



The Honorable James Mortenson
Administrative Law Judge, Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55166-0620

Re: 4615 Rulemaking Hearing – Comments

From: Several members of the House of Representatives

To: Judge James Mortenson

We legislators understand that the **role of the Administrative Law Judge is not to determine whether a proposed rule is good policy or bad policy, but rather to guard the process by which the rule is proposed and promulgated to assure alignment to statutory authority.** To that end, we would urge you to exercise your due diligence and reject the proposed rules.

Our concern for your consideration is the obvious **conflict between the proposed rules and state law** because we firmly believe **the proposed rules do represent bad policy and neglect to address primary deficiencies negatively impacting our schools, namely an adherence to improving literacy**

The proposed rules include several provisions that **either contradict or are grossly inconsistent** with the plain meaning of Minnesota Statutes. **Additionally, the proposed rules include several provisions and terms that are ambiguous and therefore lack clarity of purposes, which further leads to inconsistency with Minnesota Statutes.**

The revisions within the proposed rules **also raise serious concerns regarding the capacity for teacher preparation providers and school districts to comply with the new requirements** at a time when school leaders are struggling to recruit and retain qualified and effective educators.

Additional concerns surround the licensing board's capacity to ensure compliance with the new rules, and which rules will be the focus for attention. Current statutory requirements regarding **technology and literacy are clearly not enforced by the licensing board on teacher preparation providers.** Thus, adding broad new requirements on providers and educators is ill-timed when the licensing board should be primarily concerned with adherence to existing requirements.



Finally, before we provide more details on our concerns, **the proposed rules send an undeniable signal that only teachers who are politically aligned left of center need apply while our schools struggle not only to recruit new individuals into the profession, but to coax the tens of thousands of licensed teachers back into the classroom.**

The Role of Parents

At the top of our concerns is that the proposed rules clearly **conflict with the role of parents** in the local adoption of curriculum and their inherent local control of classroom instruction. **The rules, as drafted, would make teachers the sole arbiters on the education of the students within their classrooms and require them to not only bypass the locally adopted curriculum, but to ignore the clearly defined rights of parents.**

"The legislature finds that a process is needed to enable school boards and communities to decide matters related to planning, providing, and improving education instruction and curriculum in the context of the state's high school graduation standards. The process should help districts evaluate the impact of instruction and curriculum on students' abilities to meet graduation standards, use evaluation results to improve instruction and curriculum, and determine services that districts and other public education entities can provide collaboratively with institutions including families and private or public organizations and agencies. The legislature anticipates that a highly focused public education strategy will be an integral part of each district's review and improvement of instruction and curriculum."
[120B.10]

We include this section of law, section 120B.10, in its entirety to stress the Legislature's unambiguous intent that school boards and communities, which are comprised of parents, will "*decide matters related to planning, providing, and improving education instruction and curriculum in the context of the state's high school graduation standards.*"

Also, the statute is clear that curriculum is locally adopted and determined and cannot simply be ignored or augmented after the fact solely based on the discretion of the classroom teacher trying to meet their obligations under the rules.

Section 120B.11, subdivision 1(b) defines curriculum to mean "district or school adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills and career and college readiness."

The statutes continue with a clear direction for school districts to include parents in overseeing instruction and curriculum in the classroom.

Section 120B.11, subdivision 3 requires school districts "establish an advisory committee to ensure active community participation in all phases of planning and improving the instruction and curriculum affecting state and district academic standards, consistent with [120B.11] **subdivision 2.**" This same section of law requires these advisory committees to include parents and community residents.

Finally, the Legislature gave parents the right to preview and approve curriculum content before it is provided to their student. This process ensures, as the Legislature intends, for the parent to remain the final arbiter on the education of their children. It is not simply a parent's right to choose a nonpublic education, as provided for in Chapter 120A, but for parents participating in the public education option to choose the curriculum or instructional materials provided through the public system.

Section 120B.20, the Parental Curriculum Review, requires each school district to "have a procedure for a parent, guardian, or an adult student, 18 years of age or older, to review the content of the instructional materials to be provided to a minor child or to an adult student and, if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction."

Taken in total, the intention of the Legislature is clear that parents are not only to be actively involved in the process by which curriculum is developed or adopted, but effectively hold a veto on curriculum adopted at the local level to which they may still find objectionable.

Thus, the rules proposed by a state agency, commission, or board, cannot include a directive to educators to ignore not only the curriculum chosen and mandated by their locally elected school boards, but also the objections of parents.

However, that is exactly what we find in the draft rules, a set of directives to teachers to violate or contradict the policies of their employing school districts or charter schools, which includes the prescribed curriculum.

[RD4615, pg 40] 8710.2000, Subpart 4 (F) - The teacher features, highlights, and uses resources written and developed by traditionally marginalized voices that offer diverse perspectives on race, culture, language, gender, sexual identity, ability, religion, nationality, migrant/refugee status, socioeconomic status, housing status, and other identities traditionally silenced or omitted from curriculum.

[RD4615, pg 41] 8710.2000, Subpart 5 (H) - The teacher encourages critical thinking about culture and race and includes missing narratives to dominant culture in the curriculum.

[RD4615, pg 43] 8710.2000, Subpart 7 (D) - The teacher identifies gaps where the current curriculum does not address multiple perspectives, cultures, backgrounds, and incorporates curriculum to fill these gaps.

While there may be noble intent, these proposed rules are a blatant end run around the rights of parents to participate in the adoption of or to opt out of objectionable curriculum. The law provides a process for parents to be actively involved in the decision making for curriculum adoption. The rule cannot make it a teacher's duty to violate the plain language of the statutes.

Removing the Role of Parents

While state law is very clear in lifting up the role of parents in the education of their children, the **newly proposed rules take a dramatic step backward with the obvious implication that K-12 teachers hold no accountability to parents or guardians.**

Under the current Standards of Effective Practice, teachers are:

- Responsible for communicating student progress to parents (Standard 8)
- Evaluate effects of choices and action on others, including parents (Standard 9)
- Be able to communicate and interact with parents to support student learning (Standard 10)
- Consult with parents (Standard 10)
- Establish productive relationships with parents in support of student learning (Standard 10)

Inexplicably, all of these rules and references to parents are simply repealed. The proposed rules remove any obligation on the teacher to share educational information with parents, or to have a communication with parents. The licensing board is writing the role of parents out of the rule, and thus out of the professional obligation of licensed educators.

Therefore, the rules would direct teachers to take actions that are clearly in conflict with what is required and expected under state law. The statutes recognize parents as the first and primary educator of their children (section 120A.22, subdivision 1). For the new rules to simply pretend parents do not exist is not only a bad practice, it would be bad law.

In addition to the blatant end run around the rights and role of parents in the education of their children, **the proposed rules include several other statutory conflicts that need to be resolved.**

Terms Lack Definition

Under current law, section 122A.09, Subdivision 9 (d) **requires "Terms adopted in rule must be clearly defined and must not be construed to conflict with terms adopted in statute or session law."**

The proposed rules, page 44, requires teachers to understand the definitions for "prejudice, discrimination, bias, and racism," yet provides no specific definitions for these terms. While these terms exist in the dictionary, if the licensing board is going to base licensing decisions on understanding these definitions, the board must be specific on how the board defines these terms.

Additionally, the rules require teachers to understand "multiple theories of race and ethnicity, including but not limited to racial formation, process of racialization, and

intersectionality", and, again, provides no definitions or context. **The rules must include clear guidance on these theories, and what constitutes a teacher's proper understanding to merit consideration for licensing.**

Overall, **the proposed rules include a number of terms that are vague, or subject to different definitions based on perception and context, and yes, political inclinations.** This is why the legislature, again, was specific in requiring the licensing board to define terms in their rules.

Compliance Concerns

Minnesota statutes have specific requirements for teacher preparation programs, including:

Section 122A.092, subdivision 5. Reading Strategies. "A teacher preparation provider approved by the [licensing board] to prepare persons for classroom teacher licensure must include in its teacher preparation programs research-based best practices in reading, consistent with section 122A.06, subdivision 4 [science of reading], that enable the licensure candidate to teach reading in the candidate's content areas."

Section 122A.092, Subdivision 6. Technology Strategies. "All preparation providers approved by the [licensing board] to prepare persons for classroom teacher licensure must include in their teacher preparation programs the knowledge and skills teacher candidate need to engage students with technology and deliver digital and blended learning and curriculum."

Regarding compliance with the science of reading requirement, as Legislators, we have heard from several teachers that their teacher preparation program did not prepare them to be effective teachers of reading using the science of reading. **Despite state law specifically requiring preparation in the science of reading, and the responsibility of the licensing board to only approve programs using the science of reading, we find too many classroom teachers ill-equipped to advance literacy in our schools.**

Regarding compliance with requirements for teachers to be prepared for digital or online learning, the several months of "distance learning" during the pandemic made clear that too many of our otherwise good teachers were simply not prepared to teach in an online or blended environment. **If teacher preparation programs had adequately prepared their candidates for online and blended learning, the chaos of distance learning likely would have been far more limited or less severe.**

These are simply two, yet very important, requirements for teacher preparation that fall squarely within the responsibility of the licensing board to assure compliance. It is clear that the licensing board has failed to assure compliance with these current statutory requirements regarding the teaching of reading and the ability to use digital learning. This raises serious concerns that the licensing board lacks the capacity to assure compliance

with their new rules. More troubling, it raises concerns the licensing board will simply choose the regulatory requirements they deem more important, while more academic concerns continue to be left unchecked.

Teacher Supply and Demand

The required Statement of Need and Reasonableness (SONAR) accompanying these proposed rules fails to comply with statutory requirements to include a “rule’s probable effect on teacher supply and demand.” [122A.09, subdivision 9(e)]

However, the description provided regarding the impact to changes to the Standards of Effective Practice is merely conjecture. **There is no information regarding how the current Standards of Effective Practice impede either supply or demand, and thus provides no basis for how changes to these standards would have any probable effect on the supply or demand of teachers.**

Therefore, the licensing board is simply stating an opinion that **the radical rewrite for the Standards of Effective Practice “should” be helpful to potential teacher candidates.** It is an optimistic leap of faith but **does not meet the statutory requirement** for describing how supply and demand will be impacted by the new rule.

To that end, **we could contend the new rule will have a negative impact to both supply and demand for educators. The new Standards of Effective Practice can be easily manipulated to serve a political agenda,** which will be discouraging to educators who may not politically align to agenda of the current or even future licensing board. In fact, we have heard from many current educators expressing concerns for the political agenda the resides with the proposed rule.

Locally Adopted Standards

[RD4615, pg 39] 8710.2000, Subpart 4 (C) - The teacher creates or adopts lessons, unit plans, learning experiences and aligned assessments based on Minnesota's academic standards, or if unavailable, national or international discipline-specific standards.

Chapter 120B specifies certain subject areas for which statewide academic standards will apply, such as Language Arts, Mathematics, Science, and Social Studies. **It does allow for locally adopted standards in the subject area of Health,** where no statewide standards exist, or the Arts, in which locally adopted standards may be applied in lieu of statewide standards.

This proposed rule would direct the teacher to ignore locally adopted standards in Arts for the statewide standards, and in the case of Health, apply national or international standards in lieu of locally adopted standards.

Teachers of American Indian Language, History, and Culture

[RD4615, pg 64] 8710.4100, Subpart 6 - The Professional Educator Licensing and Standards Board shall not issue a Tier 1 or Tier 2 license to teach American Indian language, history, and culture.

This proposed rule is in direct contradiction with section 122A.18, which requires the Professional Educator Licensing and Standards Board to issue teacher licenses to candidates meeting the qualifications prescribed by this chapter [122A], which includes Tier 1 through Tier 4 licenses.

The licensing board cannot by rule declare certain content or subject area licenses ineligible for a Tier 1 or Tier 2 license, if the employing district is making the request and the teacher applicant otherwise meets the qualifications of these relative Tiers.

Additionally, section 124D.75, subdivision 1 requires the licensing board to grant "initial and continuing licenses" that "bear the same duration as other initial and continuing licenses." The terminology for "initial" and "continuing" licenses are a statutory legacy of the educator licensing system that existed prior to 2017 under the former Board of Teaching. The Legislative intent here is clear that licenses issued under section 124D.75 would be strikingly similar to the licenses issued under Chapter 122A, which now includes a tiered licensing system that replaced the old licensing system.

It should be further noted that the licensing board does not have statutory authority to write rules governing Teachers of American Indian Language, History, and Culture. Section 122A.09, Subdivision 9 (a) specifically lists the sections of law for which the board may write rules. These include section 120B.363, 122A.05 to 122A.09, 122A.092, 122A.16, 122A.17, 122A.18, 122A.181, 122A.182, 122A.183, 122A.184, 122A.185, 122A.187, 122A.188, 122A.20, 122A.21, 122A.23, 122A.26, 122A.28, and 1228.29.

This list of statutory references is exhaustive, and thus assumed complete. Section 122A.09, Subdivision 9 (f) clearly states, "The board must adopt rules under the specific statutory authority." **No such specific authority exists for 124D.75.**

Teachers of Health

[RD4615, pg 70] 8710.4500, Subpart 3 (C)(1) - Design and apply developmentally appropriate short- and long-term plans that are aligned to state academic standards, including plans for assessments.

This rule makes reference to state academic standards that do not exist. Section 120B.021, subdivision 1 on required academic standards, clause (6) reads "health, for which locally developed academic standards apply."

Again, the Legislature was intentional on leaving the development and adoption of academic standards in the subject area of health to be locally determined by individual school districts. The rule cannot direct a licensed health teacher to align instruction in state standards that do not exist, unless it the intention of the Walz Administration to seek to override locally adopted health standards with statewide health standards.

Summation

For these reasons, we urge you, in the strongest terms possible, to reject the proposed draft rules with an advisory to the licensing board to stay within their lane as a regulatory body without improper incursions into the legislative arena. The purpose of rulemaking is to fill in the details left blank by the legislative process with the understanding the details will align to both the letter and spirit of the statutes. It is not a process for the Executive Branch to legislate by other means.

Sincerely,



Rep. Sondra Erickson, District 15A



Rep. Ron Kresha, District 9B

And Signed by Other Members of the Minnesota House of Representatives as follows:

Rep. Kurt Daudt, District 31A

Rep. Anne Neu Brindley, District 32B

Rep. Peggy Bennett, District 27A

Rep. Patricia Mueller, District 27B

Rep. John Poston, District 9A

Rep. Peggy Scott, District 35B

Rep. Dean Urdahl, District 18A

Rep. Brian Daniels, District 24B

Rep. Lisa Demuth, District 13A

Rep. Jeff Backer, District 12A

Rep. Paul Anderson, District 12B

Rep. Bob Dettmer, District 39A

Rep. Dave Baker, District 17B

Rep. Steve Green, District 2B

Rep. Mary Franson, District 8B

Rep. Glenn Gruenhagen, District 18B

Rep. Matt Grossell, District 2A

Rep. John Heinrich, District 35A

Rep. Barb Haley, District 21A

Rep. Brian Johnson, District 32A



Rep. Josh Heintzeman, District 10A



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Rep. Joe McDonald, District 29A



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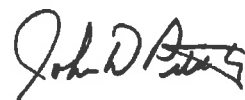
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Rep. John Petersburg, District 24A



Rep. Donald Raleigh, District 38A



Rep. Kristin Robbins, District 34A



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Rep. Paul Torkelson, District 16B