 or Minn. Laws 1979, ch. 334, §19, it appears that the state legislation must take precedence over the rule adopted by the State Board of Education.

Furthermore, because the Veterans Administration has not adopted a specific refund policy with regard to accredited courses, it would appear that as of January 1, 1980 the Federal Trade Commission rules will control the amount of refund that is required for unaccredited courses offered by private vocational schools.

While there is not a specific refund policy provided by state law for private and public postsecondary colleges and universities, there does not appear to be sufficient statutory authority to continue the existence of EDU 641 without express authorization from the legislature.

For the foregoing reasons, it is not only reasonable but necessary to repeal EDU 641.

Gregory Waddick
Assistant Commissioner
Division of Special Services

Romaine S. Foss
State Supervisor
Veterans' Education Unit

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION
DIVISION OF SCHOOL MANAGEMENT
SERVICES AND DIVISION OF SPECIAL
SERVICES

ORDER FOR HEARING

IN THE MATTER OF: The Proposed Adoption of Rules of the State Board of Education Governing Education Computer Systems and Repeal of EDU 641 Governing Veterans Refund Policy

IT IS HEREBY ORDERED that a public hearing on the above - captioned rules be held in the Veterans Service Building, Conference Room D, (5th floor), 20 West 12th Street, St. Paul, Minnesota, on Monday, November 19, commencing at 8:30 A.M. with the repeal of EDU 641 and commencing at 9:00 A.M. with Education Computer Systems 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 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.

STATE OF MINNESOTA
BOARD OF EDUCATION

Secretary

Date: September 18, 1979

State of Minnesota
State Board of Education
Department of Education
School Management Services Division
Special Services Division

In the Matter of the Proposed
Adoption of Rules of the State
Board of Education Governing Education Computer
Systems - 5 MCAR §§1.0900-1.0904 and Repeal of
Rule EDU 641 Governing Veterans Refund Policy

Notice of Hearing

Notice is hereby given that a public hearing will be held in the above-entitled matter in the Veterans Service Building, Conference Room D, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota 55155, on Monday, November 19, 1979, commencing at 8:30 A.M. with the repeal of EDU 641 and commencing at 9:00 A.M. with the rule governing Education Computer Systems and continuing until all interested or affected persons have had an opportunity to participate.

The Board proposes to repeal Rule EDU 641 governing Veterans Refund Policy. The statutory authority to repeal Rule EDU 641 is contained in Minn. Stat. §124.565.

The Board also proposed to adopt rules governing Education Computer Systems. The statutory authority to promulgate the proposed rules is contained in Laws of 1979, ch. 334, article VI, §1.

The proposed repeal of Rule EDU 641 and adoption of rules governing Education Computer Systems is subject to change as a result of the rule hearing process. The agency, therefore, strongly urges those who are potentially affected in any manner by the substance of proposed repeal or adoption to participate in the rule hearing process.

A copy of the proposed repeal of Rule EDU 641 and the proposed rules of Education Computer Systems is attached hereto. One free copy may be obtained by writing to the State Department of Education, Veterans Education Unit, Room 622 for Rule EDU 641 or to the State Department of Education, Education Data Systems Section, Room 803 for Education Computer Systems, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing.

All representatives of associations or other interested groups and all interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted by mail without personally appearing at the hearing to John Lunde, Hearing Examiner, at Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-5938. After the public hearing, written material may be submitted to the hearing examiner and recorded in the hearing record for five working days, or for a longer period not to exceed 20 calendar days if so

ordered by the hearing examiner. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested to save time and avoid duplication, that those persons, organizations or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered into and become part of the record. The conduct of the hearing will be governed by the rules of the Office of Hearing Examiners, 9 MCAR §§2.101-2.112 and by Minn. Stat. §§15.0411-15.0417 and §15.042.

Notice is hereby given that 25 days prior to the hearing a statement of need and reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing, justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge. 9

Notice. Any person may request notification of the date on which the hearing examiner's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General). 8

Under Minn. Stat. §10A.01, subd. 11 (1978), as amended by Laws of 1979, ch. 59, §3, a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute:

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. 6

"Lobbyist" does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual wholly engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony; or

(f) Stockholder of a family farm corporation as defined in §500.24, subd. 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions regarding only lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-5615.

State of Minnesota
State Board of Education

Date September 18, 1979

HOWARD B. CASMEY, Secretary

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the board of education, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the state board of education duly and properly called and held on the 10th day of September, 1979; that a quorum was present at said meeting; and that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that Howard B. Casmey, Commissioner of Education, be and hereby is granted the authority and directed to order a hearing for the purpose of promulgating permanent rules of the Board of Education on the subject of Education Computer Systems and the Creation of Regional Computer Centers, as well as performing any and all acts incidental thereto, including and without being limited thereto, signing an order for such hearing.
>
> RESOLVED, that Howard B. Casmey, Commissioner of Education, or a Deputy Commissioner of Education is also so granted the authority and directed to include in the aforesaid hearing, opportunity for a hearing for the purposes of repealing EDU 641, Refund Policy for Veterans Attending Area Vocational-Technical Institutes, which will cause State Board rules to become consistent with current statute.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of September, 1979.

Howard B. Casmey
Secretary, State Board of Education

Lorin A. Gasterland
Member, State Board of Education

CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary and executive officer of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education duly and properly called and held on the 10th day of March, 1980; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules governing the Veterans Refund Policy be hereby repealed and the rules governing Education Computer Systems be hereby adopted pursuant to authority vested in us by Minn. Stat. § § 121.11 subd 12 and 121.21 subd 6, and Laws of 1979, Chapter 334, article VI Section 1, and that one of the members of the Board of Education, be and hereby is authorized to sign an order repealing rule EDU 641 and adopting rules 5MCAR § § 1.0900 to 1.0904.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10th day of March, 1980.

Howard B. Casmey
Secretary and Executive Officer

Member, State Board of Education

State of Minnesota
Department of Education

State Board of Education
Division of School Management Services
Division of Special Services

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing education computer systems and repeal of EDU 644 governing veterans refund policy

Affidavit of Mailing

Harold E. Klecker, being first duly sworn, deposes and says:

That on the 18th day of October, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, he 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.

Harold E Klecker

Subscribed and sworn to before me
this 18th day of October,
1979.

Betty King
Notary Public

Dakota, County, Minnesota

My commission expires 6-13-83.

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

State of Minnesota
Department of Education

State Board of Education
Division of School Management Services
Division of Special Services

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing education computer systems and repeal of EDU 641 governing veterans refund policy

Certificate of Delivery
Secretary of State List

I hereby certify that the attached 9 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:40 o'clock AM this 16th day of October, 1979, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1978) 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 Donna M. Scott

State of Minnesota
Department of Education

State Board of Education
Division of School Management Services
Division of Special Services

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing education computer systems and repeal of EDU 641 governing veterans refund policy

Affidavit of Receipt of Secretary of State's List

Harold Klecker, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Education of the State of Minnesota.

2) That on the 12th day of October, he 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 Minn. Stat. § 15.0412.

3) That on the 16th day of October, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Harold E Klecker

Subscribed and sworn to before me

this 16th day of October,

1979.

BETTY L. KING
Notary Public, Dakota Co. MN
My Commission Expires
June 13, 1983

Betty King
Notary Public

Dakota, County, Minnesota

My Commissioner expires 6-13-83.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING EDUCATION COMPUTER SYSTEMS - 5 MCAR §§ 1.0900 - 1.0904 AND REPEAL OF RULE EDU 641 GOVERNING VETERANS REFUND POLICY.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 19, 1979, before Jon L. Lunde, 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 the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Education on January 23, 1980; and

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

WHEREAS, the Department of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule 9 MCAR § 2.110; 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 Education has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Order, the Department of Education has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 28th day
of March, 1980.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA STATE BOARD OF EDUCATION

DEPARTMENT OF EDUCATION DIVISION OF SCHOOL MANAGEMENT SERVICES
AND DIVISION OF SPECIAL SERVICES

IN THE MATTER OF:
The Proposed Adoption of Rules
of the State Board of Education
Governing Education Computer
Systems and Repeal of EDU 641
Governing Veterans Refund Policy.

I, Assistant Attorney General Michael J. Bradley, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures, Office of Hearing Examiner Rules, and all relevant statutory procedures have been followed.

Dated: June 16, 1980

Michael J. Bradley

MICHAEL J. BRADLEY
Assistant Attorney General