

SEP 8 1994

STATEMENT OF NEED AND REASONABLENESS
PERMANENT RULES RELATING TO FINANCIAL AID

as administered by

the Minnesota Higher Education Coordinating Board

In the Matter of the Proposed Adoption of Rules
Governing the Child Care Grant Program

August 25, 1994

STATE OF MINNESOTA
MINNESOTA HIGHER EDUCATION COORDINATING BOARD

In the Matter of the Proposed Rules
Governing the Child Care Grant
Program (Minn. Rules 4830.7100-
Part 4830.7900).

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

The Child Care Grant Program provides financial assistance to Minnesota post-secondary students, who do not receive Aid to Families with Dependent Children (AFDC) and who require child care for their dependent children. The proposed modifications to the current rule relate primarily to the following issues: factors taken into consideration in awarding a child care grant; the types of post-secondary schools eligible to participate in this program; administrative procedures schools must follow; the amount of child care grants; procedural issues related to award termination and student appeals; and school reporting responsibilities. Changes relating to institutional eligibility, the types of factors taken into consideration in the award calculation, and the maximum award amount a student may receive during an academic year are due to statutory changes made during the 1994 legislative session and reflected in *Minnesota Statutes* 136A.125, subdivisions 3, 4, and 4b.

The statutory language changes made during the 1994 legislative session affected the operation of this program significantly [*Laws of Minnesota for 1994*, Chapter 532]. A cap on the maximum award amount was added, and the calculation formula was changed to base the student's award on family income and family size. Some students will have their awards from this program significantly reduced due to the statutory changes. However, the changes should allow more students to receive assistance from this program due to the cap on the maximum award amount. According to the statutory language, the Board is directed to prepare an award chart, which is included in the Proposed Permanent Rules. During the 1994 legislative session, the conference committee on the Omnibus Higher Education bill voted to have the statutory changes effective *July 1, 1995* to give affected students a longer period of time to adjust to the reduced award amounts. However, the July 1, 1995 effective date was dropped due to an oversight in the preparation of the conference report. The House subsequently failed to pass the Revisor's bill that included the July 1, 1995 effective date for the statutory changes. As a result, the appropriation bill with the changes to the Child Care Grant Program was effective *July 1, 1994*. The Coordinating Board staff consulted legal counsel in the Attorney General's office, contacted key legislators regarding these statutory changes, and members of the Minnesota Higher Education Coordinating Board. While Board

staff understood the intent of the conference committee in delaying the effective date of the statutory changes until July 1, 1995, agency legal counsel indicated that the Board would be extremely vulnerable to legal challenge by delaying the effective date of the statutory changes. Such a delay could have deleterious fiscal implications for the State if program funds were not allocated and awarded to students according to the new award calculation specified in statute. If the funds were spent according to the award calculation language in the current permanent rules and students sued the State and won for non-compliance with the law governing this program, the State would have to come up with additional money to accommodate such individuals. Although the Board is sympathetic to the concerns of students adversely affected by these statutory changes, the Board felt it had no choice but to follow the law and implement the changes July 1, 1994. The Board realizes that the statutory changes are not popular with some students and the Board's decision to pursue permanent rule changes based on these statutory changes is also unpopular; however, the Board feels that possible legal repercussions of not pursuing such changes leave it no choice. Being sensitive to the concerns of affected students, Coordinating Board staff have worked with post-secondary financial aid administrators to make sure affected students were notified of the program changes as expeditiously as possible, and to work with the students to find possible alternative options to help pay for their education-related expenses.

The proposed rule language was reviewed by agency legal counsel and the financial aid advisory committee, which meets monthly to provide input to the Board on post-secondary financial aid matters relating to program policy and program operations. Representatives from the University of Minnesota system, State University system, Community College system, Technical College system, Private College sector, and Private Proprietary Schools are members of the Minnesota Higher Education Coordinating Board financial aid advisory committee. Individuals in the Department of Human Services and the legislative commission on the Economic Status of Women were consulted during the development of the Child Care Grant award chart included in the proposed rules. In addition, a Notice of Solicitation of Outside Information was published in the *State Register* on July 11, 1994 to secure additional public comment or opinion on the proposed rule.

II. STATEMENT OF BOARD'S STATUTORY AUTHORITY

The Minnesota Higher Education Coordinating Board's authority to adopt the rules is set forth in *Minnesota Statutes* 1992, 136A.04, Subd. 1(8), which provides:

136A.04, Subd. 1(8): [The higher education coordinating board shall:] prescribe policies, procedures, and rules necessary to administer the programs under its supervision.

III. STATEMENT OF NEED

Minnesota Statutes Chapter 14 requires the Board to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Board must set forth the reasons for its proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Board is appropriate. The need for the rule is discussed below.

CHILD CARE GRANT PROGRAM.

During the 1994 legislative session, several changes were made to *Minnesota Statutes* 136A.125 which significantly affected the operation of this program. An Emergency Rulemaking Process was pursued in order to keep the program operational within the requirements of the new statutory language for the early part of the 1994-95 academic year. Since the Emergency Rules are effective for a limited period of time, the proposed Permanent Rules incorporate the statutory program changes and address program administration issues related to the 1994 statutory changes to this program.

IV. STATEMENT OF REASONABLENESS

The Board is required by *Minnesota Statutes* Chapter 14 to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Board's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rule as a Whole: Child Care Grant Program

During the 1994 legislative session several statutory changes were made to the Child Care Grant Program [*Laws of Minnesota for 1994*, Chapter 532]. The current permanent rules are not consistent with the new statutory language. Therefore, the agency rules need to be changed to reflect the procedural changes in the program that are necessary according to *Minnesota Statutes* 136A.125. The proposed rule includes the Child Care Grant award chart based on family income and family size as directed in the new statutory language.

B. Reasonableness of Individual Rules: Child Care Grant Program

The following discussion addresses the specific provisions of the proposed rules.

4830.7100 DEFINITIONS.

Subp. 2a. Eligible child. This definition is for clarity and completeness in the definition of applicable terms used in the child care grant rules. The statutory language defining "eligible student" [*MN Statutes* 136A.125, Subd. 2 (2)] indicates the types of children an eligible student must have in order to receive a child care grant award. The Board felt that defining "eligible child" in the proposed rules adds clarity to the other sections of the child care grant rules, and ensures equitable treatment of all students applying child care grant awards under this program.

Subp. 3. Eligible employment. [repealed] This subpart is deleted in the proposed rules because "eligible employment" is no longer a factor in the child care grant award calculation. Statutory language referring to hours of employment by the student has been deleted also. The language is unnecessary and could cause confusion if it is not deleted.

Subp. 4. Eligible hours of education. [repealed] "Eligible hours of education" is no longer a factor in the child care grant award calculation. Student awards are now based on family income and family size. The current language is no longer needed for clarity and completeness of the rules governing this program.

Subp. 5. Eligible student. The language in this subpart has been amended to include all specific eligibility requirements a student must meet in order to qualify for a child care grant award. These requirements are consistent with student eligibility requirements for most other state financial aid programs administered by the Board. No *new* requirements are being added to student eligibility for this program; however, items C and J are currently stated in the *Definitions for Higher Education Programs* [4830.0100, Subp. 5] rather than in the Child Care Grant Program rules. The inclusion of all student eligibility requirements for this program in these program rules is meant to add clarity and completeness to this definition. The amended language should also eliminate any confusion regarding applicable eligibility requirements for this program.

Subp. 5a. Family income and family size. Due to a statutory change, family income and family size are factors in calculating a child care grant award. Since there are various methods of determining and documenting these factors, the Board felt it necessary to explain how such determinations will be made for purposes of this program. This addition is for clarity and completeness. It also ensures the equitable treatment of students by post-secondary institutions in calculating individual award amounts.

Subp. 7. Institution's share. The language change in this subpart is for correctness. The State Grant Program is no longer entitled the State *Scholarship* and Grant Program.

4830.7200 ELIGIBLE INSTITUTIONS.

The statutory language changes clarified the types of institutions eligible to participate in the Child Care Grant Program and expanded institutional eligibility to include Minnesota nonprofit two-year vocational technical schools that grant associate degrees. The amended language in this section is meant to incorporate the statutory changes to institutional eligibility. The changes are for clarity, completeness, and correctness.

4830.7300 STUDENT PRIORITY.

The deleted language relating to the effective date of the language in this section is no longer needed. The language changes in this subpart are for clarity and to provide the post-secondary institution some degree of flexibility in establishing a deadline date by which a student must apply for renewal of a child care grant award from one academic year to another. The additional language clarifying the time frame applicable to "continuing enrollment" provides clarity for post-secondary institutions and ensures that all participating institutions are treating "continuing enrollment" in a similar way for purposes of renewing child care grants from one academic year to another. The deletion of a specific deadline date and the addition of language indicating that the school establishes a deadline date for students wishing to renew their child care grants for subsequent academic years provide needed program administration at the campus level. Since post-secondary institutions have different starting and ending dates for a particular academic year, the Board felt it would be more efficient and effective for each participating institution to establish student deadline dates for renewal of child care grant awards. This change should result in better service to participating students in this program, and assist institutions in the effective use of program funds.

4830.7400 APPLICATION AND DISTRIBUTION OF FUNDS FOR GRANTS.

Subp. 2. Yearly allocation to institutions. The deleted language referencing a specific academic year is no longer needed or necessary because all institutional allocations are now calculated according to this formula.

Subp. 4. Administrative expense. The addition in this subpart clarifies how the percent of funds for administrative expense is determined. The addition is for completeness and clarity. It should ensure that all institutions understand the importance of efficient use of program funds as it affects institutional costs in the administration of this program.

Subp. 8. Contract with county. [repealed] The language in this subpart is unnecessary for program administration by institutional financial aid officers at participating institutions. The issues of award determination, disbursement, and program reporting are addressed in the proposed rules in sections 4830.7500 and 4830.7900.

4830.7500 AMOUNT AND TERM OF GRANTS.

Subpart 1. Financial need. [repealed] The language in this subpart is deleted because *family income* and *family size* are defined in 4830.7100, subpart 5a of the proposed rules, and now provide the basis upon which child care grant awards are to be made rather than the language in this subpart. As specified in Minnesota Statutes, 136A.125, subdivision 4, family income and family size form the basis of the award chart included in 4830.7500, subp. 2a of the proposed rules.earlier in these rules. In addition, income ranges specified in *Minnesota Statutes* 256.10, subd. 2 are no longer applicable to this program. This deletion is for accuracy and clarity. Other subparts adequately cover necessary components in the determination of the amount and terms of child care grant awards. This subpart is no longer needed.

Subp. 2. Amount. The first part of this subpart describes the factors taken into consideration in calculating a child care grant. (See items A through E of this subpart.) The basis for the language additions and deletions to items A through E are based on changes to *Minnesota Statutes* 136A.125, Subd. 4, which occurred during the 1994 legislative session. The factor of "number of eligible hours of child care needed" and the reliance on information from the Department of Human Services related to child care costs are no longer necessary to calculate the child care grant award, therefore such language has been deleted. In addition, language has been added to permit the institution to consider the estimated cost of child care needed by the student for the period of enrollment and to add that cost to the institutional budget for financial aid purposes. This would allow the institution to supplement the Child Care Grant award with other forms of financial aid such as the federal Supplemental Educational Opportunity Grant (SEOG), federal and/or state educational loans, and institutional aid, if such monies were available.

Subp. 2a. Academic Year Award. The language in this subpart provides the specific academic year award amounts per eligible child based on family income and family size. The language in this subpart is based on the statutory language in Minnesota Statutes 136A.125, Subdivision 4. This language is for clarity and to ensure equitable treatment of all child care grant applicants.

The Child Care Grant Award Chart per eligible child included in this subpart was developed with the following considerations:

- Statutory language specifies a maximum award per eligible child at \$1,500 per academic year.
- Estimated child care costs were based on input and background provided by post-secondary financial aid administrators responsible for administering the Non-AFDC Child Care Grant Program. The assumptions pertaining to estimated child care costs are included in Attachments A and B.

- The sliding fee scale and the Child Care Grant Award chart used during the 1993-94 academic year were reviewed to determine what families would be expected to contribute toward payment of child care costs (that is, the co-payment amount).
- The co-payment amounts by family size were subtracted from the estimated child care costs by family size. The resulting amounts were then multiplied by 75 percent. Keeping in mind the \$1,500 statutory maximum per eligible child, a chart was created for incremental award amounts based on family size and income which were divisible by the number 3 (for quarter-based schools) and the number 2 (for semester-based schools).

Subp. 2b. Award disbursements. As is typical in other types of federal and state grant programs, the institution is to prorate the student's academic year child care grant award by academic term. If the student is enrolled in a quarter-based institution, the award is to be divided by three, and if the student is enrolled in a semester-based institution, the award is to be divided by two. The award calculation is based on attendance for the entire academic year. In all federal and state grant programs, disbursements of annual awards are made by academic term. If the entire child care grant award amount was disbursed at the beginning of the academic year, and the student subsequently failed to meet the eligibility requirements for the funds sometime during that academic year, the student would be expected to repay the monies for terms during which he/she failed to meet the program eligibility requirements. This disbursement requirement is to protect program integrity, and to ensure that students continue to meet the program eligibility requirements for such funds during the entire academic year, for which the award was determined.

While funds are to be disbursed at least once during the academic term, some institutions have a procedure established to disburse monies weekly or monthly, based on the payment requirements of the students to their child care providers. The language is meant to be responsive to payment needs of students receiving child care grant funds. Since child care costs are incurred on a different time schedule than an academic term, the institution may find it more effective and efficient to disburse payments to students on a time schedule to meet varying institutional and student needs. For some students and institutions, more frequent payments within the academic term provides for more efficient and effective program administration. The language in this subpart is to ensure consistency in the calculation of the child care award disbursements, and to protect the integrity of the program, especially as it relates to the monitoring of the appropriate use of program funds.

Subp. 2c. Summer terms award. *Minnesota Statutes* 136A.125. Subd. 4b provides for an additional grant amount for students attending school during the summer term(s). The language in this subpart provides directions for participating post-secondary institutions in calculating the correct additional award amounts to cover summer session attendance. This language is necessary to ensure the equitable treatment of all applicants and to protect the integrity of the program in awarding additional grant monies to eligible students.

Subp. 3. Insufficient funds. [repealed] The language in this subpart is deleted because the procedure to handle applicants when the institution does not have sufficient program funds to meet all eligible applicant needs is addressed in section 4830.7710 of these rules. The language in this subpart also refers to other parts of these rules that have been changed or deleted. Since the situation discussed in this subpart is covered elsewhere in the proposed rules, this subpart is no longer needed.

Subp. 3a. Annual award amount. Language has been added to address the maximum award amount for eligible applicants. This subpart is for clarity, to avoid confusion in the awarding of child care grant program funds, and to ensure the integrity of the program.

4830.7600 PAYMENT. [Repealed] The language in this subpart is deleted for clarity. The subject cover in this subpart is now covered in 4830.7500, subpart 2b. It is more appropriate to include payment language in the added subpart addressing award disbursements.

4830.7710 PROCEDURES FOR DENIAL OR TERMINATION OF A CHILD CARE AWARD.

Subpart 1. Applicability. Language is added to indicate that a student who has been denied a child care grant award due to insufficient funds should request to be placed on the institution's waiting list. This ensures that only applicants with continued interest in receiving this type of award are placed on the waiting list. Students that do not initially receive a child grant award may decide not to enroll at least half-time, or may secure funding from other sources. By having students request placement on the waiting list, the school is less likely to spend time attempting to contact students who no longer are interested in receiving such an award, thus delaying awards to other interested students should additional program funds become available. This addition provides for improved efficiency in program administration, and should improve effective use of program funds in a timely manner.

Subp. 2. Termination. The former title of this subpart, "Procedures," has been deleted for accuracy and clarity. The only basis upon which child care grant awards are denied to eligible students is if the school does not have sufficient monies to make awards to them. In addition, each participating institution has a standardized institutional procedure for dealing with notification and termination of a student's financial aid. The Board feels that each institution should follow its own standard procedures for termination of child care grant awards. The deleted and added language gives participating institutions the operational flexibility to follow its own internal procedures for handling such action, which should be consistent with the school's policies and procedures. All institutions must have in place their own internal, standardized policies and procedures for termination of any type of financial aid funding to a student. Each institution follows such procedures when such action is warranted. The Board feels that if the institution follows its own standardized procedures for

award termination, that process should be sufficient. There is a duplication of effort if two parallel processes must be followed to terminate student awards. This needless duplication can cause confusion to both students and institutional program administrators. The amended language should improve program efficiency and operational effectiveness while continuing to protect students.

4830.7720 APPEAL PROCESS

Subpart 1. Appeal request. The added language to this subpart specifying where students should file written appeals is for clarity and to avoid possible confusion.

Subp. 2. Informal conference. [repealed] This subpart is deleted because it may or may not be part of the school's normal appeal procedure. The current language indicates that it is not a *required* step in the appeal process. An informal conference can still be done if the school wishes to discuss the matter with the student informally. This deletion does not modify or limit students' rights to appeal a school's action in any way.

Subp. 3. Appeal process. The deleted language in this subpart specifies a two week time period for a school to complete its appeal process and for it to forward all documentation to the executive director. The individual school appeal procedure may involve steps that cannot be completed in such a brief time frame. Often the time frame is affected by the availability of school officials, affected students, or receipt of necessary documentation related to the appeal. The time frame varies from institution to institution. The required steps in the appeal process is not affected by the deleted language. The language change is to allow schools and students ample time to complete all necessary steps at the institutional level in order to give the appeal process adequate time to address the issues involved in the case. The change is to provide some flexibility in the appeal process without undermining the students' rights to appeal adverse decisions made by the institution involving the child care grant program.

4830.7800 REFUNDS.

The language in this section relates to school responsibility to refund program funds. Language is added to cover refund circumstances when a student fails to enroll at any point during an academic year. Language is also added to explain required refund action by the school if the executive director determines fraudulent use of program funds by the school. The add/delete language explaining the actual refund calculation is patterned after the federal financial aid refund calculation and is to make the refund calculation for this program consistent with the State Grant Program administered by the Board. The added refund language specifies that the proportionate percentage that the child care grant award represents of the student's total award package is applied only to tuition refund monies remaining after the federal Title IV programs have been repaid.

Item A: Language is added to specify a calculation must be performed to arrive at the percentage. Language is added to specify that the calculation must exclude federal financial aid monies received by the student. These changes are for clarity and to avoid confusion in calculating the correct percentage to be used in the refund calculation.

Item B: Language is added to specify what methodology must be used by the institution in calculating the student's total tuition refund amount. This change is to incorporate the new federal refund calculation option included in the federal Higher Education Reauthorization Act of 1992 language. The additional language is for clarity and completeness in explaining the options an institution has in calculating the total refund amount. This change is to ensure equitable treatment of all student tuition refund calculations performed by the institution.

Item C: Language is added to explain that the federal refund amount must be subtracted from the total refund amount. This language is added for clarity and to avoid confusion and errors by the institution in calculating the child care grant refund amount.

Item D: Language is modified to specify that the proportional refund percentage for the Child Care Grant Program is only applied to available refund monies remaining after federal aid programs have been repaid. These language changes are meant to clarify the calculation as a result of the change in the federal aid program refund requirements. This change will prevent institution's from having to provide institutional funds to pay child care grant refund amounts for individual students receiving assistance under the Child Care Grant Program.

These changes are for completeness and consistency of state financial aid program operations, and further clarify circumstances where a program refund is appropriate.

4830.7900 REPORTS OF DATA.

The added language in this section qualifies when certain types of program-related data must be reported by the schools. The types of data indicated in item C are not always needed and necessary for the schools to supply. Also, this data would typically be requested during the academic year rather than the end of the fiscal year when annual program reports are submitted to the Board. This addition is to provide some flexibility in securing program data related to student awards during the academic year rather than waiting until the fiscal year is completed.

IV. Costs to Local Bodies

It has been determined that *Minnesota Statute* 14.11 is not applicable because there will be no

impact or cost to local bodies related to the adoption of this rule. This program relates to financial aid assistance to post-secondary students with eligible dependent children. No expenditure of public money by local public bodies is pertinent to this rule.

V. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

It has been determined that there will be no impact on small businesses.

VI. CONCLUSION

Based on the foregoing, the proposed Minnesota Rule pt. 4830.7100-4830.7900 is both needed and reasonable.

Dated: August 25, 1994

A handwritten signature in black ink, appearing to read "David R. Powers", is written over a solid horizontal line.

DAVID R. POWERS
Executive Director