

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF EDUCATION

In the Matter of Proposed Adoption of  
Rules of the State Board of Education  
Relating to Graduation Standards  
Profile of Learning, Minn. Rule  
Parts 3501.0300 to 3501.0469.

**REPORT OF THE**  
**ADMINISTRATIVE LAW JUDGE**

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck on February 5, 1998 in the auditorium of the Capitol View Conference Center, Roseville, Minnesota. The hearing was reconvened in the same location at 7:00 p.m. on that date. The hearing resumed on February 6, 1998, at 9:00 a.m. and continued until all interested persons had been heard.

This Report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Board of Education (the Board) has fulfilled all relevant substantive and procedural requirements of law applicable to the adoption of the rules, whether the proposed rules are needed and reasonable and whether or not modifications to the rules proposed by the Board after initial publication are substantially different.

Elaine J. Erickson, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Board at the hearing. The Board's hearing panel consisted of Robert J. Wedl, Commissioner of Children, Families and Learning (CFL); Susan E. Phillips, consultant to CFL; Jesse Montano, Manager for the Division of the Office of State and Federal Programs for CFL; and Wayne Erickson, Manager of the Office of Special Education for CFL. Witnesses called by the Board included Michael Lindstrom of the Minnesota Professional Education Association; Linda Forbes, Senior Consultant in Community and Economic Development of the Northern States Power Company; Carolyn Olson, Assistant Director of the Minnesota River Valley Education District; Linnea Swanson, a Teacher in the Richfield Public Schools and a Graduation Standards Implementation Coordinator; and John Augenblick, a consultant with the firm of Augenblick & Myers.

Approximately one hundred and eighty-five persons attended the February 5 morning hearing. One hundred and forty-two persons signed the hearing register for

that session. Approximately forty-five persons attended the February 5 evening session. Twenty-four persons signed the hearing register for that session. Ten persons attended the February 6 hearing session. One person signed the hearing register for that day. Each hearing session continued until all interested persons, groups or associations had an opportunity to be heard at least once concerning the adoption of these rules.

The record remained open for the submission of written comments for nineteen calendar days following the hearing, to February 25, 1998. Pursuant to Minn. Stat. § 14.15, subd. 1, five working days were allowed for the filing of responsive comments. At the close of business on March 4, 1998, the rulemaking record closed for all purposes. The Administrative Law Judge received over 800 written comments from interested persons during the comment period. The Board submitted written comments responding to matters discussed at the hearings and proposing further modifications to the rules.

The Board must wait at least five working days before the agency takes any final action on the rule(s); during that period, this Report must be made available to all interested persons upon request.

### **Notice**

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rules. During that time, this Report must be made available to interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 and 4, this Report has been submitted to the Chief Administrative Law Judge for his approval. If the Chief Administrative Law Judge approves the adverse findings of this Report, he will advise the Board of actions which will correct the defects and the Board may not adopt the rule until the Chief Administrative Law Judge determines that the defects have been corrected. However, in those instances where the Chief Administrative Law Judge identifies defects which relate to the issues of need or reasonableness, the Board may either adopt the Chief Administrative Law Judge's suggested actions to cure the defects or, in the alternative, if the Board does not elect to adopt the suggested actions, the Board must submit the proposed rule to the Legislative Coordinating Commission for the Commission's advice and comment.

If the Board elects to adopt the actions suggested by the Chief Administrative Law Judge and makes no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, then the Board may proceed to adopt

the rule and submit it to the Revisor of Statutes for a review of the form. If the Board makes changes in the rule other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, then the Board shall submit the rule, with the complete record, to the Chief Administrative Law Judge for a review of the changes before adopting it and submitting it to the Revisor of Statutes.

When the Board files the rule with the Secretary of State, the Board shall give notice on the day of filing to all persons who requested that they be informed of the filing.

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

### **FINDINGS OF FACT**

#### **Procedural Requirements**

1. On November 26, 1997, the Board requested the scheduling of a tentative hearing date and filed the following documents with the Chief Administrative Law Judge:

- (a) a copy of the proposed rules certified by the Revisor of Statutes;
- (b) a Dual Notice of Hearing under Minn. Stat. § 14.22, subd. 2 and a Notice of Hearing under Minn. Stat. § 14.22, subd. 1, proposed to be issued; and
- (c) a draft of the Statement of Need and Reasonableness (SONAR).

2. On November 26, 1997, the Board filed a notice plan under Minn. Stat. § 14.22 and requested approval of the plan. The notice plan was approved by the Administrative Law Judge on December 3, 1997.

3. On December 8-12, 1997, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Board for the purpose of receiving such notice. The Board also mailed notice on the same date to the persons and organizations identified in the additional notice plan. The recipients included media outlets, school officials, public libraries, high school student council presidents, local school district parent/teacher organizations, the Minnesota Association of Student Councils, the Minnesota Multicultural Education Advisory Committee, educational organizations, special education directors, limited English proficient project directors, graduation standards pilot site directors, and Minnesota legislators. The Board posted the Notice of Hearing and proposed rules on the internet at <http://cfl.state.mn.us> on December 10, 1997. The SONAR was hand-delivered to the Legislative Librarian on December 8, 1997.

4. On October 30, 1995, the Notice of Hearing and the proposed rules were published at 20 State Register 961.

5. At the hearing in this matter, the Board filed the following documents with the Administrative Law Judge:

- A) Request for Comments (January 1997);
- A1) affidavit of mailing Request for Comments to persons and associations that have requested to receive notice of the proposed adoption of rules by the Board;
- A2) certificate of list of persons, associations, and other interested groups who have requested to receive notice of the proposed adoption of rules by the Board;
- A3) request for approval of additional mailing plan for Request for Comments;
- A4) Judge Beck's approval of additional mailing plan for Request for Comments;
- A5) affidavit of mailing Request for Comments to superintendents of public school districts statewide;
- A6) affidavit of mailing Request for Comments to special education Directors statewide;
- A7) affidavit of mailing Request for Comments to limited English proficient project directors statewide;
- A8) affidavit of mailing Request for Comments to statewide educational organizations;
- A9) affidavit of mailing Request for Comments to Graduation Standards Pilot Site Directors;
- A10) affidavit of mailing Request for Comments to public libraries statewide;
- A11) affidavit of mailing Request for Comments to MN Association of Student Councils;
- A12) affidavit of mailing Request for Comments to Student Council Presidents in high schools statewide;
- A13) affidavit of mailing Request for Comments to school

- district parent organizations statewide;
- A14) affidavit of mailing Request for Comments to Minnesota State Legislators: members of the Senate Education Committee, Senate Education Division - K-12 funding; House Education Committee, House K-12 Education Finance Division;
  - A15) affidavit of mailing Request for Comments to newspapers for communities of color;
  - A16) Resolution Authorizing Notice of Request for Comments;
  - A17) Certificate of Resolution Authorizing Notice of Request for Comments;
  - A18) Request for Comments;
  - A19) Request for Comments (double-spaced);
  - A20) Request for Comments as published in the State Register 21 S.R. 1063-1064;
  - B) comments received by the Board;
  - C) the proposed rules Relating to Graduation Rule, Profile of Learning, with the approval of the Revisor of Statutes;
  - D) Statement of Need and Reasonableness (SONAR);
  - E) transmittal of Statement of Need and Reasonableness to Legislative Reference Library;
  - F) Notice of Hearing and Intent to Adopt Rules;
  - G) mailing of Notice of Intent to Adopt Rules at a Hearing;
  - H) letters regarding the Board's Notice Plan;
  - I) mailing of additional Notice of Hearing and Intent to Adopt Rules;
  - J) the Order of Hearing;
  - K) telephone comments; and

- L) written comments received by the Administrative Law Judge.

#### Graduation Rules Development Process.

6. In 1990, the Board formed the Graduation Standards Committee to review data, solicit input from interested persons, and make recommendations to the Board on what modifications can be made to improve the performance of Minnesota students. SONAR, at 3. Twenty-three public hearings and twenty public meetings were held state-wide by the Board to obtain public input on the first drafts of the proposed rules. *Id.* The Board established a method of considering input into revisions of the graduation standards for Minnesota schools. Additional public meetings were held in 1994-95. The standards were developed with the help of over 1,000 educators for 23 Minnesota school districts as well as the help of national consultants

7. As part of the development of the proposed rules, the Board selected thirteen pilot sites in 1994 and added ten additional sites in 1995. SONAR, at 4. Graduation standards technicians have been assigned in school districts throughout Minnesota and information has been gathered from the pilot sites and the technicians to arrive at the standards and methods proposed in these rules. The proposed standards have been through several drafts based upon the information gathered.

#### Nature of the Proposed Rules and Statutory Authority.

8. Prior to 1993, students seeking to graduate from Minnesota high schools needed to successfully complete 15 credits (in three-year secondary schools) or 20 credits (in four-year schools). Minn. Rule 3500.3100, subp. 1. (1991). The Board's rules specified subject areas required of students. Minn. Rules 3500.2000 and 3500.2100 (1991). The Board's rules also designated what subject areas were required to be offered by schools. Minn. Rule 3500.2020 (1991). In 1993, the Legislature adopted Minn. Stat. § 121.11, subd. 7c. That statute repealed the Board's credit hour standards for issuing diplomas and required the Board to adopt a state-wide, results-oriented graduation rule. The statute was amended in 1994 and 1995. Subdivision 7c, as finally amended, reads as follows:

(a) The legislature is committed to establishing a rigorous, results-oriented graduation rule for Minnesota's public school students. To that end, the state board shall use its rulemaking authority under subdivision 7b to adopt a statewide, results-oriented graduation rule to be implemented starting with students beginning ninth grade in the 1996-1997 school year. The board shall not prescribe in rule or otherwise the delivery system, form of instruction, or a single statewide form of assessment that local sites must use to meet the requirements contained in this rule.

(b) Assessments used to measure knowledge required by all students for graduation must be developed according to the most current version of professional standards for educational testing.

(c) The content of the graduation rule must differentiate between minimum competencies and rigorous standards. When fully implemented, the requirements for high school graduation in Minnesota, including both basic requirements and the required profile of learning, shall include a broad range of academic experience and accomplishment necessary to achieve the goal of preparing students to function effectively as purposeful thinkers, effective communicators, self-directed learners, productive group participants, and responsible citizens.

(d) The state board shall periodically review and report on the assessment process and student achievement with the expectation of raising the standards and expanding high school graduation requirements.

(e) The state board shall report to the legislature annually by January 15 on its progress in developing and implementing the graduation requirements until such time as all the graduation requirements are implemented.

Laws of Minnesota 1995, First Special Session, Chapter 3, Article 7, Section 1.

9. To meet the minimum competencies component of the legislative mandate, the Board adopted testing requirements in the areas of reading, mathematics, and writing. Minn. Rule 3501.0010-.0180. These tests are commonly referred to as "basic skills testing." In order to receive a high school diploma, a student must achieve an eighty percent score on each of these tests. Minn. Rule 3501.0180. The rules proposed in this rulemaking (called the Profile of Learning) are intended to fulfill the rigorous standards component of the legislative mandate. The Board explained the demands on students as follows:

The proposed rules avoid *general* categories of subject areas (e.g., English) and instead spell out *specific* areas of learning (e.g., reading, speaking, writing) which students must experience, complete, and earn scores indexed against exemplars of excellent achievement. In short, to achieve the statutory goal, the proposed rules have enumerated expected *student* experiences and results rather than the traditional categories of course credits.

SONAR, at 6. (Emphasis in original)

10. In addition, terms are defined in the proposed rule. The rules establish the use of performance packages to demonstrate completion of the contents standards to be met. School districts have the option to develop their own performance packages. The application of the Profile to students who require accommodations for disabilities or have individual education plans (IEPs) is established in the rule. Standards to meet regarding the Profile for students with limited English proficiency (LEP) are set by the rule. The proposed rules establish a grading system to measure the degree to which mastery is demonstrated on each particular standard by each student.

11. The proposed rules establish reporting requirements for schools and local school districts to report scores on student transcripts, provide compliance reports to the Board, and submit locally developed standards for review and audit. The recordkeeping required of school districts to ensure compliance with the rules is established. The Board is authorized to adopt rules governing tests required for graduation from high school by Minn. Stat. § 121.11, subd. 7c. The Administrative Law Judge concludes that the Department has general statutory authority to adopt these rules.

#### Assessment of Impact and Cost of the Rules.

12. Minn. Stat. § 14.131 requires an agency adopting a rule to include in its SONAR an assessment of the impact and cost of the proposed rules, along with any alternative considered and the reasons such alternatives were not used. The Board addressed this requirement as follows:

1. Describe the classes of persons who will probably be affected by the proposed rules, including those who will bear the costs of the rules and those who will benefit from the rules.

Ultimately, all Minnesotans will be affected by the proposed rules, for the rules will ensure a comprehensive education and thus improve the education received by a high school graduate in Minnesota. Minnesotans will also benefit from increased accountability at the individual student level for learning results and at the school level. Most direct benefits will be to the future graduates, especially those who, without these rules, may have graduated without these skills, and to those who employ them after graduation or admit them to postsecondary education. In both of these cases, costs of retraining graduates or of lost productivity will be reduced.

The major costs of the Profile of Learning rules will be borne largely by the state for developing training opportunities, reporting, analyzing, and auditing. Other costs will be borne by local districts for staff development time, administration, and planning.

2. Estimate the probable costs to the agency and other agencies of implementing and enforcing the rules and any anticipated effect of the rules on state revenues.

A cost impact study was conducted by Augenblick and Myers, Inc., a consulting firm, to estimate the cost to the state and to school districts of implementing the proposed rules for the Profile of Learning. Similar studies were conducted by this firm in 1995 to estimate the cost of the rules for basic requirements in mathematics and reading and in 1996 to estimate the cost of the rules for the basic requirement in written composition.

3. Discuss whether there are less costly or less intrusive methods of achieving the purposes of the rules.

The proposed rules have been designed to require the least cost and time necessary for implementing a results-oriented system of statewide standards. The Board believes it has selected the most efficient, cost-effective, non-intrusive means of ensuring statewide content standards with local autonomy in delivery.

4. Describe any alternative ways of achieving the purpose of the rules that the agency seriously considered and the reasons why they were rejected in favor of the proposed rules.

The agency examined the possibility of requiring Outcome-Based Education of all districts, with each district responsible for setting its own standards. This was rejected by citizens in public meetings. The agency also considered having a larger number of basic requirements in areas beyond reading, mathematics, and writing, and rejected these possibilities when the excessiveness of testing in such a system became apparent. It was also deemed unreasonable to focus so heavily on minimum skills. Required individualized educational plans for all students were proposed also, and rejected because they would be burdensome and unlikely to render the desired results. Finally, statewide performance assessment was considered, with students possibly submitting portfolios to the state for examination. Experience in other states indicated that this was not a useful form of assessment and that local curricula would need to be dictated too heavily.

Rules that provided a balance of statewide standards and local delivery models were considered best for Minnesota, and, thus, the present proposal was refined and readied for the rulemaking process.

5. Estimate the probable costs of complying with the rules.

The costs of complying with the proposed rules will be to local public school districts. The Augenblick and Myers 1997 cost impact study estimates the cost to local school districts in Minnesota for implementing the proposed rules for the Profile of Learning. The cost to school districts includes costs needed to carry out the following activities: (1) staff development, (2) new responsibilities, and (3) supplies and materials.

Based on these categories of cost and the set of assumptions developed about such factors as the number of school districts, pupil counts, salary levels, etc., it is projected that the added cost to school districts will be \$93.9 million in 1998-1999 and \$93.8 million in 1999-2000 for the Profile of Learning. Some of these costs will be offset by funds likely to be available from the school districts for professional development. As a result of these funds being available, it is estimated that the net cost of the Profile of Learning will be \$76.1 million in 1998-1999 and \$72.3 million in 1999-2000. On a per student basis, this translates to \$79.47 per pupil per weighted average daily membership (WADM) in 1998-1999 and \$74.93 per WADM pupil in 1999-2000. Copies of the full cost impact study are available on request from the Department of Children, Families and Learning.

6. Discuss any difference between the rules and existing federal regulations and specifically analyze the need for and reasonableness of each difference.

The proposed rules are consistent with federal regulations, particularly for *Goals 2000: Educate America Act* which requires state standards and emphasizes the need for a well-educated population and work force. As requirements for graduation are the province of the state rather than the federal government, there is no inconsistency in standards or procedures to assess standards, which are the essential components of these rules.

SONAR, at 74-77.

13. A wide variety of comments were received discussing the costs caused by these rules. Most of the comments indicated that compliance with the rules would be expensive. No one has proposed an inexpensive alternative to accomplish the legislative mandate the Board has been given institute rigorous standards as a requirement for graduation. The record clearly establishes that significant costs will be incurred to implement these rules and that these costs are not fully funded. T. 83-4, 134, 160. The Minnesota School Board Association points out that the law requiring

this rule is an unfunded mandate at this point. Ex. 690 at 2. Not only do districts lack funding for staff development and resources, but the record indicates that CFL staff funding is insufficient to permit adequate assistance to the districts. *Id.* This will need to be addressed by the legislature if the rules are to be successfully implemented.

14. The Board has made a reasonable effort to estimate the costs imposed by its rule. The estimate itself was amended to revise downward the final amount arrived at as the costs to districts. The consultant estimates that the cost will be \$9.5 million less each year due to federal funding available. T. 40. Districts also budget for staff development. The Board has acted in good faith in attempting to estimate the costs that districts will incur as a result of these rules. The Legislature has required the imposition of rigorous standards. The Board has recognized that putting those standards in place is an expensive undertaking. The costs projected by the Board have been arrived at by a rational method. The requirement of an assessment of impact and cost imposed by the rules under Minn. Stat. § 14.131 has been met by the Board.

### Analysis of the Proposed Rule

15. The Administrative Law Judge must determine, *inter alia*, whether the need for and reasonableness of the proposed rule has been established by the Board by an affirmative presentation of facts. The Board prepared a Statement of Need and Reasonableness ("SONAR") in support of the adoption of each of the proposed rules. At the hearing, the Board supplemented the SONAR in making its affirmative oral presentation of need and reasonableness for each provision. The Board also submitted written post-hearing comments.

16. The question of whether a rule is reasonable focuses on whether it has a rational basis. The Minnesota Court of Appeals has held a rule to be reasonable if it is rationally related to the end sought to be achieved by the statute. ***Broen Memorial Home v. Minnesota Department of Human Services***, 364 N.W.2d 436, 440 (Minn. App. 1985); ***Blocher Outdoor Advertising Company v. Minnesota Department of Transportation***, 347 N.W.2d 88, 91 (Minn. App. 1984). The Supreme Court of Minnesota has further defined the burden by requiring that the agency "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." ***Manufactured Housing Institute v. Pettersen***, 347 N.W.2d 238, 244 (Minn. 1984). An agency is entitled to make choices between possible standards as long as the choice it makes is rational. If commenters suggest approaches other than that selected by the agency, it is not the proper role of the Administrative Law Judge to determine which alternative presents the "best" approach. However, the agency is obligated to consider the approaches suggested.

17. This Report is generally limited to the 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. Moreover, because some sections of the proposed rule were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rule is unnecessary. The Administrative Law Judge specifically finds that the Board has demonstrated the need for and reasonableness of the provisions of the rule that are not discussed in this Report, that such provisions are specifically authorized by statute, and that there are no other problems that prevent their adoption.

18. This large rulemaking record contains many thoughtful and detailed comments. It reflects the strong commitment of teachers, administrators, parents and students to Minnesota's education system. It is most important that the Board and its staff examine the comments in detail in order to improve the rule. It contains detailed comments, for example, on the contents of performance packages which reflects experience in adopting them to use in the schools and it contains comments on the implementation of individual standards. Many comments contain suggestions which may improve the rule, but which do not create questions of legality and reasonableness and are therefore not considered in this Report. This rulemaking record is also a valuable resource in that it details the practical problems that parents and teachers have faced in implementing the rule requirements at their schools. It therefore will be useful in modifying the rule and in guiding the Department's assistance to school districts.

19. Where changes are made to the rule after publication in the State Register, the Administrative Law Judge must determine if the new language is substantially different from that which was originally proposed. Minn. Stat. § 14.15, subd. 3. The standards to determine if the new language is substantially different are found in Minn. Rule 1400.1100. The Board suggested two modifications based on public comment. Any language which differs from the rule as published in the State Register will be assessed to determine whether the language is substantially different.

## Impact on Agricultural Land.

20. Minn. Stat. § 14.111, imposes an additional notice requirement when rules are proposed that affect farming operations. The Administrative Law Judge finds that the proposed rule change will not impact farming operations in Minnesota, and finds that no additional notice is required.

## Need for the Proposed Rule

21. A number of commenters have suggested that the Profile of Learning rules not be adopted because they are unnecessary. See e.g., T. 196, Exhibits 5, 9, 63, 65, 105, 141, 187, 193, 261, 274, 319, 357, 369, 386, 477, 520, 686, 699, 707, 761. For example, John T. Yeaman, Principal of Becker Middle School, pointed out that extrapolating Minnesota's schools' scores on the Third International Mathematics and Science Study (TIMSS), the state ranks third in the world and ahead of eleven industrialized countries. Exhibit 285. Patricia A. Steuernagle, Teacher at Burnsville Senior High School, suggested that "the High Standards, as they stand, are creating unrealistic expectations for all students." Exhibit 328, at 3. Other commenters described the rule as an expensive, burdensome fad that will have a negative impact on education.

22. The Board has made a number of comments on why the Profile of Learning are needed as standards for graduation from high school. At the Rochester public meeting in 1994, the state's Director of Graduation Standards (who is also a high school teacher) described the current graduation system as follows:

But you must accomplish 20 credits. In fact, the law says "successfully complete." Now, we are told that "successfully complete" may actually be defined by a local school as "lived through." There is no requirement that we grade students. There is no requirement about what is in those courses.

Most schools actually have higher requirements than the state law provides. The state rule currently says you have to have "lived through" or "successfully completed." Most of our schools say you must have 20 credits of D minus to get a diploma. Once again, because we are not currently results-oriented, what is taught in those courses varies from room to room, from school to school, from district to district across the state. And so as a result, the change that the legislature is looking for here first is that we be results-oriented. That is, students [performance is judged] based on what they have accomplished in terms of learning rather than what they have gone through, which may or may not indicate a substantial amount of learning.

Minnesota's Comprehensive Goals for Graduation, Transcript, at 9-10 (brackets added).

23. A substantial of commenters supported the need for and adoption of the proposed graduation rule. E.g. the Minnesota Technology Education Association, (T. 95) the Minnesota Professional Education Association, (T. 109) the Minnesota Center for Arts Education (T. 86) the Minnesota Music Educators Association, (T. 155) the Minnesota Education Association, (T. 164) the Minnesota Federation of Teachers (T. 169) the Minnesota Association for Environmental Education (T. 181) the Minnesota Council of Teachers of Mathematics (T. 204) the Minnesota Science Teachers Association (T. 256), the Minnesota Council on the Teaching of Language and Cultures. (T. 332) and the Minnesota Business Partnership (Exhibit 624) as well as individual teachers and parents. See e.g. Exhibits 12, 49, 53, 60, 83, 92, 95, 102, 113, 123, 134, 195, 254, 260, 289, 290, 307, 308, 316, 353, 390, 410, 554, 586, 604, 613, 657, 658, 683, 685, 709, 719, 742. SciMathMN indicated that for math and science education, "new knowledge and skills" and "higher levels of attainment by all students" are needed beyond what is present in the traditional system. Exhibit 344, Exhibit 415, at 1. SciMathMN cited the TIMSS results as proof that U.S. mathematics curricula was not "world-class." *Id.* at 4. Individual teachers indicated that the rigorous standards in the Profile of Learning reflect the teaching methods of the best teachers. T. 119-125; T. 126-130. It was notable how many of the letters citing problems with the rule began with an overall endorsement of the Profile of Learning. It was also notable how widespread was acceptance of the basic skills rules among those critical of the Profile of Learning.

24. As with the basic skills testing, the adoption of rigorous standards is required by the Legislature. As discussed at Finding No. 8, above, the Board must adopt "the required profile of learning." Minn. Stat. § 121.11, subd. 7c(c). The Board has no discretion to ignore this legislative directive. The finding of need for the imposition of rigorous standards through Profile of learning has been made at the legislative level. Looking beyond the legislative requirement, the Board has argued that the lack of rigorous standards applied to all high school students seeking to graduate has resulted in a wide disparity in learning by those students. The evidence presented in the record of this rulemaking proceeding supports the legislative determination that students receiving a high school diploma should be required to demonstrate they have mastered rigorous standards.

#### Profile of Learning as State-Mandated Curriculum.

25. A recurring comment heard from parents, educators and interested citizens throughout the rulemaking was that the Profile of Learning constituted a state mandated curriculum. T. 67, 179, 194, 224. Other commenters suggested that the Profile of Learning were a federal takeover of local school districts as part of the *Goals 2000* educational program. These comments strongly endorsed local control of education as opposed to a state dictated curriculum. Exhibits 630, 664, 746, 794, 424, 552, 571, and 194. Sue Frelich and Jacqueline Arnold, Teachers at Madelia High School, suggested

that “students learn best when teachers are allowed to adapt lessons according to student interest and abilities.” Exhibits 374 and 375.

26. The Board pointed out that the statute requiring the adoption of the Profile of Learning actually predates the enactment of the *Goals 2000* federal legislation. Board Comment, at 21. The Board has repeatedly stated at each point of the development process, that the performance packages are models rather than mandates. See Exhibit 170, July 10, 1997 Tillman Letter. The Board is prohibited from requiring such a curriculum under Minn. Stat. § 121.11, subd. 7c(a). Thus, the Board was obliged to establish required standards and prohibited from mandating a single state-wide curriculum needed to meet those standards. To navigate these possibly conflicting principles, the Board has proposed content standards in ten learning areas and optional performance packages setting forth the manner in which each content standard can be demonstrated. There is a valid distinction between "standards" and "curriculum". Board Comments p. 5. Robert Strandquist, English Teacher at Eagan High School, pointed out that the level of detail in the performance packages compel the conclusion that they are curriculum. T. at 192-95. While that may be true to some extent, proposed rule **3501.0370**, subpart 1.B. requires a district to use the state performance packages, locally developed packages, or adjusted performance packages in assessing a student's mastery of content standards. The option for a district to develop its own performance packages complies with the statutory prohibition against requiring a state-wide curriculum. The rules only require that students be assessed on the content standards to demonstrate learning.

27. The contents standards are to be "embedded" into existing courses. The Board argues that with embedding, districts control the placement of individual content standards in courses offered in each district's curriculum. Local control is maximized with embedding, consistent with students demonstrating state-mandated standards. Since districts are authorized to place standards in any appropriate course, rigorous standards can be demonstrated in any course of study, whether traditionally academic, vocational, or arts based. Since existing courses are used, costs are reduced, both in training and in resources. The imposition of rigorous standards can be accomplished much faster than rewriting curriculum, which would take more than the three years the Board has taken to develop the performance packages. Board Comment at 1-2 and 5. The record indicates that the Board's approach in this rule is consistent with the statutory prohibition on mandating a statewide curriculum.

#### Application of Profile of Learning to the Class of 2002.

28. The scope of the rules is set out in proposed rule **3501.0310**, which establishes meeting the Profile of Learning as a requirement for obtaining a high school diploma. The rule part imposes this requirement on students who will begin 9th grade in the fall of 1998 (Class of 2002) and all students in subsequent years. Some rule supporters asked that the rule be adopted as proposed without delay. See e.g. Ex. 616.

29. While the Board asserts that the system of public education in Minnesota is ready for the Profile to begin with the Class of 2002, the issue of when the rules would apply to students was addressed by a large number of the persons and organizations who submitted comments in the rulemaking. Hundreds of commenters, composed of teachers, parents, students, and school administrators expressly urged that the implementation of the rules be delayed at least one year. There were several alternative suggestions to delaying imposition of the rules, such as not placing the assessments on transcripts yet, or allowing districts to obtain a waiver excusing noncompliance. Exhibits 104, 302 and 597 T. 252. Some of the commenters urging delay were teachers and administrators from pilot sites and educators conducting graduation standards training for nonpilot schools. T. 80, 131, 212, 214, 227, 275.

30. Karen Herrick, a parent of an eighth grader in the Class of 2002, described her experience in attempting to register for next year's courses. Exhibit 268. Herrick asserted that, to meet the requirements as currently understood, her child must get all of his first choices of classes. *Id.* Herrick's experience at registering an older child leads her to believe that her eighth grader will not be registered for all the classes needed. *Id.* Other commenters also pointed out that enrollment has already been concluded in many schools for students in the Class of 2002. T. 131-32; Exhibit 715. The record contains dozens of letters from parents of students who will be 9th graders this fall who have faced the difficulty of registering under the proposed rule. See e.g., Exhibit 603. They believe that the districts are not ready to implement the rule and that the course choices are too restricted.

31. In April, 1997, the CFL conducted a survey to assess readiness of schools and districts for implementation of the Profile of Learning. There was a 93 percent response rate to the survey by school districts (330 of 355) and a 66 percent response rate by high schools. CFL Survey of Schools, at 2. Of those responding to the survey, 56 percent do not believe students can meet the expectations of the graduation standards. *Id.* at 3. The survey indicated that 65 percent reported that their teachers have not embedded standards in curriculum. *Id.* at 7.

32. Judy Schaubach, President of the Minnesota Education Association (MEA), and Sandra Peterson, President of the Minnesota Federation of Teachers (MFT), expressed concern that the enormous scope of the implementation process requires more time for training and development of informational tools. T. 168, 169. Exhibits 172, 812. While both organizations support the adoption of the Profile of Learning, both the MEA and MFT urged modifying proposed rule 3501.0310 to require the Class of 2003 be the first required to meet these standards. *Id.* Many individual teachers wrote that they are working hard on implementing the rule, but simply need more time due to the magnitude of the work that must be completed. See e.g. Exhibit 674A.

33. The Board described the reasonableness of requiring the Class of 2002 to meet the Profile of Learning standards as follows:

This provision is reasonable because it provides four years notice to 1998 ninth grade students who must complete the requirements to earn a high school diploma. This four year prior notice is consistent with the period of notice that was given when the basic requirements in reading, mathematics, and written composition were adopted, and provides adequate notice to and opportunity for students to complete the requirements by their graduation date.

SONAR, at 25.

34. The Board noted that districts have had knowledge that implementation in 1998 was expected. The Board distributed a recommended three year phase-in schedule in 1996. Board Comment, at 3. Because there is a phase-in period of reduced rigor until the standards are fully imposed (proposed rule **3501.0360**), the Board maintains that no delay is appropriate. *Id.* That rule part allows less complex performance packages for any student entering 9th grade before the fall of 2001. It is not a waiver from the standards, however. The Board cites its training efforts, including workshops in each region of the state, graduation standards technicians at the district and building level, and widespread notification of modifications as reasons to not delay imposition of these standards. Board Comment, at 3. By not instituting these standards in 1998, the Board asserts that 60,000 students will not get the benefits of this “comprehensive educational background.” Board Comment, at 4. The Board noted that it had received letters of support for the imposition of the Profile of Learning in 1998 from superintendents from nineteen districts. Board Reply, at 2. See e.g. Exhibit 597.

35. A substantial number of teachers have commented critically on the training and workshops. Ruth Anderson, Math and Science Teacher, complained that the result of the workshops was to “spread the ambiguity.” Exhibit 583. Mary Ann Olson, Teacher in the Win-E-Mac district, indicated that at each workshop she has been told to “disregard any information we have heard before.” Exhibit 614. David Bengston, English Teacher at Long Prairie-Grey Eagle High School, was told to discard any information obtained before the summer session of inservice training. Exhibit 620. Bengston was also informed that training would only be available to teachers who attended a prior training session. *Id.* Jane Jost, Teacher in the Chokio-Alberta School District, described herself as being “bewildered” as a result of meetings on the proposed standards. Exhibit 381. Other teachers have described similar experiences. Exhibits 639, 640, 647 The MEA/MFT has indicated that only 10,000 teachers of the more than 60,000 teachers in the state have had any training, suitable or otherwise. Exhibit 812.

36. Lelia Redin, Associate Superintendent for Curriculum and Instruction in the Anoka-Hennepin School District (a Tier I pilot site), indicated that imposing the system before 1999 was unreasonable. T. at 212. Michael Courtney, Associate Superintendent for Teaching and Learning of Robbinsdale Area Schools, related his experience as an original pilot site for three learning areas. T. at 157 In his estimation, the implementation date is “not feasible.” Exhibit 173. The experience of Gary

Gronquist, Graphics Communications Instructor at Hastings High School and chairperson of his district graduation standards committee, is representative of the many of the school districts of the state:

Since I have worked with school administrators, I have seen them take a cautious approach to implementing the high standards into our schools around the state. They are not sure of the results of the standards. Administrators are waiting to see if the standards will become law. (They feel that if the standards do not become a law, all the prior work on standards was a waste of their and teachers effort and valuable time.) Since administrators waited too long for implementation in their districts, teachers are forced to align standards to their courses in a rush. Now that standards are aligned, teachers are looking for assessment packages to support the standards. This causes a problem for school districts. We need money for staff development and curriculum development. Teachers need time to create, adapt and prepare to use the state assessment models. It is hard [to] work on your curriculum during the regular school year when you're under the constant pressure of teaching today's youth. We need time during the summer and districts need the funds to pay for staff development. If there is no staff development this summer, teachers will not be able to prepare good assessment packages for students. It is the students who will suffer with poorly prepared packages. Also, I would like to see a proper transition period for implementation. We need to push the starting year back one year to allow this. **Students and teachers in the classroom are affected by this decision, not administrators, school boards, legislators or the CFL department.**

Exhibit 371 (emphasis in original).

37. Charles Bettendorf, Graduation Standards Technician for North Branch High School, indicated that students transferring between schools may be left taking courses outside their planned coursework because a needed standard is only embedded in an introductory course. Exhibit 674B. No provision has been proposed in the rules to govern the transfer of credit for partial completion of a standard between districts. Proposed rule **3501.0370**, subpart 1.B., only requires districts to "establish processes" for recording completion of assessments. (See Finding of Fact Nos. 106-108).

38. One retired teacher observed:

I believe that, as presently constituted, the Profile of Learning may improve education profoundly if they are not hastily implemented. What I fear is that they will either be scrapped entirely, or forced into implementation in a way that will engender great resistance. If the Profile of Learning is fully implemented for ninth graders in the fall of 1998, resources at the Dept. of CFL will be unable to fulfill the great need for

inservice, the experiment will collapse and we will have lost an opportunity to test an approach that is unique among the 50 states; an approach which anticipates that local communities will find a variety of ways of preparing their students to fulfill the intellectual challenges described by the Profile of Learning. In the same way that the Constitution established a strong central government with specified powers while reserving to the states authority over others, this Profile of Learning reserves much authority and discretion to local school districts over how to prepare students to satisfactorily complete the considerable demands of the Profile of Learning. That, I believe, is as it should be. Exhibit 757.

39. The legislation requiring adoption of the Profile of Learning did contain a deadline for initiating graduation standards. Minn. Stat. § 121.11, subd. 7c(a). The Board met that deadline by introducing basic skills testing. There is no deadline for introduction of the rigorous standards portion of the graduation standards statute.

40. This rulemaking record as a whole does not demonstrate a rational basis for full implementation of the Profile of Learning for the Class of 2002 in the fall of 1998. The evidence in the record from pilot sites and other school districts indicates that a transition period is needed to ameliorate the disruption in the education process that results from introducing new teaching standards. Since most Minnesota teachers have received no formal training in the application of the Profile of Learning, they have not had an informed opportunity to adapt existing curricula to meet the rigorous standards that are required in this rule. By the nature of the rulemaking process itself, those teachers who have received training are not aware of what the exact final standards will be. As described by Chandra Hanke, German Teacher in Hibbing, teachers "often feel that we are using our last reserves of energy to keep up." Exhibit 119. The record indicates that many exemplars and rubrics have yet to be completed to permit implementation of the rule. See e.g. T. 32, Exhibits 146, 219, 264, 766 at 2. Some districts have not fully embedded the standards. Requests for assistance to the Department or from individual District coordinators have not always been adequately answered. Exhibits 22, 25, 182. Deadlines for providing exemplars have not been met. Exhibit 648. The costs of the rule have not yet been fully funded. The details of how to handle transfer students and how to handle record keeping have not been fully worked out.

41. Requiring the Class of 2002 to meet the Profile of Learning standards means that students starting the ninth grade in September, 1998, must begin to meet the standards imposed. Many of that Class have already registered for the courses they will be taking in the Fall. The Board has indicated the possibility that some standards may be embedded by districts in classes offered only in the ninth grade. Board Comment, at 1. This raises the possibility that a ninth grader has failed to register for a required standard that will not be offered in a later year or which will have to substitute for a different course later in that student's high school education. Imposing requirements now impairs the opportunity those students would otherwise

have to plan their high school coursework to meet their goals in vocational education, postsecondary education, or arts education. Exhibits 34, 66, 89.

42. Without an assurance that their teachers can actually impart the content required in the standards consistent with their coursework, students of the Class of 2002 in some districts run the risk of having their education impaired by the demands of an untried process. There does not appear to be a reasonable assurance from either the districts or the Board that the coursework that many of those students will complete in the 1998-99 school year is suitable to meet the standards for graduation. Such students will have greater difficulty scheduling the coursework they need to fulfill their academic pursuits, since the full slate of standards will need to be met in fewer years than would otherwise be available. Whether the school districts have had adequate notice of this rule or whether the changes in proposed standards have occurred too frequently for districts to keep up is not determinative of an appropriate outcome. Some districts are unready to begin imposing the rigorous standards of the Profile of Learning on the Class of 2002. What should determine the pace of implementation is the effect on students and the record indicates that many districts cannot meet their needs this fall if the rule is implemented.

43. The Board compared the adoption of the Profile of Learning to the adoption of basic skills testing in regard to notice to districts. Basic skills testing is, as the name suggests, a measurement of the bare minimums of achievement for students receiving a high school diploma. The Profile of Learning are rigorous standards that will, if properly applied, enhance student achievement. The Board worked out the administrative details of basic skills testing prior to proposing the rules for those tests. Application of much of the Board's proposed rules for the Profile of Learning has been left to individual districts, thereby increasing the uncertainty of standards completion. Any student who failed to pass any of the basic skills testing could obtain as many retests as reasonably needed to have the opportunity to pass. The same cannot be said for students whose coursework choices may preclude or impair opportunities either for graduation or achieving those students' academic goals. There is very strong and rational support in this record for a delay in implementation of the rule from knowledgeable parents and teachers, who generally support the concept of the Profile of Learning. It is clear that implementation of the Profile will be far more challenging than implementation of basic skills testing.

44. To cure the defect in proposed rule 3501.0310, the Board could change the rule language to require students beginning 9th grade in the fall of 1999 or later to meet the Profile of Learning in order to graduate, as requested by many commenters. The record also contains other suggestions which may cure the defect such as a waiver process under which a district could apply for a time-limited delay upon showing to the Board's satisfaction that it was presently unable to proceed. Ex. 597; T. 252. Since some districts are apparently ready to proceed, a waiver process would allow them to go ahead with implementation. Other commenters suggested that the rule be phased-in in some manner such as by grade, or by requiring fewer standards at first, or by not entering scores on a transcript for 2 or 3 years. Exs. 24, 50, 57, 64, 74, 75, 248, 302,

348, 678. Whatever remedy the Board chooses, it must address the clear likelihood that some students will suffer adverse consequences from immediate implementation of the rule. Because of the intense interest in this rule and because a number of options could be adopted, it is also recommended that any modification selected by the Board be communicated to major groups participating in this proceeding for comment before final adoption.

### Completion of 24 Content Standards Required for Graduation

45. Subpart 2 of proposed rule **3501.0330** mandates that students complete 21 content standards in learning areas 1-9. Subpart 3 requires a total of 24 content standards for a student to obtain a high school diploma, three of which are electives. The content standard requirements are broken down as follows:

A. one content standard in learning area one, read, listen, and view in the English language: reading, listening, and viewing complex information, or technical reading, listening, and viewing;

B. two content standards from learning area two, write and speak in the English Language:

(1) academic writing, or technical writing; and

(2) public speaking, or interpersonal communication;

C. two content standards from learning area three, literature and the arts;

(1) literary and arts creation and performance, in an art form other than creative writing; and

(2) literature and arts analysis and interpretation of literature;

D. three content standards from learning area four mathematical applications:

(1) discrete mathematics, or chance and data analysis;

(2) algebraic patterns, or technical applications, and

(3) shape, space, and measurement;

E. two content standards from learning area five, inquiry:

(1) math research, history of science, history through culture, history of the arts, world history and cultures, records of history, or issue analysis, and

(2) research process, social sciences processes, research and create a business plan, market research, case study, or new product development;

F. two content standards from learning area six: scientific applications:

(1) concepts in biology;

(2) concepts in chemistry;

(3) earth and space systems;

(4) concepts in physics; or

(5) environmental systems;

G. four content standards from learning area seven, people and cultures:

(1) themes of United States history;

(2) United States citizenship;

(3) diverse perspectives; and

(4) human geography, institutions and traditions in society, or community interaction;

H. three content standards from learning area eight, decision-making:

(1) individual and community health;

(2) physical education and fitness; and

(3) career investigation, or occupational experience; and

I. two content standards from learning area nine, resource management:

(1) economic systems; and

(2) natural and managed systems, personal and family resource management, business management, financial systems, or technical systems;

In addition to the distribution requirements above that the districts must offer and require students to complete to be eligible for high school graduation, districts must require students to complete three additional elective content standards of the student's choice from the high school content standards listed or learning area ten, world language.

46. The volume of comment on the number of standards to be required of students to fulfill the graduation requirement was second only to the implementation date issue, discussed above. T. 97. Cy Yusten, Assistant Superintendent for Teaching and Learning in the St. Paul Public School District, reflected the comments of many regarding the number of required standards when he asked the Board to return to the 18 required-6 elective distribution that had been suggested previously. T. 252. Many commenters felt that three optional standards were not enough and 21 required standards were far too many to accommodate individual student needs, abilities and interests. See e.g. Exhibit 715 at 2. The concern was expressed that the number of required standards created breadth in a student's education, but not the depth needed by some students. The Board, in its earlier iteration of the Profile of Learning, had adopted an 18-6 distribution at one point. Board Comment, Appendix V. Some school districts had based their planning around that distribution in embedding standards and scheduling courses. The change to 21-3 apparently happened after the summer training sessions in 1997.

47. William E. Morgan, Science Teacher at Burnsville High School, performed an analysis of what coursework (including prerequisites) would be needed to meet the standards proposed. Exhibit 280. Based on his analysis, Morgan concluded that a student at his school would need to take 22 credit hour classes to meet thirteen standards. Id. at 3. The remaining standards could be met, according to Morgan's analysis, but only at the cost of not taking advanced college preparatory coursework, advanced music instruction, or advanced foreign language study. Id. at 4. This analysis questioned the impact of 24 standards on students who need to repeat a standard.

48. Daniel Smith, President of the Minnesota Association of Secondary Vocational Administrators (MASVA), objected to the number of required standards as eliminating the ability of students to take vocational classes, since content standards have not been embedded in vocational courses. Exhibit 638. Charles Bettendorf urged that the number of standards be reduced to 18 and while allowing districts to add more, to a maximum of 21 standards. Exhibit 674B. Susan Hagstum, Board Member for the Minnesota Association for Supervision and Curriculum Development (MASCD), urged the reduction of the number of standards to "afford a wide array of opportunities" to students. Exhibit 676.

49. The Board makes several arguments in support of the 21 required and three elective content standards. The Board stated:

Twenty-four is a reasonable number of standards to require. When counselors were brought together in 1995 to discuss what would be reasonable student requirements, they selected twenty-three. Subsequently, discussions were held with pilot site directors, who had experience implementing standards since 1993, to determine what number was needed and reasonable as a state minimum. In 1996 and 1997, pilot directors were again convened to discuss this issue, and the final recommendation of pilot site directors was twenty-four required standards. When the Graduation Standards Executive Committee addressed this issue in 1997, they also determined that twenty-four was reasonable, based on the premise that the twenty-one requirements represented a comprehensive breadth and essential content, and three electives gave students additional opportunity to pursue a world language and/or at least two different areas of interest beyond the required. Twenty-four was also determined to be a reasonable number of standards because it represents a reasonable amount of work to be accomplished by a student in the four years of high school. Embedding twenty-four standards into district curriculum has been the focus of the training provided by the department for "placing" standards within the curriculum in schools across the state, and this activity has substantiated the reasonableness of the total number in practical application because the embedding of twenty-four standards could be accomplished by school districts.

SONAR, at 34 (Underlining in original).

50. The standards are the result of years of work by educators attempting to determine what each student should attain in high school to have a comprehensive education and be ready for life as an adult. This record demonstrates the extensive effort by the Board, Department, and teachers across the state to fulfill the legislative directive. The content standards, as the Board has frequently noted, are not required to be completed in individual Carnegie-unit courses. Board Comment, at 1. Rather, districts can embed any number of standards in whichever courses contain curriculum that requires that a student demonstrate mastery of that standard. Thus, to use an example from the record in this matter, the Integrated Math 1, 2, 3 course in Mounds View High School appears to offer the opportunity to meet all three mathematics content standards. Exhibit 636, Mounds View High School Attachment.

51. The Board points out that districts will be able to “bundle” standards in courses, thereby delivering more than one graduation standard in a Carnegie-unit course. Board Comment, at 9. For example, a primary-source research project related to a career choice might satisfy three standards, academic writing, research process, and career investigation. Board Comment at 2. However, the record indicates that the districts must achieve a level of experience with embedding standards and recording students’ achievement in those standards before such a practice becomes either practical or widespread, consistent with the obligations of teachers to conduct classroom teaching. Until the districts and teachers become familiar with the process of embedding, it may be that some schools will embed one standard in one course wherever possible. The evidence in this record indicates that high schools have followed this practice in preparing for the Profile of Learning. Board Comment, Appendix Z, see *also* Exhibit 636, Mounds View High School Attachment. The negative impact of current embedding practices on the ability to meet standards through taking vocational courses is also demonstrated by the courses used to meet the standards requirements. Exhibit 636, Mounds View High School Attachment.

52. With the adoption of a one course-one standard approach by some districts, an unintended consequence of the proposed rule would be to increase the graduation requirements on students from the 1992 standard of 20 credits, to a new system requiring at least 24 credits. The Board’s assertion, that bundling standards will in fact reduce the number of courses required of students, is not supported by the record in this rulemaking proceeding. The only course identified as completing multiple content standards is the Integrated Math 1,2,3 course offered in ISD 622 and ISD 621. Board Comment, Exhibit Z; Exhibit 636, Mounds View High School Attachment. Based on the rulemaking record, the effect of the rule as proposed by the Board at present is to increase the number of required courses and decrease the number of electives available to high school students.

53. The Board has demonstrated the reasonableness of 24 required standards, with 3 of them being elective assuming that at some point several standards can be

successfully embedded in one course by all the districts. The process of arriving at the number was rational and the facts presented by the Board adequately support its reasonableness, whether or not it is the best policy. The authority of the Administrative Law Judge is limited to determining the legal question of whether the agency has shown its proposal to be reasonable or not arbitrary based upon the record. Whether or not a proposal is the best policy is a policymaking decision reserved to the agency. See Finding of Fact No. 16. However, as discussed above, the Board had earlier approved a system of eighteen required and six elective standards. The planning that has been done by some districts to implement the standards was based on that distribution. The suggestions from commenters for reducing the required standards included few suggestions as to which standards should be removed from the list of required standards. However, the Board has the policymaking discretion to decide if required standards can be made electives, consistent with the legislative mandate to impose rigorous standards.

54. Reducing the number of required standards to 18 (or 21) and retaining the total number of standards to be met at twenty-four would be needed and reasonable based upon this record. There is strong well-reasoned support for this modification in the record. The new language would not constitute a substantially different rule from the rule as published in the State Register. The lobbying has no doubt been intense from those seeking to have their subject made a required as opposed to an elective standard. This record contains strong efforts to include new required standards in areas such as child development and family studies, personal and family resource management and world languages. This determination is wholly within the Board's discretion. The selection process for required standards should not override the educational needs of students, however. There is very strong and rational support in the record for reducing the number of required standards. One suggestion for minimizing the special interest problem inherent in state selected standards was to allow each district to choose 18 to 24 standards from the 47. This would support the concept of local control. Exhibit 674B. A variation would be to allow local districts to select which standards over the rule's 18 mandatory ones would be required. See also, Exhibit 690 at 3 (MSBA). Additionally, the record (Exhibits 45, 47, 89, 97, 240, 248) supports the reasonableness of phasing in the number of standards from 18 to 24 over a three-year period, for example. This would allow districts to develop their expertise in embedding and ensure that no student is harmed during the adjustment period. Another suggestion was to phase in half the required standards this fall, 75 percent by the following year and all for 2000-01. Exhibit 692. It is recommended that the Board carefully review the public comments to determine if a modification is appropriate.

#### Students with Individualized Education Plans or Section 504 Accommodation Plans

55. Accommodations are made in the educational system for students who are eligible for individualized education plans (IEPs) due to a disability or otherwise qualify for accommodations under section 504. In the past, the Board has extended the accommodation process to basic skills testing. Minn. Rule 3501.0090. The Board has concluded that accommodations must be available in the Profile of Learning to comply

with those nondiscrimination provisions. To achieve that goal, proposed rule **3501.0340** requires content standards for graduation be considered as part of the IEP or section 504 accommodation plan. The consideration of the content standards is to include modification of those standards where called for to appropriately assess the student's achievement.

56. Commenters questioned whether the schools' obligations under the law can be met consistent with the Profile of Learning. Sally Brakke, Educational Speech/Language Pathologist and John Belter, Teacher for the Learning Disabled, expressed concern over the lack of information available to teachers for preparing IEPs that will meet both the legal obligations of such plans and the new graduation standards. Exhibit 713. The Board responded that IEPs are already required of schools. Board Comment, at 21. The Board argues that the least additional burden is placed upon schools in this area, since schools are already accommodating curricula to the individual needs of disabled students. The record in this matter does not indicate there will be any difference in the process of preparing IEPs. The lack of information available to special education instructors reflects the lack of information available to all teachers at this time. Graduation standards, whether Carnegie-unit based, or content standard based, must be included in an eligible student's IEP. There is no defect in the rules regarding accommodating students with such plans. Proposed rule 3501.0340 has been shown to be needed and reasonable.

#### Limited English Proficiency Students

57. The Language Arts Department at Apollo High School in St. Cloud expressed concern that the three year period for adjusting performance packages would not be sufficient time for students with limited English proficiency (LEP). Exhibit 264. Proposed rule **3501.0350** allows for an individualized plan in areas other than reading and writing to ensure that an LEP student has the opportunity to graduate. The adjusted standards are for all students. The provision of an individualized plan for LEP students is needed and reasonable to ensure that those students have an opportunity to graduate.

## Repeating Content Standards

58. Proposed rule **3501.0330, subpart 7**, allows students to repeat content standard to improve their assessment scores. Several commenters urged that students be permitted to repeat content standards to substitute for meeting other content standards in the proposed rules. Exhibit 385 T. 212-13. In the main, these comments were a response to problems anticipated with allowing AP, IB, or vocational students to complete those requirements. There was also a concern the students would be prohibited from pursuing their "passions" if they are unable to repeat electives. T. 212, 236. This concern will be partially alleviated by the Board's proposed modification set out at Finding of Fact No. 69. The rule is needed and reasonable as proposed.

## Effect on Students in AP, IB, and Honors Programs

59. A significant amount of comment in this proceeding addressed the effect of the graduation standards on students seeking to take Advanced Placement (AP) or International Baccalaureate (IB) courses. Connie Blom, President of the International Baccalaureate of Minnesota (IBMN), objected to the imposition of graduation standards to IB students due to the "difficulty of melding the compulsory elements of the rigorous IB curriculum with the elements of the proposed Areas of Learning . . ." Exhibit 724. James Miller, AP English Teacher at Winona Senior High, described his students as "already performing at highly talented levels . . . far beyond what I ever tackled as a student." Exhibit 589. Gordon Carlton, parent of a 7th grader, suggested that AP and IB students be able to substitute that coursework for the content standards required under the proposed rules. Exhibit 618. MASCD pointed out that the number of required graduation standards interferes with the coursework of AP and IB students. Exhibit 676. Stanley Fure, History Teacher of both the coursework of AP and IB students, indicated that the proposed standards are incompatible with the pace of those rigorous programs. Exhibit 757. Bill Keilty, President of the Minnesota Educators of the Gifted and Talented (MEGT), described the impact of the rule as "an incentive to avoid rigor." Exhibit 372. He described the problem as students being unable to take AP or IB courses because they had already met that standard in a lower level course and there would not be time to complete all the standards while repeating some. T. 335. College students wrote to indicate the necessity of AP courses to their preparation for entrance to demanding colleges. See e.g. Exhibit 588.

60. Elaine Skrentner, a teacher at Edina High School, detailed the problems she encountered attempting to embed the required standards for graduation in coursework leading to AP and IB course completion. Exhibit 170 T. 101. Using the transcript of a student who successfully completed (with a 3.94 grade point average) AP courses in Spanish, American History, and Economics; college prep Chemistry; and enrichment courses in Novels, Physics, and American Literature, Skrentner demonstrated that this student would not graduate from high school because of her interest in music and theater. *Id.* Skrentner also identified problems with conforming the graduation standards to the postsecondary enrollment options program (PSEO). *Id.* T. 103 - 107.

Apart from the problems for AP students, she maintains that students will have difficulty meeting the 24 standards if: they desire to stay in math beyond the three required standards, in science beyond the two required standards, in music beyond the required standard or remaining in World Language where there is only one standard that can be met by Level 5. Exhibit 170.

61. Dr. Sharen Hilliard, District Director of Vision 21 Programs for Gifted and Talented in the Wayzata School District, described the effort put into embedding standards in the summer of 1997, under the 18 required-6 elective approach that had been adopted by the Board at that time. Exhibit 178. She described “most pressing obstacle” in the proposed rule as the requirement of 21 standards. *Id.* at 2. The entrance requirements of colleges and universities, Dr. Hilliard noted, often include two years of foreign language. *Id.* This further reduced the coursework available to meet graduation standards while completing AP coursework. Dr. Hilliard believes that talented students will lose the opportunity for rigor because they will be unable to take higher level courses because of the high number of required standards and the rigidity of the elective requirements. T. 232-33. She recommended 18 required standards and three electives. T. 238. See also T. 248. This suggestion was echoed by the International Baccalaureate of Minnesota. Exhibit 724.

62. The Board points out that “there were no suggestions for which requirements might be eliminated without compromising comprehensiveness . . .” Board Comment, at 7. This is generally true, however, Cheryl Moen, Honor Roll Teacher of Minnesota, suggested Career Investigations be removed as a requirement to allow more time for writing skills. Exhibit 509. Morgan Brown, Director of Public Policy for the Minnesota Family Council, identified “New Product Development, Environmental Systems, Diverse Perspectives, Community Interaction, Individual and Community Health, and Occupational Experience” as examples of “subject matter that is outside of traditional core academic areas . . . .” T. 220.

63. The Board asserts that the a “comprehensive education” is required of students seeking to graduate. It continues to maintain that the rules are compatible with AP programs and suggests that looking at past transcripts of AP students to determine whether standards could have been met does not mean that present students cannot meet the standards. Board Comment at 4. It appears, however, that the objections to the proposed rules by those who currently achieve the most rigorous academic standards arise from the prescriptive nature of the breadth of the standards proposed. The prior graduation standards for four year secondary schools, four credit hours in communications, one in mathematics, one in science, three in social studies, one and one-sixth in physical education, and one-half in health [Minn. Rule 3500.2100 (1991)] are met easily by students taking necessary prerequisites for Advanced Placement courses or meeting the intense requirements of the IB program. The students who commit themselves to these programs are already achieving at levels of rigor beyond that which can be reasonably expected from most high school students. Exhibit 178. However, as discussed above, the proposed rules do not just impose “rigorous standards.” Rather, the rules also impose a “comprehensive education.” SONAR, at 8.

In doing so, the Board has identified learning areas, not traditionally associated with rigorous academic achievement and requires significant effort be expended by students to meet standards in those learning areas.

64. The proposal of comprehensive requirements by the Board has engendered criticism from students, parents, and teachers about the impact of the rules on high achieving students. Some fear a shift by such students to private schools. The Minnesota School Boards Association, the Minnesota Association for Supervision and Curriculum Development, and other commenters have pointed out that the proposed rules, while intended to adopt rigorous standards, can have the effect of interfering with the achievement of those standards. The IB program is certified by an international body and cannot be drastically modified to meet the Board's standards. Similarly, obtaining the necessary educational prerequisites to qualify for AP courses may be inconsistent with the breadth of the Board's Profile of Learning content standards. These problems are most likely to occur in the first years that the standards are required, before widespread embedding of those standards is accomplished along the coursework track required of a student seeking to take AP courses in that student's senior year. Exhibits 178, 180, 265, 352, 358 and 690.

65. The manner that coursework is embedded can also have problematic consequences for students following a rigorous path of coursework. For example, in the Mounds View High School alignment a single year course, Integrated Math 1,2,3, potentially meets all the content standards required for mathematics. Exhibit 636, Mounds View Attachment . Yet a student on a path to Calculus will take three additional courses in mathematics with no standard to meet (if the Integrated Math course was taken) or potentially not fulfilling the mathematics requirements (depending on the specific courses taken and the embedding done by the district). This approach is also present in the embedding of mathematics standards in ISD 622. Board Comment, Exhibit Z.

66. The rule supporters have cited the TIMSS results of students as justifying the imposition of rigorous standards. Students are not likely to achieve better scores in such examinations when they are prevented from taking college level mathematics, science, history, literature, or language classes. This impact demonstrates that the rule as proposed may not be able to achieve the goal set out in Minn. Stat. § 121.11, subd. 7c which is to provide an opportunity for students to excel by meeting higher academic standards.

67. The record supports the conclusion that the application of the 21 and 3 standards requirement to high achieving students is unreasonable in that it is not rationally related to the end sought to be achieved by the statute. See Finding of Fact No. 16. To cure the defect in the application of the rule to high achieving students, the Board could modify the application of the rule to equate successful completion of AP coursework or the IB program with meeting the rigorous standards required of the Profile of Learning by Minn. Stat. § 121.11, subd. 7c. Since these programs are

validated as meeting the highest standards in education available within high schools, there should be no legitimate concerns that high standards will not be met by those students. Proposed rule 3501.0330, subpart 3, could be amended to indicate that a student who completes an appropriate number of Advanced Placement courses, or completes the International Baccalaureate program is eligible for high school graduation.

68. Over time, the Board and the districts may demonstrate that the required standards can be embedded in the coursework required of AP and IB students. As teachers become more familiar with the standards, there will be fewer difficulties in merging the standards with the levels of achievement expected of such students. At such time, the Board can encourage districts to adapt their policies to create more uniformity in exposure to the standards or the Board may revisit the issue in a rulemaking proceeding. Accordingly, another approach to curing the defect in the proposed rule would be to phase in the 24 standard requirement for AP and IB students so that districts have time to determine if embedding is possible which would allow students to take a full AP or IB program.

69. The language suggested above does not address the possible conflict with the standards for students with fewer AP courses, a partial IB program, or participation in the Postsecondary Enrollment Options program (PSEO). The Board, in its post hearing comment proposed a modification to the rule. The Board suggested that an item B. be added to 3501.0330, subp. 7 to read:

B. The district shall permit a student to substitute successful completion of an alternate course or program of study, approved by the district, for any elective requirement when the district determines that it is unable to provide opportunities to achieve both the alternative course or program of study for a required elective shall be made only with the written approval of the student's parent or guardian.

Although the proposed modification is not substantially different and is needed and reasonable, it does not fully meet the concerns of commenters because the modification is limited to substituting for elective standards when a student follows an alternative course of study. *Id.* Board Comment, at 8. It does not reduce the number of required standards.

70. A waiver provision would be a reasonable means of accomplishing both the goal of comprehensiveness and the goal of rigor. The following language or something similar could render the rule reasonable for such students:

Upon application of a student, with the approval of the student's parent or guardian, the district must waive any content standard when the district determines that: 1) the student is participating in a course of study more rigorous than required for graduation; 2) attaining the content standard

sought to be waived would have the effect of precluding the student's opportunity to participate in the more rigorous course of study; and 3) the content standard could not feasibly have been attained earlier in the student's course of study. The district must inform the Board of every waiver granted and consult with the Board to reduce the need for future waivers of content standards.

71. Many of the unintended adverse impacts on AP and IB students arise from the uncertainty and unfamiliarity with the process of embedding standards into the coursework required to achieve those academically challenging goals. As this process is mastered by teachers and districts, the Board may wish to consider revisiting the rules to remove the exemption or waiver provisions.

### Adverse Impact on Vocational Programs

72. Janice Reineck objected to the potential impact imposing the Profile of Learning would have on students pursuing vocational education in high school. Exhibit 357. She expressed concern that those students would be forced to forego classes in the student's chosen vocation to meet the standards for graduation. *Id.* Ginny Karbowski, School to Career Director of Anoka Hennepin District 11, objected to "boxing" standards within existing courses, because that practice would impair vocational education by reducing class choices. Exhibit 385. MASVA indicated that the content standards have not been embedded in vocational courses. Exhibit 638. See also Exhibit 315. The impact on vocational programs mirrors the impact on AP and IB programs. With an additional year to embed content standards and reduction of the number of nonelective standards, the degree to which educational choices of vocational students is impaired can be lessened. A waiver provision, as discussed above, would also address this problem. There is nothing in the record of this rulemaking to suggest that the rigorous coursework required of vocational students conflicts with embedding standards.

### Impact of Profile of Learning on College Admission.

73. Proposed rule **3501.0400** requires the performance achieved by a student in each content standard be listed on that student's transcript. Harley Feldman asserted that this requirement will have a negative impact on college admissions, since postsecondary institutions have no means of assessing the content standards. Exhibit 326. Audrey D. Johnson, Communications Committee member of the Minneapolis Public Schools Parent Partnership Council, suggested that completing Profile of Learning requirements could "detract from the course of study required for students who are college bound." Exhibit 556. Joanne Drenkow, Science Teacher, asked whether postsecondary institutions would accept graduates with "not yet developed evaluation reporting mechanisms?" Exhibit 587.

74. Dr. Linda Baer, Executive Vice Chancellor of Minnesota State Colleges and Universities (MnSCU), and Dr. Robert Bruininks, Executive Vice President and Provost of the University of Minnesota, addressed this concern directly. Exhibit 637. They noted that the existing information currently on transcripts will be maintained and the addition of performance levels will aid in assessing a student's knowledge, skills, and abilities. *Id.* They do not see a problem with the rule and college admissions.

75. The Board responded that it has been in contact with postsecondary institutions and no concerns have been identified about the scoring of content standards. Districts are not prohibited from awarding credits or grades. Board Comment, at 17. There is no evidence in the rulemaking record to suggest that colleges and universities will be unable to utilize scoring under the rule in making admission decisions or that Minnesota public high school graduates will be adversely affected. The rule is needed and reasonable as proposed.

### Recordkeeping Required of Districts

76. Proposed rule **3501.0370** requires that districts assess student performance using a checklist and also sets out scoring criteria. Under subpart 1B. of proposed rule **3501.0370**, school districts are required to “establish processes” to determine content standard completion by students transferring in from other school districts, postsecondary institutions, and completing standards through outside experience. The reaction to these provisions was one of great concern. Common expressions used to describe the requirements of this subpart were: “bureaucratic nightmare,” “paperwork nightmare,” “impossible to decode.” See Exhibits 784, 796, 663, 674B, 614, 577, and 487. Frank Currier, Technology Instructor at Madelia High School, described the recordkeeping requirements of the Carpentry performance packages as leaving “little time for actual construction . . . .” Exhibit 627. Marty Siefert, State Representative from District 21A and a teacher, asserted that “it was not the intent of the legislature to impose such a costly and bureaucratic mandate in order to achieve high standards.” Exhibit 720. Judith Smith, Teacher at East High School in Duluth, asked “Who keeps track of these portfolios with attached sheets to attached sheets to attached sheets?” Exhibit 527.

77. Six teachers from Warroad Senior High School indicated that some content standards were being placed across different courses in different districts. Exhibit 684. The commenters questioned how standards would be completed when students transferred between districts. *Id.* Jessica Wiley, Supervisor of Staff Development and Training for the Northeast Metro 916 Intermediate School District, indicated that the only direction for districts from the State has been to engage in “possibility thinking” about the problem. Exhibit 694. Wiley indicates that districts are embedding standards across courses and no solution to the problem of partial completion of standards has been discovered. *Id.*

78. The Board's response asserts that the burden of the rules is not different from the current situation when students transfer from other districts or other states, or where students took college classes under the Postsecondary Enrollment Options program (PSEO). Board Comment, at 14. The Board points out that districts must "equate" learning achieved by students now. *Id.* However, in the Carnegie-unit system, the burden on districts to equate learning is lighter, since curricula of other schools, districts, or states need not be assessed to determine if standards are present. One credit hour of advanced algebra meets the mathematics requirement for graduation, whether the content standard for algebraic patterns under proposed rule 3501.0444, subp. 4, is included or not. Under the proposed rules, districts must "establish processes" by which this assessment is done. But no further instruction is provided.

79. The survey conducted by CFL in 1997, indicates that 75 percent of sites reporting had "no understanding of the expectations for recordkeeping and the reporting of student results." CLF Survey of Schools, at 9. In that same survey, 77.5 percent of sites reported that they were "not prepared for collecting and managing data for reporting results." *Id.* The Minnesota School Boards Association indicated that districts would have problems without a system of recordkeeping and that such a system was "still far from reality." Exhibit 777.

80. The Board's response on this issue to the criticisms of teachers, school officials, legislators, and parents is as follows:

The recordkeeping of student progress in the standards can be met in the classroom as part of the normal gradebook recording teachers already do to grade students. Expectation that students do assignments that assess their skills and ability to use learning is consistent with good current practice and what classroom teachers are currently doing.

Board Comment at 15.

81. In addition, the Board described the recordkeeping required by the Profile of Learning as "little additional burden for schools," "minimal," and "very little additional time or effort." The Board asserts that the record keeping essentially consists of the recording of the standards and scores achieved by students. Board Comment, at 20. However, the Board's comment on achieving standards before high school (Board Comment at 4) indicates that there must be recordkeeping available to register completion, including partial completion, of content standards, even before a student reaches high school. The rules provide no guidance to districts as to how such a system is to be established or maintained.

82. Catherine Bruce, Music Teacher from Northside Elementary, described her reaction to the adoption of the Profile of Learning as "excited." Exhibit 559. She also described the recordkeeping required of *part* of one music standard taught in her second and third grade classes. Bruce notes that the partial assessment she is

completing is taking between three and five minutes per student. At 400 students, Bruce indicated that many of her students “receive no music teaching” while either waiting to be assessed or waiting for the assessments to conclude. *Id.* Similar experiences were described by Everett Jacobson, Music Teacher in Fergus Falls, and Jane Christianson, Vocal Music Teacher at Marshall High School. Exhibits 585 and 431.

83. The current practice of classroom teachers is to tally grades for assignments given in their Carnegie-unit based courses and record the grade achieved by each student in that course on that student’s transcript. The record in this rulemaking demonstrates that many of the standards that must be demonstrated by students in order to graduate either cannot or have not been embedded in a single Carnegie-unit course. This means that the degree to which a student has demonstrated individual skills must be recorded, by each teacher, in a format which can be readily understood and applied by the teacher who assesses that same student in the next Carnegie-unit course taken to complete that standard. For each course (or combination of courses) taken to satisfy multiple standards, the recordkeeping burden is increased accordingly. Exhibits 128, 173, 178, and 717.

84. The Board has indicated that student transcripts can carry a notation, “ATT”, to indicate that a content standard has been attempted but not completed. Board Reply, at 5. The recordkeeping problem does not arise from the need to note that a student has attempted a standard, but the need to note what specific demonstrations of mastery have been met. Since districts are following different patterns of embedding standards in classes and are writing their own performance packages to assess those standards, there is no common frame of reference in which to measure partial completion. The lack of any method in the rule to record the elements of a content standard as partially completed affects students, who may then be required to repeat classes to redemonstrate mastery. The Board appears to have underestimated the additional time required of teachers to meet the rule’s requirements, especially in the first few years that the Profile of Learning assessments are being performed.

85. A common refrain heard from teachers was that time spent keeping records is time away from teaching students. See, Exhibits 71, 655. Enabling students to achieve “rigorous standards” is not accomplished by reducing teaching time. The absence of a specific standard recordkeeping requirement in the proposed rules does not render them unreasonable. Developing a uniform system of recordkeeping to clarify the rule must be pursued, however. The record keeping system was apparently promised for August of 1998 which will not allow time for implementation in the 1998-9 school year. Exhibit 688 at 1. If the implementation of the proposed rule is delayed for one year or phased in to ensure that the Class of 2002 is not unreasonably affected, the time can be used to develop appropriate recordkeeping methods. The MEA and the MFT noted that appropriate technology and software must be made available to record data or the rule will fail. T. 166-67, 172. Since the standards to be achieved will be determined by this rulemaking, a uniform system of software for tracking progress can be completed without further delay whether by the Department or private vendors.

Once the recordkeeping system is in place, students can be assured of receiving credit for completing standards, even when those standards are embedded in different courses or achieved in different schools or districts. The record demonstrates the possibility of an additional burden on teachers due to increased record keeping which will detract from time available for teaching. This problem must be solved if the rule is to be successfully implemented.

### Scoring Criteria

86. In proposed rule **3501.0370, subpart 3**, the Board has proposed a scoring system for every student that completes a standard. Scores for completed standards range from 1, for completing a standard substantially below the rubric provided for that standard, to 4 for completing a standard in a fashion that meets or exceeds the rubric. Representative Gene Pelowski, Jr., District 32A, criticized the system of scoring as lacking a “clear explanation of what each number represents.” Exhibit 389. Representative Pelowski suggested resolving the details before implementation of the system to ensure that all the participants, students, teachers, and parents, are aware of what expectations they are trying to meet. *Id.* Fred Nolan, Superintendent of Eden Valley-Watkins Public School, echoed the complaint about the 1-4 scoring system. Exhibit 240. Other commenters objected to the system as just like grades, only adding an unnecessary complication that will be difficult to explain to parents. Exhibits 240 and 496. While the lack of specificity in the rule as to the scores does not render the rule unreasonable, further explanation is needed to implement the rule. With a delay or phase-in the Board would have a reasonable opportunity to distribute rubrics, and teachers and students will be able to understand what is expected of them.

### Other Considerations in Scoring

87. Subpart 4 of proposed rule **3501.0370** requires districts to score mastery of content standards against outstanding work by third graders for the primary level, fifth graders for the intermediate level, eighth graders for the middle level, and 12th graders for the high school level. The Board described its reasons for this approach as:

This provision is needed to clarify the expectation that scoring will be consistently applied against high content standards regardless of the age at which the student completes the performance package for the content standard. The provision also clarifies that schools have latitude in the grade levels in which content standards are assessed, but that the performance expectation is not consequently made inconsistent because of those district choices. This is reasonable because it keeps the content standard consistent and it parallels general practice in school programs where consistent standards and expectations are currently applied; for example, a ninth grader who is on the varsity basketball team, is not given extra points because she is younger than most others in the same level of competition but is held to the same level as all other varsity level players.

SONAR, at 48 (emphasis in original).

88. A large number of commenters wrote objecting to the use of outstanding work done above the grade level of the child being scored. T. 160, Exhibits 33, 37, 104. Robert Helgeson, Graduation Rule Facilitator for ISD 196, pointed out that the curriculum for some standards was not being offered at the 12th grade, thereby precluding the Board from obtaining exemplars. Exhibit 174, at 2. T. 143. Michael Courtney reflected the comments of many teachers, students, and parents when he described the practice of imposing that standard on students in earlier grades as “developmentally inappropriate.” Exhibit 173.

89. The Board responded to the commenters’ concerns as follows:

This suggestion is in conflict with the effort to score all students against the same criteria, whatever the age of the individual student. While, on the surface, qualifying scoring with an age or grade factor within a level (high school, middle level, etc.) may seem logical, it is inconsistent with results-orientation.

The proposed rules, part 3501.0370, subp. 4, provide an index of the level of student work which the commissioner selects as exemplars to be used for scoring as specified in subp. 3. This provision assures that the quality of student work against which students will be scored is consistent. It is reasonable to set exemplars at one degree of rigor for each level of standards (primary, intermediate, middle and high school).

Most standards, such as those in algebra or biology, are not developmental. Students are capable of performing at high levels whenever the learning is completed, be it 9th grade or 12th grade. Take the case of a school in which students complete the Concepts in Biology standard during a yearlong course in biology. If the student is studying biology for only one term, the grade-level or age at which the student takes the biology course is of little consequence. If one school offers biology only to tenth graders and another offers the same course only to twelfth graders, the one year biology study will render similar results. In fact, many schools have multiple grade students within the same courses, and grading expectations are not different, for example, for the tenth grader, the eleventh grader, and the twelfth grader taking Public Speaking I. They are graded against the same criteria. This is even more essential when scoring against standards, so that students and employers and post-secondary institutions have a true picture of how well the student has performed without some unspoken qualifier that says "for her age."

The analogy to basketball is again appropriate. A sophomore on the varsity basketball team is not "spotted" extra points because she is younger than most players. All compete against the same standard. If a sophomore gets a "4" and a senior gets a "3", it should reflect a real comparison of their results and not a handicapped comparison which has established some unspoken assumption that younger students can't perform as well as older ones with similar training and skill. That unspoken assumption is simply not "standards-based."

Board Comment, at 16.

90. In its reply comment, the Board stated as follows:

In order to clarify the provisions of 3501.0370, subpart 4 and its relationship to subparts 2 and 3, the Board proposes to add the following language to part 3501.0370 subpart 4.

On page 11, line 21 insert the following phrase "used by the commissioner to select exemplars" after the word "index."

This addition to Part 3501.0370, Subp. 4. of the proposed rules clarifies that the exemplars selected by the commissioner and used to develop the rubrics that are provided to schools for use in the scoring of standards will be the highest student work in each level of standards (primary, intermediate, middle and high school). This provides a consistent procedure for the selection of the state exemplars referenced in subpart 3 and assures that the level of selected exemplars rises as actual student work improves year after year.

Board Reply, at 1. This proposed modification is needed and reasonable and is not substantially different. It essentially clarifies the Board's intent.

91. The Board's rationale for the use of 12th grade work as exemplars is reasonable in the sense that it is not arbitrary based upon the argument made. Again, however, a large number of comments raise the question of whether it is the best policy since scores for ninth graders, for example, will be measured against excellent 12th grade work and potentially low scores will be difficult to explain to students and parents. At the beginning of school, work by students in Kindergarten through third grade is measured against outstanding third grade work. 3501.0370, subp. 4A. Teachers are concerned that students will doubt their own ability if they are measured against older students. E.g. Exhibit 104. The Board should carefully review these concerns which were expressed by a large number of teachers. Also, in response to criticism of this rule provision, the Board asserted that all students from 9th through 12th grade could perform excellent work. There are certain standards that the Board suggested might be placed only in grades below 12th grade. Board Comment, at 1. If all schools were to place the standard at a level below 12th grade, the Board's rule as modified could conceivably prohibit the Commissioner from using any of that work to assess student performance on the standard. The Board should consider whether outstanding work from other grades should be used as exemplars since excellent work is capable of being performed at all levels.

#### Pilot Projects/Adequate Prior Testing

92. Lew Kelley, Mickie Wildeman, Wayne Ivers, Band Director at Marshall Senior High, Cheryl Moen, Honor Roll Teacher of Minnesota, Dennis Hatleli, and many other commenters objected to the Profile of Learning as an untested experiment being performed on Minnesota children. See Exhibits 484 and 495. Gordon Carlton urged the Board to "get the bugs out of the system before we go 'online.'" Exhibit 618. Other commenters, such as Gwen Moore, President of the Eagle Forum of Minnesota, have questioned whether introduction of the Profile of Learning have actually decreased scores in basic skills testing. Exhibit 727. Deb Steiskal, freelance researcher and writer, examined the basic skills test scores for the pilot districts and noted that they were below the statewide average. T. at 302.

93. The Board has relied upon pilot sites to implement the techniques that will be required to embed learning standards into existing curricula and determine what level of performance can be reasonably expected of students. The Board described the pilot site experience as follows:

Not all buildings within pilot site districts and not all classrooms within buildings participated in the piloting, so district-to-district comparisons do not even render evidence that specifically addresses the effectiveness of piloting the Profile of Learning.

Board Comment, at 22.

94. The Board's description of the pilots sites was supported by Linnea Swenson, Graduation Standards Implementation Coordinator with the Richfield Public Schools. Swenson stated:

Actually, I should clarify that these were not pilot sites in the traditional sense that we simply tried out an already-designed system. Rather, we were research and development sites for Minnesota's results-based system.

Transcript, at 126.

95. Basic skills testing was done by all high school students who need the test for graduation. The Profile were introduced in only a few locations and for a few standards. Since the pilot site experience was so limited, there is no valid conclusion that can be drawn from comparing basic skills test scores before and after the pilot site program began. Board Comment at 22.

96. Some commenters have insisted that it should be demonstrated that basic skills test scores rise in the pilot sites before this rule is demonstrated to be needed or reasonable. Exhibit 727, T. 302. These commenters are seeking to impose a burden on the Board that is not relevant to intent of these rules. Improvement in basic skills scores would be achieved by drilling students in reading, writing, and mathematics. As demonstrated by the record in this matter, the demands upon high school students when taking up their responsibilities as adults in society, whether or not they pursue vocational, career, or traditional academic interests, are many and varied. The Board is not required to demonstrate improvement in basic skills to support this rule.

### Profile of Learning as OBE

97. James Gilson and others suggested the Profile of Learning was simply another form of outcome-based education (OBE). T. 67 - 76; Exhibit 189. Generally speaking, OBE is a method of instruction which expects students to be self-directed (and self-motivated) learners who proceed at their own pace. Under OBE, each student "passes" on a subject only when the student has demonstrated mastery of that subject. Beyond the demonstration of mastery of a subject, there is no further basis for comparison between the Profile of Learning and OBE. The Profile of Learning carry grades recorded on a student's transcript and can be embedded in traditional

coursework. Any variation in progress is within the individual school board's and individual teacher's discretion. The Board has not mandated that any particular method of instruction be used to prepare students to demonstrate mastery. The Board is prohibited from imposing such a requirement. Minn. Stat. § 121.11, subd. 7c(a). The Board only requires that a student make such a demonstration before a diploma is awarded. The proposed rule is not OBE as it is generally understood.

### Level of Rigor in Academic Programs

98. Jerry Miller, Willard Marwitz, Melvin Bailey, Fonda De Kruif, and a number of other commenters expressed concern that the proposed rules would “dumb down” existing curricula in Minnesota schools. Exhibits 566, 567, 631, and 671. Jan Lekatz, Teacher in ISD 696, indicated that the performance packages do not “supply the educational needs of all students . . . .” Exhibit 650.

99. Comments to the contrary were provided by many educators who perceived many of the standards to be imposed as being at the college level. See, Exhibits 686, 711, 751, and 655 (8th grade standard too difficult). The standards for foreign language were widely criticized for exceeding the ability of all but a few students. Findings of Fact Nos. 135-138, *infra*.

100. The Board's Comments noted that:

The content standards are, in themselves, neither low nor high, but reflect what content (skills and processes) must be demonstrated. The content standards specify only what students must know and be able to do. How *well* each student performs in demonstrating the required knowledge and application of it is indicated in the scores they achieve for the quality of their individual performance. The 1-4 scoring range provided evidences the state's recognition that achievement will vary among students but that opportunity to learn and perform must be available to all students. The rules require only the completion of the specifications of the standard for graduation, and not a particular score.

Board Comments 9-10. The graduation standards attempt to maximize local control of curriculum while accomplishing the legislative mandate that “rigorous standards” be demonstrated before a student graduates from high school. The proposed standards do not displace the curriculum set by districts, schools, and teachers.

## Profile of Learning as a Business-oriented Curriculum

101. Allan Beale suggested that the Profile of Learning were an effort to produce a workforce to meet business needs at the expense of individual autonomy. Exhibit 377. Brook Bolesta related a conversation that included the term “worker bee” as a positive outcome of the Profile of Learning. Exhibit 356. Bolesta was concerned that the goal of the public education system was being changed to educate students as workers, while more privileged students receive a well-rounded education elsewhere. *Id.* Donald Gettinger, Teacher at Stillwater Area High School, assessed the performance packages as having an emphasis on entering the workforce, not intellectual development. Exhibit 359. Susan Swallow suggested that the Profile of Learning in effect, pares down education to favor preparing students for business. Exhibit 770.

102. The findings of the Minnesota Department of Education from public meetings held in town hall settings and student surveys included the following:

Basic skill-related competency areas were suggested most frequently by respondents when asked to list their beliefs about what Minnesota high school graduates of the '80s (and beyond) should know and be able to do as a result of public education. Specifically, the competencies of reading, math, language arts, and effective communications were suggested by well over half of all respondents. Other suggestions by respondents were numerous and varied in terms of content. Also, there was indication that student-suggested competencies were somewhat more career oriented than those suggested by general population respondents.

*Minnesota Dialogue on Education Report*, Mn. Dept. of Education, April, 1984, at 42.

103. There is nothing in the proposed rules to suggest that businesses, or any other group, are having their interests advanced over any other group. The focus of the rules reasonably requires rigorous standards be met before graduation. One beneficial result of requiring such standards may be to produce high school graduates better equipped to handle tasks in the workplace. With the emphasis placed on independent thinking and problem-solving in the rules, students are arguably less likely to surrender individual autonomy later in life. The proposed rules are not defective due to any "workforce" orientation.

## Holding All Students to High Standards

104. A commentator questioned whether students who are difficult to motivate will be held to high standards, or whether the pressure to allow these students to graduate will render the Profile of Learning a “farce.” Exhibit 716. Terry Holmquist, Teacher at the New London-Spicer High School, questioned whether schools would feel

pressure to pass students who do not meet rigorous standards. Exhibit 728. Luke Olson, Mathematics Teacher in South Saint Paul Public Schools, asserted that there was nothing in the rule to prevent assessing a standard at a 1, just to pass a student on. Exhibit 754.

105. The purpose of the rule is to introduce rigor into education. The Board has adopted an even number of assessment levels to prevent drift to the “middle.” SONAR, at 48. With the availability of examples of student work available to teachers to create standard assessments, students can compare their degree of mastery of subjects outside their own school or class. Even to obtain an assessment of 1, some degree of mastery must be demonstrated, which is arguably a more stringent requirement than is currently in place.

### Availability of Resources to Meet Standards

106. Many comments regarding utilizing books and other materials indicated that the proposed rules would put extreme stress on the availability of resources. See e.g. Exhibit 392. Lavonne Lichtsinn, parent of an eighth grader, described her child’s experiences with preliminary performance packages. Exhibit 590. She noted, as did many other commenters, that completing the performance packages prepared by the Board require reference materials and resources not available at the school or public libraries. *Id.* One measure of both the districts’ and the Board’s success in achieving rigor in the proposed standards is the degree to which school and community libraries are faced with increased demand. Students stressing the research resources available are students who are learning beyond the contents of any textbook. As more experience with the content standards is achieved, more efficient use will be made of resources. However, the funding to provide new materials and resources must be provided for the rule to be successful. The record indicates that there will be a pressing need in many rural areas.

### Transfer Students Meeting Standards

107. Sandra Setter, Social Studies Teacher and Graduation Rule Facilitator at Eagan High School, described the manner in which transfer students scores would be “assessed” as an “unresolved issue.” Exhibit 182, at 5. Gary Armon, Counselor of Blue Earth Area High School, pointed out that the proposed rules lack any guidance for how students transferring in from out-of-state are to meet the requirements for graduation under the Profile of Learning. When inquiring on this issue, Armon indicated that he was told to “review the student’s records and determine if standards have been met.” Exhibit 682. The CFL survey showed 75 percent of sites are not ready to equate results for mobile students. CFL Survey of Schools, at 5. Since private schools in Minnesota are not required to assess students for graduation standards, the same burden exists for students transferring into public schools from in-state private schools.

108. The proposed rule requires districts to come up with some method of analyzing a transfer student's transcript (of Carnegie-unit course grades) and arrive at a determination of what content standards have been met. It does not, however, set out a method. Each district is directed to establish its own process to assess standards completion by students coming from non-Profile schools. This lack of detail does not make the rule unreasonable. However, the same coursework can be treated in different ways by adjacent school districts. Under these circumstances, the Board should clearly determine the manner in which coursework is to be assessed, not the districts.

109. The Board could provide districts with a methodology to recognize what students have accomplished in non-Profile schools. In the alternative, the Board could relate the number of content standards that must be met to graduate to the number of years a student is in high school which assesses students under the Profile of Learning. Any such lesser standard can be reflected on the transfer student's transcript. With a delay in implementation, the Board would have adequate time to address this problem, raised by numerous commenters.

#### Use of Performance Packages to Demonstrate Mastery

110. Over seventy commenters objected to the contents of individual performance packages as being too difficult, irrelevant to students' educational needs, taking too long to teach, not being currently available, and not realistic in light of available resources. Many felt that they were not developmentally appropriate. Exhibits 39, 187, 524, 534, 407, 419, 431, 480, 500, 264, 328, 130, 182, and 187. A chemistry performance package and a health performance package were criticized as being potentially hazardous to students. Exhibits 611 and 615. Paula Holmen, Social Studies Teacher, implemented two packages and observed the implementation of a third, and she vividly describes the negative impacts of the process on existing curriculum, resource availability, and time available to teach. Exhibit 188.

111. Given the number of districts that have not yet embedded standards in existing curricula and an implementation date of the fall of 1998, many districts will be required to use the state performance packages for students to demonstrate mastery of content standards. The record indicates that a significant amount of time is required by teachers to assess and find resources for performance packages even without modification. Exhibit 577. If there is a delay in implementation of these rules, districts will have the time to adapt or replace any performance package which is in any way inappropriate. The Department would also have time to modify performance packages. Exhibit 796. The proposed rule is not defective since the performance packages are not required. They can be modified as necessary.

#### Assessing Standards in Group Projects

112. A number of parents objected to an emphasis on group projects in the performance packages. Exhibit 750, The Board responded that the only required

group involvement was in those learning areas where the standard itself required such activity. Board Reply, at 7. The issuance of a grade based on group work is currently a matter of district and teacher discretion. There is nothing in the proposed rules that affects the manner in which districts and teachers approaching grading work done by groups of students.

### Learning Area Three: Literature and the Arts

113. The Minnesota State Arts Board, the Minnesota Music Educators Association, the Minnesota Center for Arts Education, the Minnesota Alliance for Arts in Education, the Minneapolis Institute of Arts, as well as a large number of teachers and members of the artistic community wrote to support the specification of a standard in the arts. See e.g., Exhibits 283, 8, 27, 85, 92, 200, 269 and 298. T. 86. Some young commenters submitted their own artwork as a demonstration of support for a mandatory arts standard. Exhibit 288. Proposed rule **3501.0443** requires students to demonstrate mastery of the arts standard by the creation or performance of an original artistic presentation and interpreting or evaluating art works using established criteria. Kathleen Maloney, Executive Director of the Minnesota Alliance for Arts in Education, described the standard as providing “a framework that will help even out some of the disparity in learning opportunities and provide guidance to local authorities . . . .” Exhibit 186. Two commenters objected to the rule provisions as moving toward the study of “state sanctioned art.” Exhibit 557. The commenters expressed concern that the rules would foster an atmosphere of stifling individuality.

114. There is nothing in the proposed rule that would limit what any teacher could include in courses containing these content standards. There is no list of approved artists in the rule or a list of approved art forms. The standard may be met through theater, literature, dance, musical performance, choir, sculpture, painting, or multimedia. The only limits to meeting the standard are those set by the district and those imposed by the availability of resources to complete work demonstrating mastery in the content standard.

115. The Standards-Leadership Team at Cambridge-Isanti High School, and the Language Arts Department of Apollo High School suggested that creative writing be allowed as a means to meet the artistic expression standard. Exhibits 766 and 264. Other commenters suggested that a separate literature standard be established. Exhibits 21, 715. The Board responded that the distribution standard (proposed rule 3501.0330, subp. 3.C(1) and (2)) was designed to “balance” one required literature standard with one required art form other than literature. Board Reply, at 3. The Board’s approach to literature and the arts has been shown to be both needed and reasonable.

### Learning Area Four: Mathematical Applications

116. Proposed rule **3501.0444** establishes the content standards for high school students in mathematics. Requirements include using discrete mathematics in problem solving, chance and data analysis, algebraic patterns, technical applications, and shape, space, and measurement. Arnie Cutler, Executive Director of the Minnesota Council of Teachers of Mathematics (MCTM), testified in support of the proposed standards for mathematics contained in the rule. T. at 204. MCTM submitted a survey of changing mathematics graduation requirements showing that both the number of mathematics credit hours and the percentage of students taking higher mathematics classes were rising in many states. Exhibit 176, Attachment at 38. SciMathMN supported the inclusion of algebra and geometry (shape, space, and measurement) for all students as needed skills with direct application to the workplace. Exhibit 415, at 6.

117. Gary Gronquist, Graphic Communications Instructor at Hastings Senior High, and Ginny Karbowski urged that shape, space, and measurement be a separate required standard. Exhibits 371 and 385. Gronquist pointed out that students experience difficulty using the measurement tools they are exposed to in class. Exhibit 371. There are ample opportunities for embedding the shape, space, and measurement standard in vocational courses, as well as traditional mathematics. As the Board suggests, the difficulties identified by the commenter need to be worked out at the district, school, and classroom level. The Board's approach has been shown to be reasonable.

#### Learning Area Six: Science Applications

118. The content standards in learning area six, Science Applications, are contained in proposed rule **3501.0446**. Karen Kramer, President of the Minnesota Science Teacher Association and a Biology Teacher at Willmar Senior High School, expressed support for the rules but concern over some of the standard implementation that is expected under the rule. Exhibit 181. Rod Vacek, Instructional Facilitator in Anoka-Hennepin ISD-11, criticized the content standard of item C in subparts 2-5, if the standard is to be met with original student research. Exhibit 185. Vacek identified several problems, including limited resources, insufficient time, and inexperience of students as rendering such an expectation unreasonable. *Id.* He described the design and construction of student experiments as tasks that would interfere with conducting controlled experiments that are currently used to impart knowledge of the scientific method and of the science being studied. T. at 203.

119. Since the concern expressed over the standard is one of interpretation, there is no basis for finding the rule provisions defective. Given the strong concern that this requirement is impractical, the Board may wish to consider adding language that allows teachers the option of designing the experiments to be performed, so long as the experiment imparts the seven elements contained in item C. Any such change would not constitute a substantially different rule from that published in the *State Register*.

#### Learning Area Seven: People and Cultures

120. The standards to be demonstrated by students in American history, citizenship, geography, and community are set out in proposed rule **3501.0447**, Learning Area Seven: People and Cultures. The areas of learning to be attained in the rule are readily recognizable as social studies. The Board rewrote the provision, before beginning this rulemaking, but after the provision had been deemed insufficiently specific. One commenter objected to the rule language for the history provision as being no more than chapter titles to an old history text. T. at 153. This suggests that the course standard will be readily embedded in existing curricula, without excessive expenditures being required of school districts. The criticized provision reads as follows:

Subp. 2. Themes of United States history. A student shall:

A. demonstrate understanding of the Declaration of Independence, the United States Constitution, and themes related to key events, concepts, and people in the historical development of the United States, including the convergence of people, colonization, settlement, and the American Revolution; expansion, the Civil War, and the Reconstruction; tribal sovereignty and the relationship between American Indian tribal governments and federal and state government; industrialization, the emergence of modern America, and the Great Depression; World War II; and postwar United States to the present; and

B. illustrate the influence of diverse ideals or beliefs on a theme or an event in the historical development of the United States.

Charles Bettendorf, Social Studies Teacher in North Branch High School, indicated that the provision was too specific and would be “problematic” for districts lacking a survey course in American history. Exhibit 677. The fact that eras in that history fall along common divisions does not make the rule unreasonable or unnecessary. Where districts lack a survey course, the standards can be embedded in the courses that do teach each particular area identified in the standard. The possibility that students can currently graduate from high school without demonstrating knowledge of each significant era of American history supports the need for rigorous standards. The Board's rule has been shown to be needed and reasonable.

121. Matthew Little, Member of the Education Committee of the National Association for the Advancement of Colored People, suggested that the Civil Rights movement be expressly included in subpart 2, to ensure that the history of racial injustice not be overlooked in meeting the standards for graduation. T. at 360-62. Dick Little, Executive Director of the Education and Housing Equity Project, urged that the Civil Rights movement, slavery and its aftermath, and the immigrant experience be expressly included in the standard. Exhibit 532. The Board responded that studying the Civil Rights movement is very important. Board Comment, at 12. The Board also stated “That level of detail would require that the standards list *all* important movements

in history.” *Id.* at 13 (emphasis in original). The standards listed necessarily include the eras in which the institution of slavery flourished and ended, in which the Civil Rights movement achieved changes in American society, and the immigrant experience. The fundamental impact of all of these aspects of our nation’s history are sufficiently pervasive and important that the content should be taught without a specific reference in the rule. The Board has discretion to add the topics suggested to the standard. However, the Board’s approach is reasonable.

#### Learning Area Eight: Decision Making

122. Proposed rule **3501.0448** identifies the content standards for the Decision Making learning area. Marilyn Martin Rossmann, Associate Professor of Family Education with the University of Minnesota, and many teachers urged inclusion of child development and family studies as a requirement for graduation. Exhibits 368, 305, , 48, 72, 127, 138, 143, 145, 151, 152, 161, 199, 231, 252, 267, 279, 292, 293, 301, 310, 333, 336, 337, 342, 368, 413, and 536. The Board indicated that any student seeking to incorporate child development and family studies could use the elective standard of Inquiry to use the coursework to meet the graduation standards. Board Comment, at 12. The rules have been criticized for requiring too many standards. Addition or deletion of a particular content standard, that is determining their relative importance, is within the Board’s policymaking discretion.

#### Learning Area Nine: Resource Management

123. Proposed rule **3501.0449** specifies what content standards meet the Resource Management learning area requirements. Economic systems, natural and managed systems, personal and family resource management, business management, financial systems, and technical systems are the individual content standards within the learning area. Under the distribution requirements, as originally proposed, economic systems and one other content standard are required to graduate. Senator Stephen Dille, Dr. Lewis Mandell, Dean of the Business College of Marquette University, Ben Saukko, American Collectors Association (ACA), and Wm. Todd Streeter, Coordinator of the Personal Financial Initiative (PFI), and Wendy Graves, President of the Minnesota Congress of Parents, Teachers & Students, urged that personal and family resource management (PFRM) be a required standard for any high school student seeking to graduate.

124. The commenters urging the PFRM standard be required asserted that the nature of adult life required a degree of sophistication about financial management that is lacking, even in academically advanced students. The ACA cited \$1.2 trillion dollars in U.S. consumer debt, \$122 billion placed with collection agencies, and consumer bankruptcies reaching 1.1 million in 1996 as reasons that PFRM should be a required course. T. at 64. Senator Dille noted that a reduction in financial stress would strengthen families and thereby enhance student performance in school. T. at 43-44. Senators Lawrence Pogemiller and Keith Langseth indicated that a focus on PFRM

“would help insure that students will learn necessary skills to help them make prudent financial and economic decisions throughout their lives.” Exhibit 818-R.

125. The Board responded that the issues of personal finance were “addressed sufficiently” in a required middle level standard and the required economic systems standard. Board Comment, at 12. There is no doubt that students can use more instruction in PFRM. Leaving PFRM as an elective standard allows students the choice to select it, if they are entering the world of work and investment upon receiving their diploma, or defer that learning if different coursework is needed to meet shorter term goals (e.g. meeting college entrance requirements). Retaining personal and financial resource management as an elective standard or making it required is within the Board's discretion and the proposed rule has been shown to be needed and reasonable.

### Learning Area Ten: World Languages

126. Proposed rule **3501.0450** sets the content standard for high school level education in World Languages. As set forth in the rule, World Languages includes “foreign, domestic, technical, or symbolic language other than English.” The standard to be met by high school students includes communicating and analyzing complex information to the level of others highly skilled in that language.

127. One hundred and sixteen written comments were received from foreign language teachers, some representing entire foreign language departments in Minnesota schools. Their concerns were the same in the vast majority of those comments. As circulated in an earlier draft, the high school content standard included culture as a measure of mastery along with the language being taught. As proposed, the references to culture were omitted and a reference to technical language was introduced in the rule. The foreign language teachers object to the omission of culture as leaving out a vital component of learning a language. They object to the inclusion of technical language as not being a world language by any definition. See, e.g. T. 276.

128. The Board asserts that the omission of culture from the World Languages standard does not change any of the curriculum in any foreign language class. The impact of leaving culture out of the standard simply means that knowledge about foreign culture is not assessed to determine a score for the purposes of meeting the content standard in this learning area. The individual teacher and school district determine how much cultural education should be included in foreign language class. Board Comment at 11.

129. Technical languages are proposed for inclusion in the World Language learning area. The Board describes the need and reasonableness of World Languages as follows:

Learning Area 10 is needed in the Profile of Learning to ensure that students have the opportunity to gain and apply knowledge and skills in communicating in a language other than English. This skill is an entrance requirement for a number of colleges. It is an increasingly needed skill in a global society and economy. It is reasonable to require that districts offer this high school content standard because many students need a world (foreign) language to pursue their postsecondary education and career goals. This Learning Area is not required for graduation because it may not fit the personal goals of all students, and because at this time Minnesota does not have an adequate number of world language teachers to deliver a language other than English to all students in the public school system. It is reasonable to provide preparatory standards in this Learning Area because there is growing evidence that world language learning is most effective when started at early ages.

SONAR, at 72.

130. The SONAR contains no explanation as to why technical language is included in the World Language standard. In examining the preparatory content standard for learning area ten, proposed rule **3501.0469**, the primary, intermediate and middle-level content standards all make reference to culture and all are clearly referring to foreign languages. There is no reference to technical language in any of these standards. The only obvious reason for this difference is that the only courses identified that would meet the technical language standard are architectural drafting and CAD, which are only offered in high school. Exhibit 636, Mounds View High School Attachment; Exhibit 119 .

131. The Board asserts, that the argument that symbol systems and technical languages are not *real* world languages because they do not reflect a specific societal culture denies the fact that people do, in fact, *communicate* with these languages and that those who know these languages can send and receive information using symbolic or technical language solely. Learning Area 10 addresses *all* languages that might be learned and is thus inclusive of modern languages, American Sign Language, classical languages, and technical languages, offering options for varied student interests and needs in pursuing languages other than English. The fact that there is not an existing human culture does not deny that symbol systems are real languages any more than it denies that Ancient Greek and Latin are real languages according to the Board. Board Comment, at 11.

132. Chandra Hanke objected to the inclusion of technical languages, stating "this symbol system does not a language make; if it did, math and music might also be listed under world languages". Exhibit 119. Naomi Thomsen, owner of Language & Friendship, Inc., stated that:

Computer assisted drawing has nothing remotely to do with world languages. Such a class should be combined with business and can be learned outside of the high school classroom as well.

Exhibit 363.

133. Melissa Davis, French Teacher at Minneapolis South High suggested that technical languages are learned in about one year and cannot “convey thoughts, feelings, perspectives and culture as is a world language.” Exhibit 807. Antoine Mefleh, who described himself as fluent in three languages, found the idea of considering a technical language to be a foreign language to be “amusing, even ridiculous!” Exhibit 332. Mefleh also has taken coursework in COBOL and PASCAL (two computer programming languages) and noted that these “languages” are taught in English. *Id.* See also T. 279. No commentator has identified any coursework other than computer-aided design or architectural drafting that fits the definition of technical language. That coursework is only available in high school and only available in a one year program. Exhibit 8.

134. There are coursework disparities between foreign language and technical language. Under the Board’s proposed rule, some students are achieving a content standard by learning a foreign language over a period of at least four years, including the development of writing and speaking skills, vocabulary, grammar, and cultural background. Other students are achieving the same content standard by studying architectural drafting or computer-aided design (CAD), in English, for one year.

135. The Board’s reasoning for the need and reasonableness of world language learning includes the fact that such languages are often required for admission to college. SONAR, at 72. Chandra Hanke pointed out that no college requiring a foreign language for admission will accept CAD as meeting that requirement. Exhibit 119. The Board has adequately demonstrated that the inclusion of technical language in the world language standard is needed or reasonable even if the record indicates it may not be the best choice. See Finding of Fact No. 16. The Board should consider the comments summarized above and review the exclusion of technical language as a World Language.

136. Betty Lotterman, Spanish Teacher at Mounds View High School, related discussions with the guidance office in the her school (one of the schools cited by the Board as being ready to institute the Profile of Learning) that few students will be able to take foreign language for four years. Exhibit 636. As Mounds View has embedded its standards, no student will be eligible to complete the standard until the fourth year of foreign language instruction. *Id.*, Mounds View High School Attachment. Even with the increase in electives, the inability to repeat electives will render taking four years of a single foreign language difficult. The level of proficiency in foreign language expected of high school graduates was described by Lotterman as the Advanced Level on the American Council on the Teaching of Foreign Languages Proficiency Guidelines.

Exhibit 636. This is a standard Lotterman described as being beyond the ability of foreign language majors in college who had spent a year studying abroad. Id. This is not an isolated complaint. See Exhibits 262, 617, 681, 689, 243, 244, 246, 249, 256, 281, 382, and 416, 517, 578, 617.

137. The Board responded to the comments on standards to assess World Language as follows:

The problem here is one of delivery rather than of the standards. Few would dispute that world language study is more effective when begun at a younger age. The agency encourages that the study of world language begin earlier in students' schooling.

For those students who have come to high school without that preparation, the proposed rules provide for Adjusted Packages (Part 3501.0360) for several years on a "pass-fail" basis for students who have insufficient background to perform at the level of difficulty and complexity required. There is, therefore, no need to count middle level preparatory standards toward graduation.

Also, students who are native speakers of languages other than English or who have studied other languages in intensive immersion environments should have an opportunity to demonstrate their high skills in other languages and have their achievement scored against truly high standards just as a skilled English-speaking student does in Learning Areas One and Two.

Board Reply, at 3.

138. The Board's response indicates that the relatively few students who are fluent in a language due to participation in immersion programs or through the use of a second language at home are the only students who will be achieving an assessment of 4 in World Language assessment. To paraphrase a comment repeated frequently throughout the record, foreign language students are being held to a standard beyond their ability. The ability to adjust performance packages expires after three years. Since the Board cannot assure districts that resources will be available to universally introduce foreign language instruction to primary, intermediate, and middle levels in the next three years, the Board cannot rely upon adjusting performance packages as ameliorating the impact of the rule on students electing the World Language standard for meeting the graduation requirements. To expect foreign language students to achieve full fluency in a foreign language in the years of instruction they have available is not "expected *student* experiences and results" as described in the SONAR. SONAR, at 6.

139. The foreign language teachers of Minnesota have uniformly described the level to which their students can achieve. They assert that the study of foreign language is, in itself, a form of rigor. Since such classes are electives, the Board creates a disincentive for students to take foreign language if the graduation standard is set at an unreasonably high level. Although the Board has articulated a rationale for its high standard, it should carefully review the large number of comments which suggest that the standard is beyond the ability of most students and will result in reduced enrollment or will not permit a student to take only two years of a language. It may be appropriate to phase in an increasingly difficult standard over a period of time. See e.g., Exhibit 636 at 2.

## Summary

140. A number of comments recognized the significance of the change being proposed. Randy Schenkaf, Director of the Winona Quality Council, described it as "the biggest change schools have been asked to make in a century." Exhibit 702. The record makes it clear that the proposed rule is fundamental and meaningful change which will require extensive adjustments in the educational system in the state of Minnesota. It will certainly require teachers to work far beyond the call of duty for the first few years of implementation as they adapt their courses to include the standards and assess and modify performance packages to fit their district. It will also require significant continued effort from Department staff to support teachers and administrators. Community resources, such as public libraries, will be impacted. But most importantly, parents and students will need to face the adjustment and added effort necessary to comply with the new standards. It will no doubt take the combined effort of all those involved to ensure successful implementation of the rule. This rulemaking record demonstrates the commitment of hundreds of parents, students, teachers and administrators to that goal provided that reasonable adjustments are made. The record indicates that successful implementation of the rule may greatly benefit Minnesota's students.

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

### **CONCLUSIONS**

1. The Minnesota Board of Education gave proper notice of this rulemaking hearing.
2. The Board has substantially fulfilled the procedural requirements of Minn. Stat. §§ 14.14, subds. 1, 1a and 14.14, subd. 2, and all other procedural requirements of law or rule so as to allow it to adopt the proposed rules.
3. The Board 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).

4. The Board 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. 2 and 14.50 (iii), except as noted at Findings of Fact Nos. 40 and 67.

5. The additions and amendments to the proposed rules which were suggested by the Board after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, and Minn. Rule 1400.1000, subp. 1 and 1400.1100.

6. That the Administrative Law Judge has suggested action to correct the defect cited in Conclusion 4, as noted at Findings of Fact Nos. 44 and 67-70.

7. That due to Conclusions 4 and 6, this Report has been submitted to the Chief Administrative Law Judge for his approval pursuant to Minn. Stat. § 14.15, subd. 3 or 4.

8. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

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

IT IS FURTHER RECOMMENDED that any modifications of the rules by the Board be distributed to the major organizations representing teachers, administrators, parents and students in this proceeding, for comment prior to final adoption and resubmission to the Office of Administrative Hearings.

IT IS FURTHER RECOMMENDED that this Report and any modifications by the Board be placed on the internet at the Department's Web site.

Dated this \_\_\_ day of March, 1998.

S/ George A. Beck  
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GEORGE A. BECK  
Administrative Law Judge

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