

**WORKING PAPER ON  
GOVERNANCE OPTIONS FOR  
THE MINNESOTA ACADEMY FOR THE DEAF AND  
THE MINNESOTA ACADEMY FOR THE BLIND**

**Prepared for the State Planning Agency  
by the Management Analysis Division  
of the Department of Administration**

**January 1986**

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**Department of  
Administration**

January 24, 1986

**MANAGEMENT  
ANALYSIS  
DIVISION**

Lani Kawamura, Director  
State Planning Agency  
Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101

Dear Ms. Kawamura:

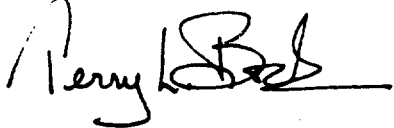
I am transmitting our report on Governance Options for the Minnesota Academy for the Deaf and Minnesota Academy for the Blind with this letter. As you know, the State Planning Agency directed the Management Analysis Division to prepare this report as part of a larger study required by Minnesota Laws 1985, Chapter 240, Section 8. The intent of the report is to provide information about the strengths and weaknesses of the various alternatives that have been suggested during a previous study of the Academies.

While we do not make a specific recommendation for or against any one option, we recognize the importance of this issue. Funding mechanisms, employer/employee relationships, as well as management controls are all affected by the governance structure. In addition, the optimal organizational structure for the Academies could vary somewhat between the alternatives. What may be a preferred structure as part of a state agency may be less advantageous if the Academies functioned as a separate entity.

It does not appear to us that any one option is clearly superior to all others. We encourage policy makers to frame their discussion around the three issues we feel are fundamental to the operation of the Academies: attaining educational excellence, establishing clear accountability, and providing incentives to operate efficiently.

We hope this report will assist you in developing a comprehensive set of recommendations to improve the services provided by the Academies.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry L. Bock". The signature is written in a cursive style with a horizontal line extending to the right.

Terry L. Bock, Director  
Management Analysis Division

BL:TLB:ml

cc: Colleen Wieck, State Planning Agency  
Ruth Myers, State Board of Education  
Carl Johnson, Superintendent, Faribault Academies  
Robert Wedl, Assistant Commissioner  
Department of Education

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## INTRODUCTION

This report discusses options for governance of the Minnesota Academy for the Deaf and the Minnesota Academy for the Blind. It is one part of a multi-faceted study of the Academies mandated in Laws 1985, Chapter 240, Section 8. (See Appendix A.) As coordinator for the entire study, the State Planning Agency directed the Management Analysis Division in the Department of Administration to investigate various alternatives and discuss their strengths and weaknesses. The purpose of the report is to provide information to policy makers. Therefore, it does not make a recommendation for or against any specific option.

The report reviews five alternatives suggested during previous discussions about governance of the Academies:

- o the State Board of Education with consultation and review by the Department of Education (current structure)
- o the Department of Education
- o a local school district
- o a special intermediate school district
- o a quasi-public agency with its own governing board.

For each of these options, the following items were researched:

- o the characteristics of a governing body typically associated with the structure
- o the traditional source of their operating and capital budgets
- o the employee/employer relationship typically associated with the structure
- o the changes necessary to implement the structure.

Finally, the strengths and weaknesses of the options are discussed and weighed against these questions:

- o Will the structure enhance educational excellence for the sensory impaired and multiply handicapped?
  - o Will the Academies be clearly accountable under this structure?
  - o Will the organization have incentives to operate in a cost effective manner?
-

The report contains four sections:

Governing Bodies in Other States - a review of the governance structures used by residential schools for the sensory impaired in other states.

Governance Options for Minnesota - an outline of the characteristics of five different governance structures.

Strengths and Weaknesses of the Options - a summary of the advantages and disadvantages of the various structures.

Conclusions - a brief discussion of options weighed against basic questions about the operation of the Academies.

### GOVERNING BODIES IN OTHER STATES

There are state operated or private residential schools for the sensory impaired in all but two states. Six states are served by a combination of state and private schools, thirty-nine states are served only by state operated schools,<sup>1</sup> and three states are served only by privately run schools.

The state operated schools use a variety of governance structures, but the most commonly used structure is the department of education. The private schools are all supervised by their own board of directors or trustees.

- o Two states do not have state or private residential schools for the hearing or visually impaired (Nevada, New Hampshire)
- o An additional five states do not have a state or private residential school for the visually impaired (Delaware, Maine, Rhode Island, Vermont, Wyoming)
- o Six states are served by both state and private schools (Maryland, Mississippi, New Jersey, New York, Ohio, Pennsylvania)
- o Three states are served only by private schools (Connecticut, Massachusetts, Vermont).

There are a variety of supervisory structures used at state operated schools (See Figure 1):

- o The department of education supervises the schools in 22 states. In 4 of these states, the schools report directly to the commissioner. In 8 states, an assistant commissioner is the direct supervisor, and in 10 states the schools are part of a division of special education or special services.
- o The state board of education provides direct supervision in four states (Idaho, Louisiana, Minnesota, Montana).

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<sup>1</sup> The information in this section relies on a survey of residential schools conducted by the Kansas State School for the Deaf in 1985. Hawaii and Alaska were not included. The results of this survey are found in Appendix B.

FIGURE 1

GOVERNING BODIES IN STATES WITH  
STATE OPERATED RESIDENTIAL SCHOOLS

|   | Number of states |
|---|------------------|
| DEPARTMENT OF EDUCATION                 |                  |
| Commissioner                            | 4                |
| Assistant Commissioner                  | 8                |
| Division of special services or schools | 9                |
| sub total                               | 21               |
| STATE BOARD OF EDUCATION                | 4                |
| OTHER STATE AGENCIES                    |                  |
| Rehabilitation Services                 | 1                |
| Health                                  | 1                |
| Institutions                            | 2                |
| Human Resources                         | 1                |
| sub total                               | 5                |
| BOARD OF REGENTS                        | 2                |
| SEPARATE BOARDS                         |                  |
| Trustees                                | 3                |
| Directors                               | 3                |
| Visitors                                | 1                |
| Commissioners                           | 1                |
| sub total                               | 8                |
| GOVERNOR                                | 2                |
| INDEPENDENT SCHOOL DISTRICT             | 1                |
| TOTAL                                   | 43               |



- o An executive branch agency other than the department of education provides supervision in 5 states. The supervisory agencies include the department of rehabilitation services (Illinois) department of health (Indiana), department of human services (Oklahoma) and an institutional council (North Dakota, Utah).
- o In eight states, the residential schools are supervised by a governing board which is not tied to a state agency. These entities are titled boards of trustees, commissioners or visitors (Alabama, Arizona, Arkansas, Delaware, Florida, Maryland, Mississippi, South Carolina).
- o In two states, the schools report to the Board of Regents governing the university system in the state (Iowa, South Dakota).
- o In two states (New Mexico, Washington) the schools report directly to the governor of the state.
- o In one state (Texas) the residential schools operate as a statewide independent school district with its own school board.

## GOVERNANCE OPTIONS FOR MINNESOTA

Minnesota has operated residential schools for the sensory impaired at Faribault since the 1860's. During that time, they have been governed by several different entities including a separate board of directors and placement within a state agency. In 1976, the Legislature transferred authority over the residential schools from the Department of Public Welfare (DPW) to the State Board of Education. This followed enactment of the Education for All Handicapped Children Act (Public Law 94-142). Figure 2 reviews the governance history of the Academies since 1863.

Five alternatives have been suggested during previous discussions about governance of the Academies:

- o the State Board of Education with consultation and review by the Department of Education
- o the Department of Education
- o a local school district
- o a special intermediate school district
- o a quasi-public agency with its own governing board.

If supervision is provided by the State Board of Education or the Department of Education, the Academies will continue to function as a state agency. Under any of the other three alternatives, they would no longer be a part of the executive branch of state government. That change would have a significant impact on the day to day operation of the Academies. Figure 3 outlines the operational characteristics of the five options:

- o oversight body (composition, terms)
- o fiscal operation (source of financing, contracting and purchasing requirements, accounting structure)
- o employee/employer relationship
- o changes necessary to implement the structure (statutes, property)

Figure 2

GOVERNANCE OF THE FARIBAULT RESIDENTIAL SCHOOLS

| <u>DATE</u> | <u>SUPERVISING BODY</u>   | <u>APPOINTING AUTHORITY</u>   |
|-------------|---|---|
| 1863-1866   | Three Commissioners   | Legislature   |
| 1866-1902   | Board of Directors, 5 members<br>(Governor and Superintendent of Instruction<br>ex-officio members)   | Governor  |
| 1902-1917   | Board of Control for state institutions given<br>financial control over the school, 3 members.<br>(Board of Directors retained authority over<br>instruction and facilities and hired the<br>superintendent)                            | Governor  |
| 1917-1938   | Board of Control (Board of Directors eliminated)  | Governor  |
| 1939-1953   | Division of Public Institutions within the<br>Department of Social Security (succeeded<br>Board of Control)   | Governor appoints<br>Director of Division   |
| 1953-1976   | Department of Public Welfare (succeeded<br>Division of Public Institutions)   | Governor appoints<br>Commissioner   |
| 1976-Date   | State Board of Education<br><br>1976-84 Board delegated authority to<br>the Commissioner of Education<br><br>1984-date Board has active role in<br>policy and administration; administrative<br>person within SDE provides consultation | Governor names Board members<br><br>1976-83 Board names Commissioner<br><br>1983-date Governor names Commissioner |

FIGURE 3  
COMPARISON OF GOVERNANCE OPTIONS

|                      |                               | Option 1<br>STATE BOARD OF EDUCATION<br>(current structure)   | Option 2<br>DEPARTMENT OF EDUCATION                                |
|----------------------|-------------------------------|---|--|
| OVERSIGHT<br>BODY    | Composition                   | 9 member board<br>--one from each congressional<br>district<br>--three must have been elected<br>school board members                   | Commissioner of Education  |
|                      | Appointment Process           | Appointed by the Governor with<br>advice and consent of the Senate  | Appointed by the Governor with<br>advice and consent of the Senate |
|                      | Term                          | 4 years   | 4 years  |
| FISCAL<br>OPERATIONS | Source of<br>Operating Budget | General Fund appropriation<br>Federal aids<br>(school district reimbursement set<br>by Legislature and returned to the<br>general fund) | Same as Option 1   |
|                      | Source of<br>Capital Budget   | Bond authorization from the State   | Same as Option 1   |
|                      | Purchasing and<br>Contracting | MS Chap. 128A.02 authorizes contracts<br>for maintenance and instruction  | Same as Option 1   |
|                      |                               | MS Chap. 16A requirements for<br>purchasing and contracting apply   | Same as Option 1   |
|                      | Accounting Structure          | UFARS required, but Academies use<br>Statewide Accounting (SWA)   | Same as Option 1   |
|                      | EMPLOYEE/<br>EMPLOYER         | Bargaining  | Bargain collectively   |
| Representation       |                               | IAFSMCE, MAPE, MMA<br>State Residential Schools Education<br>Assoc. (SRSEA)<br>MN Nurses Association (MNA)                              | Same as Option 1   |
| Retirement Plan      |                               | MSRS, TRA in some cases   | Same as Option 1   |
| CHANGES<br>NECESSARY |                               | Statutory, Law  | None   |
|                      | Property                      | None  | None   |
|                      | Employees                     | None  | None   |
|                      | Other                         |   |  |



The following descriptions supplement the information in Figure 3.

**OPTION 1 - State Board of Education with Consultation by the Department of Education (current structure):**

By statute, the State Board of Education has managerial and administrative control over the Academies (see MS 128A.02, subdivision 1). The statute has remained the same since the Academies were transferred from DPW to the State Board of Education in 1976. The manner in which that authority has been exercised, however, has changed significantly. From 1976 to 1983, the Commissioner of Education assumed all policy and administrative oversight. In 1984, the Board began to take a more active role in the operation of the Academies. Board members state their increased involvement was prompted by the criticisms in an evaluation of the Academies by the Legislative Auditor dated January 4, 1984.

The Board has now assumed a role in policy development and review which was previously the responsibility of the administrators within the Department of Education (SDE.) A 4 member subcommittee of the Board has been named to deal specifically with management of the Academies and meets once a month. On a quarterly basis, the full Board of Education meets at Faribault. According to the Board, SDE relates to the Faribault Academies in the same way they supervise other public schools in the state. In addition, the Board sees SDE as a fiscal and administrative agent for the residential schools. On the SDE organization chart, the Academies are shown reporting to an assistant commissioner. The Board members view the assistant commissioner as a consultant whose role is to assist both the Board and the superintendent in their management of the residential schools.

The Board's relationship with the Academies is distinctly different than the one they have with school districts in the state. For the Academies, the Board provides direct input and oversight on decisions and functions somewhat like a local school board. For the remainder of Minnesota's public schools, the Board provides much more general supervision by establishing statewide policies and procedures.

**OPTION 2 - Department of Education:**

Under this option, the Commissioner of Education or his/her designee would have direct supervision of the Academies. The State Board of Education would retain general supervisory responsibility for the Academies through its jurisdiction over state-wide policies on special education. While this would be a change from the current operation, no statutory change would be

required. The State Board of Education could simply exercise its delegation authority and turn over direct supervision to the Commissioner. However, if this option is seen as preferable, the Legislature may wish to direct the Board to make this delegation by law or statute to clarify the respective roles of the Board and SDE.

**OPTION 3 - A Local School District:**

This option assumes management of the Academies would become the responsibility of a local school district, presumably the Faribault schools. A model for this type of governance exists at the Lakeview School in the Worthington school district, which provides residential programs for physically handicapped children.

The Lakeview School is governed by the local elected school board and is subject to all laws and rules governing independent school districts. Funding for programs is obtained by claiming all applicable state aids and federal funds with the remainder of the costs billed to the student's home district. The school serves as a state-wide resource to physically handicapped children with approximately one quarter of its students from the southwestern corner of the state and the remainder from other areas of the state.

As indicated by the Faribault School Superintendent, the local school board is not seeking authority over the Academies. They feel there would be significant policy and operational issues to be resolved before local management would be workable. The fundamental concern is that if management responsibility were transferred, it should include full authority to manage and control through the structures established for local schools. Specifically, accounting procedures, contracting restrictions, and employee/employer relationships for the Academies should be the same as those used by local school districts. They also feel it would be inappropriate for the local school board to seek a direct or pass-through appropriation from the Legislature to finance the operation of the schools.

**OPTION 4 - A Special Intermediate School District:**

Special intermediate school districts are generally created to address the educational needs of districts in a contiguous area. There are currently three such districts in the state. They are each governed by their own joint board whose membership represents each district in the special district. They are designed to provide services to individuals residing within the boundaries of the special district, although they may accept students from outside the district on a tuition basis. None of the special districts currently provides a residential program.

It is assumed funding mechanisms for a residential program in a special district would be similar to those used by the Lakeview School, i.e., use of state and federal aids with the remainder of the costs billed to the student's home district. The existing special districts have taxing authority tied to the property tax levy of the member districts and can also issue bonds to finance capital improvements.

**OPTION 5 - Quasi-public Agency with its Own Governing Board:**

Implementation of this option would maintain the public nature of the Academies by establishing the Academies as a public corporation. The legislation authorizing this change would also create the Academies as an entity outside the structure of either state or local government. The management and administration of the corporation would be the responsibility of a board established for that purpose. The legislation creating Gillette Hospital as a public corporation was used as a model in Figure 3 since an education oriented model does not exist in Minnesota.

**Labor Relations Issues Associated with a Change in Governance:**

One of the more complex issues that would need to be addressed, if any change in governance were made, is the effect on employees of the Academies. The following information is summarized from material prepared by the Department of Employee Relations (DOER) Labor Relations Bureau specifically for this report. (See Appendix C.)

If a new governance structure were established for the Academies, the status of the existing employees would be affected by the accompanying legislation. If the enabling statute or law simply created the new governing entity and was silent on specific issues such as contractual rights of employees, the status of collective bargaining agreements or bargaining unit determinations, these issues would be addressed by interpretation of Public Employee Labor Relations Act (PELRA), Bureau of Mediation Services (BMS) policy, existing contract law and general labor law principles.

Alternatively, the enabling legislation could specify the implementation of any or all of these issues. It could:

- o Require the new employer to hire all the Academy employees, or require that the new employer hire as many of the existing employees as it deems necessary and grant special benefits to those not hired, or



- o Require that new bargaining unit determinations and certification elections be held in accordance with PELRA and BMS policy, or
- o Require that employees would retain certain rights or benefits, for example, transition rights guaranteeing salary levels or ranges, sick leave or vacation leave accrual rates, and severance pay.

It is important to note that enabling legislation would need to specify the issue of retirement benefits since this is not a negotiable item and cannot be addressed through collective bargaining agreements.

## STRENGTHS AND WEAKNESSES OF THE OPTIONS

Each of the options in the previous section has some advantage(s) for management of the Academies.

### **OPTION 1 - State Board of Education with Consultation by the Department of Education (current structure).**

The primary strength of the current supervisory structure is the attention the Board gives the Academies. The relationship has provided the Academies visibility within the state's educational hierarchy at a time the schools were undergoing a great deal of change. The reporting or consultative relationship with the SDE has been transferred several times in the last two years, the most recent change occurring in September 1985. While membership on the Board changes as well, the Board's supervisory relationship to the Academies appears to have been more consistent than the Academies' recent relationship with SDE.

The most serious question raised about the current structure is whether it is an appropriate role for the Board. The Board's mission is to establish educational policy for all Minnesota schools. With the exception of the Academies, it is the responsibility of local school districts to operationalize those policies.

In addition, responsibility for supervising the Academies is currently divided between the Board and SDE. While the Board views SDE as a consultant, the department plays an important role in the operation of the Academies through its review and control of financial and personnel transactions. This division is not unworkable, but it appears cumbersome to manage effectively.

### **OPTION 2 - Department of Education.**

If the Academies report directly to the SDE, the issue of dual supervision should be resolved. The schools would be clearly accountable to one administrative and governing body. While this consideration is very important, it should not be the only concern.

Oversight by the SDE has shifted several times within the last two years, coinciding with the Board's increased involvement with managing the Academies. This raises questions about the Department's commitment to provide leadership for the Academies. In September 1985, the schools were placed under the Assistant Commissioner for the Division of Systems Effectiveness. The current incumbent has a background in the

state's special education policy and appears to be respected by both the Board and the Academies. If this reporting relationship were stabilized, it could strengthen leadership of the Academies.

A broader concern is whether it is appropriate for the state to operate any school as part of a state agency. It is generally held that educational services are best delivered and administered by local units of government, specifically local school districts. Administration of the Academies by the SDE (or the State Board of Education) contradicts that general policy.

### **OPTION 3 - A Local School District.**

Transferring the Academies to a local school district would be in keeping with the policy that educational services should be delivered by local units of government.

Local control may provide other advantages as well. The local board and district administrators could access and integrate the resources available within the district for the benefit of the students at the Academies. This should reinforce and expand the mainstreaming activities and capabilities of the Academies, in keeping with the mandates in P.L. 94-142. In addition, the local school board would be encouraged to be directly involved with the operation of the schools through its physical proximity to the Academies. Local school district control may provide tighter management control and oversight.

While these advantages may be attractive, there are some issues that would be complicated by such a transfer. The Academies are designed to be a state-wide resource for the sensory impaired. While the residential schools currently serve students that are predominantly from the southeastern portion of the state, transfer to a local district would reinforce the perception that the Academies are a local or regional resource rather than a state-wide school.

In addition, the operational changes that would accompany such a transfer should be carefully considered and planned for. As cited in the previous section, the local school district should not be confronted with managing two different administrative structures. The state and the local district would need to design a tuition based budget rather than relying on direct appropriations to the Academies. The state and the local district would also have to agree on how any capital improvements would be financed. This has ramifications for all school districts with students at the Academies.

Finally, the effect on the current employees in both the district and the Academies would need to be negotiated before a transfer could be implemented.

**OPTION 4 - A Special Intermediate School District.**

This option is conceptually attractive. Creation of a state-wide special district could maintain the state-wide nature of the Academies at the same time that it gives control to a local unit of government. The independence of the special district would allow it to create services that are responsive to the needs of the population it would be designed to serve. It should also provide the freedom to design a service delivery structure that fits its needs. Beyond this conceptual level however, it appears the structure would be difficult to operationalize using the current models.

Several issues would have to be resolved:

Would all districts in the state be required to be part of the special district?

Would all districts be represented on the joint board?

Would the special district be given levy authority and allowed to issue bonds for capital improvements?

Finally, just as with the local school district option, the effect on the current employees at the Academies would have to be examined and negotiated.

**OPTION 5 - Quasi-public Agency With its Own Governing Board.**

Establishing the Academies as a public corporation would create it as an independent service provider of programs for the sensory impaired. It would give the schools the most autonomy of any of the alternatives described in this report. Within the scope of the enabling legislation, the governing board could define the population it would serve and design services to fit the needs of that group. The board would be clearly accountable for the management and administration of the programs and facilities.

The State's oversight under such a structure would be very limited. The Governor could retain appointment authority over the board of directors. The SDE would be responsible for monitoring the educational program's compliance with P.L. 94-142 but would not have other direct ties to the organization. Using the Gillette Hospital experience as a model, the public corporation

would have no required accounting system, no restrictions on the purchasing or contracting, and would not be tied to any State or local government employee classification system.

As with the two previous options, the effect on current employees at the Academies would need to be carefully negotiated.

## CONCLUSION

Each of the structures discussed has its own strengths and weaknesses. It appears, however, that the characteristics of the governance options should be weighed against three questions: Will the structure enhance educational excellence? Will the Academies be clearly accountable? Will they have incentives to operate in a cost effective manner?

This report will not give conclusive answers to these questions, but it will highlight some of the elements that should be considered.

- o Will the structures provide educational excellence for the sensory impaired and multiply handicapped?

Each of the structures is capable of forming a responsive and innovative program for the education of the sensory impaired and multiply handicapped. The critical elements appear to be a commitment to the needs of the population being served and clear leadership for development and management of programs. To the extent multiple responsibilities detract from clear commitment and leadership, a governance structure fully devoted to the operation of the Academies may have an advantage. This points to the special district and quasi-public agency models. To the extent that educational excellence is tied to the premise that educational services are best administered by local units of government governance by the local school district or a special district is indicated.

- o Will the Academies be clearly accountable?

With the exception of the dual accountability of the current structure, the other four options focus the supervisory relationship on one governing body. Corollary issues are the degree to which the Academies should be tied to state government and the degree to which the Academies should be perceived as a state-wide facility.

The State Board of Education and the Department of Education options maintain the Academies within the executive branch; the other options remove them from the jurisdiction and control of state government. It should be noted that under any of the options, the SDE would continue to have responsibility for monitoring the educational program's compliance with P.L. 94-142.

With management by the local school district, the Academies may be perceived to be a local or regional resource rather than a state-wide facility. With the trend to provide special

education services as close to the home district as possible, this characteristic may be desirable. If so, it raises questions about the need to create similar facilities and programs in other areas of the state.

- o Will the Academies have incentives to operate in a cost effective manner?

All public organizations are under increasing pressure to operate as efficiently as possible. This pressure would exist for the Academies under each of the options.

If the Academies were funded on a per student or tuition basis rather than a direct appropriation or pass through grant, they would become more responsive to fluctuations in student enrollment. In addition, if services were provided on a fee or billable basis, both the Academies and their clients would become more conscious of cost-benefit relationships. Given the relatively small size of the student population and the high fixed costs at the Academies, relying solely on a tuition based budget may not be feasible. Small fluctuations in the number of students served would have a disproportionately large effect on the dollars available to maintain programs.

A fee or tuition based budget would appear to be necessary for the local district, special district and quasi-public agency options. It could, however, be used in either State Board or Department of Education models.

**APPENDIX A**

Laws of Minnesota for 1985, Chapter 240, Section 8:

**MANAGEMENT AND GOVERNANCE REPORT.**

The state planning agency shall coordinate a study with the management analysis unit of the department of administration, the department of finance, the department of employee relations and the department of education of issues related to the academies. The study shall include but not be limited to the following:

- (1) the management organization structure;
- (2) the governance;
- (3) financing methods;
- (4) ratios;
- (5) student assessments;
- (6) admission and discharge criteria.

The state planning agency shall report to the senate and house education committees, the senate finance committee, and the house appropriations committee by January 1, 1986. The agency shall report to those committees by October 1, 1985, with a progress report. The actual cost of the study must be paid by the academies.



APPENDIX B  
RESULTS OF SURVEY BY KANSAS STATE SCHOOL OF THE DEAF

| STATE         | OPERATED SCHOOL | VISION IMPAIRED | HEARING IMPAIRED | SUPERVISING AGENCY              | PLACEMENT WITHIN AGENCY             |
|---------------|-----------------|-----------------|------------------|---------------------------------|-------------------------------------|
| ALABAMA       | X               | X               | X                | BOARD OF TRUSTEES               |                                     |
| ALASKA        |                 |                 |                  | DID NOT CONTACT                 |                                     |
| ARIZONA       | X               | X               | X                | BOARD OF DIRECTORS              |                                     |
| ARKANSAS      | X               | X               | X                | BOARD OF DIRECTORS              |                                     |
| CALIFORNIA    | X               | X               | X                | DEPARTMENT OF EDUCATION         | DIRECTOR OF SPECIAL SCHOOLS         |
| COLORADO      | X               | X               | X                | DEPARTMENT OF EDUCATION         | COMMISSIONER OF PUBLIC INSTRUCTION  |
| CONNECTICUT   |                 |                 |                  |                                 |                                     |
| DELAWARE      | X               |                 | X                | BOARD OF DIRECTORS              |                                     |
| FLORIDA       | X               | X               | X                | BOARD OF TRUSTEES               |                                     |
| GEORGIA       | X               | X               | X                | SUPERINTENDENT OF SCHOOLS       | ASSOCIATE SUPERINTENDENT            |
| HAWAII        |                 |                 |                  | DID NOT CONTACT                 |                                     |
| IDAHO         | X               | X               | X                | STATE BOARD OF EDUCATION        |                                     |
| ILLINOIS      | X               | X               | X                | DEPARTMENT OF REHABILITATION    |                                     |
| INDIANA       | X               | X               | X                | COMMISSIONER OF HEALTH          |                                     |
| IOWA          | X               | X               | X                | STATE BOARD OF REGENTS          |                                     |
| KANSAS        | X               | X               | X                | DEPARTMENT OF EDUCATION         | COMMISSIONER OF EDUCATION           |
| KENTUCKY      | X               | X               | X                | DEPARTMENT OF PUBLIC EDUCATION  | ASSOCIATE SUPERINTENDENT            |
| LOUISIANA     | X               | X               | X                | STATE BOARD OF EDUCATION        |                                     |
| MAINE         | X               |                 | X                | DEPARTMENT OF EDUCATION         | COMMISSIONER OF EDUCATION           |
| MARYLAND      | X               |                 | X                | BOARD OF VISITORS               |                                     |
| MASSACHUSETTS |                 |                 |                  |                                 |                                     |
| MICHIGAN      | X               | X               | X                | STATE SUPERINTENDENT OF SCHOOLS | DIRECTOR OF RES. SCHOOLS            |
| MINNESOTA     | X               | X               | X                | STATE BOARD OF EDUCATION        |                                     |
| MISSISSIPPI   | X               | X               | X                | BOARD OF TRUSTEES               |                                     |
| MISSOURI      | X               | X               | X                | DEPARTMENT OF EDUCATION         | ASSISTANT COMMISSIONER              |
| MONTANA       | X               | X               | X                | STATE BOARD OF EDUCATION        |                                     |
| NEBRASKA      | X               | X               | X                | DEPARTMENT OF EDUCATION         | ASSISTANT COMMISSIONER              |
| NEVADA        | NONE            |                 |                  |                                 |                                     |
| NEW HAMPSHIRE | NONE            |                 |                  |                                 |                                     |
| NEW JERSEY    | X               |                 | X                | DEPARTMENT OF EDUCATION         | DIRECTOR OF DIRECT SERVICES         |
| NEW MEXICO    | X               | X               | X                | GOVERNOR                        |                                     |
| NEW YORK      | X               | X               | X                | DEPARTMENT OF EDUCATION         | DIRECTOR OF STATE SUPPORTED SCHOOLS |
| NO. CAROLINA  | X               | X               | X                | DEPARTMENT OF EDUCATION         | DIRECTOR OF DEAF AND BLIND SCHOOLS  |
| NO. DAKOTA    | X               | X               | X                | DIRECTOR OF INSTITUTIONS        |                                     |
| OHIO          | X               | X               | X                | PUBLIC INSTRUCTION              | ASSISTANT SUPERINTENDENT            |
| OKLAHOMA      | X               | X               | X                | DIRECTOR OF HUMAN SERVICES      |                                     |
| OREGON        | X               | X               | X                | PUBLIC INSTRUCTION              | ASSISTANT SUPERINTENDENT            |
| PENNSYLVANIA  | X               |                 | X                | DEPARTMENT OF EDUCATION         | SECRETARY OF EDUCATION              |
| RHODE ISLAND  | X               |                 | X                | DEPARTMENT OF EDUCATION         | DIRECTOR OF SPECIAL POPULATIONS     |
| SO. CAROLINA  | X               | X               | X                | BOARD OF COMMISSIONERS          |                                     |
| SO. DAKOTA    | X               | X               | X                | STATE BOARD OF REGENTS          |                                     |
| TENNESSEE     | X               | X               | X                | DEPARTMENT OF EDUCATION         | DIRECTOR FOR SPECIAL SCHOOLS        |
| TEXAS         | X               | X               | X                | SCHOOL BOARD                    |                                     |
| UTAH          | X               | X               | X                | CHAIR OF INSTITUTIONAL COUNCIL  |                                     |
| VERMONT       |                 |                 |                  |                                 |                                     |
| VIRGINIA      | X               | X               | X                | DEPARTMENT OF EDUCATION         | ADMINISTRATIVE DIRECTOR             |
| WASHINGTON    | X               | X               | X                | GOVERNOR                        |                                     |
| WEST VIRGINIA | X               | X               | X                | DEPARTMENT OF EDUCATION         | DEPUTY SUPERINTENDENT OF SCHOOLS    |
| WISCONSIN     | X               | X               | X                | SUPERINTENDENT OF SCHOOLS       | ASSISTANT SUPERINTENDENT            |
| WYOMING       | X               |                 | X                | SUPERINTENDENT OF SCHOOLS       | ASSISTANT SUPERINTENDENT            |

APPENDIX B  
RESULTS OF SURVEY BY KANSAS STATE SCHOOL OF THE DEAF

| PRIVATE<br>OPERATED VISION HEARING<br>SCHOOL IMPAIRED IMPAIRED SUPERVISING AGENCY |       |       |       |               |
|---|-------|-------|-------|---------------|
| -----   | ----- | ----- | ----- | -----         |
| ALABAMA   |       |       |       |               |
| ALASKA  |       |       |       |               |
| ARIZONA   |       |       |       |               |
| ARKANSAS  |       |       |       |               |
| CALIFORNIA  |       |       |       |               |
| COLORADO  |       |       |       |               |
| CONNECTICUT   | X     | X     | X     | PRIVATE BOARD |
| DELMARE   |       |       |       |               |
| FLORIDA   |       |       |       |               |
| GEORGIA   |       |       |       |               |
| HAWAII  |       |       |       |               |
| IDAHO   |       |       |       |               |
| ILLINOIS  |       |       |       |               |
| INDIANA   |       |       |       |               |
| IOWA  |       |       |       |               |
| KANSAS  |       |       |       |               |
| KENTUCKY  |       |       |       |               |
| LOUISIANA   |       |       |       |               |
| MAINE   |       |       |       |               |
| MARYLAND  | X     | X     |       | PRIVATE BOARD |
| MASSACHUSETTS   | X     | X     | X     | PRIVATE BOARD |
| MICHIGAN  |       |       |       |               |
| MINNESOTA   |       |       |       |               |
| MISSISSIPPI   | X     |       | X     | PRIVATE BOARD |
| MISSOURI  |       |       |       |               |
| MONTANA   |       |       |       |               |
| NEBRASKA  |       |       |       |               |
| NEVADA  |       |       |       |               |
| NEW HAMPSHIRE   |       |       |       |               |
| NEW JERSEY  | X     | X     |       | PRIVATE BOARD |
| NEW MEXICO  |       |       |       |               |
| NEW YORK  | X     | X     | X     | PRIVATE BOARD |
| NO. CAROLINA  |       |       |       |               |
| NO. DAKOTA  |       |       |       |               |
| OHIO  | X     |       | X     | PRIVATE BOARD |
| OKLAHOMA  |       |       |       |               |
| OREGON  |       |       |       |               |
| PENNSYLVANIA  | X     | X     | X     | PRIVATE BOARD |
| RHODE ISLAND  |       |       |       |               |
| SO. CAROLINA  |       |       |       |               |
| SO. DAKOTA  |       |       |       |               |
| TENNESSEE   |       |       |       |               |
| TEXAS   |       |       |       |               |
| UTAH  |       |       |       |               |
| VERMONT   | X     |       | X     | PRIVATE BOARD |
| VIRGINIA  |       |       |       |               |
| WASHINGTON  |       |       |       |               |
| WEST VIRGINIA   |       |       |       |               |
| WISCONSIN   |       |       |       |               |
| WYOMING   |       |       |       |               |

## APPENDIX C

### FARIBAULT ACADEMY STUDY GOVERNANCE ISSUES

The Department of Employee Relations, Labor Relations Bureau, has been asked by the Department of Administration to address the governance issues involved in the Faribault Academy Study. A discussion of these issues follow.

- I. The Department of Administration has identified the following governance options:
  - A. The Academy retains its current governance.
  - B-1. The Academy would become a separate school district.
  - B-2. The Academy would be merged into the existing school districts.
  - B-3. The Academy would be merged into the existing Faribault School District.
  - C. The Academy would become a quasi-public board. (This would be similar to the current governance structure with MTC and Metro Council.)
  - D. The Academy would be governed by the Minnesota State Department of Education.
  
- II. Governance issues such as those involved in the Faribault Academy Study have arisen in the private sector and there is an established case law in this area. When there is a "shift" of employees from one employer to another, one of three situations can exist. These three scenarios are discussed below.
  - A. Alter Ego. The new employer will be considered the alter ego of the old employer when the identity of the employing entities (in this case the State as the prior employer and whomever the new employer would be) are substantially the same (the new employer is in reality the same employer.) If it were to be determined that the new employer (be it an intermediate school district, quasi-public board, etc.) were the alter ego of the State, as employer, the new employer would be bound by all of the State's collective bargaining obligations.

B. Successor Employer. Even if it were determined that an alter ego situation did not exist, the new employer may be considered to be the successor employer of the State. The determination of successorship relates to the degree of continuity between the old and the new employer. The private sector specifically looks at:

1. Whether there is a continuity in the workforce;
2. Whether there is continuity in the employing industry;
3. Whether there is continuity in the appropriateness of the bargaining unit; and
4. The impact of a hiatus in operations (the time period between when the "transferred" employees left the old employer and began working for the new employer.)

One issue that is specifically looked at in determining whether a successorship exists is whether the old employer's employees have a majority status under the new employer. A majority status exists if the majority of the new employer's workforce consists of holdovers from the previous employer (rather than the majority of the former employees being hired.)

If a successorship exists, the new employer is not obligated to honor the existing contract, but is obligated to bargain with the exclusive representative (i.e., bargaining obligation, not a contract obligation.)

Finally, under a successorship, the new employer is free to select its own workforce. However, it cannot discriminatorily refuse to hire employees because of their Union membership or activities or because of the employer's desire to avoid having to recognize the Union. (If it can be shown that but for the discriminatory refusal to hire the employees, the Union would have enjoyed majority status, the successor employer will ordinarily be subject to a bargaining order.)

C. No Successor Employer. If it were determined that there was not a successorship relationship between the State and the new employer, the new employer would be completely relieved of any of the State's collective bargaining obligations.

Where these governance issues have arisen in the public sector (e.g., Pennsylvania, Iowa, Florida, Washington, New York), it appears that the administrative agencies and the courts have adopted the private sector case law in toto.

III. The Labor Relations Implications/Issues of each of the Department of Administration's governance options will be discussed before:

A. The Academy retains current governance.

There would not be any specific implications since the status quo would remain.

B-1. The Academy would become a separate school district.

The following questions, among others, exist:

1. Would all and/or some of the State employees be hired by the new school district?
2. If the new school district does hire all or some of the State employees, would these newly hired employees constitute a majority status?
3. What would be the appropriate bargaining unit(s)?
4. How would these bargaining units be established?
5. Would exclusive representatives representing State employees retain any bargaining rights?
6. Would any of the terms and conditions of employment governing State employees under existing collective bargaining agreements between the State and the various exclusive representatives remain? (These rights include both economic items, such as salary, sick leave, vacation leave, severance pay and non-economic items, such as seniority for determining vacation, scheduling requirements, etc.).

B-2. The Academy would be merged into the existing school districts.

The same questions that were discussed in B-1 would also apply to this option. However, the

emphasis on particular issues would be different in this situation. Under this option, there could be a merger of existing State employees with employees already employed by the new employer, whereas in the above option there would be a new employer without existing employees. Therefore, issues such as whether the State employees would even be hired; whether they would fit into existing bargaining units or whether new bargaining units would have to be created; and how the current "rights" of State employees would fit into a system with an already existing contract become important.

- B-3. The Academy would be merged into the existing Faribault School District.

Again, the same questions as in option B-1 would be raised. This option would seem to be a middle ground between options B-1 and B-2 with the most similarity to option B-2.

- C. The Academy would become a quasi-public board.

The issues would be identical to those in option B-1.

- D. The Academy would be governed by the Minnesota Department of Education.

The issues would be identical to those in option A.

#### IV. Legislative Options.

The governance legislation could be extremely open or extremely tight. For example, the legislation could simply establish a new type of governance, e.g., establish a separate school district, and leave it at that. All other issues, such as the contractual rights of the employees, status of existing collective bargaining agreements, bargaining unit determinations, etc., would have to be addressed by looking to other pieces of legislation, specifically, PELRA, BMS policy, existing contract language and general labor law principles (successorship/alter ego principles), with the possibility that either party -- or both -- might seek redress through the courts.

On the other hand, the legislation could not only establish the type of governance e.g., establish a

separate school district, but also address all or some of the "implementation" issues.

In Options A and D there would not be any substantive implementation issue. Option A would not require any legislation, and Option D would probably only require legislation changing the name in certain references and possibly attendant technical changes.

Options B-1 and C would result in a very similar set of issues. Both situations envision a new employer starting fresh, i.e., without any existing employees. In this situation the legislation could:

- A. Require that the new employer hire all State employees as its own employees, or require that the new employer hire as many State employees as it deems necessary (with the understanding that no non-State employees would be hired) and that any State employees not hired would be granted special benefits (i.e., severance pay, rights to vacancies as they occur under the new employer, etc.).
- B. Require that the bargaining unit determination and certification elections be in accord with PELRA and BMS policy. Since the bargaining units for State employees are statutorily determined, the assumption is that the bargaining units as they currently exist would no longer be appropriate because of the simple fact that the employees would no longer be State employees (a condition precedent for the bargaining units.) Since the new employer would be dealing with all "new" employees, the bargaining unit structure, theoretically, could parallel existing units.
- C. Require that during any interim period (either during the unit determination/election process and/or during the period when a new agreement is being negotiated), employees would retain certain rights.

Options B-2 and B-3 are also similar although not exactly identical. These two options would not be as clear as the other options since State employees would be merged with existing employees. Consequently, the possible legislative response on these issues is not as clear. Some possible responses are as follows:

- A. Although the legislature could require that the new employer hire the State employees, in these situations it is very likely that there would not be positions

for the employees. One, the concept of a residential setting may no longer exist and therefore, there would not be jobs for employees employed in this capacity. Even in terms of the direct teaching positions, there may not be enough positions for all such State employees. This would be especially true in Option B-2 (merger into existing school districts) because in the majority of school districts, there would, at most, be one student per school district. Therefore, under these two options, the treatment of State employees who would not be hired by the new employer would be more critical than in the other options.

- B. Require that the bargaining unit determination and/or certification elections be in accord with PELRA and BMS policy. Under these two options, bargaining units would have already been determined for the current employees, and it is very possible that any State employee hired would simply be assimilated into current bargaining units.
- C. Require that employees retain certain rights. Again, under these two options, most likely, a collective bargaining agreement would already be in effect. Therefore, it is possible, that the newly hired employees would immediately be covered by existing collective bargaining agreements. In this situation, the issue of transition rights becomes important. For example, what if the salary ranges between the new employer and the State are different -- would the newly-hired employees be guaranteed their salaries at least until a new contract is negotiated; what if other benefit structures are different, sick leave, vacation leave, severance pay, etc. -- would these benefits be initially protected; what would be the seniority dates for the newly-hired employees; would the employees have to serve a new probationary period; could they continue under their existing insurance plans, etc. The legislature could attempt to address some of these benefit questions.

Again, those issues not specifically addressed by legislation, would be resolved through existing legislation, policy, labor law principles, and contract language and through possible negotiations between appropriate parties.

In addition, under any circumstance, the legislation will also have to address the issue of retirement benefits. Since retirement is not a negotiable item, this item cannot be addressed through collective bargaining. The



status of employees' retirement benefits must be specifically addressed by legislation.