

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

In the Matter of the Proposed Expedited
Rules Relating to Science Academic
Standards, Minnesota Rules Chapter
3501

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.389
AND MINN. R. 1400.2410**

On January 29, 2009, the Minnesota Department of Education (Department or MDE) filed documents with the Office of Administrative Hearings (OAH) seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 and Minn. R. 1400.2410.

Based upon a review of the written submissions by the Department, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY ORDERED THAT:

1. The Department does not have the statutory authority to adopt these rules. Accordingly, the rules are **DISAPPROVED** as not meeting the requirements of Minnesota Rules, part 1400.2100, item D.

Dated: February 12, 2009

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

NOTICE

Minn. Rule 1400.2410, subp. 8, provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Judge must then review the agency's filing, and approve or disapprove the rule within 14 days of receiving it.

MEMORANDUM

The Department requests approval of proposed expedited rules relating to academic science standards. The Department published a *Notice of Intent to Adopt Expedited Rules* in the *State Register* on September 2, 2008, and submitted the proposed rules to the OAH for review as to their legality on January 29, 2009.¹

In expedited rulemaking, the legal review of the proposed rules is conducted according to the standards of Minn. R. 1400.2100, items A and C to H.²

Pursuant to item D in this series, the rule must be disapproved by the judge or chief judge if it “exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law.”

The Department asserts that it has the statutory authority to adopt the proposed rules through the expedited process pursuant to Minn. Stat. § 120B.021, subd. 3. This section provides:

The commissioner, consistent with the requirements of this section and section 120B.022, must adopt statewide rules under section 14.389 for implementing statewide rigorous core academic standards in language arts, mathematics, science, social studies, and the arts. After the rules authorized under this subdivision are initially adopted, the commissioner may not amend or repeal these rules nor adopt new rules on the same topic without specific legislative authorization. The academic standards for language arts, mathematics, and the arts must be implemented for all students beginning in the 2003-2004 school year. The academic standards for science and social studies must be implemented for all students beginning in the 2005-2006 school year.³

The language directing the promulgation of science standards in advance of the 2005 - 2006 school year, through rulemaking, was enacted during the 2004 Session of the Minnesota Legislature.⁴ The effective date of the amendment was May 27, 2004.⁵ Additionally, while the Legislature revised Section 120B.021 in 2005, 2006 and 2007, the due date for promulgation of the academic standards for science was not adjusted.

Minn. Stat. § 14.125 requires an agency to “publish a notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the law authorizing

¹ Exhibit B.

² See, Minn. R. 1400.2410, subp. 3 (2007).

³ Minn. Stat. § 120B.021, subd. 3 (2008) (emphasis added).

⁴ 2004 Laws of Minnesota, Ch. 294, Art. 6, §1.

⁵ *Id.*

or requiring rules to be adopted, amended or repealed.” If the agency does not meet this timeline, the “authority for the rules expires.”⁶ Furthermore, the agency is prohibited from using “other law in existence at the time of the expiration of rulemaking authority ... as authority to adopt, amend, or repeal” such rules.⁷

In this matter, the legislative authority to adopt the proposed expedited rules was granted on May 27, 2004, but the *Notice of Intent to Adopt* the proposed rules was not published until September 2, 2008 – more than four years after the initial delegation.

The requirements of Minn. Stat. § 14.125 are clear: Proposed rules – regardless of whether they are subject to “expedited” or ordinary rulemaking procedures – must advance to the point of publication of a notice to adopt rules, or a notice of hearing, within 18 months of the effective date of the law that grants the agency new rulemaking authority; or the authority to adopt those rules expires. The Department did not meet the timeline set forth in Minn. Stat. § 14.125 in this instance.

Because the Department’s statutory authority to adopt the proposed rules has expired, pursuant to Minn. Stat. § 14.125, the proposed rules must be disapproved under Minn. R. 1400.2100, item D. The Department may seek additional rulemaking authority from the Legislature, and once obtained, initiate a new rulemaking proceeding to adopt the proposed rules.

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⁶ Minn. Stat. § 14.125.

⁷ *Id.*