

**N.D.A.G. Letter to Krauter (Dec. 16, 1991)**

December 16, 1991

The Honorable Aaron Krauter  
Senator, District 35  
HCR 01, Box 27  
Regent, ND 58650

Dear Senator Krauter:

Thank you for your November 25, and December 2, 1991, letters wherein you request an opinion concerning certain requirements for the licensing of a foster care group home operated by Prairie Learning Center of Raleigh, North Dakota.

Specifically, you call my attention to N.D.C.C. §§ 50-11-02 and 50-11-03. Those sections respectively authorized the granting of a license to such a facility if it will "be maintained according to the standards prescribed for its conduct by the rules and regulations of the department of human services" and require the Department of Human Services to "make such reasonable rules and regulations for the conduct of . . . [the foster care facility] as are necessary to carry out the purposes of . . . [N.D.C.C. ch. 50-11]."

Acting under the requirements of N.D.C.C. § 50-11-03, the department has adopted N.D. Admin. Code ch. 75-03-16 concerning licensing of group homes and residential child care facilities. N.D. Admin. Code § 75-03-16-07(2) requires the administrator of the facility to hire or designate a program director who is "a licensed, certified social worker . . . [who demonstrates] a practice knowledge of the casework process." N.D. Admin. Code § 75-03-16-13(1) describes minimum staffing requirements for facilities of various sizes. For a facility of the size you describe in your letter, this rule provides:

1. During waking hours, each facility shall comply with the following minimum staff to child ratio requirements:
  - ...
    - b. Two child care staff, one social service person, one program director, and one administrator for a facility providing services to nine to sixteen children.

The requirements with respect to facilities of various sizes are such that larger numbers of staff persons are required for larger facilities.

The rule does not specify that each staff person described must be full-time, but the Department of Human Services interprets and applies the rule to require full-time staff. The rule describes the staffing requirements as "minimums." They could not be accurately described as such if a licensed facility is at liberty to employ one part-time staff

person to meet a requirement that one staff person be present. If the requirements of this section are interpreted to permit part-time staff, there would be no effective provision for assuring adequate staffing levels.

You have also suggested that a literal interpretation of N.D. Admin. Code § 75-03-16-13(1)(b) would require more than one individual for the working hours because those hours would be from 7 a.m. to 10 p.m. (a total of 15 hours per day). My staff has reviewed this suggested interpretation with DHS staff. They have been informed that the "full-time staff member" means at least 40 hours per week. The condition that the person be available during working hours means that the person must fulfill the 40 hours per week during working, as opposed to, sleeping hours. Preferably both the social service person and the program director are available at the same time so the children will receive the most benefit from the facility. Furthermore, these persons would not need to be available during the period when all the children are at school. Therefore, I must conclude that it is a reasonable and necessary interpretation of N.D. Admin. Code § 75-03-16-13(1) that the references to persons or staff are intended to be references to full-time persons or staff.

The rules governing the licensing of these foster care facilities permit the granting of variances. N.D. Admin. Code § 75-03-16-30 provides: "Upon written application and good cause shown to the satisfaction of the department, the department may grant a variance from the provision [sic] of this chapter upon such terms as the department may prescribe." I understand the Prairie Learning Center has sought a variance but it has been denied. The Center may consider reapplying for a variance. In doing so I urge the Center staff work closely with DHS personnel so it can address the reasons the Department denied the variance.

Sincerely,

Nicholas J. Spaeth

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