

No. A06-2173

STATE OF MINNESOTA

IN COURT OF APPEALS

Sauk Centre Education Association & Independent School District No. 743
(Sauk Centre),

Relators,

vs.

Alice Seagren, in her Official Capacity as Commissioner of the
Minnesota Department of Education,

Respondent.

RESPONDENT COMMISSIONER OF EDUCATION'S BRIEF

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).

TABLE OF CONTENTS

	Page
LEGAL ISSUE.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
SCOPE AND STANDARD OF REVIEW	11
ARGUMENT	14
I. The Commissioner’s Decision To Reject The School District’s Application For Alternative Teacher Performance Pay Funding Is Not Arbitrary And Capricious And Is Supported By Substantial Evidence.....	14
A. The Commissioner’s Interpretation of “Reform” Is Consistent With The Alternative Teacher Performance Pay Statute.....	14
B. The Commissioner’s Decision Was Not Arbitrary and Capricious Because She Reasonably Applied Statutory Criteria to Record Facts.....	18
CONCLUSION	25

TABLE OF AUTHORITIES

	Page
STATE CASES	
<i>American Family Ins. Group v. Schroedl</i> , 616 N.W.2d 273 (Minn. 2000).....	15
<i>Brookfield Trade Ctr., Inc. v. County of Ramsey</i> , 584 N.W.2d 390 (Minn. 1998).....	13
<i>Cable Comm. Bd. v. Nor-West Cable Comm. P'ship</i> , 356 N.W.2d 658 (Minn. 1984).....	12, 13
<i>Earthburners, Inc. v. County of Carlton</i> , 513 N.W.2d 460 (Minn. 1994).....	24
<i>In re Excess Surplus Status of Blue Cross and Blue Shield of Minn.</i> , 624 N.W.2d 264 (Minn. 2001).....	1, 12, 13, 14
<i>In re Quant. of Eenvtl. Costs</i> , 578 N.W.2d 794 (Minn. Ct. App. 1998).....	1, 12
<i>Independent Sch. Dist. No. 316 v. Eckert</i> , 161 N.W.2d. 692 (Minn. 1968)	24
<i>Mammenga v. State Dept. of Human Servs.</i> , 442 N.W.2d 786 (Minn. 1989).....	1, 13, 14, 25
<i>Minnesota Ctr. for Eenvtl. Advocacy v. City of St. Paul Park</i> , 711 N.W.2d 526 (Minn. Ct. App. 2006)	12, 24
<i>Reserve Mining Co. v. Herbst</i> , 256 N.W.2d 808 (Minn. 1977).....	1, 11, 12, 13
<i>Rodne v. Comm'r of Human Serv.</i> , 547 N.W.2d 440 (Minn. Ct. App. 1996)	12
<i>Saif Food Market v. Comm'r, Dep't of Health</i> , 664 N.W.2d 428 (Minn. Ct. App. 2003)	1, 13, 18
<i>School Serv. Employees Local No. 284 v. Indep. Sch. Dist. No. 270</i> , 499 N.W.2d 828 (Minn. Ct. App. 1993)	12

STATE STATUTES

	Page
Minn. Stat. §§ 122A.413-.16.....	2, 3
Minn. Stat. § 122A.414.....	<i>passim</i>
Minn. Stat. § 122A.414, subd. 1.....	17
Minn. Stat. § 122A.414, subd. 1a.....	4
Minn. Stat. § 122A.414, subd. 2(a).....	2
Minn. Stat. § 122A.414, subd. 2(b).....	<i>passim</i>
Minn. Stat. 122A.414, subd. 2(b)(3).....	9
Minn. Stat. § 122A.414, subd. 3(b).....	7, 22
Minn. Stat. § 122A.4144.....	10
Minn. Stat. § 645.16.....	16, 17

MISCELLANEOUS

Webster's New International Dictionary (3d ed. 1976).....	15
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LEGAL ISSUE

- I. Whether the Commissioner of the Department of Education's decision rejecting the School District's alternative teacher performance pay application is supported by substantial evidence and is not arbitrary and capricious.

Yes. The Commissioner's decision is based on substantial evidence and is not arbitrary and capricious, as supported by written findings, the full record of the Commissioner's decision, and the language and intent of the governing statute.

Reserve Mining Co. v. Herbst, 256 N.W.2d 808 (Minn. 1977)

In re Quant. of Env'tl. Costs, 578 N.W.2d 794 (Minn. Ct. App. 1998)

In re Excess Surplus Status of Blue Cross and Blue Shield of Minn., 624 N.W.2d 264 (Minn. 2001)

Saif Food Market v. Comm'r, Dep't of Health, 664 N.W.2d 428 (Minn. Ct. App. 2003)

Mammenga v. State Dept. of Human Servs., 442 N.W.2d 786 (Minn. 1989)

STATEMENT OF THE CASE

On September 5, 2006, Independent School District No. 743 (Sauk Centre) (“School District” or “District”) applied to the Commissioner for alternative teacher performance pay funding (otherwise known as “Q Comp” funding, or Quality Compensation for Teaching). R. at Exh. 2.¹ The Q Comp program was enacted to “restructure” teacher professional pay while improving student learning. *See generally* Minn. Stat. §§ 122A.413-16. The Commissioner administers Q Comp and provides technical assistance to school districts applying for Q Comp funds. *See, e.g.*, Resp. App. 23-33 (FAQ). Funding is contingent on a school district’s successful development of, among other things, an alternative teacher professional pay system. *See* Minn. Stat. § 122A.414, subd. 2(a). An approved school district receives funding on a modified per-student basis.

A panel of educational experts (“review committee”) examined the School District’s Q Comp application. The committee requested clarifying information from the District on a number of application elements, including the statutory requirement that the District “reform [its] ‘steps and lanes’ salary schedule.” Resp. App. 6 (Sept. 19, 2006 letter). *See* Minn. Stat. § 122A.414, subd. 2(b) (school district must “reform the ‘steps and lanes’ salary schedule”).² The District’s initial application did not “reform” its

¹ Cites to the Commissioner’s Appendix are annotated as Resp. App. ____; to Relators’ Appendix as Rel. App. ____; and to the administrative record as R. ____.

² A traditional schedule bases a teacher’s salary on years of service (“steps”) and educational credentials (“lanes”).

“salary schedule” (which governs a teacher’s base pay). Rather, the District proposed to pay individual teachers a discretionary performance bonus, while retaining base-pay increases tied to seniority and educational credentials. The District declined to submit additional information on the “reform” requirement. *See* Resp. App. 9. Recommending rejection, the committee forwarded the District’s application to the Commissioner for final decision. After reviewing the application file in its entirety, the Commissioner rejected the District’s Q Comp application because the School District failed to reform its salary schedule. The Commissioner informed the District of her Final Determination in writing on September 29, 2006. Resp. App. 13-20.³

On November 15, 2006, the District and its teachers’ union, Sauk Centre Education Association (together “Relators”), sought a *writ of certiorari* from this Court. Relators challenge the Commissioner’s quasi-judicial Final Determination.

STATEMENT OF FACTS

The Q Comp Program

In 2005, the Minnesota legislature adopted an alternative teacher performance pay program, *see* Minn. Stat. §§ 122A.413-.16, commonly referred to as “Q Comp” (or Quality Compensation for Teaching). The program is designed to help school districts⁴ recruit and retain highly qualified teachers, while improving student learning, by

³ An earlier application by the School District also had been rejected, in part because the District failed to adequately address the “reform” requirement.

⁴ The program is open to school districts, schools, intermediate districts, charter schools, and the Perpich Center for the Arts. For ease of reference, we will refer to all applicants as “school districts.”

restructuring the teacher professional pay system to create salary incentives tied to student achievement. The Commissioner implements the program, which generally involves advancement opportunities for teachers, evaluation of teachers and students, and restructured teacher pay. *See* Minn. Stat. § 122A.414.

School districts submit Q Comp funding applications to the Commissioner.⁵ The application contains a budget plus five substantive components that the Commissioner drew from the statute. The substantive components relate to how teachers are trained, evaluated and paid, and include: (1) career advancement opportunities; (2) professional development activities; (3) base at least 60 percent of any teacher compensation increase on performance, using teacher/student performance measures; (4) teacher evaluation; and (5) an alternative professional pay schedule. *See* Rel. App. 1-41a.

Q Comp applications are evaluated by a review committee. If the committee finds an initial application lacking in any one of the required substantive areas, the applicant is notified in writing of the shortcoming(s) and given 30 days to supply additional information. Depending on the sufficiency of the additional information, the panel recommends acceptance or rejection of the application to the Commissioner. The Commissioner reviews the entire application and the panel's recommendations, makes the final decision, and notifies the applicant of the outcome in writing, including reason(s) for the acceptance or rejection. Approximately 34 school districts and 15

⁵ At least one school year before submitting a funding application, the school district also must: (a) submit to the Commissioner a "letter of intent" to apply for funding, and (b) set aside up to two percent of its basic revenue for developing the Q Comp program. *See* Minn. Stat. § 122A.414, subd. 1a.

charter schools have to date received funding under the program, and approximately 134 additional school districts have indicated their intent to submit applications. The Department has rejected approximately 40 school district applications.

Traditionally, school districts have structured teacher compensation on a grid, represented by vertical “steps” (years of service) and horizontal “lanes” (educational credentials). Under the Q Comp statute, however, school districts must “reform” teacher pay to place more emphasis on teacher performance, and must enter into an “alternative” teacher professional pay agreement. The agreement must implement significant changes to the way teachers are evaluated and trained, as well as how they are paid. Q Comp’s payment provisions require school districts to:

- (3) *reform the ‘steps and lanes’ salary schedule, prevent any teacher’s compensation paid before implementing the pay system from being reduced as a result of participating in this system, and base at least 60 percent of any compensation increase on teacher performance using [standardized assessments, measures of student achievement, and objective teacher evaluations].*

Minn. Stat. § 122A.414, subd. 2(b) (emphasis added).⁶

⁶ In its entirety, a school district’s the alternative teacher professional pay system must:

- (1) describe how teachers can achieve career advancement and additional compensation;
- (2) describe how the school district, ... will provide teachers with career advancement options that allow teachers to retain primary roles in student instruction and facilitate site-focused professional development that helps other teachers improve their skills;
- (3) reform the “steps and lanes” salary schedule, prevent any teacher’s compensation paid before implementing the pay system from being reduced as a result of participating in this system, and base at least 60 percent of any compensation increase on teacher performance using:

(Footnote Continued on Next Page)

“Salary schedule” is a term of art that refers to a teacher’s base pay, or salary, independent of other instructional compensation such as a “bonus.” Consistent with the language of the statute, the Commissioner has determined that school districts must “reform” the way increases in teacher *base pay* are calculated, “untying” salary increases from traditional factors such as years of service and moving toward a performance-based salary system. *See* Resp. App. 28, 29 (FAQ). The Commissioner has determined that a school district *also* may offer a performance bonus to teachers, but this must be independent of the statutorily required salary schedule reform. The Commissioner may

(Footnote Continued From Previous Page)

- (i) schoolwide student achievement gains under section 120B.35 or locally selected standardized outcomes, or both;
- (ii) measures of student achievement; and
- (iii) an objective evaluation program that includes:
 - (A) individual teacher evaluations aligned with the educational improvement plan under section 122A.413 and the staff development plan under section 122A.60; and
 - (B) objective evaluations using multiple criteria conducted by a locally selected and periodically trained evaluation team that understands teaching and learning;
- (4) provide integrated ongoing site-based professional development activities to improve instructional skills and learning that are aligned with student needs under section 122A.413, consistent with the staff development plan under section 122A.60 and led during the school day by trained teacher leaders such as master or mentor teachers;
- (5) allow any teacher in a participating school district, ... that implements an alternative pay system to participate in that system without any quota or other limit; and
- (6) encourage collaboration rather than competition among teachers.

Minn. Stat. § 122A.414, subd. 2(b).

deny funding if school districts do not commit to salary schedule reform,⁷ and the Q Comp statute explicitly provides that the Commissioner may withdraw funding if school districts fail to live up to their reform commitments. *See* Minn. Stat. § 122A.414, subd. 3(b).

The Department of Education has provided training and technical assistance to school districts applying for Q Comp funding, and has highlighted the specific need for and requirements of salary schedule reform. *See, e.g.,* Resp. App. 52 (alternative pay component materials); Resp. App. 29, 40 (FAQ; presentation materials). Indeed, the Department has emphasized the very point that the School District now contests; namely, that salary schedule reform “is not simply a ‘bonus’ system on top of steps,” but rather “a permanent increase or partially permanent increase in the base salary of the individual who has successfully met the requirements for additional compensation under the district[']s reformed salary schedule.” *See* Resp. App. 51 (component description). *See also* Resp. App. 29 (FAQ) (“A new salary schedule must ‘untie’ compensation based solely on seniority and education course credit system and move to one that is

⁷ Recognizing the difficulty of reopening existing teacher contracts, and in light of contract settlement requirements set by state law, the Commissioner conditionally approved some Q Comp applications in 2005 and 2006 for school districts that committed to negotiate salary reform into their *next* two-year teacher contracts (the 2007-09 cycle). This was because the 2005 Legislature did not adjourn its special session until mid-July, and districts only had until January 15, 2006 to settle teacher contracts or, for the first time in six years, they would face financial penalties. Under those contracting pressures, the Commissioner permitted school districts that needed extra time -- but that committed to reform -- to proceed with Q Comp on a conditional basis. Unlike these other districts, the School District failed to commit to any reform of the salary schedule, now or in its next contract. *See infra* Part I.B.

performance-based.”); Resp. App. 40 (presentation materials) (“Under the Q Comp program, a school district will need to negotiate a new salary schedule that is not based exclusively [on] and ‘reforms’ the lockstep steps and lanes system.”). The School District had the benefit of this technical assistance.

School District’s Application for Q Comp Funding

The School District first applied for alternative teacher performance pay funding in May 2006. The Commissioner ultimately rejected the District’s application in August 2006 because of concerns with each of the five required substantive areas, including the District’s failure to reform its steps and lanes salary schedule. *See* Resp. App. 52-54 (Aug. 2006 rejection letter).

The District reapplied for Q Comp funding on September 5, 2006.⁸ The District’s September 2006 application also failed to “reform” the steps and lanes salary schedule as required by the statute. Instead, the District proposed to offer each teacher only a discretionary annual bonus of up to \$1,000, based on teacher performance, while retaining its old lockstep salary schedule based on years of service and educational credentials.⁹ In section 5 of the application, which requested a description of the

⁸ The Commissioner categorizes applications by the date they are received.

⁹ It also is not clear how the School District’s proposed discretionary bonus served the statute’s goal of rewarding good teaching, when the vast majority (80%) of the “discretionary” bonus was awarded for meeting a relatively low performance threshold. The threshold was met, for example, if the teacher’s “spoken language is audible, and written language is legible”; “some activities and assignments are appropriate to students and engage [the students] mentally, but others do not”; and s/he “has only a limited repertoire of strategies” to help students who have difficulty learning. *See* R. at Exh. 2 (Danielson rubric attachment).

District's new salary schedule, the District simply repeated its description of the performance pay bonus from section 3 of its application. *See* Rel. App. 38-39 (Sept. 27, 2006 submission).¹⁰

The panel reviewed the September 5 application and, on September 19, 2006, requested clarification from the District on five of the six required elements (all areas except the budget). With respect to salary schedule reform (Component #5), the Commissioner's September 19, 2006 letter requested a "descri[ption] of how the salary schedule has been revised as required under Minn. Stat. 122A.414, subd. 2(b)(3)." Resp. App. 6. The District provided no additional information to the Commissioner on this component of its plan.

In an attempt to promptly resolve this and other remaining issues, the Commissioner scheduled a conference with the School District and teachers' union officials. Prior to the conference, the Commissioner circulated another list of clarification requests, again seeking further information from the District about its salary schedule reform. Resp. App. 11-12 (Sept. 28, 2006 e-mail from P. King to Supt. Brooks)

¹⁰ The School District did not use the official Q Comp application form until its final submission on or about September 28, 2006. *See* R. at Exh. 5; Rel. App. 1-41a. However, only the earlier submissions contained all of the relevant attachments. When citing to the application, therefore, the Commissioner refers to the September 28, 2006 version (which appears in Relators' Appendix at pp. 1-41a but is misdated in Relators' Index). When discussing certain attachments, however, the Commissioner refers to the original September 5, 2006 submission. R. at Exh. 2. All versions of the School District's application are contained in the administrative record. *See, e.g.*, R. at Exh. 2 (Sept. 5, 2006); R. at Exh. 5 (Sept. 28, 2006) (includes attachments from Exhibit 2).

(with respect to Component #5 (salary reform), the Commissioner asked: “Are there revisions to the salary schedule? Please help us understand this.”)

When it became apparent at the conference that the School District did not intend to reform its current salary schedule, the Commissioner gave the District the option of maintaining its salary schedule for the duration of its master agreement so long as the District now committed to pursue full salary reform in its next negotiation cycle (2007-09). The Commissioner has accepted this type of partly deferred Q Comp proposal from other school districts, in recognition that reopening an existing teacher contract, while permissible under the Q Comp statute, may not always be practicable.¹¹ In a follow-up e-mail, however, the District specifically rejected the Commissioner’s offer, indicating that its proposed teacher “bonus” sufficed as salary schedule “reform” under the statute. *See* Resp. App. 9 (“It is believed that our submitted 5.3 [bonus] provisions adequately address the requirements of the statute.”)

In a written decision issued on September 29, 2006, the Commissioner rejected the School District’s application for alternative teacher performance pay funding for failure

¹¹ Even though the Q Comp statute amended the Public Employees Labor Relations Act (“PELRA”) to permit school districts to reopen existing union contracts for purposes of negotiating an alternative salary schedule, *see* Minn. Stat. § 122A.4144, many school districts were not as a practical matter in position to reopen their contracts. Some school districts, for example, recently had renegotiated new two-year teacher contracts, and the Q Comp statute’s requirement that any new schedule not reduce individual teacher salaries below existing levels would have proved financially difficult for the school district. For other districts, new contract negotiations were to begin in only a matter of months, and the Commissioner, in her discretion, believed that implementation of the rest of the Q Comp program -- training, staff development, evaluation -- should not be delayed, on condition that reform ultimately be achieved.

to reform its steps and lanes salary schedule as required by the statute. Resp. App. 13-20.

The Commissioner clearly stated the statutory basis for her decision:

[Component #5: Alternative professional pay schedule] One of the requirements in this area is to “reform” the steps and lanes salary schedule and to tie pay to teacher performance and student performance. The [School District’s] alternative pay schedule was not accepted. The following revisions or clarifications are necessary:

The full \$1,000 of performance pay outlined in component three [performance pay] is paid as a one time additional stipend to all teachers. Movement on the salary schedule is not changed in any way by this addition of performance pay. Some reform to the salary schedule itself is required to meet the requirement of Minn. Stat. 122A.414, subd. 2(b) . . .

School districts approved under the Q Comp program have agreed to reform their current salary schedule starting with the 2006-07 school year or add to their memorandum of understanding that they will transition to a reformed salary schedule in their next contract for 2007-09. It is the department’s understanding that Sauk Centre Public Schools, through its application and based on discussions at meetings with the department, is not interested in entering into this type of agreement or in reforming the salary schedule. Therefore, we cannot approve your application under this component.

Resp. App. 19-20 (Sept. 29, 2006 Final Determination). Relators, represented by Education Minnesota (which is not a party to this case), sought a writ of *certiorari* from this Court on November 15, 2006. Relators challenge the Commissioner’s quasi-judicial decision.

SCOPE AND STANDARD OF REVIEW

The Court of Appeals reviews administrative decisions, such as the Commissioner’s September 29, 2006 final determination, under a narrow standard. Agency decisions “enjoy a presumption of correctness[.]” *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 824 (Minn. 1977). This considerable judicial deference is rooted in the

separation of powers doctrine. *Id.* See also *In re Quant. of Env'tl. Costs*, 578 N.W.2d 794, 799 (Minn. Ct. App. 1998), *rev. denied* (Aug. 18, 1998); *Cable Comm. Bd. v. Nor-West Cable Comm. P'ship*, 356 N.W.2d 658, 668 (Minn. 1984).

On a writ of *certiorari*, a court's review is limited to determining whether the agency decision is based on an error of law, is arbitrary or capricious, or is not supported by substantial evidence. *School Serv. Employees Local No. 284 v. Indep. Sch. Dist. No. 270*, 499 N.W.2d 828, 831 (Minn. Ct. App. 1993). As this Court has observed,

[o]n certiorari appeal from a quasi-judicial agency decision that is not subject to the Administrative Procedure Act, we inspect the record to review questions affecting the jurisdiction of the [agency], the regularity of its proceedings, and, as to the merits of the controversy, whether the order or determination in a particular case was arbitrary, oppressive, unreasonable, fraudulent, under an erroneous theory of law, or without any evidence to support it.

Rodne v. Comm'r of Human Serv., 547 N.W.2d 440, 444-45 (Minn. Ct. App. 1996).

An agency decision is arbitrary and capricious when

the agency relied on factors the legislature never intended it to consider, if it entirely failed to consider an important aspect of the problem, if it offered an explanation for the decision that runs counter to the evidence, or if the decision is so implausible that it could not be ascribed to a difference in view or the result of agency expertise.

Minnesota Ctr. for Env'tl. Advocacy v. City of St. Paul Park, 711 N.W.2d 526, 534 (Minn.

Ct. App. 2006). The agency's conclusions are not arbitrary and capricious "[s]o long as a 'rational connection between the facts found and the choice made' has been articulated."

In re Excess Surplus Status of Blue Cross and Blue Shield of Minn., 624 N.W.2d 264, 277 (Minn. 2001).

In reviewing an agency's factual determinations, the court considers whether substantial evidence in the record as a whole supports the agency's findings. *Reserve Mining*, 256 N.W.2d at 826. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *Saif Food Market v. Comm'r, Dep't of Health*, 664 N.W.2d 428, 430 (Minn. Ct. App. 2003), "in view of the entire record as submitted." *Cable Comm. Bd.*, 356 N.W.2d at 668-69. "[I]f the ruling by the agency decision-maker is supported by substantial evidence, it must be affirmed." *In re Excess Surplus*, 624 N.W.2d at 279.

Courts review agency interpretations of statutes de novo, *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998), under a rational basis test. *See Mammenga v. Dept. of Human Servs.*, 442 N.W.2d 786, 789-90 (Minn. 1989). The agency's interpretation will be upheld if it is rationally related to the legislative objective to be achieved. *Id.* If there is any doubt about the meaning of a statute, "courts should give great weight to a construction placed upon it by the Department charged with its administration." *Id.* at 792 (citation omitted). *See also Reserve Mining*, 256 N.W.2d at 824 ("deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education and experience").

ARGUMENT

I. THE COMMISSIONER'S DECISION TO REJECT THE SCHOOL DISTRICT'S APPLICATION FOR ALTERNATIVE TEACHER PERFORMANCE PAY FUNDING IS NOT ARBITRARY AND CAPRICIOUS AND IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The Commissioner's decision to reject the School District's Q Comp application is not arbitrary and capricious because it is based on a rational connection between the facts and the law. *See In re Excess Surplus*, 624 N.W.2d at 277. *See also Mammenga*, 442 N.W.2d 786. The Commissioner rationally determined that the Q Comp statute required real "reform" of a school district's steps and lanes salary schedule -- not simply a performance pay "veneer" -- and that the School District's application failed to meet this requirement. The decision to reject the District's Q Comp application was a reasonable exercise of the Commissioner's judgment.

A. The Commissioner's Interpretation of "Reform" Is Consistent With The Alternative Teacher Performance Pay Statute.

The Commissioner's interpretation of the word "reform" is consistent with the Q Comp statute. As noted above, the statute requires that a school district "reform [its] 'steps and lanes' salary schedule" as a condition of Q Comp funding. Minn. Stat. § 122A.414, subd. 2(b). As Q Comp program administrator, the Commissioner interpreted "reform" to require that the School District's salary schedule be "untied" from traditional seniority and educational credentials factors. By contrast, Relators attempt to cast the "reform" requirement as non-substantive, as mandating merely that pay systems be put in a "better form." Relators' Brief at 5. Relators' argument is misplaced. It ignores the context in which the term is used, as well as overlooking the Commissioner's

discretion to interpret the statute to facilitate the administration of limited state funds.

On its face, the term “reform” in the Q Comp statute appears clear enough -- it implies reshaping or recasting, or, according to Webster, “amend[ment] or improve[ment] by change of form or by removal of faults.” WEBSTER’S NEW INTERNATIONAL DICTIONARY (3d ed. 1976). Amendment is necessary. Relators acknowledge that teacher pay must be restructured, *see* Relators’ Brief at 7-10, and the School District’s application clearly introduces new elements into the District’s overall pay system. Relators’ non-substantive notion of “reform,” however, must be rejected.

Dictionary definitions of “reform” are a useful starting point but cannot be the end of the analysis. The word “reform” must be read in its statutory context. *See, e.g., American Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). The Q Comp statute requires school districts to “*reform* the steps and lanes *salary schedule*.” Minn. Stat. § 122A.414, subd. 2(b) (emphasis added). The term “salary schedule” is a term of art and refers to a teacher’s *base pay*, not a teacher’s total compensation package (as Relators suggest). On its face, this clause requires that the calculation of increases in a teacher’s *base pay* be re-formed. Relators repeatedly mischaracterize the statute’s requirement as reform of the “pay system,” which they describe as including base salary as well as other instructional compensation such as a performance bonus. *See, e.g.,* Relators’ Brief at 5-10. While it is true that Q Comp as a whole aims to restructure the teacher professional pay system, and that this may include a performance bonus, the “reform” requirement specifically applies to the “salary schedule.” There is no “reform” of the “salary schedule” for purposes of Q Comp if a teacher’s base pay increase in any

given year is still determined by the old factors (years of service and educational credentials). The Commissioner's conclusion that statutory "reform" requires change in the way teacher *base pay* is calculated is reasonable and consistent with the Q Comp statute.

The Commissioner's position is further supported by the statutory context in which the term "reform" resides. As set forth in the Statement of Facts, a school district's alternative performance pay program (in addition to meeting separate training and evaluation requirements) must accomplish three things with respect to teacher pay: (1) it must base at least 60 percent of any compensation increase on teacher performance, as specifically defined in the statute; (2) it must ensure that no individual teacher's salary is reduced as a result of the new plan; *and* (3) it must reform the steps and lanes salary schedule. *See* Minn. Stat. § 122A.414, subd. 2(b). Relators wrongly assume that satisfaction of the first factor (through a one-time performance bonus) will satisfy the third factor's "reform" requirement. That is not the case. The Commissioner has determined that the statute imposes three independent requirements.¹² Every law must be construed, if possible, to give effect to all its provisions. Minn. Stat. § 645.16. While the School District's application included performance pay, it did so only in the form of a bonus, and it did not also "reform" the salary schedule as required by the statute.

¹² This is comparable to the Q Comp application form developed by the Department, which requires (and separately evaluates) both performance pay (element #3) *and* an alternative professional pay schedule (element #5). *See, e.g.*, Resp. App. 21 (program components description); Rel. App. 31-33, 38-39 (School District application -- parts 3 and 5).

The legislature's intent that "reform" extend to a teacher's base pay is even clearer when viewed in the context of the entire Q Comp statute. *Cf.* Minn. Stat. § 645.16. Q Comp was enacted to "restructure" teacher professional pay to promote greater retention of highly qualified teachers and support teacher growth while improving students' educational achievement. *See* Minn. Stat. § 122A.414, subd. 1. In the recent years of limited state funding, the Minnesota legislature does not lightly provide long-term funding for new school district programs. Q Comp was intended to radically change the way teachers are paid by focusing exclusively on how teachers meet identified school needs. *See, e.g.,* Resp. App. 21-22 (program components). Participation in this rigorous program is purely voluntary, and Q Comp funds are available *only* to those school districts willing to make substantive changes. The legislature plainly did not intend Q Comp funds to flow to a school district that continues to grant lockstep salary increases for teachers based on seniority, regardless of whether performance goals have been met. This, however, is precisely what the School District proposed.¹³ Q Comp's long-term funds are conditioned on making fundamental change to the way that teachers are trained, evaluated and paid. The Commissioner's conclusion that the District must reform its salary schedule as a condition of receiving Q Comp funds was reasonable and consistent

¹³ This is not to discount the value of experienced teachers, but rather to note that, for purposes of Q Comp, the legislature has determined that such value must be measured in terms of teacher performance and not years of service.

with Q Comp's language and intent.¹⁴

The evidence in support of the Commissioner's interpretation of "reform" is substantial. *See Saif Food Market*, 664 N.W.2d at 430 (substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). The legislative mandate to change teacher *base salary* calculations is clear from the letter and spirit of the statute. The Department has taken a reasonable and consistent position on this requirement in all of its training and technical assistance materials and in its review of individual applications. *See infra*. Relators do not provide any evidence to support their argument that simply retaining a pre-existing steps and lanes format satisfies the *salary schedule* "reform" requirement. Consequently, the Commissioner's interpretation of the Q Comp statute is not arbitrary and capricious and should be upheld.

B. The Commissioner's Decision Was Not Arbitrary and Capricious Because She Reasonably Applied Statutory Criteria to Record Facts.

The Commissioner's decision likewise was not arbitrary and capricious because she reasonably applied the Q Comp statutory criteria to the facts of the School District's Q Comp application.

¹⁴ In fact, it was the Department of Education that proposed the term "reform" to legislators drafting the Q Comp bill. This term was selected over other terms such as "eliminate" to allay school district concerns that Q Comp forbade all forms of salary "schedule." To the contrary, by using "reform," the Department intended to enable school districts to maintain a salary "schedule," but one based on factors other than seniority and educational credentials.

As discussed above, the Q Comp application, consistent with the statute, requires that school districts implement an alternative professional pay schedule, which contains elements of performance pay *and* a revised salary schedule. Section 5 of the application requires the school district to describe its salary schedule proposal.

The School District's application failed to address reform of its salary schedule, but instead restated the application's separate and independent "performance pay" (or bonus) provisions. *See* Rel. App. 38-39. On at least two separate occasions, as previously noted, the Commissioner gave the School District the opportunity to clarify how its application "reformed" the *salary schedule* as required by statute. On the first occasion, the District failed to provide a response, and on the second, it simply stated simply that, in its view, the application's "bonus" provisions satisfied the terms of the statute. The District also rejected the Commissioner's offer to allow transitional reform of the salary schedule in the next teacher contract cycle. All of these facts are undisputed.

Based on her reasonable conclusion that these undisputed facts failed to satisfy the salary schedule "reform" required by the Q Comp statute, the Commissioner rejected the School District's Q Comp application. Relators have produced no evidence showing that the Commissioner's measured and objective decision was arbitrary and capricious. Consequently, her decision should be upheld.

Moreover, as demonstrated by the decisions attached in the Commissioner's appendix, Relators' application was treated no differently than other Q Comp

applications.¹⁵ Even the partial decisions submitted by Relators (as completed by the Commissioner's appendix) support the Commissioner's position. Contrary to Relators' assertions, *see* Relators' Brief at 10-11, no school district approved for Q Comp funding refused to reform its salary schedule.

For the Court's reference, the Commissioner has arranged the attached applications into three groups. The first group includes three examples of approved applications where full reform of the salary schedule was undertaken up front. *See* Resp. App. 55-84 (Grand Meadow Independent School District, Mounds View Public Schools, St. Francis Public Schools, and Grand Meadow Independent School District). As is evident from these applications, school districts have successfully "reformed" their salary schedules in a variety of ways, using performance rather than seniority to calculate increases in base pay. Horizontal movement on the new schedule may also be based on the attainment of educational credentials, where that is judged by the school district to be part of overall teacher performance. *See, e.g.*, Resp. App. 65-68. Like the School District, these districts provide bonuses to teachers for exemplary performance, but, unlike the School District, they *also* reformed their salary schedules.

¹⁵ Q Comp applications and final decision letters for Q Comp applicants are public documents. Final approval letters may be found on the Department's website at http://education.state.mn.us/MDE/Teacher_Support/QComp/Implementing_QComp/QComp_Application/Public_School_Letters/index.html. The remainder of the Q Comp application is available upon request. While such documents are not part of the administrative record of this particular decision, a sample of the Commissioner's other Q Comp decisions may be useful to the Court in assessing the Commissioner's consistent application of statutory requirements.

The second group of applications are those partially provided by Relators, as completed by the Commissioner in her appendix.¹⁶ Contrary to Relators' assertions, while these programs have features similar to those proposed by the School District, they were not identical to the School District's proposal in at least one significant respect: each of these approved school districts pledged to reform their salary schedules.¹⁷ Understanding the difficulty of reopening salary negotiations mid-contract, and understanding that negotiations on the next master agreement would resume within months for most districts, or at most a year, the Commissioner approved these applications *on condition that* their next master agreement reflect full salary schedule reform. These districts must keep the Commissioner apprised of their ongoing salary

¹⁶ This group includes the following school districts: Alexandria; Brainerd; Brandon; Clearbrook-Gonvick; Centennial; International Falls; North St. Paul-Maplewood-Oakdale, Pine River-Backus; Proctor; St. Cloud; St. Louis Park; and South St. Paul.

¹⁷ See, e.g., Resp. App. 101 (Brainerd: "an Alternative Teacher Performance Pay System will continue to be discussed as part of the 2007-2009 teacher contract"); Resp. App. 147 (Pine River-Backus: same); Resp. App. 106-07 (Brandon: "The District and Teachers' union have agreed to discuss the development of an appropriate salary schedule for the next Master Agreement"); Resp. App. 112-13 (Centennial: "During the 2007-2009 teacher negotiations process, reforming the schedule will be addressed. Negotiations are expected to be initiated in the spring of 2007 and complete no later than January 15, 2008"); Resp. App. 158, 165 (St. Cloud: performance pay model "lays the framework for the transition from steps to performance-based increments . . . [T]hese two years will serve as a transition period for further salary structure modifications per Q-Comp expectations"); Resp. App. 118, 121 (Clearbrook-Gonvick: same); Resp. App. 188, 189 (South St. Paul: included negotiation schedule for salary schedule reform).

negotiations,¹⁸ and the Commissioner may cease Q Comp funding if these salary schedule obligations are not met. *See* Minn. Stat. § 122A.414, subd. 3(b). The Commissioner is following up with school districts to ensure that negotiations are proceeding on schedule.

The decision to grant approval to these districts was the Commissioner's concession to the reality of renegotiating existing teacher contracts and was well-within the Commissioner's discretion as administrator of a complex and evolving funding program. The Commissioner also determined that conditional approval was appropriate to permit other important aspects of the districts' Q Comp programs to proceed without delay during salary negotiations, including substantial staff development, new forms of teacher assessment, and significant new career opportunities for teachers. This likewise was within her discretion as program administrator.

The third group includes examples of other school districts' Q Comp applications that were rejected for, among other things, failure to satisfy the salary schedule reform component. While no other district has taken the School District's position that salary

¹⁸ *See, e.g.*, Resp. App. 96 (Brainerd: "As a condition of approval a final ratified contract including the salary schedule will need to be submitted to [the Department] as soon as possible"); Resp. App. 172 (St. Louis Park: same); Resp. App. 103 (Brandon: "As a condition of approval, the district and teachers union will create a more complete timeline for reforming the salary schedule and negotiate an alternative salary schedule in the next contract in accordance with the timeline"); Resp. App. 110 (Centennial: same); Resp. App. 123-24 (International Falls: 2006-07 and 2007-09 salary negotiations will recognize and incorporate base salary augmentations utilizing Q comp revenue); Resp. App. 156, 166 (St. Cloud: "As a condition of approval, the District and [union] will continue to work on the transition and provide the Department of Education with information as this transition continues"); Resp. App. 183, 190 (South St. Paul: acknowledging timeline for negotiating reformed salary schedule).

schedule reform is not mandated by the statute, the Commissioner has rejected applications where, for example, only superficial reform was proposed, *see* Resp. App. 199, 201 (Byron: “step” on salary schedule relabeled as “career advancement increment” but formula unchanged); Resp. App. 203, 206, 207-09 (Rocori: same; “step” relabeled as “career rung”); or where requests for a revised salary schedule went unaddressed, *see* Resp. App. 192, 196 (Blackduck).

Unlike all of these other districts, the School District expressed no intent to reform the its salary schedule -- indeed, the District denied that *any* reform to teacher base pay was required so long as a discretionary bonus was available. Relators are simply incorrect. It is generally understood, by the Commissioner and by participating school districts, that salary schedule reform is a condition of participation in the Q Comp program. Indeed, one school district, whose transitional reform proposal was approved in early 2006, recently notified the Commissioner that it no longer will be participating in the Q Comp program because ultimately it was unable to reach agreement with its union on salary schedule reform. *See* Resp. App. 140 (North St. Paul-Maplewood Dec. 7, 2006 letter).¹⁹ The Commissioner is permitted to make reasonable distinctions among

¹⁹ Relators’ alternative assertion that the School District’s discretionary bonus did in fact reform the salary schedule should be rejected as well. The District’s application clearly states that the bonus -- entitled Teacher Performance Pay -- is “compensation above and beyond the salary,” *see* Rel. App. 41a, confirming that no changes to the salary schedule were made.

(Footnote Continued on Next Page)

applicants for limited public funds. In this case, the Commissioner reasonably determined that commitment to reforming the school district's *salary schedule* -- base pay calculations -- was a funding threshold.

Finally, there is no evidence that any improper considerations contributed to the Commissioner's decision. This is not a case where the agency's decision was hasty, *see Earthburners, Inc. v. County of Carlton*, 513 N.W.2d 460 (Minn. 1994), or where the agency may have based its decision on factors the legislature never intended it to consider, *cf. Minnesota Ctr. for Env'tl. Advocacy*, 711 N.W.2d at 534. The undisputed evidence established that the School District failed to "untie" teacher base pay from the traditional seniority and educational credentials format, as required by the statute. Under these circumstances, the District's unwillingness to consider reforming its steps and lanes salary schedule "not only permit[ted]" the Commissioner to reject the District's application "but virtually compel[led] that conclusion." *See Independent Sch. Dist. No. 316 v. Eckert*, 161 N.W.2d 692, 696 (Minn. 1968) (upholding agency decision where

(Footnote Continued From Previous Page)

Indeed, the School District's proposed salary schedule runs contrary to the notion of Q Comp reform in both concept and in fact. Under the proposed schedule, the School District's teachers continue to receive base pay increases purely on the basis of seniority, whether or not their performance goals have been met. As a percentage of base salary, the most senior teachers receive automatic increases that are up to three times higher than those given to beginning teachers, even though their educational credentials are the same. In the BA+45 lane, for example, the automatic increase from year 1 to year 2 is \$977, or a 3.0% increase in salary, while the increase from year 13 to year 14 is \$4,433, or a 9.2% increase in salary; these differences are for teachers whose educational credentials are comparable. *See Rel. App. 41a*. As a pure dollar amount, the proportional disparities are even greater. This clear preference for seniority is not mitigated with the addition of a \$1,000 "performance bonus."

relator acknowledged facts supporting decision). The Commissioner thoroughly explained the rationale for her decision in her Final Determination. The record clearly shows that the Commissioner's decision was an exercise of her "judgment," not her "will." See, e.g., *Mammenga v. Dept. of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989). Relators have failed to demonstrate that the Commissioner's decision is either arbitrary or capricious.

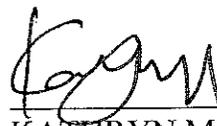
CONCLUSION

For the above-cited reasons, the Commissioner respectfully requests that the Court affirm the Commissioner's decision rejecting Relators' application for Q Comp funding.

Dated: January 17, 2007

Respectfully submitted,

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