

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

In the Matter of
Independent School District #271
(Bloomington)
and
Intermediate District #287

**ORDER PARTIALLY GRANTING AND
PARTIALLY DENYING
INTERMEDIATE DISTRICT'S
MOTION FOR RECONSIDERATION
AND ORDER DENYING
BLOOMINGTON'S MOTION FOR
RECONSIDERATION**

This matter comes before Administrative Law Judge Ann O'Reilly on the parties' cross Motions for Reconsideration.

David L. Holman, Holman Law Offices, appeared on behalf of Independent School District #271 (Bloomington). Anne Becker, General Counsel, and Katherine Barrett Wiik, Robins Kaplan, L.L.P., appeared on behalf of Intermediate School District #287 (Intermediate District or District).

Based upon all of the files, records, and proceedings herein, and for the reasons set out in the attached Memorandum, the Administrative Law Judge makes the following:

ORDER

1. The Intermediate District's Motion for Reconsideration is **GRANTED** in part and **DENIED** in part;
2. Bloomington's Motion for Reconsideration is **DENIED**; and
3. An Amended Findings of Fact, Conclusions of Law, and Decision is hereby issued to reflect the Administrative Law Judge's decision after reconsideration. The Amended Findings of Fact, Conclusions of Law, and Decision shall be the final decision in this case, subject to the parties' right to appeal to the Minnesota Court of Appeals.

Dated: June 29, 2015

s/Ann C. O'Reilly

ANN C. O'REILLY
Administrative Law Judge

SUMMARY OF DECISION

The Intermediate District has established that the Administrative Law Judge erroneously included restricted funds associated with the North Education Center (NEC), and inadvertently excluded depreciation on equipment, in the determination and calculation of assets to be distributed to Bloomington in this matter. Based upon these errors, the Administrative Law Judge **GRANTS** the Intermediate District's Motion for Reconsideration. An Amended Findings of Fact, Conclusions of Law, and Decision shall be issued contemporaneously with this Order to correct the Judge's mathematical errors. The Administrative Law Judge **DENIES** the District's Motion for Reconsideration on all other bases.

With respect to Bloomington's Motion for Reconsideration, Bloomington has failed to establish any basis for reconsideration of the Administrative Law Judge's decision in this case. Accordingly, the Administrative Law Judge **DENIES** Bloomington's Motion for Reconsideration. The Judge's decision regarding the allocation of pension and other post-employment benefits is fully explained in the original Findings of Fact, Conclusions of Law and Decision, dated January 7, 2015 (Original Decision), and remains unchanged in the Amended Findings of Fact, Conclusions of Law, and Decision issued herewith.

MEMORANDUM

I. PROCEDURAL HISTORY

On June 30, 2011, Bloomington withdrew from the Intermediate District. Upon withdrawal, Bloomington and the Intermediate District were unable to agree on Bloomington's proportionate share of the Intermediate District's assets and liabilities.

Minnesota Statutes section 123A.24 (2014) provides that if a withdrawing school district and an intermediate district cannot agree on the withdrawing district's share of assets and liabilities upon withdrawal, the districts may submit the matter to the Commissioner of the Department of Education (Commissioner) for final resolution. The Commissioner shall then resolve the dispute by determining the withdrawing district's "proportionate share" of assets and liabilities based on the withdrawing district's "enrollment, financial contribution, usage, or other factor or combination of factors determined appropriate by the [C]ommissioner."¹

The Commissioner met with the parties on two occasions to resolve the matter informally.² Despite her efforts, the Commissioner was unable to assist the parties in settling the matter. The parties disagreed about three main issues: (1) the value of, and Bloomington's financial obligations for, the District's real estate interests; (2) the amount of, and Bloomington's liability for, employee pension benefits and other post-employment benefits (OPEB); and (3) the calculation of Bloomington's "proportionate share" of the District's assets and liabilities.

¹ Minn. Stat. § 123A.24, subd. 1(c).

² See Notice and Order for Prehearing Conference and Hearing at 2.

Ultimately, the Commissioner concluded, “The Minnesota Department of Education does not have the technical knowledge or expertise to make an appropriate determination of the correct valuation of Bloomington’s share of the Intermediate’s assets and liabilities.”³ As a result, the Commissioner referred the matter to the Office of Administrative Hearings (OAH) for a contested case hearing pursuant to the Minnesota Administrative Procedure Act, and for final decision pursuant to Minn. Stat. § 14.57(a) (2014).⁴ The parties to the proceeding included the Intermediate District and Bloomington. The Department of Education (Department) was not a party to the action, but observed the proceedings through its legal representative, Daron Korte.

On or about October 20, 2013, the Commissioner filed a Notice and Order for Prehearing Conference and Hearing (Commissioner’s Order for Hearing). As set forth in Minn. Stat. § 14.57(a), the Commissioner’s Order for Hearing provided that the Administrative Law Judge’s decision shall constitute the agency’s final decision in this case.⁵

A contested case hearing was held before Administrative Law Judge Ann O’Reilly on June 23, 24, 25, 26, 27, and 30, 2014. The parties called numerous witnesses, including seven expert witnesses (four real estate appraisers, two accountants, and an actuary), to testify to the Intermediate District’s assets and liabilities.

During the hearing, Bloomington offered into evidence (among other things): (1) an unexecuted copy a Refunding Lease Agreement for the West Education Center (WEC) (Exhibit 11); (2) an unexecuted copy of the Lease-Purchase Agreement for the South Education Center (SEC) (Exhibit 12); and (3) an executed copy of the Lease Purchase Agreement for the Edgewood Education Center (EEC) (Exhibit 13). These documents were received into evidence at the hearing. However, Exhibits 11, 12, and 13 referenced numerous other documents and agreements that were not offered into evidence by the parties during the hearing.

After the hearing, the Administrative Law Judge afforded the parties the opportunity to submit post-hearing briefs, which were filed on or about August 22, 2014. After an extensive review of the exhibits, hearing transcripts, post-hearing briefs, and arguments, the Administrative Law Judge concluded that she could not decide the case without reviewing the documents referenced in Exhibits 11, 12, and 13. In addition, after reviewing Exhibits 11, 12, and 13, the Judge concluded that certain representations made by witnesses regarding the nature of the real estate transactions were inconsistent with terms and provisions of the real estate contracts themselves.

³ *Id.*

⁴ *Id.* Minn. Stat. § 14.57(a) provides:

An agency shall initiate a contested case proceeding when one is required by law. Unless otherwise provided by law, an agency shall decide a contested case only in accordance with the contested case procedures of the Administrative Procedure Act. Upon initiation of a contested case proceeding, an agency may, by order, provide that the report or order of the administrative law judge constitutes the final decision in the case.

⁵ See Notice and Order for Prehearing Conference and Hearing, dated October 20, 2013.

The value of the District's interest in, and financial obligations for, its real estate investments was a central issue in the case. However, the hearing record included only incomplete copies of some, but not all, real estate contracts. Therefore, the Administrative Law Judge concluded that a full review of all agreements entered into by the District for the acquisition of real estate was necessary to accurately determine the nature of the District's legal interests in the properties, as well as the District's financial obligations under the real estate contracts.

On September 11, 2014, the Administrative Law Judge requested that the parties voluntarily "supplement the hearing record" by providing final execution copies of all lease, purchase, trust, and other agreements involving the WEC, SEC, EEC, and NEC properties.⁶ The Administrative Law Judge noted, "I will mark each of these exhibits separately and advise you of the exhibit numbers upon receipt of the documents."⁷ The documents requested were all contracts and agreements with self-evident terms and provisions.

Without objection, on or about September 14, 2014, the Intermediate District provided most of the documents requested by the Administrative Law Judge to supplement the hearing record. However, certain documents were still missing.

On September 19, 2014, the Administrative Law Judge requested: "Exhibit B" to the EEC lease purchase agreement; the WEC lease purchase agreement dated August 31, 2004, including all related trust agreements and certificates of participation; and all documents related to the January 6, 2006 lease purchase agreement, trust agreement, and certificate of participation for the SEC property.⁸ Again, the Administrative Law Judge noted, "The record will be supplemented with all the documents I am requesting. I will provide you a list of the exhibits when the documents are finally received."⁹

Without objection, the Intermediate District provided the additional documents requested on September 19, 2014. On September 26, 2014, the District confirmed, without objection, that it had provided true and accurate copies of "all of the real estate financing contracts" related to the WEC, EEC, SEC, and NEC properties.¹⁰

All documents received from the Intermediate District were provided to Bloomington, marked by the Administrative Law Judge as exhibits (Exhibits A through W), and included in the hearing record.¹¹ Counsel for the Intermediate District did not, at

⁶ See e-mail correspondence from Administrative Law Judge Ann O'Reilly to counsel for the parties dated September 11, 2014, on file and of record in this case.

⁷ *Id.*

⁸ See e-mail correspondence from Administrative Law Judge Ann O'Reilly to counsel for the parties dated September 19, 2014.

⁹ *Id.*

¹⁰ See e-mail correspondence from Anne Becker, counsel for the Intermediate District to Administrative Law Judge Ann O'Reilly, dated September 26, 2014.

¹¹ See Order Supplementing Hearing Record with Additional Exhibits, dated December 19, 2014.

any time, challenge the inclusion of the documents into the hearing record, or request that additional argument or testimony be provided related to the additional exhibits.

The review of the additional documents and preparation of the Administrative Law Judge's decision was an exhaustive process, given the complexities of the issues and evidence presented. After thoroughly analyzing the real estate documents submitted, the Administrative Law Judge determined that evidence of legal title for the properties was relevant and probative to the testimony provided by the Intermediate District's real estate appraiser, Robert Strachota, but was unclear in the hearing record. Rather than take judicial notice of the public title documents, on November 4, 2014, the Administrative Law Judge made a written inquiry to the parties requesting that the Intermediate District provide copies of certificates of title or recorded deeds for the District Service Center (DSC), EEC, SEC, WEC, and NEC properties for inclusion in the hearing record.¹² The Administrative Law Judge noted, "Once these documents are received, I will issue an Order supplementing the record and providing you with copies of the marked exhibits (numbered A-Z)."¹³

Without objection, on November 11, 2014, the Intermediate District submitted the certificates of title for the DSC, EEC, SEC, and WEC properties, and provided a copy of the deed for the NEC property.¹⁴ All of these documents were public documents, duly filed with the Hennepin County Registrar of Titles or Recorder's Office.¹⁵

Counsel for the Intermediate District did not, at any time, object to the inclusion of the documents into the hearing record, or request that additional argument or testimony be provided related to the additional exhibits. The Administrative Law Judge marked the certificates of title and deeds for the DSC, EEC, SEC, and WEC properties as Exhibits X, Y, Z, and AA.

In addition to requesting additional documentation from the parties, between September and December 2014, the Administrative Law Judge engaged in written correspondence with counsel for the Intermediate District, Bloomington, and the Department regarding questions that remained unclear in the hearing record.¹⁶ The Administrative Law Judge specifically asked the parties if they wished to brief or have oral argument on the issues raised post-hearing.¹⁷ At no time during these months of post-hearing correspondence did the Intermediate District or Bloomington object to the

¹² See e-mail correspondence from Administrative Law Judge Ann O'Reilly to counsel for the parties, dated November 4, 2014.

¹³ *Id.*

¹⁴ See e-mail correspondence from Anne Becker, counsel for the Intermediate District, to Administrative Law Judge Ann O'Reilly dated November 11, 2014.

¹⁵ *Id.*; Exs. X, Y, Z, AA.

¹⁶ See letter to counsel for the parties from Administrative Law Judge Ann O'Reilly dated December 22, 2014, enclosing copies of all post-hearing email correspondence among the parties for inclusion in the hearing record.

¹⁷ See e-mail correspondence from Administrative Law Judge Ann O'Reilly to counsel for all parties dated September 17, 2014.

inclusion into the hearing record of the property records or real estate agreements requested by the Judge in September, October, and November 2014.¹⁸

The hearing record closed on December 19, 2014, upon receipt of the last post-hearing correspondence and the issuance of an Order Supplementing the Hearing Record to include Exhibits A-Z and AA. No party objected to the Order Supplementing the Hearing Record, and no party requested the opportunity to present additional evidence, testimony, or argument regarding the additional exhibits.

On January 7, 2015, the Administrative Law Judge issued the original Findings of Fact, Conclusions of Law, and Decision in this matter.

On January 16, 2015, the Intermediate District timely filed a Motion for Reconsideration. Bloomington filed a response to the Intermediate District's Motion for Reconsideration, as well as its own Motion for Reconsideration on February 2, 2015.

Oral argument on the Motions was held on March 12, 2015. At the Motion hearing, the Intermediate District requested the opportunity to reopen the hearing record and admit into the hearing record an unspecified number of unspecified documents related to the Department's alleged approval of the contested lease agreements.¹⁹

The Administrative Law Judge gave the parties until April 10, 2015, to enter into stipulations regarding the inclusion of additional documents into the hearing record. The Judge agreed to allow the supplementation of the hearing record with additional evidence if the parties could agree on the documents to be included into the hearing record.²⁰ The parties were unable to agree to the inclusion of additional exhibits into the hearing record.²¹

The Administrative Law Judge then requested that the Intermediate District provide a list of the additional documents it wished to include in the hearing record, and that Bloomington respond to each of those documents.²² The Judge gave the parties until June 19, 2015, to complete that process.²³ The Intermediate District sent a list of 26 additional documents it sought to include in the hearing record.²⁴ Each of the documents was in existence and would have been available to the District prior to the hearing of this matter.²⁵ Bloomington opposed the admission of each of the documents.²⁶

¹⁸ *Id.*

¹⁹ See Transcript of Motion Hearing, dated March 12, 2015, at T. 13-14.

²⁰ *Id.* at 60-64.

²¹ See e-mail correspondence to Administrative Law Judge Ann O'Reilly from David Holman, legal counsel for Bloomington, dated April 10, 2015.

²² See e-mail correspondence from Administrative Law Judge Ann O'Reilly to counsel for the parties dated May 21, 2015.

²³ *Id.*

²⁴ See correspondence to Administrative Law Judge Ann O'Reilly from Anne Becker and Katherine Wiik, counsel for the Intermediate District, dated June 4, 2015.

²⁵ *Id.*

²⁶ See correspondence to Administrative Law Judge Ann O'Reilly from David Holman, counsel for Bloomington, dated June 19, 2015.

II. STANDARD OF REVIEW FOR MOTIONS FOR RECONSIDERATION

Minnesota Rule part 1400.8300 (2013) prescribes the circumstances under which a motion for reconsideration may be brought in an administrative action. In matters where the Administrative Law Judge's decision is not binding on the agency, all motions for reconsideration must be filed with the agency, not the Administrative Law Judge.²⁷ Where, as here, the Administrative Law Judge's decision is final and binding on an agency, the parties may petition the Judge for reconsideration.²⁸

A petition for reconsideration must be filed within a "reasonable time" but not after an appeal is taken or more than one year after the decision was issued.²⁹ However, in order to toll the time for appeal to the Court of Appeals, a party must file its petition for reconsideration within ten days after the Administrative Law Judge's decision was issued.³⁰

The Intermediate District's Motion for Reconsideration was filed within ten days of the issuance of the Administrative Law Judge's Report in this case. Therefore, the Intermediate District's Motion tolled the time for appeal with respect to the issues for which the District seeks to appeal.

Like the General Rules of Practice applicable to district courts, the Administrative Procedure Act provides a limited opportunity for motions for reconsideration. According to Minn. R. 1400.8300, an administrative law judge shall grant a motion for reconsideration if it appears that to deny the motion would be inconsistent with substantial justice and any one of the following has occurred:

- irregularity in the proceeding whereby the moving party was deprived of a fair hearing;
- accident or surprise that could have been prevented by ordinary prudence;
- material evidence newly discovered that with reasonable diligence could not have been found and produced at hearing;
- fraud upon the hearing process;
- mistake, inadvertence, or excusable neglect; or
- the decision is not justified by the evidence or is contrary to law.³¹

²⁷ Minn. R. 1400.8300.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Minn. Stat. § 14.64 (2014).

³¹ Minn. R. 1400.8300.

According to the Advisory Committee Comments to Minn. R. Gen. P. 115.11:

Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely exercise it. They are likely to do so only where intervening legal developments have occurred (e.g., enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to ‘expand’ or ‘supplement’ the record on appeal...³²

In this case, the Intermediate District argues that “irregularities in the proceeding” and the “lack of impartiality” of the Administrative Law Judge deprived the District of a fair hearing. In addition, the Intermediate District asserts that the Administrative Law Judge’s decision regarding the valuation of the District’s real estate assets and liabilities was not justified by the evidence or was contrary to law. In response, Bloomington contends that the Administrative Law Judge’s decision regarding the allocation of liabilities for the District’s other post-employment and pension benefits was not justified by the evidence or was contrary to law.

The Administrative Law Judge finds that an inadvertent error in the calculation of the assets to be allocated to Bloomington justifies reconsideration and requires correction. The Administrative Law Judge rejects all other bases for reconsideration.

III. INTERMEDIATE DISTRICT’S MOTION FOR RECONSIDERATION

The Intermediate District argues that its Motion for Reconsideration should be granted because: (1) “irregularities in the proceedings” and the Administrative Law Judge’s “failure to act impartially” deprived the District of a fair hearing and violated the District’s due process rights; and (2) the Administrative Law Judge’s calculation of assets and liabilities associated with the District’s real estate interests were “not justified by the evidence” and were “contrary to law.”

More specifically, with respect to the District’s first argument, the District asserts that the Administrative Law Judge’s “*sua sponte*” request for the parties to supplement the hearing record with Exhibits A through AA (the legal documents evidencing the District’s interest in, and obligation for, the District’s real estate assets) was improper because it: (1) denied the District an opportunity to respond to the evidence requested, thereby denying the District of its right to a fair hearing; and (2) was requested by the Administrative Law Judge to unfairly assist Bloomington in establishing its right to recovery.

³² Minn. R. Gen. Pract. 115.11 advisory comm. note.

With respect to the second basis for the District's Motion, judicial error, the District argues that the Administrative Law Judge's final reconciliation of the District's assets and liabilities to be allocated was inconsistent with the evidence and law because the Judge: (1) included "restricted assets" attributable to the NEC property in the calculation of distributable assets; (2) neglected to include findings of fact and conclusions regarding the "premium" and "deferred charges" on liabilities issued; and (3) failed to include depreciation of equipment in the value of District assets.

As explained in greater detail below, the Administrative Law Judge rejects the District's contention that there were irregularities in the proceeding and partiality on the part of the Judge which deprived the District of its right to a fair hearing. The Judge acknowledges, however, that she inadvertently erred by: (1) including funds attributable to the construction of the NEC property into the calculation of assets to be distributed; and (2) failing to apply undisputed depreciation to the value of the District's equipment assets. Because the parties stipulated to the amounts and inclusion of "premiums" and "deferred charges" on liabilities in the calculation of liabilities in this proceeding, the Administrative Law Judge concludes that her original findings of fact and conclusions of law are not erroneous, and denies the District's Motion on that issue.

In addition, the Intermediate District requests that the Administrative Law Judge amend Findings of Fact Nos. 50, 56, and 58 and Conclusions of Law Nos. 69 and 71, which are related to the District's use of certificate of participation (COP) financing for its acquisition of real estate interests. The Judge has reviewed the identified original findings and conclusions and has amended them to better reflect the evidence presented at hearing.

Finally, to remedy all of the above-asserted "errors," "procedural irregularities," and "bias," the District requests the opportunity to reopen the hearing record to include 26 additional documents that the District failed to present at hearing. The Administrative Law Judge finds that the additional documents are not newly-discovered evidence and are not necessary to correct any errors in the record. Thus, because a motion for reconsideration is not a proper vehicle to present facts or arguments available at hearing, and should not be used to expand or supplement the hearing record for appeal, the Administrative Law Judge denies the District's request to reopen the hearing record.

A. Background Regarding Supplementation of the Hearing Record

To understand why the Administrative Law Judge requested that the parties supplement the hearing record with legal documents evidencing the District's interests and liabilities associated with the real properties, it is important to understand how the evidence was developed (or, more accurately, under-developed) by the parties at the hearing.

Bloomington based its claim for recovery on the District's 2011 Audited Financial Statement (Financial Statement). The Financial Statement represented that as of June 30, 2011, the District had assets of \$117,152,119.00 and liabilities of

\$103,383,972.00, resulting in net assets of \$13,768,147.00.³³ Bloomington, thus, asserted that it was entitled to a payout of its “proportionate share” of the net assets.

The largest portion of the District’s assets, as represented in the Financial Statement, was the District’s interests in six real properties: the SEC, WEC, EEC, DSC, NEC, and a residential condo, which, on a cost basis in the Financial Statement,³⁴ had a combined value of \$58,123,749.00.³⁵

Upon receiving Bloomington’s notice of intent to withdrawal from the District, the Intermediate District decided to appraise some of its real estate assets to determine the market value of the properties and to estimate how much Bloomington would be entitled to claim upon its withdrawal. In 2010, the District hired Shenehon Company (Shenehon) to conduct real estate appraisals.³⁶ Shenehon appraisers determined that the market value of the WEC property was \$7,700,000.00, and the market value of the SEC property was \$34,000,000.00.³⁷ (There is no evidence in the record of appraisals conducted on the other properties in 2010.)

After Bloomington’s withdrawal from the District in June 2011, the Intermediate District hired Shenehon to re-appraise the properties with a valuation date of June 30, 2011, the effective date of Bloomington’s withdrawal. Shenehon determined that the market values of the properties as of June 30, 2011, were as follows:

Property	2011 Appraised Value³⁸	2010 Appraised Value³⁹
DSC	\$2,700,000.00	Unknown
EEC	\$4,500,000.00	Unknown
WEC	\$7,600,000.00	\$7,700,000.00
SEC	\$31,300,000.00	\$34,000,000.00

Using the 2011 Shenehon appraisals, the District began settlement discussions with Bloomington, through the Commissioner, where it disclosed the appraisals to Bloomington. When the settlement negotiations broke down in 2014, the District drastically changed its position as to the value of its real estate assets and how those assets should be valued. Despite the same date of valuation (June 30, 2011), Shenehon changed its appraised value for each of the properties as follows:

³³ Ex. 108 at 16.

³⁴ That is, the value of the land was the original purchase price paid by the bank for the properties, and the value of the buildings was the actual cost of construction. See Testimony (Test.) of Gary Dossdall at T. 665-66.

³⁵ See Ex. 108 at 39; Ex. 103 at Table 2. Note that \$52,665,400.00 is attributable to the SEC, WEC, DSC, EEC, and Robbinsdale Condominium (Condo), plus an additional \$5,458,349.00 for the NEC property, which was then under construction.

³⁶ Exs. 5, 6.

³⁷ Exs. 5, 6.

³⁸ Exs. 7, 8, 9, 10.

³⁹ Exs. 5, 6.

Property	2011 Appraisal ⁴⁰	2014 Appraisal ⁴¹	Change in Value
DSC	\$2,700,000.00	\$3,000,000.00	+\$300,000.00
EEC	\$4,500,000.00	\$4,000,000.00	-\$500,000.00
WEC	\$7,600,000.00	\$3,650,000.00	-\$3,950,000.00
SEC	\$31,300,000.00	\$9,000,000.00	-\$22,300,000.00
Total	\$46,100,000.00	\$19,650,000.00	-\$26,450,000.00

In sum, Shenehon reduced its appraised value of the District’s real estate interests by **over \$26 million** from its own 2011 appraisals, and by **nearly \$33 million** from the District’s 2011 Audited Financial Statement.⁴²

To justify the sudden and dramatic change in appraised value, Robert Strachota (Strachota), the District’s real estate appraiser, explained that his revised valuations were based upon the difference between the value of a “leased fee” interest in the properties and the value of a “fee simple” interest in the properties.⁴³ Strachota opined that the value of the properties to the District for this proceeding should be based on a “fee simple” interest, notwithstanding the fact that he had previously concluded that a reasonable buyer in the marketplace would purchase the properties based upon the value of a “leased fee” interest in the properties.⁴⁴ Strachota further testified that, in his opinion, the lease agreements under which the District’s interests in the properties arose were not actually “leases,” but rather “mortgages” encumbering the properties.⁴⁵ However, it was unclear in the record whether Strachota had ever fully reviewed the lease agreements or the plethora of other legal documents granting the District an interest in the various properties (including, but not limited to, Exhibits A through AA) prior to performing his appraisals. Even so, Strachota was offered as an expert in real estate appraisal, not an expert in law or the legal effect of real estate contracts.

Accordingly, it was the District’s own appraiser who put into question the District’s legal interests in the properties, the value of those legal interests, and the financial and legal obligations that the District had under the real estate agreements. Despite these facts, the Intermediate District did not offer into evidence the agreements that actually established the District’s legal interests and contractual obligations about which its appraiser opined. The only documents offered into evidence with respect to these issues were: (1) an unexecuted version of the WEC Refunding Lease Agreement (Ex. 11); (2) an unexecuted version of the SEC Lease-Purchase Agreement (Ex. 12); and (3) an executed version of the EEC Lease Purchase Agreement (Ex. 13). Notably, these documents were offered into evidence by Bloomington, not the District.

After the conclusion of the hearing, the Administrative Law Judge painstakingly reviewed and analyzed the various appraisals, the witnesses’ testimony, and the hearing

⁴⁰ Exs. 7, 8, 9, 10.

⁴¹ Exs. 104, 105, 106, 107.

⁴² Exs. 7, 8, 9, 10, 104, 105, 106, 107, 108.

⁴³ Exs. 105, 106, 107.

⁴⁴ Exs. 5, 6, 7, 8, 9, 105, 106, 107.

⁴⁵ Test. of Robert Strachota at T. 500-501.

exhibits, including Exhibits 11, 12, and 13. Exhibits 11, 12, and 13 evidenced that the Intermediate District had neither a leased fee interest nor a fee simple interest in the EEC and SEC properties; and that the District's legal interest in the WEC property was unclear.

It also became apparent, based upon Exhibits 11, 12, and 13, that Strachota's testimony that the lease agreements were not really "leases" but "mortgage" liens, was not entirely accurate.⁴⁶ A review of Exhibits 11, 12, and 13 evidenced that the agreements were, indeed, leases with options to purchase the property; and that the leases were terminable at will by the District without further financial obligation.⁴⁷

Moreover, Exhibits 12 and 13 evidenced that legal title to the properties remained with the lender, not the District, until the end of the lease term or the District's exercise of the option to purchase.⁴⁸ Thus, if the District terminated or defaulted on the leases, legal title to the properties would not transfer to the District and all amounts paid in rent up until the date of termination or default would be forfeited by the District, making the lease agreements akin to a contract for deed, not a conventional mortgage lien.⁴⁹

Finally, a close review of Exhibits 11, 12, and 13 revealed that numerous documents evidencing the nature of the District's interests in the properties and the District's financial obligations were absent from the hearing record. First, Exhibits 11 and 12 were unexecuted versions of the contracts, indicating that they may not have been the final agreements. Second, Exhibits 11, 12, and 13 referenced numerous prior and companion agreements, such as prior contracts and concurrent ground leases, trust agreements, and certificates of participation, that were not offered into evidence by either party. Third, it was almost impossible to understand the scope and effect of Exhibits 11, 12, and 13 without a review of the prior and companion documents which they arose out of, relied upon, referenced, or referred to. Without reviewing the documents referenced in the exhibits, the Administrative Law Judge could not fully understand Exhibits 11, 12, and 13. Moreover, the Judge, acting under the final decision-making authority delegated by the Commissioner, could not determine what interests, if any, the District had in the respective properties and what financial obligations accompanied those interests.

Ideally, all lease agreements and contracts related to the properties would have been offered into evidence by the parties at the hearing. However, Bloomington claimed that it had no access to the documents prior to hearing.⁵⁰ Whereas, the Intermediate District had these documents available to it prior to hearing but simply chose not to offer the documents into evidence, relying instead on its appraisers' lay understandings of the District's legal interests in, and obligations for, the properties.

Ultimately, the Administrative Law Judge, acting under the decision-making authority delegated by the Commissioner, concluded that additional documents were

⁴⁶ Exs. 11, 12, 13.

⁴⁷ Exs. 11, 12, 13.

⁴⁸ Exs. 12, 13.

⁴⁹ Exs. 12, 13.

⁵⁰ Transcript of Motion Hearing, dated March 12, 2015, at T. 60.

necessary to include in the hearing record so she could: (1) understand Exhibits 11, 12, and 13; (2) determine the nature of the District's legal interests in the properties; (3) determine the District's contractual liabilities and obligations under the various agreements; (4) evaluate the District's appraisals and expert testimony; and (5) make an accurate determination as to the value of the District's assets and liabilities.

Because the District's legal interests in, and financial obligations for, the real estate could be concretely determined by a legal review of the conveyance documents; and because a complete and accurate record of the evidence was necessary for the Administrative Law Judge to make a legal determination regarding the District's property interests and liabilities, the Judge requested that the parties provide copies of all leases, purchase agreements, trust agreements, and other documents related to the District's interests in all real estate, including the WEC, SEC, DSC, EEC, and NEC properties. The Administrative Law Judge clearly articulated to the parties her intent "to supplement the hearing record" and to mark the documents as exhibits in the hearing record.⁵¹

The Intermediate District immediately, and without objection, provided copies of the requested documents, and did not request the opportunity to provide argument or additional evidence related to the same. After reviewing all of the lease agreements and companion documents, the Administrative Law Judge determined that evidence of legal title to the properties would be most clearly evidenced through copies of certificates of title of recorded deeds, all of which are public records. Rather than take judicial notice of these public documents, the Administrative Law Judge decided that it would be better to request copies of the documents from the parties and mark them as exhibits in the record, thereby giving the parties the opportunity to object or provide additional argument about this evidence, if necessary.

It took four requests for the Administrative Law Judge to obtain all of the real estate and title documents needed to fully analyze the transactions involved in this case. In the end, the legal documents were marked as Exhibits A through Z and AA, and formally entered into the hearing record by the Administrative Law Judge without objection by any party. In addition, no party requested argument or an opportunity to respond to the exhibits prior to the final close of the hearing record.

After receiving all the documents requested, on December 19, 2014, the Administrative Law Judge issued an Order Supplementing the Hearing Record with Additional Exhibits. The Judge also provided a copy of all the newly marked exhibits to the parties, as well as copies of all correspondence occurring after the hearing.⁵² Neither party objected to the inclusion of the exhibits or correspondence into the hearing record; and neither party requested leave to argue for exclusion or for additional supplementation of the record. At that point, the hearing record closed. It was not until the Intermediate District received the Administrative Law Judge's decision in the case – a decision partially

⁵¹ See email correspondence from Administrative Law Judge Ann O'Reilly to counsel for the parties dated September 11, 2014, September 19, 2014, and November 4, 2014.

⁵² See letter from Administrative Law Judge Ann O'Reilly to counsel for the parties and Department dated December 22, 2014.

adverse to the District's theory of the case – that the District first alleged that the Judge's consideration of Exhibits A through AA was in error and that it needed to respond to the Exhibits.

B. Irregularities in Proceeding and Judicial Bias

In its Motion for Reconsideration, the Intermediate District asserts that the Administrative Law Judge's request to the parties for additional documentation related to the District's legal interests in, and financial obligations for, real estate resulted in "irregularities in the proceeding;" denied the District an opportunity to rebut the evidence; and demonstrated bias in favor of Bloomington. As a result, the Intermediate District argues that it was deprived of its due process right to a fair hearing. The Administrative Law Judge finds the District's arguments unpersuasive.

Under the Minnesota Administrative Procedure Act (APA), contested cases are not governed by the strict rules of evidence that apply to the trial of cases in Minnesota courts.⁵³ Rather, the APA provides that "[i]n contested cases, agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs."⁵⁴ The rules of the Office of Administrative Hearings echo this standard:

The judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs....⁵⁵

Rule 1400.5500 (2013) sets out the duties and responsibilities of an administrative law judge, including the responsibility "to make a complete record."⁵⁶ The Rule provides that the judge, "in his or her discretion, [shall] perform such other duties as may be delegated by the agency ordering the hearing." In this case, the "agency" is the Commissioner of the Department of Education, who specifically delegated her fact-finding and final decision-making authority to the Administrative Law Judge, pursuant to Minn. Stat. § 14.57 (2014).

Under these provisions, the Administrative Law Judge, acting under the express delegation of authority granted by the Commissioner, was permitted to request that the parties supplement the hearing record with the documents necessary to decide the issues presented in the case. Notably, the District fully acknowledges that the documents requested by the Administrative Law Judge were relevant and probative to the issues

⁵³ Minn. Stat. § 14.60, subd. 1 (2014). The Minnesota Court of Appeals has observed that "administrative agencies are not strictly bound by the rules of evidence." *Schumann v. State*, 367 N.W.2d 688, 690 (Minn. Ct. App. 1985). See also, *Padilla v. Minnesota Board of Medical Examiners*, 382 N.W.2d 876, 881-82 (Minn. Ct. App. 1986) (adherence to formal rules of evidence in administrative cases is not required to provide due process of law).

⁵⁴ Minn. Stat. § 14.60, subd. 1.

⁵⁵ Minn. R. 1400.7300 (2013).

⁵⁶ Minn. R. 1400.5500H.

presented in this proceeding.⁵⁷ Indeed, the documents were directly related to the arguments asserted by the parties and to documents already entered into evidence at hearing, specifically, Exhibits 11, 12, and 13. Moreover, the documents were necessary to authenticate and clarify the contents of Exhibits 11, 12, and 13; to evaluate the expert testimony offered; and to make legal determinations as to the District's property interests and financial obligations created by those very documents.

For the District to now claim that it was surprised by the Administrative Law Judge's use of the additional exhibits or denied an opportunity to provide a response to those documents is without merit. Counsel for both parties were advised of the reason for the Administrative Law Judge's request for the documents, as well as the Judge's intent to enter the documents into the hearing record as exhibits. There was plenty of opportunity, indeed, months of time, for either party to object to the admission of the exhibits or request an opportunity to respond to that evidence. Not once over the course of three months did any party object to the additional exhibits, request an opportunity to be heard, or seek leave to offer additional evidence or testimony in response to those documents.

"A party's failure to object to the admission of evidence generally constitutes a waiver of the right to appeal on that basis."⁵⁸ For the same reasons, in this administrative proceeding, the Intermediate District's failure to object to the admission of Exhibits A through AA resulted in a waiver of its objections.

Finally, there is simply no support for the District's claim that the Administrative Law Judge failed to act impartially in this case. The Judge's request for additional probative and relevant evidence was not to benefit one party over the other. It was for the benefit of all parties, but especially the Commissioner, who delegated authority to the Administrative Law Judge to make findings of fact, conclusions of law, and a final decision in this proceeding.

An administrative law judge has a duty to develop the record fairly and fully;⁵⁹ as well to ensure justice and fairness in a contested case hearing. That duty includes ensuring that a hearing record be as complete and as accurate as possible so that the agency decision-maker (in this case, the Administrative Law Judge) can base her decision on all evidence that is relevant and probative to the issues of the case. If the record is insufficient for the Administrative Law Judge to determine crucial issues in the case, the Judge may seek additional evidence or clarification to develop the record so that she may decide that issue.⁶⁰ This is the same authority that the Commissioner would have possessed had she exercised her statutory authority to decide this case.

⁵⁷ See Transcript of Motion Hearing of March 12, 2015, at T 16-17.

⁵⁸ *State v. Vick*, 632 N.W.2d 676, 684 (Minn. 2001).

⁵⁹ *Stormo v. Barnhart*, 377 F.3d 801, 806 (8th Cir. 2004).

⁶⁰ See *Stormo*, 377 F.3d at 806 (holding that an administrative law judge is only required to seek additional evidence or clarification if a "crucial issue" is undeveloped). See also *McCoy v. Astrue*, 648 F.3d 605, 612 (8th Cir. 2011) (holding that if the record is not sufficient for the administrative law judge to determine whether a claimant is disabled, he must develop the record further).

Here, the following crucial issues were under-developed by the parties in the hearing record: (1) what legal interests the Intermediate District held in each of the properties; and (2) what contractual and financial obligations the District had with respect to the properties. Accordingly, to decide the case, the Administrative Law Judge had a duty to request supplementation of the record to obtain the legal documents necessary to establish those interests and obligations. The request for the additional documents and their entry into the hearing record -- without objection -- was to ensure that the Administrative Law Judge, acting on behalf of the Commissioner, could reach a decision that was based in law and all relevant facts. Withholding evidence or information from the record to obscure the true nature of the real estate interests and the District's financial obligations would not serve justice. It would only result in a faulty and inferior decision.

While the Intermediate District may disagree with the Administrative Law Judge's decision or her legal interpretations of the interests and obligations created by the additional exhibits, such dispute of law does not arise to judicial bias or a denial of a fair hearing.⁶¹ Similarly, the fact that the Administrative Law Judge did not adopt either party's theory of the case, and ultimately decided the case in a manner more favorable to one party over the other, does not evidence bias.⁶² It demonstrates a careful, contemplative decision-making process that evaluated all evidence relevant and probative to the issues presented in the proceeding. Accordingly, the Intermediate District was not denied its right to a fair hearing or its right to due process of law. The District's Motion for Reconsideration based upon "irregularities in the proceeding" and judicial bias is, therefore, **DENIED**.

C. Valuation of the District's Assets and Liabilities

The Intermediate District next argues that the Administrative Law Judge's valuations of assets and liabilities associated with the District's real estate interests were not justified by the evidence and were contrary to law. Specifically, the District claims that the Administrative Law Judge erroneously: (1) included "restricted assets" related to the NEC property in the calculation of assets to be distributed to Bloomington, despite the Judge's conclusion of law that Bloomington should not share in either the assets or liabilities related to the NEC property; (2) erroneously included as liabilities "premiums" and "deferred charges" on liabilities issued; and (3) failed to reduce the value of equipment by accumulated depreciation, a figure that was undisputed by Bloomington. The Intermediate District is correct that the Administrative Law Judge made two of the

⁶¹ Adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. Ct. App. 1986).

⁶² In addition, a full reading of the Administrative Law Judge's original Findings of Fact, Conclusions of Law, and Decision demonstrates that the Judge made several major decisions in favor of the Intermediate District. First, the Judge adopted, in full, the Intermediate District's arguments related to the OPEB and pension benefits -- a significant part of the case. Second, the Administrative Law Judge adopted a formula for determining Bloomington's "proportionate share" of the assets that benefited the District, not Bloomington, in the distribution of assets (i.e., selected 6.52 percent vs. 9.1050 percent of the assets). Third, the Judge's original decision reduced Bloomington's award from \$2,001,874.00 to \$525,297.00, so as to minimize financial disruption to the Intermediate District. Consequently, the Administrative Law Judge's initial decision, as a whole, was not particularly favorable to Bloomington.

three errors asserted and, therefore, **GRANTS** the District's Motion for Reconsideration on the basis of inadvertent mistake, as explained below.

1. ***Inclusion of "Restricted Assets" Related to the NEC Property.***

In its Motion for Reconsideration, the, Intermediate District asserts that the Administrative Law Judge erroneously included "restricted assets" of \$28,652,110.00 in the calculation of assets to be distributed to Bloomington in this matter. According to the District's argument at the Motion hearing, the "restricted assets" noted on the District's 2011 Audited Financial Statement are funds provided and held in trust by U.S. Bank, and which arose from the sale of certificates of participation related to the construction of the NEC facility.⁶³

The adjusted balance sheet used by the parties to identify the District's assets and liabilities was contained in Table 2 of Exhibit 103. Table 2 was created by the District's financial expert, Gary Dosedall, from the District's 2011 Audited Financial Statement (Ex. 108), to explain the District's proposed allocation of assets and liabilities.⁶⁴ Table 2 contains a line item entitled, "Restricted Cash & Investments" in the amount of \$28,652,100.00.⁶⁵ This same amount is denoted on the 2011 Audited Financial Statement as "Restricted assets – temporarily restricted Cash and investments for capital projects."⁶⁶

During the hearing of this matter, neither party addressed this asset line item. Therefore, no expert testimony was provided to explain what these "restricted assets" were. As a result, the Administrative Law Judge was under the mistaken understanding that these "restricted assets" were simply invested general funds unavailable for immediate use by the District. Because neither party mentioned that the funds were the result of the NEC certificates of participation, earmarked for the construction of the NEC and held in trust by U.S. Bank, the Administrative Law Judge simply adopted this figure as an undisputed asset.

The Administrative Law Judge's decision in this case, however, specifically excludes from allocation to Bloomington all assets and liabilities associated with the NEC project, due to Bloomington's objection to the acquisition and construction of the NEC, and the District's immediate withdrawal from the Intermediate District, pursuant to Minn. Stat. § 123B.02 (2014).⁶⁷ In the original Findings of Fact, Conclusions of Law, and Decision dated January 7, 2015, the Judge concluded:

51. Because Bloomington opposed the acquisition of the NEC Property, and immediately withdrew from the District after the District voted to acquire an interest in the NEC Property, it would be inequitable for Bloomington to

⁶³ See Transcript of Motion Hearing on March 12, 2015, at T. 21-22.

⁶⁴ Ex. 103.

⁶⁵ Ex. 103 at Table 2.

⁶⁶ Ex. 108 at 16, 18.

⁶⁷ See Findings of Fact, Conclusions of Law, and Decision, dated January 7, 2015, at 83-85.

share in the value of the NEC Property as an asset, or be subject to the liabilities associated with the NEC Lease, as supplemented.

52. Therefore, the NEC Property and the obligations under the NEC Lease, as supplemented, shall be removed from the calculation of the District's assets and liabilities subject to disbursement and allocation in this case.⁶⁸

Based upon the Administrative Law Judge's reasoning, all assets associated with the NEC, including any restricted funds held in trust and earmarked for the construction of the NEC facility, must also be excluded from the calculation of assets in this case. Had any evidence in the record suggested that the "restricted assets" on the 2011 Audited Financial Statement and the adjusted balance sheet were funds held in trust by the bank for the construction of the NEC, the Administrative Law Judge would have excluded those funds from the asset distributable to Bloomington in her original decision.

After this matter was brought to the Administrative Law Judge's attention in the District's Motion for Reconsideration, the Judge carefully re-reviewed the 2011 Audited Financial Statement (Ex. 108), NEC Lease Purchase Agreement (Ex. R), NEC First Supplemental Purchase Agreement (Ex. U), NEC Trust Agreement (EX. S), and NEC First Supplemental Trust Agreement (Ex. V). The Judge discovered that, indeed, the \$28,652,100.00 in "restricted assets" referenced in the Financial Statement was consistent with the amount of funds provided by U.S. Bank from the sale of certificates of participation, and held in trust by U.S. Bank, for use in the construction of the NEC facility.⁶⁹

Consistent with the Administrative Law Judge's legal rationale in this case, all amounts received by the District or held in trust by U.S. Bank for the construction of the NEC should be excluded from the assets to be allocated to Bloomington in this matter. Thus, "restricted assets" in the amount of \$28,652,100.00 shall be deducted from the assets to be distributed to Bloomington. To correct this error, the Administrative Law Judge hereby **GRANTS** the District's Motion for Reconsideration on this point. The Judge has prepared an Amended Findings of Fact, Conclusions of Law, and Decision which corrects this error.

⁶⁸ *Id.* at 83-85 (Conclusions of Law Nos. 51 and 52).

⁶⁹ Ex. 108 at 13, 18-19. The amount in the fund was actually \$27,054,799.00, but that was because \$1,637,047.00 was deducted from the fund to pay NEC construction costs in that amount (\$1,637,047.00), and thus included in the District's "accounts and contracts payable" for 2011. Ex. 108 at 13, 18-19. Once this amount is removed from the "accounts and contracts payable" line and placed back into the restricted funds category, the amount the District had available to it for payment of the construction of the NEC was \$28,652,100.00, excluding \$39,746.00 in accrued interest which the District does not dispute can be distributed to Bloomington in this matter.

2. **Premiums and Deferred Charges on Liabilities**

The Intermediate District next argues that the Administrative Law Judge neglected to include findings of fact or conclusions of law related to two line items in the adjusted balance sheet used by the parties: “premium on liabilities issued” (totaling \$96,177.00) and “deferred charges on liabilities issued” (totaling a negative \$1,272,335.00). The District’s argument is incorrect. These liabilities were addressed as “undisputed” by the parties in Finding of Fact No. 322 and as “undisputed liabilities” in Conclusion of Law No. 84.⁷⁰ Neither party addressed or disputed these items in the hearing record. Therefore, they were deemed undisputed by the parties.⁷¹

In its Motion for Reconsideration, the District does not explain these items. Moreover, when specifically asked at the Motion hearing to provide a citation in the record where these liabilities were addressed, counsel for the District was unable to provide an answer or citation.⁷² Instead, counsel merely provided a general definition of “bond premium” and “deferred charge.”⁷³

A review of the 2011 Audited Financial Statement indicates that these two items, referred to in the Financial Statement as “premium on **debt** issued” and “deferred charges on **debt** issued,” relate to all “outstanding long term liabilities” of the District, including the capital leases (North Vector, Technology, and SEC building lease), all certificates of participation payable (including the COPs for the SEC, WEC, EEC, and NEC properties), severance benefits payable, compensated absences payable, net OPEB obligations, and net pension obligations.⁷⁴ That is the only evidence in the record about these figures. According to the District, the payment obligations arising out of the lease agreements and certificates of participation are not “debt.” Therefore, the “premium on debt issued” and “deferred charges are debt issued” must not relate to the real estate obligations.

Regardless, the record is devoid of any explanation for these liabilities. Moreover, the parties stipulated to the inclusion of these figures in the calculation of the District’s liabilities to be allocated to Bloomington. Accordingly, the Administrative Law Judge finds no error with respect to these figures requiring reconsideration or correction of her decision. As a result, the District’s Motion on this point is **DENIED**.

3. **Depreciation on Equipment and Non-Real Estate Capital Assets**

The Intermediate District also argues that the Administrative Law Judge neglected to reduce the asset value of equipment by accrued depreciation, as stipulated to by the parties. The District is correct in this assessment. This was an inadvertent error made by the Administrative Law Judge.

⁷⁰ See Findings of Fact, Conclusions of Law, and Decision dated January 7, 2015.

⁷¹ Ex. 18 at A.

⁷² See e-mail correspondence from Anne Becker, legal counsel for the District, to Administrative Law Judge dated March 27, 2015.

⁷³ *Id.*

⁷⁴ Ex. 108 at 14 (emphasis added).

At the hearing, Bloomington stipulated to the inclusion of \$2,256,894.00 in accrued depreciation attributable to the equipment assets held by the District.⁷⁵ Therefore, this amount should have been included as a stipulated deduction from the value of equipment in the final reconciliation. The Administrative Law Judge, therefore, **GRANTS** reconsideration as to this point and has corrected the error in the Amended Findings of Fact, Conclusions of Law, and Decision.

D. Description of Certificate of Participation Financing

The Intermediate District requests that the Administrative Law Judge amend the original Findings of Fact and Conclusions of Law to soften language related to the description of the District's choice to use COP financing to acquire interests in the Subject Properties. Specifically, the District requests that the Judge amend Findings of Fact Nos. 50, 56, and 58 and Conclusions of Law Nos. 69 and 71 to remove any implication that the District used COP financing to "avoid" or "circumvent" the law. The Administrative Law Judge has reviewed the specific findings and conclusions noted by the District and has made minor changes to the identified paragraphs⁷⁶ to better reflect the evidence presented at the hearing. (See Amended Findings of Fact, Conclusions of Law, and Decision.)

E. Inclusion of Additional Evidence into Hearing Record

Finally, at oral argument on its Motion for Reconsideration, the Intermediate District requested the opportunity to supplement the hearing record with additional documentation related to: (1) the District's acquisition of interests in the EEC, SEC, WEC, and NEC properties (Subject Properties); and (2) the District's decision to use COP financing for the acquisitions.⁷⁷ The District asserts that allowing it to supplement the hearing record with these documents would remedy any alleged "prejudice" the District suffered as a result of the Administrative Law Judge's "*sua sponte*" inclusion of title and real estate agreements related to the Subject Properties into the hearing record.⁷⁸

On June 4, 2015, the District requested that the following 26 documents be included as exhibits in the hearing record:

- 2005 Purchase Agreement Term Sheet related to the WEC Property
- 2009 Wells Fargo Termination Letter related to the WEC Property
- Money Market activity summary, dated 8/31/04 to 5/29/08, related to the WEC Property
- Money Market Fund statement as of 5/30/08 related to the WEC Property

⁷⁵ Test. of Phillip Williams at T. 386.

⁷⁶ Revised and renumbered in the Amended Findings of Fact, Conclusions of Law, and Decision.

⁷⁷ Transcript from Hearing on Motion for Reconsideration, March 12, 2015, at T. 5, 13, 60-63.

⁷⁸ *Id.*

- Money Market Fund statement as of 8/31/04 related to the WEC Property
- UCC Financing Statement 2009A related to the WEC Property
- 2009 Assignment and Assumption Purchase Agreement related to the EEC Property
- 2009 Purchase Resolution related to the EEC Property
- 2010 Minnesota Department of Revenue Certificate of Real Estate Value for the EEC Property
- Purchase Agreement for the EEC Property
- NEC COP Purchase Agreement (Executed)
- NEC COP Series 2010E Account statement as of 11/30/10
- NEC COP Series 2010E Account statement as of 6/30/11
- NEC COP Series 2011A Account statement as of 01/31/13
- NEC COP Series 2011A Account statement as of 02/28/13
- Purchase Agreement for NEC Property
- 2005 Purchase Agreement for SEC Property
- 2010 Wells Fargo Termination Letter related to SEC Property
- Money Market Fund statement as of 06/30/13, related to SEC Property
- Money Market Fund statement as of 10/31/06, related to SEC Property
- 2004 Minnesota Department of Education Review and Comment documents related to the WEC Property
- 2006 Minnesota Department of Education Review and Comment documents related to the SEC Property
- 2009 Minnesota Department of Education Review and Comment documents related to the EEC Property
- 2010 Minnesota Department of Education Review and Comment documents related to the NEC Property
- 2011 Minnesota Department of Education Review and Comment documents related to the NEC Property

- Minnesota Department of Children Families & Learning (precursor to Minnesota Department of Education) Guide for Planning School Construction Projects in Minnesota (2003)

The additional exhibits proposed by the Intermediate District fall into three general categories: (1) miscellaneous documents related to the acquisition of interests in the Subject Properties; (2) bank statements, COP statements, and other financial documents; and (3) “review and comment” documents prepared by the Intermediate District and Commissioner related to the Subject Properties. Bloomington opposes the reopening of the hearing record to include each of these documents.

At the outset, it is important to note that a motion for reconsideration is not a proper vehicle to present additional facts or arguments available when the case was first considered.⁷⁹ Nor is a motion for reconsideration a proper method to supplement or expand the record for appeal.⁸⁰ But this is exactly what the Intermediate District is attempting to do by requesting that the proposed documents be included in the hearing record.

With respect to the real estate documents, the Intermediate District seeks to include term sheets, lender letters, purchase agreements, money market account statements, and COP account statements. However, the District has not shown (or even asserted) that these documents were unavailable to the District at the time of hearing, are newly discovered evidence, or are necessary to correct any error in the record or the Administrative Law Judge’s Original Decision.

The Administrative Law Judge acknowledges that one group of documents -- the purchase agreements related to the Subject Properties -- may have been helpful to have as part of the original hearing record, along with the assignments of purchase agreements conveying the District’s interests in the purchase agreements to the lenders (which, notably, the District has not offered). However, none of these documents change or negate the Judge’s Findings of Fact or Conclusions of Law related to how the Subject Properties were ultimately titled and what interest the District maintained in the Subject Properties as of June 30, 2011. The fact that the District entered into purchase agreements to purchase the Properties and then assigned its interests in those purchase agreements to lenders so that the lenders could purchase the Properties and lease them to the District, does not affect the titling or ultimate ownership of the Properties or the final outcome of this action. Thus, because all of the proposed real estate documents were available to the District at the time of the hearing, and none of the additional documents are necessary to correct an error in the decision, there is no basis to reopen the record to include any of these documents.

⁷⁹ Minn. R. Gen. Pract. 115.11 advisory comm. note (“Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to ‘expand’ or ‘supplement’ the record on appeal.”). See also, *Midway National Bank of St. Paul v. Bollmeier*, 462 N.W.2d 401, 404-405 (Minn. Ct. App. 1990), *aff’d* 474 N.W.2d 335 (Minn. 1991); *Sullivan v. Spot Weld, Inc.*, 560 N.W.2d 712, 716 (Minn. Ct. App. 1997), *review denied* (Minn. April 27, 1997).

⁸⁰ *Id.*

Like the real estate documents, the review and comment documents between the District and the Commissioner do not constitute “new evidence” and are not necessary to correct an error in the record. The fact that the District and Commissioner engaged in a review and comment process pursuant to Minn. Stat. § 123B.71 (2014) prior to the District’s acquisition of interests in the Subject Properties, does not impact the Administrative Law Judge’s decision in this case. The District chose to use COP financing, whereby the District “rents-to-own” the Subject Properties, and the District must accept the ramifications of those decisions when it comes to Bloomington’s withdrawal.⁸¹ The fact that the Commissioner knew of the District’s financing arrangements does not change, in any way, the Administrative Law Judge’s decision in this case. The review and comment documents are, therefore, unnecessary to supplement the record or to correct any error in the record. Accordingly, there is no basis for reopening the hearing record to include these documents.

Similarly, the financial documents proposed by the Intermediate District, including the bank statements, NEC COP statements, and UCC financing statement, were available to the District at the time of the hearing and do not represent newly discovered evidence. Moreover, none of the proposed documents are necessary to correct any errors in the record. Therefore, there is simply no basis to reopen the record and include these documents.

In sum, the Intermediate District had ample opportunity to present all 26 documents: first, in its presentation of its case at the hearing; and second, after the hearing when the Administrative Law Judge requested that the parties provide all agreements related to the District’s acquisition of interests in the Subject Properties. The Intermediate District’s affirmatively chose not to offer these documents into the record or make these arguments at the hearing, and the District must live with its litigation strategies upon appeal. Using a motion for reconsideration to re-try the case and assert new legal theories (with the benefit of the Administrative Law Judge’s final decision in hand) is simply inappropriate and impermissible. Accordingly, the Intermediate District’s request to reopen the record to admit new and/or additional evidence is hereby **DENIED**.

IV. BLOOMINGTON’S MOTION FOR RECONSIDERATION

In its cross Motion for Reconsideration, Bloomington argues that the Administrative Law Judge’s decision was “not justified by the evidence at hearing” because the Judge included for allocation all liabilities associated with the OPEB and pension benefits, but excluded from allocation all liabilities associated with the Subject Properties. Bloomington asserts that because the OPEB and pension benefits are paid annually by the District on a “pay-as-you-go” basis, such benefits do not represent long-term liabilities of the District,

⁸¹ If the remaining Member Districts are dissatisfied with the Administrative Law Judge’s valuations of the properties, then they can easily draft and enter into a withdrawal agreement that specifically dictates in the future how the real properties should be valued upon withdrawal, and how much the withdrawing member is liable for upon withdrawal.

but are, instead, annual expenses for which Bloomington has no on-going obligation to pay, similar to the rent payments due under the lease-purchase agreements.

Bloomington has failed to present any evidence that the Administrative Law Judge's decision was not justified by the evidence presented at the hearing or is contrary to the law. The bases for the Judge's valuation and allocation of the OPEB and pension benefits as liabilities are thoroughly explained in the Original Decision and are supported by both law and fact in the record.

In her Report, the Administrative Law Judge concluded that unlike the rent payments owed on the Subject Properties, the OPEB and pension benefits are long-term contractual obligations of the District which accrue at the time that the employee earns the benefits, not when the benefits are paid out by the District. In contrast, rent payments owed under the lease agreements are yearly appropriations made by the District which can be stopped at any time. The District can decide at the end of any fiscal year not to appropriate funds for rent for the next year and can terminate the leases at any time without on-going obligations under the leases.

The same is not true for the OPEB and pension benefits, which vest with the District's employees at the time the benefits are earned, not when the benefits are paid. Accordingly, the OPEB and pension benefits are not yearly appropriations; they are vested, contractual obligations that the District has incurred over the course of decades and that the District has owed to its employees from the time that the benefits were earned. The District cannot simply refuse to appropriate payments for earned OPEB and pension benefits like the District can for rent payments each year. As a result, the OPEB and pension benefits represent long-term debts, liabilities, and contractual obligations of the District for which Bloomington is proportionately responsible. Bloomington's Motion for Reconsideration is, therefore, **DENIED**.

V. CONCLUSION

For the reasons set forth above, the Administrative Law Judge issues, contemporaneous with this Order, an Amended Findings of Fact, Conclusions of Law, and Decision correcting the errors cited above. This Order shall be incorporated into the Memorandum of the Amended Findings of Fact, Conclusions of Law, and Decision.

A. C. O.