

**MINUTES OF SPECIAL MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Time of meeting The special meeting of the Administrative Rules Review Committee (ARRC) was held on Monday, March 21, 1994, in Room 22, State Capitol, Des Moines, Iowa.

Members present Representative Janet Metcalf and Senator Berl E. Priebe, Co-chairs; Senators H. Kay Hedge, John P. Kibbie, and Sheldon Rittmer; Representatives Horace Daggett, Roger Halvorson, Minnette Doderer and David Schrader. Senator William Palmer excused.

Also present Joseph A. Royce, Legal Counsel; Phyllis Barry, Administrative Code Editor; Mary Ann Scott, Administrative Assistant; Caucus staff and other interested persons.

Education, Ch 41 The meeting was called to order at 9 a.m. by Co-chair Metcalf and the following was considered: 281—Chapter 41, Special Education, Notice of Intended Action proposed by the Department of Education, published in IAB 3/2/94 as ARC 4626A.

Representing the Department of Education were Jeananne Hagen, Acting Chief; Dennis Dykstra, Jeff Grimes, Dave Tilly and Jim Reese. Also in attendance were Carole Nelson, Lewis Central High School; A. Otterbach Burns, East High, Waterloo; Bill Rousch, Greenfield Community School; Marvin Lewis, AEA 6; Fritz Kruger, Special Education Director, AEA 5; Tricia Elmer, Urban Education Network; Ronald J. Dumig, Urban Education Network, Council Bluffs Schools; Ron Peeler, Ahlers Law Firm, Representative Linda Nelson, Pottawatomie County; Denita Swenson, Curt Sytsma and Mervin Roth, Iowa Protection Advocacy.

Metcalf asked the Department to provide background on the proposed rule making. Hagen stated that special education rules had not had major revision since 1975. She added that special education had generated much discussion, both in Iowa and nationally—as to which programs are best, the best way to fund those programs, and who should be in special education, for example. A few years ago, AEAs began to enter into the renewed service delivery system on an experimental basis whereby certain state rules were waived to allow them to experiment on new ways of delivering services to students. Today, 14 of the 15 AEAs are engaged in this activity to some extent.

Hagen continued that in revising the special education rules, the Department's major challenge was how to make changes to reflect activity in the state but maintain flexibility at the local level and comply with federal requirements. Much of the federal language has been adopted.

According to Hagen, notices were mailed last year to about 500 "stakeholders in special education" and considerable feedback was received on proposed changes. The first draft was then written and mailed to the same 500 for comments. The second draft was then presented to the Board and approved as the Notice of Intended Action.

The Board encouraged continued publicity on the proposed changes so copies, along with supporting materials, were mailed to all school superintendents, stakeholders in special education, AEA directors, and Urban Network directors. Six hearings have been scheduled around the state in April and May.

Education (Cont.)

Daggett noted concern about class size and discussed with Hagen Division VI, Least Restrictive Environment, as it related to a child attending classes and receiving services in their neighborhood school, when possible. He was also interested in the fiscal impact of portions of the rules.

Doderer asked if the federal court decisions referenced by Hagen involved parents who wanted their child in the regular classroom or those who prefer the professional classroom. Hagen responded that the Oberda Case from Illinois and the Holland Case from California, both wanted their children with disabilities in the regular education classroom. Doderer indicated that the teachers from whom she had heard favored the present system for the best interest of the children. Hagen interjected a new emphasis in these proposals was on services, not places. She pointed out new requirements were not added but more options were included.

Priebe took exception to the qualifications and responsibilities for a director as well as other authorized personnel under 41.9. He contended bureaucracy was being created to protect the professionals. He also alluded to the fiscal impact. Hagen said this portion of the rule had been in effect since 1974. Also, the director was the only required position, others were optional. Priebe asked if the director's responsibilities were defined in the Iowa Code and Hagen referred to §273.5.

Kibbie inquired about availability of personnel to fill these positions. Lewis from Marshalltown indicated that some positions were more challenging to fill and that conditional licensure had been granted from the Bureau of Licensure in some instances. Hagen said paraprofessionals would be hired by the school districts. Nothing in these rules differed from current provisions with regard to private accredited institutions.

Rittmer questioned transitional planning and Reese responded there were no substantive changes in this area. Hagen agreed with Rittmer that the area of special education required documentation but this originates at the federal level.

Hagen informed Metcalf that the federal restrictions preclude cost as a consideration in out-of-state placements—41.12(9).

Clarification was provided Metcalf on definition of "multiple disabilities." She was also informed that the definition of "behavioral disorders" had not been changed from the existing rules and did not reflect the federal definition. The government had struggled with this area for over a year but Hagen suspected they would ultimately develop a definition very similar to Iowa's. She added that behavior disorders were by far their largest challenge.

Priebe quoted from Iowa Code §273.5 and disagreed with the Department's interpretation relative to employment of a director.

Carole Nelson apprised the ARRC of her concerns, which included class size. She was aware of problems, not only in special education classrooms, but regular classrooms as well. Nelson stressed the importance of a limited class size.

With respect to eliminating labeling, Nelson could foresee problems when students were moved into jobs or adult service providing programs after high school. A student's eligibility for funds is partly determined by their classification (mentally disabled, learning disabled, etc.).

Motion

Priebe moved that the Department be requested to prepare an Economic Statement on Chapter 41 and that the Department return to the ARRC meeting in June when there would be adequate time to address these rules. Motion carried.

Curt Sytsma focused on concerns regarding the general education intervention which have been as long as six weeks before a comprehensive evaluation. He voiced opposition to lack of public hearings or notice by area agencies with respect to categorization. Sytsma observed that special education was approached in sixteen different ways across the state. He cited difficulty in accessing current rules.

June meeting

Priebe advised that regular meeting dates in June would be the 14th and 15th. The afternoon of the 15th would be set aside to address proposed 281—Chapter 41. Kibbie requested the Department to provide the Committee with copies of pro and con issues which result from the public hearings.

Marvin Lewis reported that the AEA Directors Association recently adopted a motion in support of the general direction of Chapter 41 and would recommend adoption. He was aware of unanswered questions but expected them to be addressed at the public hearings. As a director, Lewis felt that parents were being involved in a more meaningful way and were more tenacious in protecting their due process rights. These rules help focus on services to the learner and not just the due process part of their responsibilities.

Kibbie pointed out that this was local school budget time and everyone should remain aware of potential impact on small schools.

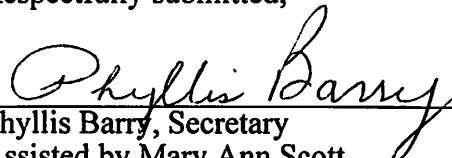
In response to Daggett, Lewis stated that all of the laws governing special education (including the American Disability Act 94-142, and Section 504, the Rehabilitation Act) have a bearing on how services can be delivered.

Tricia Elmer, Special Education teacher in Waterloo and Chairman of Urban Education Network Special Education Directors, spoke in general support of the scope, intent and direction of proposed rules. A letter was distributed with suggestions for changes which would include adequate funding following the student in the weighted process. This letter is on file in the Administrative Code Office. Elmer informed Doderer that a funding problem does exist.

Metcalf requested the Department to provide a numbers chart of students in each category or division, e.g., the percentage of students with visual problems, and to include a comparison or trend over the past five years. Hagen was amenable.

Metcalf reminded the Committee that the next meeting would be held on Monday, April 11, at 7 a.m. Meeting was adjourned with unanimous consent.

Respectfully submitted,


Phyllis Barry, Secretary
Assisted by Mary Ann Scott

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APPROVED:

Representative Janet Metcalf

SPECIAL MEETING

ADMINISTRATIVE RULES REVIEW COMMITTEE

Monday March 21, 1993, 9:00 A.M. in Senate Committee Room #222

The committee will review ARC 4626A. This notice of intended action was proposed by the Department of Education and was published in IAB Vol. XVI, No. 18 (03-02-94).

This proposal creates a new rule chapter, 281 IAC Chapter 41, relating to requirements for special education.

The public is welcome to attend this meeting and give oral comments on the proposal. Written comments may be sent to the Administrative Rules Review Committee, Statehouse Room #116, Des Moines, Iowa, 50319.

For additional information please contact Joe Royce at (515)281-3084.