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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Rules of the Department of Education Governing Social Studies Academic Standards, Minnesota Rules Chapter 3501

REPORT OF THE ADMINISTRATIVE LAW JUDGE

Administrative Law Judge Barbara L. Neilson conducted a hearing in this rulemaking proceeding commencing at 9:00 a.m. on December 20, 2012, at the Department of Education in Roseville, Minnesota. The hearing continued until everyone present had an opportunity to be heard concerning the proposed rules.

The hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act.[1] The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency made after the proposed rules were initially published do not result in the rules being substantially different from what the agency originally proposed. The rulemaking process also includes a hearing when a sufficient number of persons request one or when ordered by the agency. The hearing is intended to allow the agency and the Administrative Law Judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

Kerstin Forsythe Hahn, J.D., Rulemaking Coordinator, represented the Department of Education (the Department) at the hearing. The members of the Department's hearing panel included Dr. Beth Aune, Director of Academic Standards and Instructional Effectiveness for the Department, Kate Stower, Social Studies Specialist on contract with the Center for Social Studies Education of the Department of Education; and Charlene Briner, the Department's Chief of Staff. Approximately 60 individuals attended the hearing.

The Department received approximately 55 written comments on the proposed rules prior to the hearing. Twenty-three members of the public provided oral comments regarding the proposed rules during the hearing, and nine written public exhibits were received. After the hearing, the Administrative Law Judge kept the administrative

[1] Minn. Stat. §§ 14.131 through 14.20.

record open for an additional twenty calendar days, until January 9, 2013, to allow interested persons and the Department to submit written comments. Thereafter, the record remained open for an additional five business days, until January 16, 2013**,** to allow interested persons and the Department to file written responses to any comments received during the initial comment period.[2] Forty-seven written comments were received from members of the public after the hearing, along with two responses from the Department. During the post-hearing comment period, Education Liberty Watch also submitted a petition letter with approximately 350 electronically-submitted names and addresses of individuals from Minnesota, Florida, California, Texas, Pennsylvania, Michigan, Missouri, Arizona, Kentucky, Indiana, Ohio, and Wisconsin. To aid the public in participating in this matter, agency and public comments were posted on the website of the Office of Administrative Hearings shortly after they were received. The hearing record closed for all purposes on January 16, 2013.[3]

NOTICE

The Department must make this Report available for review by anyone who wishes to review it for at least five working days before the Department takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the Department makes changes in the rules other than those recommended in this report, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Department must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Department, and the Department will notify those persons who requested to be informed of their filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Nature of the Proposed Rules

1. Minnesota law declares the commitment of the Legislature "to establishing rigorous academic standards for Minnesota's public school students"[4] and states that, with certain exceptions, satisfactory completion of state academic standards will be

[2] *See* Minn. Stat. § 14.15, subd. 1.
[3] The Chief Administrative Law Judge extended the time period for issuance of the Administrative Law Judge's Report on this rule.
[4] Minn. Stat. § 120B.02(a).

required for high school graduation.[5] Applicable statutes require that the Commissioner of Education adopt rules establishing statewide academic standards[6] that are "intended to raise academic expectations for students, teachers, and schools"[7] and take into consideration "school district autonomy."[8] The Department and school districts are required by statute to make information about rule initiatives available to "students and parents, teachers, and the general public in a timely format that is appropriate, comprehensive, and readily understandable."[9] The statutes make it clear that the Commissioner is not authorized to "prescribe in rule or otherwise the delivery system, classroom assessments, or form of instruction that school sites must use."[10] In addition, after rules establishing academic standards are initially adopted, the applicable laws specify that the Commissioner "may not amend or repeal these rules nor adopt new rules on the same topic without specific legislative authorization."[11]

2. In developing standards, the Commissioner is required to consider advice from parents of school-age children and members of the public throughout the state, as well as licensed teachers, elementary and secondary school principals, and school board members throughout the state; faculty teaching core subjects at Minnesota post-secondary institutions; and Minnesota business community representatives.[12]

3. Academic standards are required to be "clear, concise, objective, measurable, and grade-level appropriate" and "consistent with the Constitutions of the United States and the state of Minnesota." They must "not require a specific teaching methodology or curriculum."[13]

4. Social studies, including history, geography, economics, and government and citizenship, is one of the areas required by Minnesota law to be the subject of academic standards.[14] The social studies academic standards that are currently in effect in Minnesota were adopted in 2004.[15]

5. The Commissioner is required to supplement the required state academic standards with grade-level benchmarks designed to implement the standards by "specifying the academic knowledge and skills that schools must offer and students must achieve to satisfactorily complete a state standard."[16] Once established, the benchmarks may only be changed if there is specific legislative authorization and

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[5] Minn. Stat. § 120B.02(c).
[6] Minn. Stat. § 120B.02(a).
[7] Minn. Stat. § 120B.02(b)(1).
[8] Minn. Stat. § 120B.02(b)(2).
[9] Minn. Stat. § 120B.02(b)(3).
[10] Minn. Stat. § 120B.02(a)
[11] Minn. Stat. § 120B.021, subd. 3.
[12] Minn. Stat. § 120B.021, subd. 2(a).
[13] Minn. Stat. § 120B.021, subd. 2(b).
[14] Minn. Stat. § 120B.021, subd. 1(4).
[15] Statement of Need and Reasonableness (SONAR) at 11.
[16] Minn. Stat. § 120B.023, subd. 1.

specified review procedures are followed.[17] The Commissioner must develop and implement a system for reviewing each of the required academic standards and related benchmarks and elective standards on a periodic cycle.[18]

6. Unlike the academic standards themselves, the benchmarks are not subject to any of the rulemaking procedures set forth in the Minnesota Administrative Procedure Act, Minnesota Statutes Chapter 14.[19] As a result, the benchmarks that have been drafted by the Department implementing the proposed social studies standards are not involved in this rulemaking proceeding; the only focus is the academic standards that have been proposed by the Department to be included in Minnesota Rules Chapter 3501.1300.

7. Minnesota law directs the Commissioner of Education to "revise and align the state's academic standards and high school graduation requirements in social studies" during the 2010-2011 school year "to require that students satisfactorily complete the revised social studies standards beginning in the 2013-2014 school year."[20] The statute specifies that, during review and revision of the standards, the Commissioner "must examine the alignment of each required academic standard and related benchmark with the knowledge and skills needed for college readiness and advanced work in the particular subject area" and, where appropriate, embed technology and information literacy standards.[21] State law also directs the Commissioner to "include the contributions of Minnesota American Indian tribes and communities."[22]

8. In this rulemaking proceeding, the Department proposes to replace the social studies standards that have been in place since 2004 with new standards that "better target the most important knowledge and skills in civics and government, economics, geography and history."[23]

9. The proposed rules are the culmination of a year-long review and revision process. In December 2010, the Commissioner of the Department approved a list of assumptions for guiding the work of the Standards Committee. The list included the assumptions that the revised standards will be "grounded in current research on curriculum instruction and student learning;" will reflect a "comprehensive, balanced and developmentally appropriate approach to preparation in the core social studies disciplines;" and "will not be based solely on the interpretation of religious text and/or the influence of special interests, but on the preponderance of research that is commonly accepted throughout the social studies academic community."[24]

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[17] Minn. Stat. § 120B.023, subd. 1(c).
[18] Minn. Stat. § 120B.023, subd. 1(d).
[19] Minn. Stat. § 120B.023, subd. 1(e).
[20] Minn. Stat. § 120B.023, subd. 2(f).
[21] Minn. Stat. § 120B.023.subd. 2(a).
[22] Minn. Stat. § 120B.021, subd. 1.
[23] SONAR at 11-12.
[24] *Id*. at 14; Testimony (Test.) of Beth Aune at Rule Hearing, Transcript (T.) 18-19 (Dec. 20, 2012).

10. The Department solicited applications from members of the public who wish to be considered for membership on the Standards Community. The Committee was formed in January 2011, and consisted of more than 40 K-12 and postsecondary educators, business and government representatives, parents and other members of the public. The Committee members were drawn from all regions of the state and school sizes, and included urban, suburban, and rural school districts. Teachers serving on the committee represented the K-12 range of grade levels in the former social studies disciplines (civics and government, economics, geography, and history), and most of them had experience teaching two or more disciplines or grade levels, Advanced Placement or honors courses, and students with special needs. The Committee included teachers who had experience instructing English language learners, low-income students, and urban and rural students. Department staff worked with four committee co-chairs to facilitate the work of the committee.[25]

11. The Standards Committee worked from February 2011 through December 2011. Most Committee members assisted in drafting the revised standards as part of one or more technical writing teams that were formed as subsets of the overall Committee. The full Committee met 12 times during 2011 to review feedback on the previous drafts, discuss issues that affected multiple disciplines or grade levels, and provide direction to the writing teams. The writing teams met to work on revisions during some of the full Committee meetings as well as between meetings of the full Committee.[26]

12. In the SONAR, the Department indicated that the Standards Committee consulted a variety of sources during the review and revision process, including "national standards documents and reports on social studies education, exemplary standards from other states, over 1100 comments submitted by the public, analysis submitted by 15 reviewers of the draft standards, and advice provided by numerous other content and pedagogy experts." The specific sources used by the Committee were listed on the SONAR.[27] Throughout the process, the Department also sought input from members of the public, experts, consultants, targeted groups, world history teachers, middle school teachers, and special education professionals. As detailed in the SONAR, the process included the following:

- Prior to the first meeting of the Committee, the public was invited to submit on-line suggestions for revising the standards, and the feedback that was received was submitted to the new Committee for its consideration. One of the most prevalent comments was that the new standards should include fewer standards and benchmarks than the 2004 standards.[28]

- The first draft of the revised standards was prepared and posted on February 25, 2011, followed by a public review and comment period.

[25] SONAR at 14.
[26] *Id*. at 14-15.
[27] *Id*. at 15-16.
[28] *Id*. at 17; Test. of B. Aune, T. 21; Department's Post-Hearing Rebuttal at 2.

In March 2011, the Department hosted evening town hall meetings in Fergus Falls, Marshall, Duluth, and Roseville, and invited the public to provide oral or written feedback at the meetings or on-line. Comments that were received were considered by the Committee as they prepared the second and third drafts of the social studies standards.[29]

- The second draft of the standards was completed on April 8, 2011, and was sent to 15 expert reviewers whom the Department considers to be professionals who have established national reputations for their expertise in a particular discipline or topic area. The Department typically uses 3 to 6 expert reviewers during a standards process but, because social studies encompasses four disciplines and has a relatively large number of controversial issues and specialty topics, the Department decided to enlist the assistance of a larger number of expert reviewers. The expert reviewers included the President of the World History Association, the chair of the Advanced Placement Geography Test Development Committee, the Manager of Economics Education at the Federal Reserve Bank of St. Louis, and the former chair of the Advanced Placement World History Test Development Committee. The expert reviewers pointed out important recent developments in each field such as the use of the convention BCE or CE instead of BC or AD in designating time periods; provided advice about aligning the standards with current college level expectations for entering freshmen; and stressed the importance of strengthening the civic skills component of the standards. The Committee considered the expert analyses in preparing the next draft of the standards.[30]

- The third draft of the standards was completed April 29, 2011. The Department invited the public to provide feedback on-line. More than 600 comments were submitted, which were subsequently reviewed by the Committee.[31]

- Because suggestions received during the public comment period showed strong support for a global studies approach in grade eight that combined world history with world regional geography content, the writing team consulted with the president of the Midwest World History Association and history professors from Augsburg College and the University of Minnesota to discuss thematic, regional and chronological options for structuring world history and world geography content in grade eight.[32]

- The Commissioner of the Department invited numerous stakeholder groups and organizations to attend meetings that were held by the

[29] SONAR at 17; Test. of B. Aune, T. 21-22.
[30] SONAR at 17; Test. of B. Aune, T. 22-23; Department's Post-Hearing Rebuttal at 2 (Jan. 16, 2013).
[31] SONAR at 18; Test. of B. Aune, T. 23-24.
[32] SONAR at 18; Test. of B. Aune, T. 24.

Department on August 24 and 25, 2011, to discuss the standards and obtain additional feedback. Those who were unable to attend the meetings were invited to submit written comments. The organizations that participated included Education Minnesota, the Minnesota School Boards Association, the Minnesota Business Partnership, the Minnesota Chamber of Commerce, the Minnesota Indian Affairs Council and Minnesota Business Educators. The feedback that was received informed additional changes in the draft standards.[33]

- Writing teams working on the standards consulted with post-secondary faculty and Advanced Placement teachers from the Mounds View and Stillwater School Districts to ensure that the proposed standards reflected the knowledge and skills that students need for college. These consultations occurred at various times in August-October and December 2011. The colleges that participated in this process included Southwest State University, the College of St. Benedict, St. John's University, St. Cloud State University, and the University of St. Thomas.[34]

- On November 18-20, 2011, the Departments surveyed world history teachers in Minnesota regarding their preferences for the scope and sequence of world history content at the middle and high school levels.

- On November 22, 2011, the Department hosted a meeting of middle school teachers from a variety of regions and school sizes and asked them to provide feedback on the middle school standards. A writing team later met with middle school teacher consultants on December 15, 2011, to address concerns that had been raised during the middle school focus group and finalize the world history benchmarks for grade eight global studies. Their suggestions helped frame subsequent changes to the standards.[35]

- The Department also convened a team of special education professionals to review the draft standards for items that might be biased against students with special needs.[36]

13. According to the Department, the proposed rules are designed to address legislative mandates that have been enacted after 2004 that require that the revised standards have grade level specific benchmarks, reflect college and career readiness skills and knowledge, consider the contributions of American Indian tribes and communities, incorporate technology and information literacy skills, and complement the 2010 English Language Arts standards which include standards for literacy, history, social studies, science, and technical subjects. In addition, the proposed rules are

[33] SONAR at 18; Test. of B. Aune, T. 24-25.
[34] SONAR at 18; Test. of B. Aune, T. 25-26.
[35] SONAR at 18; Test. of B. Aune, T. 25, 26.
[36] SONAR at 18; Test. of B. Aune, T. 26. It is unclear when the special education consultation occurred.

intended to remedy issues with the 2004 standards by reducing the number of standards and related benchmarks to a "teachable" number; enlarging the "grain size" of the standards by focusing on the most important principles, concepts, and skills and eliminating excessive specificity; and reflecting the knowledge and skills that prepare students for college, advanced work, and productive citizenship (inquiry, critical thinking, problem solving and communication). The Committee reviewed standards from other states, national standards in each of the disciplines, national frameworks and other guiding documents to make decisions about the specific content that would be required at any given grade level. The Committee also sought to revise the standards in a way that would ensure that students would be better prepared for the global world and would take into consideration the increasing diversity of the student population in Minnesota.[37]

Rulemaking Legal Standards

14. Under Minnesota law, one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts.[38] In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute, or stated policy preferences.[39] The Department prepared a Statement of Need and Reasonableness (SONAR) in support of its proposed rules. At the hearing, the Department primarily relied upon the SONAR as its affirmative presentation of facts in support of the proposed rules. The SONAR was supplemented by comments made by staff and witnesses who spoke on behalf of the Department at the public hearing, and by the Department's written post-hearing submissions.

15. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.[40] Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.[41] A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.[42] The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."[43]

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[37] SONAR at 25-37; Test. of B. Aune, T. 27-31.
[38] Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100.
[39] *Mammenga v. Dept. of Human Services*, 442 N.W.2d 786 (Minn. 1989); *Manufactured Hous. Inst. V. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).
[40] *In re Hanson*, 275 N.W.2d 790 (Minn. 1978); *Hurley v. Chaffee*, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).
[41] *Greenhill v. Bailey*, 519 F.2d 5, 19 (8th Cir. 1975).
[42] *Mammenga*, 442 N.W.2d at 789-90; *Broen Mem'l Home v. Minnesota Dept. of Human Services*, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).
[43] *Manufactured Hous. Inst. V. Pettersen*, 347 N.W.2d at 244.

16. Reasonable minds might be divided about the wisdom of a certain course of action. An agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the "best" approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.[44]

17. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the Department complied with the rule adoption procedure, whether the proposed rules grant undue discretion, whether the Department has statutory authority to adopt the rules, whether the rules are unconstitutional or illegal, whether the rules involve an undue delegation of authority to another entity, or whether the proposed language is not a rule.[45]

18. If changes to the language of the proposed rules are suggested after the original publication of the rule language in the State Register, it is also necessary for the Administrative Law Judge to determine if the new language is substantially different from that which was originally proposed. The standards to determine whether changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if the differences are within the scope of the matter announced in the notice of hearing and are in character with the issues raised in that notice; the differences are a logical outgrowth of the contents of the notice of hearing and the comments submitted in response to the notice; and the notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.[46]

19. In reaching a determination regarding whether modifications result in a rule that is substantially different, the Administrative Law Judge is to consider whether persons who will be affected by the rule should have understood that the rulemaking proceeding could affect their interests; whether the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of hearing; and whether the effects of the rule differ from the effects of the proposed rule contained in the notice of hearing.[47]

Procedural Requirements of Chapter 14

20. The Minnesota Administrative Procedure Act[48] and the rules of the Office of Administrative Hearings[49] set forth certain procedural requirements that are to be followed during agency rulemaking.

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[44] *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).
[45] Minn. R. 1400.2100.
[46] Minn. Stat. §14.05, subd. 2(b).
[47] Minn. Stat. § 14.05, subd. 2l.
[48] The provisions of the Act relating to agency rulemaking are codified in Minn. Stat. §§ 14.001-14.47.
[49] The OAH rules governing rulemaking proceedings are set forth in Minnesota Rules part 1400.2000 through 1400.2240.

21. On May 23, 2011, the Department published a Request for Comments on Possible Amendment to Rules Governing Social Studies Academic Standards in the State Register at 35 State Reg. 1815.[50]

22. On September 26, 2012, the Department filed with the Office of Administrative Hearings a proposed Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received (Dual Notice); a copy of the proposed rules; a draft of the Statement of Need and Reasonableness (SONAR); and an Additional Notice Plan. The Department requested that the Office of Administrative Hearings review and approve the Dual Notice and its Additional Notice Plan.

23. By Order dated October 3, 2012, Administrative Law Judge Eric L. Lipman approved the Dual Notice and the Additional Notice Plan relating to the proposed rules.

24. The Department asked the Commissioner of Minnesota Management and Budget (MMB) to evaluate the fiscal impact and benefits of the proposed rules on local units of government, as required by Minn. Stat. § 14.131. In a memorandum dated October 11, 2012, Kristy Swanson, Executive Budget Officer for Minnesota Management & Budget, noted that she had reviewed the Department's proposed rule amendments and SONAR and had concluded that the proposed rule revisions "will not impose a significant unforeseen cost on local governments."[51] Found that the proposed rules would impose costs to local units of government (specifically school districts and charter schools) but concluded that the costs were foreseeable and are required to adhere to Minnesota statute.

25. On October 12, 2012, the Department submitted an electronic copy of the SONAR to the Legislative Reference Library.[52]

26. On October 24, 2012, the Department mailed copies of the Dual Notice and the SONAR to the Legislative Coordinating Commission and the Chairs and Ranking Minority Members of the Senate Education Committee, the Senate Higher Education Committee, the House Education Finance Committee, and the House Education Reform Committee.[53]

27. On October 25, 2012, the Department mailed the Dual Notice to all persons and associations on its Rulemaking List. On October 25 and 26, 2012, the Department provided the Dual Notice and proposed rules in accordance with the Additional Notice Plan. By October 25, 2012, the Dual Notice and the proposed rules were also available on the Department's website.[54]

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[50] Ex. A.
[51] Ex. K.
[52] Ex. E.
[53] Ex. K.
[54] Ex. H.

28. On October 29, 2012, the Department published the Dual Notice in the State Register at 37 State Reg. 659.[55]

29. More than 25 persons requested that a hearing be held on the proposed rules.[56]

30. On December 5, 2012, the Department notified all persons who had requested a hearing that a hearing would, in fact, be held.[57]

31. The hearing on the proposed rules was held on December 20, 2012, in Roseville, Minnesota. During the hearing, the following documents were received into the hearing record:

A. the Request for Comments as published in the State Register on May 23, 2011 (35 State Reg. 1815);[58]

B. a copy of the proposed rules dated July 9, 2012, including the Revisor's approval;[59]

C. a copy of the SONAR;[60]

D. the Certificate of Mailing a copy of the SONAR to the Legislative Reference Library on October 12, 2012;[61]

E. a copy of the Department's Dual Notice as mailed and as published in the State Register on October 29, 2012 (37 State Reg. 659);[62]

F. a Certificate attesting to the accuracy of the Department's mailing list and a Certificate attesting that the Dual Notice was sent on October 25, 2012, to all persons and associations on the Department's rulemaking list;[63]

G. a Certificate attesting that the Dual Notice and proposed rules were mailed on October 25, 2012, or distributed via email on October 25 and 26, 2012, to all individuals and organizations identified in the Additional Notice Plan;[64]

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[55] Ex. F.
[56] Ex. I.
[57] Ex. K.
[58] Ex. A.
[59] Ex. C.
[60] Ex. D.
[61] Ex. E.
[62] Ex. F.
[63] Ex. G.
[64] Ex. H.

H. copies of written comments on the proposed rules that were received by the Department from members of the public prior to the public hearing;[65]

I. a certificate attesting that the Dual Notice and SONAR were mailed to the Chairs and Ranking Minority Members of the Senate Education and Higher Education Committees and the House Education Finance and Education Reform Committees, along with a copy of the transmittal letter;[66]

J. a copy of the October 11, 2012, memorandum from Kristy Swanson, Executive Budget Officer, MMB, regarding the fiscal impact and benefits of the proposed rules with respect to local units of government;[67] and

K. a copy of the notice mailed on December 5, 2012, to those requesting a hearing confirming that a hearing would be held on December 20, 2012.[68]

32. The Administrative Law Judge finds that the Department has met the procedural requirements imposed by applicable law and rules.

Additional Notice

33. Minn. Stat. §§ 14.131 and 14.23 require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who may be affected by the proposed rules. In its SONAR, the Department identified more than 60 groups to which it would provide notice of the proposed rules. The list included a broad variety of interested parties, such as the Minnesota Academy of Social Studies, Education Minnesota, the Minnesota Council for Social Studies and Council for Social Studies Education, the Minnesota Associations of Elementary School and Secondary School Principals, the Minnesota Association for Supervision and Curriculum Development, the Minnesota Indian Affairs Office, the Minnesota Association for School Administrators, the Minnesota School Boards Association, the Minnesota Parent Teacher Association, Minnesota Business Educators, Inc., the Minnesota Minority Education Partnership, parent and student advocacy organizations, Minnesota superintendents, charter school directors, and others.[69] The Department's additional notice plan was approved by Administrative Law Judge Eric L. Lipman on October 3, 2012.

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[65] Ex. I.
[66] Ex. K.
[67] Ex. K.
[68] Ex. K.
[69] SONAR at 22-23.

34. During the rulemaking proceeding, the Department certified that it had sent the proposed rules and SONAR to the individuals and organizations identified in the Additional Notice Plan.[70]

35. The Administrative Law Judge finds that the Department has fulfilled its additional notice requirements.

Statutory Authority

36. The Department relies upon Minn. Stat. § 120B.02 as the primary source of its statutory authority to adopt these rules. That provision states, in relevant part:

> The legislature is committed to establishing rigorous academic standards for Minnesota's public school students. To that end, the commissioner shall adopt in rule statewide academic standards. The commissioner shall not prescribe in rule or otherwise the delivery system, classroom assessments, or form of instruction that school sites must use.

37. In addition, pursuant to a 2006 amendment to the applicable statutes, language was added to Minn. Stat. § 120B.023 that requires the Department to "revise and align" the social studies academic standards in the 2010-2011 school year and to subsequently review the standards in the 2019-2020 school year.

38. Several of those commenting on the proposed rules argued that the proposed rules go beyond the "revision and alignment" of the 2004 social studies standards that was intended by Minnesota statutes section 120B.023. For example, State Senators David Hann, Gary Dahms, Dan Hall, Dave Thompson, and Bill Weber argued that the proposed rule "is not just revision, and it is not alignment as allowed by law," but instead is "a wholesale makeover of settled standards that exceeds the legislative grant of authority for rulemaking and that will create additional expense for the state and for local schools, generate confusion, and weaken academics for every public school student." They traced the history of the 2004 standards and the involvement of the Legislature in that process, and contended that it is not credible for the Department to claim that the Legislature intended for its earlier work on the 2004 standards to be "wholly altered based on the phrase 'revise and align'" or that the Legislature and the Governor intended to grant the Department "a rule-making 'blank check' in order to undo the difficult compromises reached in 2003 and 2004.[71] Similarly, State Representatives Kelby Woodard and Sondra Erickson contended that the "rewrite of the current standards goes well beyond making revisions or alignments, but represents not only defining wholly new concepts for students to be taught, but a significant shift in methodology, and thus far exceeds the mandate of the Legislature."[72]

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[70] Ex. H.
[71] Public Ex. 50. Senator Gen Olson submitted a similar comment on Dec. 19, 2012, the day before the rulemaking hearing was held.
[72] Public Ex. 36; *see also* Public Ex. 54.

39. In its post-hearing submissions, the Department disagreed with these comments, and denied that it has exceeded its proper authority in proposing the current rules. The Department asserted that it has general rulemaking authority to adopt social studies academic standards under Minn. Stat. § 120B.02, as well as more specific authority under Minn. Stat. § 120B.023 to revise the standards currently in effect. The Department also emphasized that several new legislative mandates were created after the development of the 2004 social studies standards, including the requirement to embed technology and information literacy into the standards, the mandate to align the standards and related benchmarks with the knowledge students need for college readiness and advanced work, the requirement that the content of the standards include the contributions of American Indian tribes and communities, and the need to consider advice from a wide variety of stakeholders. As a result of these new legislative mandates, and in response to "best practices" research and extensive feedback provided by the education community regarding the 2004 standards and early drafts of the proposed 2011 standards, the Department contends that it was necessary to make significant changes to the 2004 standards. The Department emphasized that the proposed standards are the result of an intensive year-long review and revision process, and that teachers, college instructors, parents, business representatives, community members, and national experts in each content area provided extensive input. It also indicated that all of the prior revisions of Minnesota standards have also resulted in significant changes to benchmarks.[73]

40. The Administrative Law Judge concludes that the Department has shown that it has statutory authority to adopt the proposed rules under Minn. Stat. §§ 120B.02 and 120B.023. The applicable statutes authorize review and revision of the social standards and do not impose restrictions on the extent of the revisions or the scope of the changes that may be made.

41. Some of those commenting on the proposed rules, including Karen Effrem of Education Liberty Watch and Senators Hann, Dahms, Hall, Thompson and Weber, stated that the Department does not have "specific legislative authority" within the meaning of Minn. Stat. § 120B.023, subd. 1(c), to revise the benchmarks that support the proposed social studies standards.[74] In addition, Representatives Woodard and Erickson objected to the Department's assertion that the benchmarks are outside the scope of this rulemaking proceeding, and argued that the benchmarks "are inseparable from a review and critique of the standards."[75] In its SONAR and its post-hearing

[73] Department's Initial Post-Hearing Response at 2-3, 5-7 (Jan. 9, 2013); Department's Post-Hearing Rebuttal at 6-7 (Jan. 16, 2013). Education Liberty Watch did not dispute that it was necessary to add or alter some of the 2004 standards to comply with the new technology mandate. It did, however, dispute the Department's assertions regarding the need to make changes to the standards to better prepare students for post-secondary education, work and civic life or incorporate the contributions of Minnesota American Indian tribes and communities, based on its contention that the 2004 standards did a better job of meeting these requirements. *See* Public Exs. 52 and 56. However, regardless of the merits of this claim, the Department's authority to adopt academic standards and the Legislature's directive to review and revise the standards during the 2010-2011 school year provide sufficient statutory authority for this rulemaking.

[74] Public Exs. 50, 56.

[75] Public Ex. 54.

responses, the Department pointed out that the benchmarks are not part of this rulemaking proceeding. The proposed rules set forth the academic standards, which are "broad statements of the knowledge and skills that students need to master in order to be considered proficient in a content area." Each of these standards is supported by one or more benchmarks, which is "a specific statement of knowledge and skills that students must complete by the end of a grade level (grades K-8) or grade band (grades nine to twelve) to satisfactorily complete a standard." The Department asserts that, due to the close relationship between standards and benchmarks, they must be reviewed and revised simultaneously to ensure that they fit together in a cohesive manner.[76]

42. As discussed above, the applicable statutes require the Commissioner of Education to supplement the required state academic standards with grade-level benchmarks that are designed to implement the standards by "specifying the academic knowledge and skills that schools must offer and students must achieve to satisfactorily complete a state standard."[77] State law also requires the Commissioner to develop and implement a system for reviewing each of the required academic standards *and related benchmarks* on a periodic cycle.[78] It appears, based on these provisions, that the Department has authority to revise the benchmarks at this time and has explained a rational basis for doing so. However, as **noted above, the benchmarks are, by statute, not subject to rulemaking requirements[79] and, as a result, are not involved in this rulemaking proceeding. Accordingly, the question of the Department's authority to revise the benchmarks is not properly before the Administrative Law Judge, and the Judge does not have proper authority to consider or require that changes be made to the language of the benchmarks. It should be noted, however, that** the Department indicated in its post-hearing submissions that the Standards Committee will carefully review all feedback and comments received about the benchmarks during this proceeding and will consider changes to the benchmark language as appropriate.[80]

Impact on Farming Operations

43. Minn. Stat. § 14.111 imposes an additional requirement calling for notification to be provided to the Commissioner of Agriculture when rules are proposed that affect farming operations. In addition, where proposed rules affect farming operations, Minn. Stat. § 14.14, subd. 1b, requires that at least one public hearing be conducted in an agricultural area of the state.

44. There is no indication that the proposed rules will affect farming operations in any way. Accordingly, the Administrative Law Judge concludes that it was not necessary for the Department to provide notice to the Commissioner of Agriculture under Minn. Stat. § 14.14, subd. 1b.

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[76] *Id*. at 3-4; SONAR at 11, 37-38.
[77] Minn. Stat. § 120B.023, subd. 1.
[78] Minn. Stat. § 120B.023, subd. 1(d).
[79] Minn. Stat. § 120B.023, subd. 1(e).
[80] Department's Post-Hearing Rebuttal at 8.

Regulatory Analysis in the SONAR

45. Minn. Stat. § 14.131 requires an agency adopting rules to consider eight factors in its Statement of Need and Reasonableness.[81] Each of these factors, and the Department's analysis, are discussed below.

46. The first factor requires "a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule." In its SONAR, the Department indicated that the proposed rule will affect Minnesota parents and students; Minnesota school districts, including charter schools; social studies educators implementing the social studies academic standards in their discipline; and curriculum directors. The Department does not believe that there will be significant costs associated with the proposed rules and noted that any minimal costs are likely to be borne by the Department and by school districts and charter schools in Minnesota. The Department expects that the classes that will benefit from the proposed rules include Minnesota students who will achieve greater levels of social studies competency preparing them for college and the highly-skilled workplace.[82]

47. The second factor requires consideration of "the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues." In the SONAR, the Department stated that the proposed rules will create, at most, minimal costs for the Department through the 2012-13 school year. The Department stated that it is already staffed to provide training and support regarding the proposed rules, and staff assignments and resources will be reallocated accordingly within the agency. According to the Department, the proposed rules are not anticipated to have any effect on revenue, and they will not have a fiscal impact on other state agencies.[83]

48. The third factor requires "a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule." The Department stated in the SONAR that, because the Legislature has required that state academic standards in social studies be established, there is no less costly or less intrusive method for achieving the purpose of the proposed rules. The Department noted that the Social Studies Assessment, Curriculum, and Instruction (SSACI) Collaborative, facilitated by the Council of Chief State School Officers, is in the process of developing common state standards in social studies, but it is unclear when the final version of the standards will be available to the public. The Department acknowledged that "it is likely that some cost savings would be realized, especially in the areas of classroom instructional resources and assessments," if Minnesota decides in the future to adopt the common state social studies standards. However, the Department indicated that, "at this point there is no indication of the quality of the common state

[81] The statute was amended effective August 1, 2012, to include an eighth factor requiring "an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule." See 2012 Laws of Minn., Chapter 238, Section 2.
[82] SONAR at 19.
[83] *Id*.

standards in social studies or the number of other states that may choose to adopt these new standards once they are finalized."[84]

49. The fourth factor requires "a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule." The Department stated in its SONAR that, because rules containing state academic standards in social studies are a legislative requirement, there is no alternative method for achieving the purpose of the proposed rules.[85]

50. The fifth factor specifies that the agency must assess "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals." In the SONAR, the Department noted that school districts may face initial increased costs to implement the new rules. The Department indicated, however, that "school districts typically undertake a regular curriculum adoption cycle, so many of these costs would be borne regardless of the adoption into rule of statewide social studies academic standards."[86]

51. The sixth factor requires a description of "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals." In the SONAR, the Department stated that Minnesota "risks the loss of federal funding" under the No Child Left Behind Act (NCLB) if it does not adopt academic social studies standards. The Department pointed out that Section 1111(g)(1) of NCLB provides that, "[i]f a state fails to meet deadlines established by the Improving America's Schools Act of 1994 . . . for demonstrating that the State has in place challenging academic content standards and student achievement standards, and a system for measuring and monitoring adequate yearly progress," the U.S. Secretary of Education "shall withhold 25 percent of the funds that would otherwise be available to the State for State administration and activities under [the NCLB] each year until the Secretary determines that the State meets those requirements."[87] The Department also indicated that section 1111(g)(2) authorizes the Secretary to withhold funds for State administration under the NCLB if a state fails to meet the requirements enacted in 2001. Finally, the Department stated that NCLB requires states to have academic standards in subjects determined by the state and pointed out that Minn. Stat. § 120B.021, subd. 1, requires academic standards in social studies. Accordingly, the Department asserts that federal funding is at risk if Minnesota does not adopt revised academic social studies standards.[88]

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[84] *Id*. at 19-20.
[85] *Id*. at 20.
[86] *Id*..
[87] This provision is codified at 20 U.S.C. § 6311(g)(1).
[88] *Id*.; Department's Post-Hearing Rebuttal at 8.

52. Senator Sean Nienow,[89] Education Liberty Watch,[90] and other individuals commenting on the proposed rules disputed the Department's contention that a failure to adopt the proposed rules could endanger federal funding under NCLB. They contended that the Department is relying on an overly expansive interpretation of NCLB and emphasize that the MCLB does not specifically require academic standards in social studies. In response, the Department acknowledged that NCLB does not specifically include social studies as a federally-required subject area for standards, but again emphasized that NCLB does require states to have standards in subjects determined by the state. The Department continued to assert that federal funding could be at risk if the state fails to have "challenging academic content standards" in place.[91]

53. While it may be unlikely that the federal government would in fact withhold federal funds if the Department failed to revise the 2004 social studies standards, the Administrative Law Judge finds that the Department has complied with the requirement that it describe what it believes to be the probable consequences of not adopting the proposed rules and has articulated an arguable legal basis for its concern.

54. The seventh factor requires "an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference." In the SONAR, the Department asserted that adoption of the proposed rules would be consistent with existing federal and state requirements. The Department reiterated that NCLB requires states to have academic standards in subjects determined by the state, and that Minn. Stat. § 120B.021, subd. 1, requires academic standards in social studies (including history, geography, economics, and government and citizenship) for statewide accountability. The Department also noted that NCLB defines core academic subjects to include civics and government, economics, history, and geography.[92]

55. The eighth and final factor requires "an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule." In the SONAR, the Department indicated the adoption of the proposed rules satisfies federal requirements under NCLB and state requirements under Minn. Stat. § 120B.021. The Department also maintained that the cumulative effect of the proposed rules will be to improve social studies education for students throughout the state, provide guidance to educators for social studies curriculum as they conduct their regular reviews, and ensure high quality and consistent social studies education for all Minnesota students. The Department believes that the cumulative effect of the proposed rules will be positive and will not place additional burden on district or school staff. In addition, the Department stated that the proposed rules meet the requirements of Minn. Stat. § 120B.021, subd. 1 (requiring inclusion of the contributions of American Indian tribes and communities), by creating benchmarks supporting the standards that enable Minnesota students to learn about and understand the significant contributions of American Indian tribes and communities. The Department further asserts that the

[89] Public Ex. 49.
[90] Test. of Marjorie Holsten, T. 36; Public Exs. 52, 56.
[91] Department's Initial Post-Hearing Comments at 4 (Jan. 9, 2013).
[92] *Id*. at 20-21.

proposed rules and their supporting benchmarks reflect the mandate contained in Minn. Stat. § 120B.023, subd. 2(a), requiring the Department to embed technology and information literacy standards, implement a review cycle for standards and related benchmarks, and ensure the standards and supporting benchmarks include the knowledge and skills students need for college readiness and advanced work in the subject area. Overall, the Department indicated that the proposed rules do not increase the cumulative impact of federal and state regulations related to the specific purpose of the rules.[93]

56. Education Liberty Watch,[94] State Senator Sean Nienow,[95] Stephanie Michaelis,[96] and American Principles in Action[97] objected to any attempt by the Department to adopt national standards such as those involved in the Common Core State Standards Initiative or any attempt to link the proposed rules to such standards. Education Liberty Watch argued in its post-hearing rebuttal that the Department's analysis of factors seven and eight was deficient because it should have mentioned three federal statutes that it contends prohibit federal supervision, direction, or control of school curriculum.[98] In its post-hearing submissions, the Department acknowledged that the proposed standards reflect the influence of a variety of sources from within and beyond Minnesota, including national standards documents written by professional content organizations, and that the Committee did rely on such documents as a model for developing the proposed social studies standards. However, the Department noted that the proposed standards are specific to Minnesota and asserted that it has not adopted national or federal standards in social studies content areas.[99] Under the circumstances, the Administrative Law Judge finds that the Department did not need to discuss the three federal statutes in its regulatory analysis.

57. The Administrative Law Judge finds that the Department has adequately complied with the eight-factor analysis required by Minn. Stat. § 14.131.

Performance-Based Regulation

58. The Administrative Procedure Act also requires that an agency describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems set forth in Minn. Stat. § 14.002.[100] A performance-based rule is one that emphasizes superior achievement in meeting the

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[93] *Id*. at 21-22.
[94] Test. of M. Holsten, T. 38; Public Exs. 52 and 56.
[95] Public Ex. 49.
[96] Public Ex. 18.
[97] Public Exs. 24 and 53.
[98] According to Education Liberty Watch, these statutes are the General Education Provisions Act, 20 U.S.C. § 1232a; the Department of Education Organization Act, 20 U.S.C. § 3403(b); and the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 7907(a).
[99] Department's Initial Post-Hearing Response at 17; Department's Post-Hearing Rebuttal at 15.
[100] Minn. Stat. § 14.131.

agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.[101]

59. In its SONAR, the Department indicated that throughout the development of the proposed rules and the SONAR, the Department "made every attempt to develop rules that will be understandable to and workable for practitioners and families, ensuring efficient and effective delivery of services while achieving the best possible results for students."[102]

60. Although the discussion of this topic in the SONAR lacked specificity and ideally would have included additional discussion of provisions of the proposed rules that reflect flexibility for the regulated parties, the Administrative Law Judge finds that the Department has minimally met the requirements set forth in § 14.131 for consideration and implementation of the legislative policy supporting performance-based regulatory systems.

Consultation with the Commissioner of Management and Budget

61. Under Minn. Stat. § 14.131, the Agency is also required to "consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

62. The Department asked the Commissioner of Minnesota Management and Budget (MMB) to evaluate the fiscal impact and benefits of the proposed rules on local units of government, as required by Minn. Stat. § 14.131. In a memorandum dated October 11, 2012, Kristy Swanson, Executive Budget Officer for Minnesota Management & Budget, noted that she had reviewed the Department's proposed rule amendments and SONAR. She found that the proposed rules would impose costs on local units of government (specifically school districts and charter schools) but found that implementation costs are "typically mitigated by the standard six-to-seven year curriculum adoption cycle that many school districts follow." She noted that state law requires school districts to have social studies academic standards in place and specifies that the social studies academic standards are to be implemented during the 2013-2014 school year, so school districts and charter schools should be already planning on revising the social studies standards at that time. She emphasized that the costs were foreseeable and are required to adhere to Minnesota statute and concluded that the proposed rule revisions "will not impose a significant unforeseen cost on local governments."[103]

63. The Administrative Law Judge finds that the Department has met the requirements set forth in Minn. Stat. § 14.131.

Compliance Costs for Small Businesses and Cities

[101] Minn. Stat. § 14.002.
[102] SONAR at 22.
[103] Ex. K.

64. Under Minn. Stat. § 14.127, the Department must "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees." The Department must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.

65. In its SONAR, the Department stated that it had determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city. The Department noted that the proposed rules do not affect small businesses or small cities.[104]

66. The Administrative Law Judge finds that the Department has made the determination required by Minn. Stat. § 14.127 and approves that determination.

Adoption or Amendment of Local Ordinances

67. Under Minn. Stat. § 14.128, the agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.[105]

68. The Department determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules. The Department further noted that the proposed rules do not affect any of the local governments included within the scope of Minn. Stat. § 14.128.[106]

69. The Administrative Law Judge finds that the Department has made the determination required by Minn. Stat. § 14.128 and approves that determination.

Analysis of the Proposed Rules

70. This Report is limited to discussion of the portions of the proposed rule that received significant critical comment or otherwise need to be examined. Accordingly, the Report will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that each and every submission has been read and considered. The Administrative Law Judge finds that the Department has demonstrated, by an affirmative presentation of facts, the need for and reasonableness of all rule provisions not specifically discussed in this Report. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

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[104] SONAR at 24.
[105] Minn. Stat. § 14.128, subd. 1.
[106] SONAR at 24.

71. The rulemaking record in this matter is voluminous, and contains many thoughtful and detailed comments that reflect the strong commitment of teachers, administrators, parents, students, and citizens to Minnesota's educational system. A number of the comments are not discussed in this Report because they did not raise issues of legality or reasonableness of the proposed rules or because they focused on the benchmarks and thus fall outside the scope of this rulemaking proceeding. However, they may still be of assistance to the Department in determining whether further modifications of the rules or benchmarks are warranted, or in suggesting additional assistance the Department may wish to provide to school districts. For that reason, the Department is encouraged to examine the comments and, if deemed appropriate, make further modifications to the proposed rules, the benchmarks, or other facets of its implementation of the social studies standards.

Overview of Comments Supporting the Proposed Rules

72. A number of individuals expressed support for the proposed rules. Dr. Jean Lubke, Executive Director of Curriculum and Instruction for the Rochester Public Schools stated that she and other social studies teachers in Rochester support the proposed standards and believe that they are clearer, better aligned, and more manageable than the 2004 standards. She asserted that the proposed rules set forth a realistic number of standards that can be appropriately taught within the 170 days of instruction during a school year, are logically clustered by grade level, and represent the history created from the myriad of peoples in the world. Dr. Lubke pointed out that the students in the Rochester Public Schools come from 79 countries and speak more than 57 languages and dialects, and that more than one-third are not white. In her view, the proposed standards will help dispel misconceptions, ensure that the indigenous and other voices and perspectives are sought out, and better prepare students for college and careers.[107]

73. Peggy Poitra of the Shakopee Mdewakanton Sioux Community echoed many of the same sentiments in her testimony and written comments made on behalf of the Tribal Nations Education Committee. Ms. Poitra objected to any attempt to weaken or remove Native history from the proposed standards. She noted that Minnesota ranked 50th in the nation for the graduation rate of American Indian students and stated that those on the Committee believe that the proposed standards will present a rigorous and relevant curriculum.[108] Similarly, Dr. Anton Treuer, Executive Director of the Bemidji State University American Indian Resource Center, noted that providing opportunities for all children to learn about themselves and rest of the world is critical to their academic success, and stated that all Minnesotans should know something about the first people of the land. He indicated that there is widespread support for the proposed rules among tribal leaders in Minnesota.[109] Carri Jones, Chairwoman of the Leech Lake Band of Ojibwe, also commented favorably on the proposed standards,

[107] Test. of Jean Lubke at Rule Hearing, T. 79-85; (Dec. 20, 2012); Public Ex. 5.
[108] Test. of Peggy Poitra, T. 96-99; Public Ex. 6.
[109] Public Ex. 12.

noting that the standards will enable students in Minnesota to learn about "the importance of Indian people; our history, our governance, and our culture."[110]

74. Brad Olson,[111] Crystal Polski,[112] Dr. Anne Kaufman,[113] Jennifer Bloom,[114] Megan Gunnar Dahlberg,[115] Andrew Johnsrud,[116] John Wood,[117] Steve Brothers,[118] Jennifer Hansen,[119] Matt Moore, President of the Minnesota Council for History Education,[120] Calvin Palmer,[121] Lanise Block,[122] Diane Munson,[123] Chad Kuehne,[124] Todd Andrix,[125] David Enge,[126] Eric Beckman,[127] Nancy Gerber,[128] Michael Boucher, Jr.,[129] Andrew Frosch,[130] Teresa Ponessa,[131] Bob Ihrig (on behalf of the 28 teachers of the secondary social studies department in the Mankato Area Public Schools),[132] and other teachers and parents also provided comments in support of the proposed social studies academic standards. Many of them emphasized that the state is increasingly diverse and stated that they believe that the proposed rules are more rigorous than the 2004 standards, will provide a well-balanced social studies curriculum, and will promote critical thinking.

75. Eric Beckman, who is a social studies teacher at Anoka High School and a member of the Board of Directors for the Minnesota Council for History Education as well as a Member of the District 11 Grade 11 World History Curriculum Writing Team, indicated that more than thirty social studies teachers were included in the drafting of the standards and, as a result, he believes that the standards are "more realistic and more in tune with best practices in teaching." In addition, he approves of the emphasis on inclusivity in the standards and the emphasis on the experiences of a broad range of people because he believes "[a]ll of our students should see themselves reflected in the curriculum."[133] Regina Seabrook, Member of the 2011 Minnesota Social Studies Standards Committee, commented that "[t]ragic chapters of our past can be taught with

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[110] Public Ex. 47.
[111] Test. of Brad Olson, T. 69-71.
[112] Test. of Crystal Polski, T. 93-96.
[113] Test. of Anne Kaufman, T. 123-126.
[114] Test. of Jennifer Bloom, T. 129.
[115] Public Ex. 14.
[116] Public Ex. 15.
[117] Public Ex. 16.
[118] Public Ex. 17.
[119] Public Ex. 28.
[120] Public Ex. 27.
[121] Public Ex. 40.
[122] Public Ex. 22.
[123] Public Ex. 34.
[124] Public Ex. 39.
[125] Public Ex. 33.
[126] Public Ex. 35.
[127] Public Ex. 30.
[128] Public Ex. 45.
[129] Public Ex. 44.
[130] Public Ex. 46.
[131] Public Ex. 51.
[132] Public Ex. 20.
[133] Public Ex. 30.

honesty, courage, and compassion and they can be taught in ways that build bridges across race, class, and ethnicity, but such chapters cannot be ignored or minimized. There is no justice in omitting the past or distorting it."[134] Lanise Block, a Content Lead for K-12 Social Studies for the Minneapolis Public Schools, commented that the proposed standards "reflect a smoother learning progression from grade to grade, allowing for deeper exploration of key concepts in later grades."[135]

76. Emma Ryan, President of the Minnesota Council for Social Studies, commented that the proposed standards "are politically neutral and reflect a broad scientific view rather than a singular impassioned idealism." She commented that the proposed rules were written by a diverse group of educators, parents, and representatives of both business and government and involved a comprehensive study of national documents and reports, social studies standards from other states, and analysis of thousands of comments submitted by the public.[136] Mark Bray, a Board Member of the Minnesota Council for Social Studies, noted his agreement with Ms. Ryan's remarks and expressed his view that the revised standards are "based on politically-neutral, sound research in social studies education" and improve upon the 2004 standards by "reflecting new knowledge in the discipline, new understandings about how students learn, and new legislative requirements such as grade-specific standards and college- and career-readiness knowledge and skills." He indicated that the revised standards reflect a more manageable number of standards and benchmarks, fewer "laundry lists" of examples that were confusing to teachers, and preserve local control of curriculum decisions.[137]

77. Richard Todd, who holds a Ph.D. in Applied Economics from the University of Minnesota and is a board member of the Minnesota Council on Economic Education, wrote in support of the proposed economics and personal finance standards. He indicated that he had reviewed and commented on drafts of the standards during 2010-2011 and, although the standards are not perfect, he considers them to be "a significant step forward in their overall articulation of developmentally appropriate economic and personal finance concepts from kindergarten through high school." In Dr. Todd's view, the proposed standards are "both specific enough to provide a clear, strong K-12 framework and flexible enough to adapt to a variety of age- and area-specific needs and contexts."[138]

78. Many individuals, including Dr. Treuer,[139] Mr. Johnsrud,[140] Mr. Wood,[141] Mr. Ihrig,[142] Mr. Moore,[143] and Mr. Boucher[144] were critical of those opposing the

[134] Public Ex. 43.
[135] Public Ex. 22.
[136] Public Ex. 21.
[137] Public Ex. 23.
[138] Public Ex. 29.
[139] Public Ex. 12.
[140] Public Ex. 15.
[141] Public Ex. 16.
[142] Public Ex. 20.
[143] Public Ex. 27.
[144] Public Ex. 44.

proposed rules and asserted that the proposed rules should not be revised at the behest of a small number of individuals with religious or conservative political agendas. Mr. Moore asserted that several of the arguments made in opposition to the proposed rules are flawed and rest on a fundamental misunderstanding of the nature of academic standards. He argued the standards "create a framework that will allow professional educators to make decisions about what specific topics, themes, and investigations are worthy of inclusion in a curriculum." For this reason, he asserted that it is in the nature of academic standards to "be broad and allow room for flexibility" rather than merely listing facts or events to be memorized. He further argued that, if only positive events were emphasized and racism were downplayed, students would not make sense of the civil rights movement. In his view, the proposed standards allow for "a more robust and rigorous approach to social studies."[145]

79. Sarah Herder, Education Director for the Advocates for Human Rights, indicated that her organization strongly supports adoption of the proposed rules. Although she also made some recommendations for further improvements in the rules,[146] she stated that the Advocates for Human Rights favor adoption of the proposed rules even without incorporation of the suggested changes. Ms. Herder indicated that the Advocates for Human Rights is impressed with the comprehensive process the Department followed to ensure that the proposed standards reflected input from a variety of individuals with knowledge and expertise. She commented that the proposed standards are more rigorous and involve higher order thinking than the 2004 standards.[147]

Overview of Comments Opposing the Proposed Rules

80. The majority of the comments that were made in opposition to the proposed rules were not focused on individual rule provisions but more broadly on the rules as a whole. For that reason, this Report will focus primarily on the general topic areas in which comments were made and the Department's responses to those comments, rather than analyzing each individual rule provision.

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[145] Public Ex. 27.

[146] Recommendations made by the Advocates for Human Rights for improving the proposed rules included substituting the phrase "human rights" for the phrase "individual rights" in proposed rule parts of 3501.1300, subpart 1, item C; 3501.1305, subpart 1, item C; 3501.1310, subpart 1, item B; 3501.1315, subpart 1, item B; 3501.1325, subpart 1, item D; 3501.1335, subpart 1, items B and D; and 3501.1345, subpart 1, items B and D, in order to address concerns that rights are inalienable and intrinsic and to make a more direct connection to international law; and striking the phrase "in a republic" from proposed rule parts 3501.1325, subpart 1, item C; 3501.1330, subpart 1, item B; 3501.1335, subpart 1, item C; and 3501.1340, subpart 1, item C in order to avoid limiting the concept of rights to those of U.S. citizens. Ms. Herder also recommended that the Department encourage schools to offer courses in social studies disciplines beyond civics, economics, geography, and history. *See* Public Ex. 48.

[147] Public Ex. 48.

Alleged Lack of Rigor

81. Several individuals, including Marjorie Holsten and Karen Effrem of Educational Liberty Watch,[148] Debbie Daniels, a political scientist,[149] Susan Richardson, a former Advanced Placement biology teacher,[150] Cindy Pugh, a newly-elected member of the Legislature,[151] Ryan MacPherson, Chair of the History Department at Bethany Lutheran College,[152] David Lau, a parent and concerned citizen,[153] and James Tracy, a retired University of Minnesota history professor,[154] asserted that the proposed rules are less rigorous than the 2004 standards and urged that the 2004 standards remain in place. They argued that the proposed rules are at odds with Minnesota statutes that require the implementation of "rigorous" academic standards that are "intended to raise academic expectations for students, teachers, and schools." Education Liberty Watch contended that the proposed standards are "linked with" the Common Core State English Language Arts standards and asserted that the Common Core high school standards "have been reviewed to be only at the sixth to eighth grade level" by Dr. Sandra Stotsky. Due to omissions and changes in emphasis, Education Liberty Watch contended that the proposed standards will not prepare students for post-secondary education, work, or civic life.[155] Dr. MacPherson maintained that the proposed standards are academically inferior to the 2004 standards and unnecessary, and alleged that there are a number of inaccuracies in the proposed standards.[156] Dr. Daniels asserted that the proposed standards would leave students ill-prepared for college-level Introduction to American Government courses and objected that no political scientists were consulted in connection with the proposed rules.[157]

82. The Department disagreed with these comments. Although the proposed rules contain fewer standards than the 2004 standards and fewer benchmarks have been proposed under the proposed revisions, the Department denies that the quantity of standards and benchmarks is a valid indicator of rigor. The Department asserted that the proposed standards have been specifically designed to incorporate knowledge and skills students need to be ready for college and careers, and explained at length in its post-hearing submission the process that was followed by the Committee to identify the essential skills and knowledge and the steps that were taken to make those a primary focus of learning in every grade level. The Department further argued that the proposed standards require students to understand at a higher level the concepts, principles, and perspectives that shaped the social studies disciplines. The Department maintains that students are required under the proposed standards to apply their understanding to complex situations and contexts, think critically about important issues, communicate their findings, and engage in problem solving and discipline-based inquiry. The

[148] Test. of Marjorie Holsten, T. 35; Public Exs. 52, 56.
[149] Test. of Debbie Daniels, T. 88; Public Ex. 26.
[150] Test. of Susan Richardson, T. 57; Public Ex. 2.
[151] Test. of Cindy Pugh, T. 71; Public Ex. 41.
[152] Test. of Ryan MacPherson, T. 104-113; Public Ex. 11.
[153] Test. of David Lau, T. 113-115.
[154] Public Ex. 19.
[155] Minn. Stat. §§ 120B.02(a) and (b)(1) and 120B.021, subd. 3.
[156] Test. of R. MacPherson, T. 105-109; Public Ex. 11.
[157] Test. of D. Daniels, T. 88-90; Public Ex. 26.

Department also contends that the proposed standards include enhanced economic concepts and skills with added focus on financial literacy, and require students to use geospatial technologies to a greater extent than the 2004 standards.[158]

Lack of Specific References in the Proposed Standards to Particular Topics or Individuals

83. During the rulemaking hearing, several individuals and organizations expressed concerns that the proposed rules were not sufficiently specific and failed to mention certain important topics or individuals. For example, State Senator Sean Nienow commented that the proposed rules will lower academic expectations for students, teachers, and schools, contrary to the requirement in Minn. Stat. § 120B.021, subd. 3, that the Commissioner adopt statewide rules for "implementing statewide "rigorous core academic standards in . . . social studies." In support of this statement, Senator Nienow pointed out that the Southern Poverty Law Center noted that Minnesota "requires students to learn about the civil rights movement but does not specify any required details" and determined that Minnesota thereby "fails to set high expectations for students and provide direction to teachers."[159] Education Liberty Watch objected to the failure of the proposed rules to describe all of the First Amendment rights.[160] Other individuals, including David Lau,[161] Lee Michaels,[162] and Jeff Baumann,[163] complained that the proposed standards did not mention the language of founding documents or identify significant historical figures.

84. State Senators Hann, Dahms, Hall, Thompson, and Weber commented that the proposed standards neglect to mention "relevant events including the 9/11 terrorist attack on our country and related War on Terror, the impact of the European Renaissance, and references to Abraham Lincoln and the Gettysburg address (as well as the battle)." They noted that they agreed with the comments of John Fonte, Senior Fellow and Director of Hudson's Center for American Common Culture, in which he asserted that the proposed standards downplay American achievements and contain a paucity of information.[164] Dr. Fonte also emphasized in his comments filed in this proceeding that the standards should identify the most significant events and concepts that students will be required to examine.[165]

85. In response, the Department indicated that it is misleading to suggest that a topic will not be taught unless it is explicitly stated in the standards or benchmarks. The Department indicated that standards are "broad statement[s] of skill and understanding that students must learn in order to be prepared for postsecondary education and advanced work." As such, the standards "represent the 'big picture,' that

[158] Department's Initial Post-Hearing Submission at 12-16.
[159] Public Ex. 49.
[160] Test. of M. Holsten, T. 40; Public Exs. 52, 56.
[161] Test. of D. Lau, T. 113-115.
[162] Test. of Lee Michaels, T. 127-129.
[163] Test. of Jeff Baumann, T. 85-86.
[164] Public Ex. 50.
[165] Public Ex. 55.

is, the major concepts and skills that students return to again and again throughout their K.-12 education."[166] The Department explained that the History standards characterize an era in either United States or world history, and the other standards describe an important concept in the particular discipline. According to the Department, many topics that are not explicitly mentioned in the standards may be addressed in the supporting benchmarks or taught through a school's local curriculum, and stressed that the local curriculum may include hundreds of topics. For example, the Department noted that specific names of civil rights leaders are not mentioned in the History standards because this level of detail would not fit with the general nature of the standards and the supporting benchmarks. The Department provided the following example from the history standards and the benchmarks for seventh grade and high school:

> **History Standard 22:** The student will understand that post-World War II United States was shaped by an economic boom, Cold War military engagements, politics and protests, and rights movements to improve the status of racial minorities, women and America's indigenous peoples between 1945 and 1989.
>
> **Grade 7 History Benchmark 7.4.4.22.6:** Compare and contrast the goals and tactics of the Civil Rights Movement, the American Indian Movement, and the Women's Rights Movement; explain the advantages and disadvantages of non-violent resistance. (Post-World War II United States: 1945-1989)
>
> **High School History Civics Benchmark 9.4.4.22.6:** Identify obstacles to the success of the various civil rights movements; explain tactics used to overcome the obstacles and the role of key leaders and groups. (Post-World War II United States: 1945-1989)

The Department indicated that school districts will decide which leaders will be covered, but noted that it is highly unlikely that students would be able to complete the standard and the seventh grade and high school benchmarks without learning about Martin Luther King, Jr., and other leaders of the civil rights movement.[167] In a similar vein, the Department asserted that, although the proposed standards do not specifically mention First Amendment rights, teachers will undoubtedly use the rights identified in the First Amendment to illustrate concepts contained in the standards and supporting benchmarks.[168]

86. The Department also maintained that it is not realistic or desirable to identify large numbers of specific topics in the standards and supporting benchmarks. During the standards revision process, many educators informed the Committee that the 2004 social studies standards were overly specific and contained more topics than could be covered in the amount of time typically allotted for social studies instruction. The Department emphasized that Minnesota law indicates that academic standards

[166] Department's Initial Post-Hearing Response at 6.
[167] Department's Initial Post-Hearing Response at 6-8.
[168] Department's Initial Post-Hearing Response at 29-30.

"must not require a specific teaching methodology or curriculum" or the "form of instruction that school sites must use," and cautions that "any state action regarding the [academic standards] rule must evidence consideration of school district autonomy."[169] The Department further indicated that the Council of Chief State School Officers (CCSSO) has recommended that states focus on key concepts and "big ideas" in developing standards rather than creating standards that are too numerous and specific since the latter approach will encourage superficial learning rather than a deeper understanding of the content area. The Department stated that the proposed standards were written at a broader level of generalization than the 2004 standards, and focus on the most important principles, concepts and skills involved in the four social studies disciplines. According to the Department, the proposed revisions "reduce the overall number of standards and benchmarks to a teachable number of concepts and skills while preserving the option for schools to choose curriculum that they feel best delivers the standards and meets the needs of their students."[170]

Global Emphasis

87. Several individuals objected to the proposed standards on the grounds that they fail to emphasize the contributions of Western civilization and over-emphasize global perspectives. For example, Alexandra Matyja[171] opposed the rules because she believes they are skewed toward pro-global and anti-American ideals. Education Liberty Watch[172] argued that the proposed standards and statements in the SONAR seem to be "emphasizing loyalty to entities and governance outside of the US and [are] inconsistent with the US Constitution," in violation of statutory requirements.

88. In the SONAR, the Department explained that a major focus of the Standards Committee was to revise the standards in a manner that would ensure that students would be better prepared for the global world. The SONAR included a discussion of several social studies articles and position papers that support the need for students to understand global and international issues and see the world as one interrelated system.[173] In its post-hearing submissions, the Department emphasized that Minnesota's graduation requirements state that students who begin 9th grade in the 2011-2012 school year or later must complete 3.5 credits of social studies, encompassing at least U.S. history, geography, government and citizenship, economics, and "world history." The Department stressed that this mandate does not refer to "European" history, but to "world" history. Moreover, the Department asserted that there is movement in the social studies field to incorporate a greater global emphasis into social studies standards. As a result, the Department stated that the proposed high school standards focus on the breath of world history (which includes the study of Europe and Western civilizations) instead of focusing more narrowly on Western civilization. The Department contends that the proposed social studies standards do, however, have supporting benchmarks related to the contributions of

[169] Minn. Stat. §§ 120B.02(a) and (b)(2), and 120B.021, subd. 2(b)(2).
[170] *Id.* at 7-9, *relying upon* Minn. Stat. §§ 120B.02(a) and (b)(2) and 120B.021, subd. 2(b)(2).
[171] Test. of Alexandra Matyja, T. 52-56; Public Ex. 7.
[172] Test. of M. Holsten, T. 34-42; Public Exs. 52, 56.
[173] SONAR at 35-36.

Western civilization within each time period, including topics such as the significance of the Greek and Roman civilizations; the development of Christianity; the "Great Schism" in Christianity; the exchange of ideas prompted by the Enlightenment and the Renaissance; the Reformation and Counter-Reformation; trans-oceanic exploration; and the Columbian exchange. The Department contended that the shift from a focus on Western civilization toward a global study of the world is supported in post-secondary education. It also argues that the proposed standards are consistent with the emphasis in current scholarship in the field of world history on broad patterns in human development and connections among human societies across time and space.[174]

Ideological Concerns

89. Several of those commenting on the proposed rules expressed concern that the revised academic standards reflect a liberal ideological bias. For example, Matthew Abe, who was a member of the committee that created the 2004 standards, objected to the proposed revised standards on the grounds that they focus on racism, oppression, and lack of opportunity.[175] Donald Lee alleged that omissions and subtle ideological shifts were evident in the proposed standards. He indicated that the statements made in the standards were not factually false, but alleged that they "reveal a concerted effort by the writers to be culturally neutral, to treat history as an object of scientific curiosity, rather than a distillation of human experience and wisdom to be passed on to our descendants." Mr. Lee further noted that the proposed standards "seem carefully worded to avoid any hint of ethnocentrism or nationalism." He maintained that "education is indoctrination" and contended that it is crucial that the narrative of our history be cast in a positive light. He contended that the proposed standards employ a "much darker narrative" in which "America prospered only through imperialism and the exploitation of minorities."[176] Carter Glendenning also commented that the proposed standards should be replaced with a document that "extols the virtues of America."[177]

90. Education Liberty Watch and others also objected to the failure of the proposed standards to stress "American Exceptionalism." Ms. Holsten of Education Liberty Watch argued that "the concept of American Exceptionalism is completely absent from the proposed standards" and that the proposed standards contain "an incredibly out of balance emphasis on the concept of America as an oppressive culture with an almost obsessive focus on racism, slavery and the wrongs done to the indigenous peoples."[178] Dr. Fonte also asserted that "American achievements are downplayed" in the proposed standards "while the overarching theme becomes 'institutionalized racism.'" In his view, the use of the "biased concept of institutionalized

[174] *Id*. at 22-24.
[175] Public Ex. 10.
[176] Test. of Donald Lee, T. 118-121; Public Ex. 9.
[177] Test. of C. Glendenning, T. 79; Public Ex. 4.
[178] Test. of M. Holsten, T. 39-40; Public Exs. 52, 56.

racism . . . could only mean that the major institutions of American democracy are themselves racist and therefore illegitimate."[179]

91. Senator Nienow asserted that the proposed rules contain "value-laden" language that would have the students and citizens of the state "focus disproportionately on the country's historic problems" and would give "little fair-minded consideration to the philosophies, beliefs and actions that formed this nation, while focusing on America's problems and social activism." As a result, he argued that the proposed standards would "reduce the quality and productivity of citizen dialogue." He expressed concern that the content standards would "promote an anti-American worldview" and questioned whether the "mischaracterization of inherent rights as individual rights" would "keep students and citizens ignorant of those rights, i.e. rights inherent from the Creator versus individual rights granted by the state."[180]

92. Senator Nienow also objected to the language of the United States history standards for fifth grade, sixth grade, and grades 9-12.[181] These standards state that students will understand that "before European contact, North America was populated by indigenous nations that had developed a wide range of social structures, political systems, and economic activities, and whose expansive trade networks extended across the continent;" and that "rivalries among European nations and their search for new opportunities fueled expanding global trade networks and, in North America, colonization and settlement and the exploitation of indigenous peoples and lands; colonial development evoked varied responses by indigenous nations, and produced regional societies and economies that included imported slave labor and distinct forms of local government between 1585 and 1763." Senator Nienow objected that this language was value-laden and contended that students will be taught that the 13 original colonies were based on "exploitation" while native populations had "economic activities" and "trade networks."[182]

93. In contrast, Paul Spies commented that there are plenty of examples in the proposed standards relating to American Exceptionalism, liberty, freedom, and founding documents. Mr. Spies objected to the number of references in the SONAR to the reports of the "right-wing" Fordham Foundation. He believes that the proposed standards show great improvements over the 2004 standards, but commented that the they do not go far enough to create a sufficiently balanced view of the true history of the United States.[183]

94. In response to concerns about ideological bias, the Department denied that the proposed standards reflect a liberal or other bias or that "American Exceptionalism" is absent from the proposed social studies standards. The Department stated that it assumes the reference to "American Exceptionalism" is intended to

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[179] Public Ex. 55.
[180] Public Ex. 49.
[181] *See* parts 3501.1325, subpart 4, item B(1) and (2), 3501.1330, subpart 4, items B(1) and (2), and 3501.1345, subpart 4, item C(1) and (2), of the proposed rules.
[182] Public Ex. 49.
[183] Test. of Paul Spies, T. 91-93.

encompass a historical perspective that portrays a narrative of American history, government, and economic systems in favorable terms.[184] According to the Department, "American Exceptionalism" is “a particular interpretation of the American past that both derives from and supports a specific political belief about what makes the United States unique in the world today." The Department indicated that those adhering to the "American Exceptionalism" approach assert that “American society, governance, and economy are ‘the most free,’ ‘the most dynamic,’ ‘the most prosperous,’ or ‘the most generous.’” The Department indicated that most professional historians and other social scientists do not accept the premise of the "American Exceptionalism” interpretation. Moreover, those who are critical of “American Exceptionalism” believe that the assertions made by those who support it lack analytical precision and are difficult to verify since the evidence varies depending on how these qualities are defined, how the historical period was examined, and what particular metrics were used.[185]

95. The Department noted that individuals who applied to serve on the Standards Committee agreed to a list of assumptions to guide their work. The list included assumptions that the revised standards "will be grounded in current research on curriculum, instruction and student learning and reflect a comprehensive, balanced, and developmentally appropriate approach to preparation in the social studies core disciplines" and that the revised standards "will not be based solely on the interpretation of religious texts and/or the influence of special interests, but on the preponderance of research that is commonly accepted throughout the social studies academic community." Based on feedback provided during the public comment and review periods and the Commissioner’s meetings with stakeholder groups, as well as the analysis provided by expert reviewers of the standards, the Department asserted that the Committee successfully followed these assumptions. The Department further contended that the Standards Committee “sought to achieve academic balance in the standards by coupling disciplinary knowledge (i.e., the commonly accepted ‘big ideas' of the disciplines) with sophisticated skills that require students to apply their knowledge in useful ways.” The Department noted that expert reviewer Alfred Andrea, President of the World History Association, spoke favorably of the balance achieved in the proposed standards:

> [A] useful education in a democratic society must strike a balance. It must deliver the knowledge, skills, and modes of perception that this society deems essential to the full development of an informed and engaged citizen, but it must also take into account the interests and experiences of the student. Moreover, in order to assist students in becoming effective citizens, it must introduce them to multiple perspectives and must foster in them the art of critical thinking. It seems to me that this set of K-12 social studies standards goes far in establishing a structure for achieving this "democratic ideal of education."[186]

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[184] Department's Initial Post-Hearing Response at 16, 18.
[185] Department's Post-Hearing Rebuttal at 2.
[186] Department’s Initial Post-Hearing Response at 16-17.

96. The Department indicated that it believes the academic standards should be written in balanced language and that the goal of social studies education is to "provide students with the content knowledge, skills, and dispositions that enable them to draw their own conclusions about the country that they live in." The Department asserted that the proposed standards provided a "balanced narrative of the American story" and "acknowledge the progress of America, while also calling attention to setbacks that might be underrepresented in an 'American Exceptionalism' narrative." The Department noted that the proposed standards do not prevent a teacher from highlighting the positive aspects of the United States (since schools retain the ability to select the curriculum, the instructional approach, and the form of assessment they will use to address state standards), or "prevent a student from reaching the conclusion that America is the greatest country in the world." According to the Department, the proposed standards do refer to certain American successes (for example, the high school standards require students to identify how American democratic principles and ideals influenced other democratic revolutions around the world), but also challenge students to critically examine potential solutions to issues.[187]

97. The Department contends that those urging the "American Exceptionalism" perspective are requesting that the state standards reinforce a particular set of values. The Department maintains that the standards should not promote a certain set of values but instead should be written in a value-neutral manner that encourages students to think critically about topics presented to them.[188] The Department provided the following overall assessment of the proposed standards:

> As a whole, the social studies standards and supporting benchmarks provide a positive portrayal of America. With the exception of one economics standard about comparative economics, almost the entire Economics strand is about American capitalism. The standards and supporting benchmarks for Civics focus almost entirely on American civics, and many of the civics standards and benchmarks highlight the rights and democratic principles that many of the world have tried to emulate in their struggles for democracy. Almost half of the history standards and supporting benchmarks focus on U.S. history, while the other half focus on world history. Within the world history standards and supporting benchmarks there are also multiple benchmarks that relate to European and American history. There is also a significant number of geography standards and supporting benchmarks that address the geography of U.S. and Europe. Finally, the U.S. history standards include positive references to America's strengths, while also addressing its struggles and setbacks.
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> Every history standard characterizes an era by including both examples of progress during that time period as well as significant struggles. This is reasonable because many people argue that the United States is truly

[187] *Id*. at 18-22.
[188] *Id*. at 16, 18-22.

> "exceptional" because of its continual efforts to address issues in American society, and provide greater access to American democracy. It is important to acknowledge that what makes America great are the battles that have been won to provide greater political, economic, and social equality, in addition to the struggles to spread liberty and democratic values throughout the world. The proposed standards ask students to examine both, thus providing a balanced approach to social studies.[189]

The Department provided numerous examples drawn from the proposed standards and benchmarks to support this point of view.[190]

98. In its rebuttal comments, the Department noted that people will inevitably disagree about which content is most important to include in academic standards. Because there is no definitive way to determine how controversial topics should be handled, the Department relied on the thoughtful deliberations of its highly-qualified[191] Standards Committee and the Department's review process to guide the development of the proposed standards.[192]

Concerns regarding the Role of Religion

99. Some individuals commenting on the proposed rules objected to the use of BCE/CE (Before Common Era/Common Era) to indicate periods of history in the proposed standards instead of BC/AD (Before Christ/Anno Domini). The Department noted that world historians have moved away from using the traditional BC and AD designations and instead have adopted a more culturally-balanced way to denote time periods in history. The Department acknowledged that marking chronology in history from the birth of Christ makes sense in the Christian world, it found that that approach makes less sense in a global world where there are a variety of chronologies and religious traditions. Because BCE and CE have become the standard in the field of world history and remove value judgments about which system of marking time is most important, the Standards Committee decided to use BCE/CE terminology in the proposed standards.[193]

100. Education Liberty Watch,[194] Julie Quist,[195] Carter Glendenning,[196] Susan Richardson,[197] Marieke Mayweathers,[198] and others criticized the failure of the proposed

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[189] *Id*. at 21-22.
[190] *Id*. at 19-22.
[191] The credentials of some of the Committee members were summarized in the Department's Post-Hearing Rebuttal at 3-4. The background of expert reviewers consulted by the Department was set forth in Appendix A of the SONAR.
[192] Department's Post-Hearing Rebuttal at 2-3.
[193] *Id*. at 25.
[194] Test. of M. Holsten, T. 39; Public Exs. 52, 56.
[195] Test. of Julie Quist, T. 100-101; Public Ex. 8.
[196] Test. of Carter Glendenning, T. 77; Public Ex. 4.
[197] Test. of Susan Richardson, T. 60-61; Public Ex. 2.
[198] Public Ex. 32.

standards to contrast "inalienable" or "God-given" rights such as liberty with "government-given" rights. James Tucker[199] and Education Liberty Watch asserted that the proposed standards contain very little discussion of religion of any kind, either in connection with the role played by religious freedom in the founding of America or as a source of motivation or conflict in world history. Jeff Baumann also expressed concern about the absence of references in the proposed standards to the Christian heritage of the United States.[200]

101. The Department reiterated that one of the assumptions guiding the Standards Committee was that the revised standards would not be based solely on the interpretation of religious texts and/or the influence of special interests, but instead would be based on the preponderance of research that is commonly accepted throughout the social studies academic community. The Department stated that the degree to which Christianity has influenced the Declaration of Independence, the Articles of Confederation, the Constitution, and the Bill of Rights has been the subject of debate among scholars and that, due to these debates, "the proposed social studies standards do not make value judgments or assertions that are not universally accepted within the field." The Department also indicated that there is disagreement in the field of social studies about which version of Christianity was most influential during the early history of America. For these reasons, the proposed standards do not set forth a specific role that religion or Christianity played in American history. According to the Department, "[t]hese are questions that students might examine in their study of the founding period, but not value-based assertions that should be mandated by the state." Although the standards incorporate neutral wording, the Department emphasized that certain examples contained in the supporting benchmarks provide students with the opportunity to consider the influence of Christian values in the development of the United States. The Department further noted that there are many other forms of religion besides Christianity that have shaped our leaders and events in more recent times. To reflect the fact that the United States has become a more religiously pluralistic country and to be inclusive of the varied backgrounds of all Minnesota students, the proposed standards do not make assertions based on values representing one religion or cultural group to the exclusion of others.[201]

102. In response to suggestions that the proposed standard should ask students to distinguish between "God-granted" rights and rights that are granted by the government, the Department indicated that the standards deliberately did not identify the source of rights in order to avoid making assertions based on a certain set of values. Although some people believe that certain inherent rights are given by God, the Department noted that this this is a religious belief and not a widely-accepted fact within the social studies academic community. The Department recognizes that parents have the prerogative to teach their children about the source of rights if they choose, but does not believe it is appropriate for the state to mandate that particular religious beliefs be taught in a public education setting. Finally, the Department noted that at least three of

[199] Public Ex. 37.
[200] Test. of Jeff Baumann, T. 87.
[201] Department's Initial Post-Hearing Response at 25-27.

the twelve Civics and Government standards address the rights of individuals in the United States, including rights that fall under the broad label of "inalienable rights," such as life, liberty, and the pursuit of happiness; the concept of "liberty" is included as a core democratic principle in one of the Civics standards and one of the History standards; and examples that address the concepts of inalienable rights and property rights are included in various Civics and Economics benchmarks.[202]

Other Concerns regarding the Proposed Standards

103. Some individuals, including Alexandra Matyja,[203] Greg O'Connor,[204] and David Lau,[205] objected to the use of the word "democracy" in the standards and suggested that the phrase "constitutional republic" be substituted. The Department did not modify the proposed rules in response to these comments. The Department responded that both the terms "democracy" and "republic" are used in the proposed standards and in the associated benchmarks, since American government is a blending of the two political systems. The Department acknowledged that the United States is not a direct democracy in which all people vote or participate directly in decision-making on every public policy issue, and agreed that the Founding Fathers were leery of a pure democracy and set up a republic that would avoid rule by the masses through a constitutional democracy that limits the power of the majority. However, the Department indicated that the proposed standards do not claim that the United States is a direct democracy. The Department argued that the proposed standards include language that captures many elements of American democracy and provided examples of standards and benchmarks that offer opportunities for students to study the nuances of what it means to be a "democracy" or a "republic." The Department further asserted that the United States government has become more democratic over time--for example, it pointed out that the Seventeenth Amendment allows for the direct election of Senators. The Department also emphasized that there are elements of direct democracy in state and local government in the United States, such as state and local initiatives, referenda and tax levies. Although the United States is a kind of republic, the Department stated that it is one in which democratic values have led to universal suffrage. In the view of the Department, it would be misleading to use only the term "republic" to define American government, since not all republics are very democratic.[206]

104. Ryan MacPherson alleged that the proposed standards were inaccurate in a number of respects. Among other things, he contended that the high school History standard contained in 3501.1345, subp. 4(c)(3) is inaccurate because colonial interests did not diverge from those of England until at least 1763, and thus asserted that the timeframe for this standard should begin in 1763 rather than in 1754. He also stated that the Renaissance was placed out of its proper chronological order in the proposed standards and argued that the 1920s should not be described as a period of "political apathy" since it was the first decade in which women could vote nationally. The

[202] Department's Initial Post-Hearing Response at 27-29.
[203] Test. of A. Matyja, T. 53; Public Ex. 7.
[204] Test. of Greg O'Connor, T. 68; Public Ex. 3.
[205] Test. of David Lau, T. 114.
[206] Department's Initial Post-Hearing Response at 34-36.

Department disagreed that these standards were erroneous and explained the reasons for its position in its rebuttal submission. The Department indicated it was confident that the proposed standards and supporting benchmarks are historically accurate, balanced, and reflect the current scholarly consensus within each of the four social studies disciplines.[207] Michael Boucher, Jr., (former President of the Minnesota Council for the Social Studies, current President of the Indiana Council for the Social Studies, and a former board member of the National Council for the Social Studies),[208] Matt Moore (President of the Minnesota Council for History Education and social studies teacher),[209] and others supported the accuracy of the standards, stated that they are an improvement over the 2004 standards, and urged their adoption.

105. Some of the individuals commenting on the proposed rules objected to references to Native American tribes as sovereign nations. The Department disagreed that this characterization was inaccurate and provided an explanation of the grounds for that determination in its rebuttal comments.[210] Education Liberty Watch and others contended that the 2004 social studies standards adequately fulfill the Department's statutory obligation to include the contributions of Minnesota American Indian tribes and communities and alleged that the proposed standards do not improve the manner in which that statutory requirement is met. The Department responded that the feedback obtained by the Standards Committee and the discussion among the Committee members caused the Committee to conclude that this area should be strengthened in the standards. The Department explained in its rebuttal comments the resources upon which the Committee relied in proposing the language contained in the proposed rules.[211]

106. Some individuals commenting on the proposed rules claimed that certain of the Economic standards inaccurately state that interactions between buyers and sellers determine price and the market determines interest rates. The Department disagreed that these standards are inaccurate or misleading and asserted that the standards are based on core principles in the field of Economics. Although the Department acknowledged that there are exceptions to these general rules about price and interest rates, it contended that these exceptions do not invalidate the general concepts presented in the standards.[212]

107. Some individuals expressed concern that there was a lack of content knowledge in the proposed standards regarding national and world geography. In its post-hearing response, the Department disagreed with these contentions and emphasized that the proposed standards include a separate strand devoted to geography and include at least one geography standard in supporting benchmarks at every grade level from kindergarten through grade eight. The Department noted that geography has the same number of associated benchmarks as the other disciplines in

[207] Department's Post-Hearing Rebuttal at 10-11.
[208] Public Ex. 44.
[209] Public Ex. 27.
[210] Department's Post-Hearing Rebuttal at 12-13.
[211] Department's Post-Hearing Rebuttal at 16.
[212] Department's Post-Hearing Rebuttal at 14-15.

kindergarten through third grade and it is the "lead discipline" in grades four and eight (with more benchmarks associated than any of the other social studies disciplines at those grade levels). The Department also emphasized that there are benchmarks for geography at the high school level that are the equivalent of a semester-long course of geography. In the Department's view, the proposed standards will afford students an opportunity to develop a strong background in geographic concepts and skills.[213]

108. Susan Richardson objected to the proposed rules' reference to climate change causing fluctuation in global populations. She asserted that climate change or global warming is a theory rather than accepted scientific law, and alleged that scientific evidence and consensus for that theory is lacking. She also suggested new World History and Economics benchmarks for the Department's consideration.[214] In response, the Department asserted that climate change, including warming, cooling and changes in precipitation patterns, is an established and well-documented scientific occurrence throughout history, and is properly the focus of a History standard which refers to a general cooling of temperatures in the Northern Hemisphere that was known as the "Little Ice Age."[215]

109. Some individuals expressed concerns relating to the discussion of capitalism in the Economics standards. For example, Ms. Holston objected to the failure of the proposed standards to "properly contrast the deprivation, failure, and death associated with communism/command economies with the benefits of capitalism and free markets." She also complained that the phrase "free market" had been removed from the proposed standards.[216] Greg O'Connor commented that the proposed standards fail to mention that market failures are often caused by government interference in the private marketplace.[217] Alexandra Matyja asserted that there were no positive references to capitalism, and no indication that the highest level of prosperity occurs when there is a free market economy and a minimum of government regulations.[218] In its post-hearing response, the Department indicated that the standards describe the function of the market system, otherwise known as "market capitalism," and asserted that calling the concept "free market" capitalism is redundant because an important component of capitalism is competitive or "free" markets. The Department also reiterated that the standards were drafted in a balanced way so as not to promote any particular ideology, belief system, or set of values.[219]

110. Ms. Holsten of Education Liberty Watch expressed concern that the proposed standards are "too neutral regarding the failure of government over-regulation" of the economy. The petition letter submitted by Education Liberty Watch supported the 2004 standards and opposed the proposed modifications. Among other things, the letter asserted that the proposed standards "completely remove the role of

[213] Department's Initial Post-Hearing Response at 37.
[214] Test. of S. Richardson; Public Ex. 2.
[215] Department's Initial Post-Hearing Response at 37-38.
[216] Test. of M. Holsten, T. 40-41; Public Exs. 52, 56.
[217] Test. of G. O'Connor, T. 69; Public Ex. 3.
[218] Test. of A. Matyja, T. 55.
[219] Department's Initial Post-Hearing Response at 41.

heavy-handed government over-regulation and market interference as a cause of market failure, creating the false notion that all market failures are due to problems in allocating resources that can only be repaired by government intervention."[220] James Tucker also commented that the proposed standards fail to discuss the undesirable consequences of government attempts to intervene to correct "market failures."[221] In response, the Department indicated that the standards that have been proposed are deliberately written in a balanced way so as not to promote a particular set of values or a specific political agenda. The Department contended there are multiple opportunities throughout the proposed standards for students to learn about the role of government in the economy and described specific History and Economics standards and benchmarks that would allow such inquiry.[222]

111. Cathryn Weller, a seventh grade social studies teacher, indicated that she does not disagree with the standards and thinks they are well intentioned. She commented that, while the number of standards are reduced in the proposed rules, the number of topics covered in each standard has increased. She expressed frustration with the sequence of topics in middle school and the lack of time to fit in all of the standards, and made suggestions for changing the standards for grades five through eight.[223] Lonni Skrentner (a retired social studies teacher for grades 7-12) was critical of certain benchmarks and also believed that the proposed standards covered too many topics, but found the proposed standards to be rigorous and grounded in fact-based, complex knowledge.[224] Valerie Olson and the two other geography teachers at Bemidji Middle School commented that they were very disappointed in the revised standards for eighth grade because it would be impossible to handle world geography plus world history and economics.[225] Paul Seeba, a ninth grade social studies teacher, commented that, overall, the proposed standards are a definite improvement over the 2004 standards. He noted that it is challenging to teach the concept of comparative advantage to ninth grade AP students, and asked that the Department consider removing the requirement that this concept be taught to eighth grade students. He also expressed concern that the heavier emphasis on geography would push aside education in civics.[226] Bill Rood, a parent and former middle school teacher, commented that the proposed standards are for the most part sound and unbiased, and generally acceptable. He made several specific suggestions for changes and clarifications in the language of the standards and benchmarks.[227]

112. Jason Ulbrich, the Executive Director of a classical charter school,[228] and Dan Tripps, a charter school sixth grade history teacher, recommended that standards not be restricted to specific grade levels, but instead be applied to grade bands K-2, 3-5,

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[220] Public Ex. 52.
[221] Public Ex. 37.
[222] Department's Initial Post-Hearing Response at 38-40.
[223] Test. of Cathryn Weller, T. 48-52; Public Ex. 13.
[224] Test. of Lonni Skrentner, T. 61-67 and 132-135.
[225] Public Ex. 42.
[226] Test. of Paul Seeba, T. 42-48; Public Ex. 1.
[227] Public Ex. 31.
[228] Public Ex. 25.

6-8, and 9-12. They contended that this would allow their schools the flexibility to teach the standards in the grades that are appropriate for their high-achieving students of his school. Mr. Tripps commended the Committee members for their commitment to the process, but indicated that, to his knowledge, no charter school representatives had served on the Committee or been consulted. He asserted that the proposed standards would almost completely remove the classical education content used in sixth grade, and noted that Minn. Stat. § 124D.10, which governs charter schools, indicates that such schools must increase learning opportunities for pupils and encourage the use of different and innovative teaching methods.[229] In response to these concerns, the Department noted that the standards themselves are not grade-specific, but the benchmarks that support the standards in grades K-8 are required by state law to be grade specific.[230]

Determination of Administrative Law Judge regarding the Proposed Rules

113. It is inevitable that there will be disagreement between people about the content that should be included in academic standards, particularly where, as here, the subject matter involves such controversial topics as economics, history, government, and "human" geography. It is apparent that reasonable minds may be divided about the particular academic standards that should be specified in these social studies disciplines, and whether the selected standards will be sufficiently rigorous and raise academic expectations. However, as noted above, an agency is legally entitled to make choices between possible approaches so long as its choice is rational. It is not the role of the Administrative Law Judge to determine which policy alternative presents the "best" approach, since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.[231]

114. The Administrative Law Judge concludes that the Department has shown that there is a rational basis for the proposed standards it has chosen to include in the rules. In compliance with applicable Minnesota law, the Department considered the advice of parents, members of the public, licensed teachers, principals, and school board members throughout the state, as well as faculty teaching core subjects at Minnesota post-secondary institutions and representatives of the Minnesota business community. As described in detail in the SONAR and post-hearing agency responses, the Department formed a Standards Committee that engaged in an extensive process over the course of a year. The process afforded significant opportunities for input from members of the public, experts, consultants, targeted groups, teachers, and special education professionals. The Department also sought the assistance of fifteen expert reviewers with expertise in the areas encompassed by the proposed standards, as well as post-secondary faculty and advanced placement teachers.

115. The Department's SONAR and post-hearing submissions provided an adequate explanation of the need for and reasonableness of the proposed rules, and

[229] Public Ex. 38.
[230] Department's Initial Post-Hearing Response at 5.
[231] *Federal Sec. Adm'r v. Quaker Oats Co.*, 318 U.S. 218, 233 (1943).

the rules fall within the broad authority the Legislature has given to the Department to revise and align the social studies academic standards. The Administrative Law Judge further concludes that, in accordance with applicable case law,[232] the Department has provided ample explanation of the facts on which it is relying and how those facts connect rationally with the approach it has chosen to take in its drafting of the proposed standards. The choices made by the Department concerning the number and content of the standards; its decision to focus on "big picture" concepts rather than specific topics or individuals; its determination that emphasis should be placed on global perspectives; its selection of an approach that highlights both American progress and set-backs; its decision to use neutral wording and not mandate a particular view of the role of religion in American history; and its other drafting decisions are choices that a rational person could have made, and are not arbitrary or unreasonable.

116. Accordingly, the Administrative Law Judge finds that the Department has demonstrated that the proposed academic standards are needed and reasonable, and there are no other problems that preclude their adoption. Although the Department is encouraged to consider the particular suggestions that were made for modifications to the language of the proposed rules (as well as the associated benchmarks) and make modifications if deemed appropriate, no defects are found in the rules as proposed.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department gave proper notice of the hearing in this matter. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.

2. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; 14.15, subd. 3; and 14.50 (i) and (ii).

3. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 4; and 14.50 (iii).

4. Any Findings that might properly be termed Conclusions and any Conclusions that might properly be termed Findings are hereby adopted as such.

5. A Finding or Conclusion of need and reasonableness with regard to any particular rule does not preclude and should not discourage the Department from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based on facts appearing in this rule hearing record.

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[232] *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d at 244.

Based on the Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules, as modified, be adopted, except where otherwise noted above.

s/Barbara L. Neilson

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BARBARA L. NEILSON
Administrative Law Judge

Dated: March 22, 2013