

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Petition of the City of
Brooklyn Center to the Commissioner of
Education for Amendment of Minn. R. 3535

SECOND PREHEARING ORDER

This matter was commenced on April 10, 2015 upon the city of Brooklyn Center's filing of a Petition to the Commissioner of Education for Amendment of a Rule Under Minn. Stat. § 14.091 (Petition for Amendment) with the Office of Administrative Hearings. The matter was assigned to Chief Administrative Law Judge Tammy L. Pust.

Myron Orfield, Attorney at Law, and George Beck, Attorney at Law, appear on behalf of the city of Brooklyn Center (City). Kathryn Woodruff, Assistant Attorney General, appears on behalf of the Minnesota Department of Education (Department).

On May 18, 2015, the City filed a Request for Disqualification seeking to disqualify the Chief Administrative Law Judge from presiding in this matter given her past employment history with the Department.

On May 19, 2015, the parties, by counsel, appeared for a Prehearing Conference pursuant to the First Prehearing Order issued in this matter on May 14, 2015.

Based upon the arguments and submissions of counsel, and a review of the files and proceedings herein, the Chief Administrative Law Judge issues the following:

ORDER

1. At the May 19, 2015 Prehearing Conference and on the record thereof, the City withdrew its Request for Disqualification of the Chief Administrative Law Judge, filed pursuant to Minn. R. 1400.2020 (2013). The Chief Administrative Law Judge will remain assigned to preside over all proceedings in this matter.

2. For the reasons set forth in the Memorandum below, the Chief Administrative Law Judge concludes that the pendency of the Department's rulemaking action, currently docketed as OAH Docket No. 65-1300-32227, does not negate the Petitioner's right to a hearing under Minn. Stat. § 14.091 (2014).

3. In accordance with Minn. Stat. § 14.091(c), **by 4:30 p.m. on May 29, 2015**, the parties and any other interested person may file with the Office of Administrative Hearings, PO Box 64620, St. Paul, MN 55164-0620, factual information and/or legal argument related to whether:

- (a) The City has complied with the requirements of Minn. Stat. § 14.091(a);
- (b) Minn. R. 3535 (2013), in its current form, is required to comply with a court order; or
- (c) Minn. R. 3535, in its current form, is required by federal law or is required to maintain authority to administer a federal program.

4. If a hearing is determined necessary in this matter, it will be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota, beginning at **9:30 a.m. on July 8, 2015**. The hearing will continue, as necessary, on **July 9 and 10, 2015**.

5. The Department is directed to provide public notice of the hearing in the manner prescribed by Minn. Stat. § 14.14, subd. 1a (2014) at least 30 days prior to the date of the scheduled hearing. If the hearing is cancelled or rescheduled, the Department shall take appropriate steps to provide notice of the cancellation or rescheduled date in the same manner that the original notice was provided.

6. Courtesy copies of all filings shall be provided to the Administrative Law Judge by electronic mail, directed to Tammy.Pust@state.mn.us with a copy to Kendra.McCausland@state.mn.us. To become a part of the official hearing record, hard copies of all documents **must be filed** with the Office of Administrative Hearings **by mail, fax, or personal delivery**, pursuant to Minn. R. 1400.5550 (2013).

Dated: May 21, 2015

s/Tammy L. Pust

TAMMY L. PUST
Chief Administrative Law Judge

MEMORANDUM

This is a case of first impression under Minn. Stat. § 14.091, a provision of Minnesota's Administrative Procedures Act (APA). The matter involves the City's Petition for Amendment related to Minn. R. 3535, the state's School Desegregation/Integration Rule (Rule). In its filings, the City argues that it has established the availability of "significant new evidence relating to the need for or reasonableness of the rule"¹ such that it is entitled to a hearing under the statute.

The Department argues that no additional hearing is necessary given the fact that it has already commenced a rulemaking proceeding, docketed as OAH Docket No. 65-1300-32227, wherein it is seeking to amend the same portions of the Rule challenged in the Petition for Amendment. Asserting that the requirement of an additional hearing would be duplicative and thus wasteful of public funds, the Department requests that it be allowed to consider the City's concerns regarding the Rule within the rulemaking process already commenced. The Department questions whether the legislature could have foreseen the complexities of requiring strict compliance with section 14.091 during an expedited rulemaking proceeding governed by Minn. Stat. § 14.389 (2014), and requests that the Chief Administrative Law Judge exercise her discretion to manage the tribunal's docket by determining that no hearing is required other than that which will be provided during the rulemaking proceeding.

While the Department is correct that it is legally obligated to receive and consider the City's filings and that the City would have a right to present testimony at a rulemaking hearing, those facts do not lead to the conclusion that the hearing requested by the City is unnecessary and should be denied. An examination of the purposes and processes of both the section 14.389 expedited rulemaking hearing and the section 14.091 amendment petition hearing reveals the flaw in the Department's position.

In a rulemaking proceeding under the APA, an agency is required to establish the "need for and reasonableness"² of its chosen rule language. An agency has the discretion to adopt, or choose not to adopt, suggested rule changes submitted through public comment. To establish that its proposed rule language is reasonable, an agency need only "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken"³ and does not merely "represent[] its will and not its judgment."⁴ An agency is entitled to make choices between different possible regulatory approaches so long as the alternative that it selects is a rational one.⁵ The agency's selection must be approved upon review if it is one that a rational person could have made, even if reasonable minds might differ as to

¹ Minn. Stat. § 14.091(a).

² Minn. Stat. § 14.14, subd. 2 (2014).

³ *Manufactured Housing Institute v. Pettersen*, 347 N.W.2d 238, 244 (Minn. 1984).

⁴ See, *Mammenga*, 442 N.W.2d 786, 789 (Minn. 1989); *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm'n*; 312 Minn. 250, 260-61, 251 N.W.2d 350, 357-58 (1977).

⁵ *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

whether the chosen approach represents “the best alternative.”⁶ Therefore, an agency can lawfully choose to consider and reject any competing proposal for rule language as long as the agency can establish that the language it finally proposes to adopt is both necessary and reasonable.

This process and legal standard are markedly different from those provided in section 14.091 of the APA. Minn. Stat. § 14.091 specifies a process whereby a city, county, or sanitary district⁷ has a right to seek repeal or amendment of any adopted rule. The statute allows a petitioner to propose adoption of specific rule language, either through an agency’s acquiescence or through an Administrative Law Judge’s order. The hearing provided under this section of the APA can lead to the repeal or specific amendment of a rule “in the manner requested by the petitioner, or in another manner that the administrative law judge has determined is needed and reasonable,”⁸ no matter the contrary preference of an agency. Clearly, a section 14.091 amendment petition hearing is not comparable to or legally interchangeable with a typical rulemaking hearing.

Minnesota’s canons of statutory construction make clear that a statute must be construed so as to give effect to each of its provisions.⁹ As such, the statutory right to a hearing related to a specific rule amendment proposal, found in APA section 14.091, cannot be ignored in favor of the right to submit comments or testimony at a rulemaking hearing, as envisioned in APA section 14.389.

The Chief Administrative Law Judge has no discretion to elevate the APA’s expedited rulemaking process over the statute’s amendment petition process defined in section 14.091. Accordingly, the Chief Administrative Law Judge determines that a hearing will be ordered if the record supports the findings required by Minn. Stat. § 14.091(c).

T. L. P.

⁶ *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

⁷ Contrary to the Department’s argument, the statute does not open the door to rule challenges by the 300+ school districts throughout Minnesota. School districts are not within the enumerated governmental entities granted the right to petition for amendment or repeal of an adopted rule under Minn. Stat. § 14.091.

⁸ Minn. Stat. § 14.091(e).

⁹ *Staab v. Diocese of St. Cloud*, 853 N.W.2d 713, 718 (Minn. 2014) citing *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) and Minn. Stat. § 645.17(2) (2012).