

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Amendments to Rules Governing Teacher Licensure and Permissions; the Standards of Effective Practice; and Teachers of Health, Physical Education, Developmental Adapted Physical Education, Parent and Family Education, Adult Basic Education, and American Indian Language, History, and Culture; Minn. R. 8710; Proposed Repeal of Minn. R. 8710.0400 and .0550

**ORDER OF THE CHIEF  
ADMINISTRATIVE LAW JUDGE  
ON REVIEW OF RULES**

This matter came before the Chief Administrative Law Judge pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (2022), and Minn. R. 1400.2240, subp. 4 (2021). These authorities require that the Chief Administrative Law Judge review an administrative law judge's findings that a proposed agency rule is defective and should not be approved.

The proposed rules concern the Professional Educator Licensing and Standards Board's (Board) teacher licensure and required pedagogical standards under Minnesota Rules chapter 8710. Following a rulemaking hearing, Administrative Law Judge Jim Mortenson disapproved portions of the proposed rules in a Report dated November 22, 2022.<sup>1</sup>

Based upon a review of the record in this proceeding and for reasons explained in the attached Memorandum, the Chief Administrative Law Judge:

- **concurs** with the **disapproval** of proposed Rule Part 8710.2000, subpart 5(H);
- **concurs** with the **disapproval** of proposed Rule Part 8710.2000, subpart 7(D);
- **disagrees** with the **approval** of proposed Rule Part 8710.2000, subpart 4(F); and
- **disagrees** with the **disapproval** of proposed Rule Part 8710.2000 4(H).

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<sup>1</sup> Report of the Administrative Law Judge (Nov. 22, 2022).

Therefore, the Chief Administrative Law Judge issues the following:

**ORDER**

1. Proposed Rule Part 8710.2000 4(F) is **DISAPPROVED**;
2. Proposed Rule Part 8710.2000 4(H) is **APPROVED**;
3. Proposed Rule Part 8710.2000 5(H) is **DISAPPROVED**;
4. Proposed Rule Part 8710.2000 7(D) is **DISAPPROVED**;
5. In all other respects, the findings in the Report of the Administrative Law Judge dated November 22, 2022, are **APPROVED**.

The changes or actions necessary for approval of the disapproved rules are identified in the Administrative Law Judge's Report and in the Memorandum below. If the Board elects not to correct the defects associated with the proposed rules, the Board must submit the rule to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations, for review under Minn. Stat. § 14.15, subd. 4 (2022).

If the Board chooses to make changes to correct the defects, it must submit to the Chief Administrative Law Judge a copy of the rules as originally published in the State Register, the order adopting the rules, and the rule showing the Board's changes. The Chief Administrative Law Judge will then determine whether the defect has been corrected and whether the modifications to the rules make them substantially different than originally proposed.

Dated: December 2, 2022



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JENNY STARR  
Chief Administrative Law Judge

## MEMORANDUM

### Legal Authority to Adopt Rules

The Board has a broad grant of authority to adopt rules governing teacher licensure, preparation programs, and pedagogical standards (Standards of Effective Practice or SEP).<sup>2</sup> Within this regulatory space, the Board may adopt rules rationally related to licensing standards and qualifications that the Board determines are necessary to demonstrate fitness to practice as a teacher. Within its delegated authority to make rules, the Board is entitled to make choices between possible regulatory approaches so long as its choices are rational. It is not the role of the administrative law judge to determine which policy alternative presents the “best” approach. Instead, the reviewing judge’s role is to determine whether the Board has made a reasonable selection among the regulatory options it had. The delegation of rulemaking authority is from the Minnesota Legislature to the Board; and not to the judge.<sup>3</sup>

While the Legislature has granted the Board the regulatory authority to license teachers and establish licensing standards and requirements, the Board does not have statutory authority to determine curriculum. As the Administrative Law Judge noted in his Report, that authority lies with the Legislature, school boards, the Department of Education, and regional centers of excellence.<sup>4</sup>

When undertaking a review of proposed rules, judges must assess whether the proposed rules comport with applicable legal standards.<sup>5</sup> A rule must be disapproved if it “exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by the enabling statute or other law.”<sup>6</sup>

### Proposed Rule 8710.2000, subparts 5(H) and 7(D)

After reviewing the record and Report, the Chief Administrative Law Judge agrees with the Administrative Law Judge’s findings that proposed Rule 8710.2000, subparts 5(H) and 7(D), exceed the Board’s authority and must be disapproved. Subpart 5 governs instructional strategies. Item H provides that the teacher “encourages critical thinking about culture and race and includes missing narratives to dominant culture in the curriculum.”<sup>7</sup> Subpart 7 governs collaboration and leadership. Item D provides that the teacher “identifies gaps where the current curriculum does not address multiple perspectives, cultures, and backgrounds, and incorporates curriculum to fill these gaps.”<sup>8</sup>

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<sup>2</sup> See Minn. Stat. §§ 122A.09, subd. 9; 122A.092, subds. 1, 3 (2022).

<sup>3</sup> See generally, *Citizens Advocating Responsible Dev. v. Kandiyohi Cty. Bd. of Comm’rs*, 713 N.W.2d 817, 832 (Minn. 2006) (“Our role when reviewing agency action is to determine whether the agency has taken a ‘hard look’ at the problems involved, and whether it has ‘genuinely engaged in reasoned decision-making’”) (quoting *Reserve Mining Co. v. Herbst*, 256 N.W.2d 808, 825 (Minn. 1977)).

<sup>4</sup> See Minn. Stat. § 122A.09, subd. 9. See also, Minn. Stat. §§ 120B.10, .11, .115 (2022).

<sup>5</sup> See Minn. R. 1400.2100 (2021).

<sup>6</sup> Minn. R. 1400.2100 D.

<sup>7</sup> Exhibit (Ex.) C1 (proposed rule amendments).

<sup>8</sup> *Id.*

Both subparts 5(H) and 7(D) direct teachers to identify gaps in curriculum and make additions to include missing narratives and multiple perspectives. It is not within the Board's teacher licensing authority to address gaps in school curricula. As Judge Mortenson indicated, the Board may cure the defects by tying the proposed language in these subparts directly to existing local or statewide academic standards.<sup>9</sup> The Board may also cure the defects by inserting an introductory phrase such as, "The ability to use a wide range of curriculum materials . . . ."

#### **Proposed Rule 8710.2000, subpart 4(F)**

The Chief Administrative Law Judge finds that proposed Rule 8710.2000, subpart 4(F), also exceeds the Board's authority and must be disapproved. Subpart 4 governs standards for planning effective instruction. Item F provides that the teacher "features, highlights, and uses resources written and developed by traditionally marginalized voices . . . and other identities traditionally silenced or omitted from curriculum." Like subparts 5(H) and 7(D), this proposed subpart direct teachers to identify voices "omitted from curriculum" and to cure that gap. Again, this defect could be cured with the introductory phrase, "The ability to use a wide range of curriculum materials." The subpart would then focus on a teacher's ability to feature and highlight traditionally marginalized voices by using a wide range of curriculum materials, which is within the Board's authority.

#### **Proposed Rule 8710.2000, subpart 4(H)**

Finally, the Chief Administrative Law Judge finds that proposed Rule 8710.2000, subpart 4(H), does not exceed the Board's authority and, therefore, is approved. Again, subpart 4 governs standards for planning effective instruction. Item H provides that the teacher "creates opportunities for students to learn about power, privilege, intersectionality, and systemic oppression in the context of various communities and empowers learners to be agents of social change to promote equity."<sup>10</sup>

This proposed part does not impose additions to approved curricula. It merely identifies the kind of instructional approach that a licensee must be able to perform. For example, a teacher could create opportunities for students to learn about power, privilege, and oppression by highlighting, assessing, and discussing features of curricula that were adopted by a local school board. Because it does not conflict with the Board's regulatory authority, proposed rule 8710.2000, subpart 4(H), is approved.

Nevertheless, the Chief Judge recommends the Board consider the introductory phrase referenced above as a replacement to the phrase, "The teacher identifies." The introductory phrase would make the meaning of this rule part clearer.

**J. S.**

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<sup>9</sup> See Report at 62, n. 378 (E.g.: "Consistent with the local curriculum and state and local academic standards, a teacher will encourage critical thinking about culture and race.")

<sup>10</sup> Ex. C1.

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**REPORT OF THE  
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Jim Mortenson for a rulemaking hearing on August 24, 2022. The public hearing was held remotely through an interactive video conference on the WebEx platform.

As explained below, the Minnesota Professional Educator Licensing and Standards Board (Board) proposes to amend its administrative rules governing teacher licensure, including the standards of effective practice (SEPs). Thirty-seven rules are impacted by the proposals; 17 with amendments and 20 which are being repealed in whole or in part.

The public hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act.<sup>1</sup> The Minnesota Legislature designed this process to ensure that state agencies meet the requirements of law and rule in adopting and amending rules. The public hearing was conducted to permit agency representatives and the Judge to hear public comments regarding the impact of the proposed rules. Further, the hearing process provided the public an opportunity to review, discuss, and critique the proposed rules, and to ensure a fully developed rulemaking record. In addition to the comments received at the public hearing, the public was permitted to submit written comments into the record. The agency may formulate – and in this case, has - appropriate changes based on public comment.

As described more extensively below, the Board must establish that the proposed amendments to its rules are needed and reasonable; that the rules are within the Board's statutory authority; that the Board has fulfilled all procedural requirements; and that any modifications to the rule made after the proposed amendments were initially published in the *State Register* are within the scope of the matter that was originally announced.

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<sup>1</sup> See Minn. Stat. §§ 14.05-.20 (2022).

## SUMMARY OF CONCLUSIONS

With the exception of Minn. R. 8710.2000, subps. 4(H), 5(H), and 7(D), the Board established it has the statutory authority to amend and repeal the rules as proposed, it complied with all procedural requirements of law and rule, and that the remaining proposed amendments and repeals are needed and reasonable. Therefore, with the above noted exceptions, the Judge **APPROVES** the proposed amendments and repeals to Chapter 8710 and recommends the Board adopt them.

Based upon the entire record, the Judge makes the following:

### FINDINGS OF FACT

#### I. Background and Summaries Regarding the Proposed Amendments

##### A. Background of Board

1. In 1973, the Minnesota Legislature established the Teachers Standards and Certification Commission. In 1976, the Commission's name was changed to the Board of Teaching. The Board's name was changed again in 2017, to the Professional Educators and Licensing Standards Board. During this time, the essential responsibilities of the Board have remained the same.<sup>2</sup>

2. The Board is responsible for licensing public school teachers in Minnesota; establishing and maintaining teacher licensing standards and requirements; establishing and enforcing the Teacher Code of Ethics; and approving teacher preparation providers and programs to prepare licensing candidates in Minnesota.<sup>3</sup>

##### B. Background and Summary of Changes to Tiered Licensure Rules

3. In 2017, the Legislature enacted major reforms to teacher licensure, which became effective in 2018. The legislature created a tiered licensure system and moved the responsibilities the Minnesota Department of Education had concerning teacher licensure to the Board.<sup>4</sup>

4. In October 2018, the Board adopted rules to implement the new tiered licensure system. There are four tiers of licensure and there are multiple ways an individual may obtain a license to teach. Significantly, Tier 1 and Tier 2 provide licenses for one and two years, respectively, and may only be renewed three times. Licensure in these tiers also requires the licensee to have a position in a school district. Tier 3 and Tier 4 provide licenses for three and five years, respectively. There is no limit on the number of times such licenses may be renewed, and no restriction related to having a teaching job. In general, licensure in a higher tier requires more significant training.<sup>5</sup>

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<sup>2</sup> Exhibit (Ex.) D at 9 (SONAR).

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 9-10.

5. A license will also be for a particular subject or “field” (e.g. physical education) and scope (e.g. grades k-12, or parents).<sup>6</sup>

6. In addition to licensing teachers, the Board is responsible for approving teacher preparation providers and programs to prepare teacher candidates in Minnesota.<sup>7</sup> A teacher preparation program is licensure-specific training (e.g. elementary education, visual arts) provided to a licensure candidate.<sup>8</sup> The Board must approve teacher preparation programs before candidates may enroll.<sup>9</sup> To obtain approval, a provider of a teacher preparation program must submit a pedagogy application which demonstrates how the program meets the SEPs found at Minn. R. 8710.2000 and an application demonstrating how the program meets the license-specific standards (“teacher standards” or “content standards”) found elsewhere in chapter 8710. Each program must have a learning opportunity and an assessment for each standard.<sup>10</sup> In other words, applicants must have training on teaching, and training in the content area to be taught.<sup>11</sup>

7. The Board is proposing technical amendments to Minn. R. 8710.0200, .0310, .0311, .0313, .0314 .0320, and .0321.<sup>12</sup> The changes to Minn. R. 8710.0200 are intended to update language specific to the Board’s collection of fees from applicants for licensure and renewal of licenses.<sup>13</sup> The changes to Minn. R. 8710.0310 create new definitions, update some existing ones, and update language concerning the background check process.<sup>14</sup> The changes to Minn. R. 8710.0311, and .0320 remove language concerning interim permissions from the Tier 1 licensure rule and the out-of-field permission rule.<sup>15</sup> The changes to Minn. R. 8710.0313, .0314, .0320, and .0321 clarify when a license or permission expires.<sup>16</sup>

8. The Board is proposing licensure changes in Minn. R. 8710.0310, .0313, .0314, and .0330.<sup>17</sup> The changes to Minn. R. 8710.0310 will require teachers to provide current contact information at the time of application and renewal and to keep that information current with the Board.<sup>18</sup> The changes to Minn. R. 8710.0313 clarify requirements for teachers moving from Tier 3 to Tier 4, and permit out-of-state applicants to receive a Tier 3 license to teach certain middle level subjects without holding another “stand alone” license.<sup>19</sup> Changes to Minn. R. 8710.0313 and .0314 provides rules to permit teachers who hold a restricted Tier 3 or Tier 4 license to expand the grade levels

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<sup>6</sup> *Id.* at 11; Minn. Stat. § 122A.22, subd. 10 (2022).

<sup>7</sup> Ex. D at 12; Minn. Stat. § 122A.092 (2022).

<sup>8</sup> Ex. D at 12.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*; Minn. Stat. § 122A.092.

<sup>11</sup> There is an important distinction between elementary and secondary education, which is noted but not necessary to discuss here.

<sup>12</sup> Ex. D at 7; Minn. Stat. §§ 122A.09, subds. 1, 4, 9, .092. (2022).

<sup>13</sup> Ex. D at 7.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

of the license.<sup>20</sup> Finally, changes to Minn. R. 8710.0330 clarify the requirements for licensure via portfolio.<sup>21</sup>

9. The Board is proposing changes to rules concerning license permissions.<sup>22</sup> The changes to Minn. R. 8710.0320 will: permit a teacher to obtain additional out-of-field permissions for good cause; require school districts to attest to providing supports for teachers who will use an out-of-field permission for teaching; and clarify posting requirements for out-of-field permissions.<sup>23</sup> The changes to Minn. R. 8710.0321 clarify the requirements for a “cross curricular delivery permission” (f/k/a “innovative program permission”).<sup>24</sup>

10. The Board is proposing changes to Minn. R. 8710.0327 concerning substitute teaching.<sup>25</sup> The amendments will change requirements concerning where an applicant’s bachelor’s degree may be from; increase the amount of time a “short-call” substitute may replace a teacher of record and require schools to use a long-term substitute for time in excess of that allowed for a short-call substitute, unless the short-call substitute has submitted an application for that particular assignment; and clarifies which assignments a career and technical education (CTE) short-call substitute teacher may work.<sup>26</sup>

### **C. Summary of Changes to License-Specific Rules**

11. The Board is proposing changes to Minn. R. 8710.3100, .4000, Parent and Family Education and Adult Basic Education, respectively, to update standards and remove a requirement for candidates to complete 12 weeks of student teaching.<sup>27</sup>

12. The Board is proposing changes to Minn. R. 8710.4100, American Indian Language, History, and Culture, to reduce the number of resolutions from a tribal government that an applicant must obtain to apply to teach an American Indian language, history, or culture.<sup>28</sup>

13. The Board is proposing changes to Minn. R. 8710.4500 to update standards related to teaching health.

14. The Board is proposing changes to Minn. R. 8710.4700, to update standards related to teaching physical education and expanding the grade-levels of the license to include pre-kindergarten.<sup>29</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 7-8.

<sup>26</sup> *Id.* at 8.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*



15. The Board is proposing changes to Minn. R. 8710.5300, Developmental Adapted Physical Education (DAPE), to update the standards and to remove a requirement that candidates complete the Special Education Core Skills set forth in Minn. R. 8710.5000.<sup>30</sup>

**D. Summary of Changes to Minn. R. 8710.2000 Standards of Effective Practice (SEPs)**

16. All teacher preparation programs must address the SEPs, as they are applicable to all public-school teachers.<sup>31</sup> The SEPs are the pedagogical standards all candidates must meet, whether seeking licensure through a teacher preparation program or through submission of a portfolio.<sup>32</sup>

17. The Board proposes to make the first significant changes to Minn. R. 8710.2000 (the SEPs) since it was adopted in 2001.<sup>33</sup> The Board's purpose is to update the SEPs to ensure public school teachers have the foundational knowledge and skills to effectively educate every public-school student in Minnesota.<sup>34</sup>

**II. General Issues Regarding the Review of the Proposed Rules**

18. This rulemaking matter has proceeded according to statutes and rules governing the process for the adoption or amendment of rules following a public hearing.<sup>35</sup> The process is intended to fulfill one of the purposes of the Minnesota Administrative Procedure Act, which is to increase public participation in the formulation of administrative rules.<sup>36</sup> A rulemaking proceeding that includes one or more public hearings, in addition to a period for submission of written comments, offers an opportunity for members of the public to ask questions and share feedback with agency staff. In this matter, members of the public and groups with an interest in the outcome of this proceeding submitted well over 500 comments for consideration, the majority opposing the amendments, specifically to the SEPs.

19. Public comments were received by the Board early in this process following the Board's September 2019 request for comments.<sup>37</sup> Those comments influenced the Board's draft rule proposal of December 16, 2021.<sup>38</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 9; Minn. R. 1400.2000-.2240 (2021). In Minnesota, rules may be adopted without a public hearing, some rulemakings are exempted from the full rulemaking process, and some rules are authorized for adoption according to an expedited process. See Minn. Stat. §§ 14.22, .385, .389 (2022).

<sup>36</sup> Minn. Stat. § 14.001(5) (2022).

<sup>37</sup> Ex. D at 14.

<sup>38</sup> *Id.* at 17.

20. The Board, a Board subcommittee, and the Board's Standards and Rules Advisory Committee held nearly 30 public meetings to discuss proposed changes to the rules from January 2020 through January 2022.<sup>39</sup>

21. There are 37 different rules affected by the proposed changes, 20 of which involved repealing entire rules (two) or subparts of rules (18). Seventeen rules are being modified by revising and replacing language. The majority of comments concern one rule, 8710.2000, which is comprised of the SEPs. The proposed amendment reduces the subparts from 10 to eight, and reduces the specific SEPs from 125 to 71.

22. Comments in support of the proposed amendments generally argued that the new rules provide concrete and precise guidance for teachers in creating welcoming classrooms for all students. Further, these commentators continue, the rule changes are necessary to reduce the disparities between diverse groups of students in the opportunities, resources, and experiences that contribute to their success in school. In the view of many commentators, the current system is failing Minnesota students and that the proposed changes will ensure that all students feel seen, supported, and included at school. Moreover, a commenter stated that the changes may result in the avoidance of expensive litigation concerning the present failure to meet some children's needs. Still others remarked that the changes represent common sense that new teachers understand all students. These commentators maintain that the protection and nurturing of historically marginalized children is advanced with the rule changes.<sup>40</sup>

23. Comments in opposition to the proposed amendments generally fell into one or more of four categories. Those who argued that: (a) none of the proposed changes should be approved; (b) the proposed changes do not reflect pedagogical rigor but instead propagate left-of-center, radical, or Marxist political perspectives; (c) a regulatory focus on the racial, gender or ethnic identities of students will reduce the willingness of individuals to continue teaching or enter the teaching field, or of parents to enroll their children in public schools; and (d) the proposed rules violate the law or constitutional rights.<sup>41</sup>

24. Another set of comments argues that the proposed changes to the standards of practice delve into curriculum and remove the academic knowledge teachers currently must have. The commentators argue that the Board's proposal removes academic rigor and substitutes it with standards that reflect ideological goals.<sup>42</sup>

25. Some commenters expressed concerns that the Board has exceeded its authority with the proposed changes. They argue the Board is performing functions that

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<sup>39</sup> *Id.* at 17-19.

<sup>40</sup> Ex. J.

<sup>41</sup> See, e.g., Comment by Marla Berd (Sept. 13, 2022), Comment by Wendy Nelson (Aug. 25, 2022), Comment by Julie Jacobs (Aug. 25, 2022).

<sup>42</sup> See Minn. Stat. § 14.14.

belong to the state legislature or local school boards. Some argue the proposed changes remove parents as decision makers about their children's education.<sup>43</sup>

26. Finally, a group of comments raise concerns that words and phrases used in the proposed changes are not defined. This leaves the rules open to interpretation and possible inappropriate conduct by school staff, including teachers.<sup>44</sup>

### III. Rulemaking Authority

27. The Board relies on three statutes for its authority to adopt the proposed rules.<sup>45</sup> The specific statutory provisions follow.

28. Minn. Stat. § 122A.09, subd. 9, grants the Board the authority to:

(a) adopt rules subject to the provisions of chapter 14 to implement sections 120B.363, 122A.05 to 122A.09, 122A.092, 122A.16, 122A.17, 122A.18, 122A.181, 122A.182, 122A.183, 122A.184, 122A.185, 122A.187, 122A.188, 122A.20, 122A.21, 122A.23, 122A.26, 122A.28, and 122A.29.

(b) adopt rules relating to fields of licensure, including a process for granting permission to a licensed teacher to teach in a field that is different from the teacher's field of licensure without change to the teacher's license tier level.

(c) The board must adopt rules relating to the grade levels that a licensed teacher may teach.

(d) If a rule adopted by the board is in conflict with a session law or statute, the law or statute prevails. Terms adopted in rule must be clearly defined and must not be construed to conflict with terms adopted in statute or session law.

(e) The board must include a description of a proposed rule's probable effect on teacher supply and demand in the board's statement of need and reasonableness under section 14.131.

(f) The board must adopt rules only under the specific statutory authority.<sup>46</sup>

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<sup>43</sup> See, e.g., Comment by Greg Schoener (Sept. 9, 2022), Comment by Margaret Engquist (Sept. 12, 2022), Comment by Juli Erickson (Sept. 6, 2022).

<sup>44</sup> See, e.g., Comment by Chris Neary (Sept. 13, 2022), Elizabeth Bulleigh (Sept. 13, 2022), An No (Sept. 9, 2022), Elizabeth Husom (Sept. 3, 2022).

<sup>45</sup> Ex. D at 13.

<sup>46</sup> Minn. Stat. § 122A.09, subd. 9 (The Board cites paragraphs a, b, and c. The specific limitations on Board authority are set forth here to ensure clarity).

29. Minn. Stat. § 122A.092, subds. 1 and 3, provide:

(1) The board must adopt rules to approve teacher preparation programs, including alternative teacher preparation programs under section 122A.2451, nonconventional programs, and Montessori teacher training programs.

(3) The board must adopt rules creating flexible, specialized teaching licenses, credentials, and other endorsement forms to increase students' participation in language immersion programs, world language instruction, career development opportunities, work-based learning, early college courses and careers, career and technical programs, Montessori schools, and project- and place-based learning, among other career and college readiness learning offerings.<sup>47</sup>

30. Minn. Stat. § 122A.18, subd. 7a (2022), provides:

(a) The Professional Educator Licensing and Standards Board may allow a person who otherwise qualifies for a Tier 1 license in accordance with section 122A.181, subdivision 2, or is enrolled in and making satisfactory progress in a board-approved teacher program and who has successfully completed student teaching to be employed as a short-call substitute teacher.

(b) The Professional Educator Licensing and Standards Board may issue a lifetime qualified short-call or long-call substitute teaching license to a person who:

(1) was a qualified teacher under section 122A.16 while holding a Tier 3 or Tier 4 teaching license issued by the board, under sections 122A.183 and 122A.184, respectively, and receives a retirement annuity from the Teachers Retirement Association or the St. Paul Teachers Retirement Fund Association;

(2) holds an out-of-state teaching license and receives a retirement annuity as a result of the person's teaching experience; or

(3) held a Tier 3 or Tier 4 teaching license issued by the board, under sections 122A.183 and 122A.184, respectively, taught at least three school years in an accredited nonpublic school in Minnesota, and receives a retirement annuity as a result of the person's teaching experience.

A person holding a lifetime qualified short-call or long-call substitute teaching license is not required to complete continuing education clock hours. A person holding this license may reapply to the board for either:

(i) a Tier 3 or Tier 4 teaching license under sections 122A.183 and 122A.184, respectively, and must again complete

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<sup>47</sup> Minn. Stat. § 122A.092, subds. 1, 3.

continuing education clock hours one school year after receiving the Tier 3 or Tier 4 teaching license; or

(ii) a Tier 1 license under section 122A.181, provided that the candidate has a bachelor's degree, an associate's degree, or an appropriate professional credential in the content area the candidate will teach, in accordance with section 122A.181, subdivision 2.<sup>48</sup>

31. Minn. Stat. § 122A.18, subd. 10(a) (2022), provides:

The Professional Educator Licensing and Standards Board must adopt rules establishing a process for an eligible candidate to obtain any teacher license under subdivision 1, or to add a licensure field, via portfolio. The portfolio licensure application process must be consistent with the requirements in this subdivision.<sup>49</sup>

32. Minn. Stat. § 124D.75 (2022) sets forth specific requirements for licenses for American Indian language and culture teachers. Pursuant to that statute, the Board,

in consultation with the Tribal Nations Education Committee, must grant initial and continuing teaching licenses in American Indian language and culture education that bear the same duration as other initial and continuing licenses. The board must grant licenses to persons who present satisfactory evidence that they:

(1) possess competence in an American Indian language or possess unique qualifications relative to or knowledge and understanding of American Indian history and culture; or

(2) possess a bachelor's degree or other academic degree approved by the board or meet such requirements as to course of study and training as the board may prescribe, or possess such relevant experience as the board may prescribe.<sup>50</sup>

33. The Board has the statutory authority to adopt the proposed rules under Minn. Stat. §§ 122A.09, subd. 9, .092, subds. 1 and 3, and .18, subd. 10(a), with the exceptions of proposed rules 8710.2000, subparts 4(H), 5(H), and 7(D).<sup>51</sup>

34. Authority for curriculum decisions does not lie with the Board. The Legislature reserved this duty for itself, school boards, the Department of Education and regional centers of excellence.<sup>52</sup> As a result, any proposed rule revisions requiring teachers to amend or adopt curriculum beyond that established by those authorized bodies is beyond the authority of the Board and must be disapproved.

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<sup>48</sup> Minn. Stat. § 122A.18, subd. 7a.

<sup>49</sup> *Id.*, subd. 10(a).

<sup>50</sup> Minn. Stat. § 124D.75, subd. 1.

<sup>51</sup> The reasons for these exceptions are addressed in the rule-by-rule analysis below.

<sup>52</sup> See Minn. Stat. § 122A.09, subd. 9.

35. The legislature has established that “[t]he object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.”<sup>53</sup> Every law must be construed, if possible, to give effect to all of its provisions,<sup>54</sup> and it is presumed that the legislature intends the entire statute to be effective and certain.<sup>55</sup>

36. Pursuant to Minn. Stat. § 120B.11, subd. 1(b) (2022):

“Curriculum” means district or school adopted programs and written plans for providing students with learning experiences that lead to expected knowledge and skills and career and college readiness.<sup>56</sup>

37. School Boards are charged with the responsibility to develop curriculum for their students.<sup>57</sup> “Regional centers of excellence are established to assist and support school boards” in implementing “competency-based curricula” along with the assistance of the Department of Education.<sup>58</sup>

38. Additionally, school districts are to establish procedures to permit parents “to review the content of the instructional materials to be provided” to students “and, if the parent...objects to the content, to make reasonable arrangements with the school personnel for alternative instruction.”<sup>59</sup>

39. Objections to specific rules or rule provisions that are based on a lack of statutory authority are addressed in the rule-by-rule analysis below.

#### **IV. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400**

##### **A. Request for Comments**

40. Minn. Stat. § 14.101 requires that an agency solicit comments from the public on the subject matter of a proposed rulemaking at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing. Such notice must be published in the *State Register*.<sup>60</sup>

41. The Board originally requested approval of its Additional Notice Plan (First Notice Plan) for Request for Comments on September 3, 2019. The Judge disapproved the First Notice Plan by Order dated September 9, 2019.<sup>61</sup> The Judge required the Board to:

a. provide a detailed description of the subject matter of the proposed rule amendments. This description must explain why each rule change—or

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<sup>53</sup> Minn. Stat. § 645.16 (2022).

<sup>54</sup> *Id.*

<sup>55</sup> Minn. Stat. § 645.17(2) (2022).

<sup>56</sup> Minn. Stat. § 120B.11, subd. 1(b).

<sup>57</sup> Minn. Stat. §§ 120B.10, .11.

<sup>58</sup> Minn. Stat. § 120B.115 (2022).

<sup>59</sup> Minn. Stat. § 120B.20 (2022).

<sup>60</sup> Minn. Stat. § 14.101.

<sup>61</sup> See Order on Review of Additional Notice Plan for Request for Comments (Sept. 9, 2019).

group of similar rule changes—is being made and what the intended regulatory or policy objective of each change—or group of similar changes—is;

b. include parents, parent groups, or other advocacy groups for students and parents in the Plan. These groups must cover a range of parents and students across the state consistent with the grades, classes, subject matter, or student classifications impacted by the various proposed rule changes; and

c. if no draft of proposed rule amendments is available on the referenced website, remove the reference from the Plan.

42. The Board submitted a revised Additional Notice Plan (Second Notice Plan) on September 11, 2019. The Judge approved the Second Notice Plan by an Order dated September 12, 2019.<sup>62</sup>

43. On September 23, 2019, the Board published in the *State Register* a Request for Comments seeking comments on this rulemaking project.<sup>63</sup> The Board kept the comment period open until June 1, 2021, in order to gather additional feedback.<sup>64</sup> The Request for Comments was also posted to the Board's webpage and sent electronically to people registered to receive rulemaking updates and other individuals and organizations the Board determined would be impacted by the rules. The combined list totaled over 9,000 email recipients.<sup>65</sup> Eighty-five comments were received: 69 were received directly by the Board, and 16 through the Office of Administrative Hearings' eComments website.<sup>66</sup>

44. The Board engaged in extensive public listening outreach to obtain information on possible rule changes.

45. The Request for Comments was published at least 60 days prior to the publication of the Notice of Intent to Adopt Rules, which occurred on May 2, 2022, as discussed below.

46. The Board complied with the requirements established by Minn. Stat. § 14.101.

## **B. Publication of Notice of Rule Hearing**

47. Minn. Stat. § 14.14, subd. 1a(a) and Minn. R. 1400.2080, subp. 6, require that an agency publish in the *State Register* a notice of hearing at least 30 days prior to the date of hearing and at least 30 days prior to the end of the comment period.

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<sup>62</sup> Order on Review of Revised Additional Notice Plan for Request for Comments, (Sept. 12, 2019).

<sup>63</sup> Ex. A (Request for Comments); Ex. D at 14.

<sup>64</sup> Ex. D at 14.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

48. On December 16, 2021, the Board created a draft of the proposed rule changes.<sup>67</sup>

49. The Board published the Notice of Hearing in the *State Register* issued on May 2, 2022.<sup>68</sup> The Notice of Hearing was also emailed to everyone on the Board's GovDelivery system.<sup>69</sup> The comment period ended June 6, 2022.<sup>70</sup> The Notice of Hearing scheduled the hearing to take place by video conference on August 24, 2022. The Notice of Hearing provided information on how persons could submit comments on the proposed rules and how persons could join the hearing via the internet or telephone.<sup>71</sup>

50. The Notice of Hearing contained all the information required under Minn. R. 1400.2080 and was published more than 30 days before the hearing and the close of the comment period.

### **C. Notice Requirements**

#### **1. Notice to Official Rulemaking List**

51. Minn. Stat. § 14.14, subd. 1a, requires that each agency maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings.

52. On May 2, 2022, the Board emailed a copy of the Notice of Hearing to all persons and entities on its official rulemaking list.<sup>72</sup> The official rulemaking list was comprised of all persons and entities who requested to be placed on the Board's GovDelivery system for the purpose of receiving such notice.<sup>73</sup>

53. The Notice of Hearing advised that the comments could be provided at the hearing or for five days following the hearing, unless the Judge extended the timeline, not to exceed 20 calendar days following the hearing on August 24, 2021.<sup>74</sup> The comment period was extended until September 13, 2022.<sup>75</sup>

54. Minn. Stat. § 14.14, subd. 1a, requires that an agency give notice of its intent to adopt rules by U.S. mail or electronic mail to all persons on its official rulemaking list at least 30 days before the date of the hearing.

55. Minn. R. 1400.2080, subp. 6, provides that a notice of hearing or notice of intent to adopt rules must be mailed at least 33 days before the end of the comment period or the date of the hearing.

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<sup>67</sup> Ex. C1.

<sup>68</sup> Ex. E2.

<sup>69</sup> Ex. E1.

<sup>70</sup> *Id.*; Ex. E2.

<sup>71</sup> Ex. E1; Ex. E2.

<sup>72</sup> Ex. G1; Ex. G2.

<sup>73</sup> Ex. G1.

<sup>74</sup> Ex. E1; Ex. E2.

<sup>75</sup> Tr. at 13.



56. The Board fulfilled the notice requirements established in Minn. Stat. § 14.14 and Minn. R. 1400.2080, subp. 6.

## 2. Additional Notice

57. Minn. Stat. § 14.14, subd. 1a(a), requires that an agency make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intent to adopt rules. Such notice may be made in newsletters, newspapers, or other publications, or through other means of communication.<sup>76</sup> This notice is referred to as “additional notice” and is detailed by an agency in its additional notice plan.

58. Minn. Stat. § 14.131 requires that an agency include in its Statement of Need and Reasonableness (SONAR) a description of its efforts to provide additional notice. Alternatively, the agency must detail why additional notification efforts were not made.<sup>77</sup>

59. An agency may request approval of its additional notice plan by an administrative law judge prior to service.<sup>78</sup>

60. The Board originally requested approval of its First Notice Plan for Request for Comments on September 3, 2019. The Judge disapproved the First Notice Plan by Order dated September 9, 2019.<sup>79</sup> The Judge required the Board to:

- a. provide a detailed description of the subject matter of the proposed rule amendments. This description must explain why each rule change—or group of similar rule changes—is being made and what the intended regulatory or policy objective of each change—or group of similar changes—is;
- b. include parents, parent groups, or other advocacy groups for students and parents in the Plan. These groups must cover a range of parents and students across the state consistent with the grades, classes, subject matter, or student classifications impacted by the various proposed rule changes; and
- c. if no draft of proposed rule amendments is available on the referenced website, remove the reference from the Plan.<sup>80</sup>

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<sup>76</sup> Minn. Stat. § 14.14, subd. 1a(a).

<sup>77</sup> Minn. Stat. § 14.131.

<sup>78</sup> Minn. R. 1400.2060.

<sup>79</sup> See Order on Review of Additional Notice Plan for Request for Comments (Sept. 9, 2019).

<sup>80</sup> *Id.*

61. The Board submitted a revised Additional Notice Plan (Second Notice Plan) on September 11, 2019. The Judge approved the Second Notice Plan by an Order dated September 12, 2019.<sup>81</sup>

62. On September 23, 2019, the Board published in the *State Register* a Request for Comments seeking comments on this rulemaking project.<sup>82</sup> The Board also electronically provided the Request for Comments to:

- The Board’s rulemaking email list (containing over 1,160 interested individuals)
- Approved teacher preparation providers in Minnesota, including all licensing officers and field directors, and all approved alternative teacher preparation providers in Minnesota
- The Board’s Standards and Rules Advisory Committee
- School district administrators
- Minnesota Association of Colleges for Teacher Education
- Education Minnesota
- Education Evolving
- Minnesota Education Equity Partnership
- Minnesota Comeback
- The Coalition to Increase Teachers of Color and American Indian Teachers
- Minnesota Rural Educator Association
- Association of Metro School Districts
- Minnesota Association of Elementary School Principals
- Minnesota Association of Secondary School Principals
- Commissioners of the Department of Education
- Commissioner of the Office of Higher Education
- Teachers holding an active teaching license in adult basic education, developmental adaptive physical education, health, physical education, and parent and family education
- A random sample of 100 teachers holding an active teaching license
- PACER Center
- Minnesota PTA
- Dyslexia Advocates
- Dyslexia Parent Alliance
- OutFront Minnesota
- MN Chapter of National Association of Multicultural Education<sup>83</sup>

63. The Board kept the comment period open until June 1, 2021, in order to gather additional feedback.<sup>84</sup> The Request for Comments was also posted to the Board’s webpage and sent electronically to people registered to receive rulemaking updates and

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<sup>81</sup> Order on Review of Revised Additional Notice Plan for Request for Comments, (Sept. 12, 2019).

<sup>82</sup> Ex. A; Ex. D at 14.

<sup>83</sup> Ex. D. at 26.

<sup>84</sup> *Id.* at 14.

other individuals and organizations the Board determined would be impacted by the rules, totaling over 9,000 email recipients.<sup>85</sup> Eighty-five comments were received: 69 were received directly by the Board and 16 through the Office of Administrative Hearings' eComments website.<sup>86</sup>

64. The Board complied with its Second Notice Plan and fulfilled the additional notice requirements provided in Minn. Stat. §§ 14.14, subd. 1a(a), .131.

### **3. Notice to Legislators**

65. Under Minn. Stat. § 14.116, an agency is required to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators at the time it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its additional notice plan.

66. On May 2, 2022, the Board emailed its Notice of Hearing and SONAR, and proposed rules the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the proposed rules, and to the Legislative Coordinating Commission.<sup>87</sup>

67. The Board fulfilled its notification responsibilities under Minn. Stat. § 14.116.

### **4. Notice to the Legislative Reference Library**

68. Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3 (2021), require the agency to send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt is mailed.

69. On April 27, 2022, the Board submitted an electronic copy of the SONAR to the Legislative Reference Library.<sup>88</sup>

70. The Board complied with Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3.

### **5. Notice to Commissioner of Agriculture**

71. Minn. Stat. § 14.111 imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.<sup>89</sup>

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<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> Ex. K-3 (Certificates of Sending Notice and SONAR to Legislators and Legislative Coordinating Commission). Notice was sent to Representatives Davnie, Sandstede, Kresha, Richardson, Hassan, Erickson, Pinto, Pryor, and Franson, as well as Senators Chamberlain, Eichorn, and Wiger.

<sup>88</sup> Ex. I.

<sup>89</sup> Minn. Stat. § 14.111.

72. The Board's proposed rules do not impose restrictions or have an impact on farming operations. As a result, the Board was not required to notify the Commissioner of Agriculture.<sup>90</sup>

#### **D. Rule Hearing and Submission of Written Comments**

73. The Judge conducted a public rulemaking hearing on August 24, 2022.<sup>91</sup> The Board's panel at the hearing included: Alexi Liuzzi, Executive Director of Board; Brian Rappe, Board Chair; and Michelle Hersh Vaught, Rulemaking Specialist.<sup>92</sup>

74. In support of its request for approval to adopt the proposed rules, the Agency offered the following documents into the record as exhibits, as required by Minn. Stat. § 14.14, subd. 2a and Minn. R. 1400.2220, and they were all entered into the record:<sup>93</sup>

- Ex. A: The Board's Request for Comments as published in the *State Register* on September 23, 2019;
- Ex. C1: A draft of proposed rule changes, dated Dec. 16, 2021;
- Ex. C2: Revisor's Certificate of Approval;
- Ex. D: The SONAR;
- Ex. E1: Notice of Hearing as mailed on May 2, 2022;
- Ex. E2: Notice of Hearing as published in the *State Register* on May 2, 2022;
- Ex. G1: Certificate of Mailing the Notice of Hearing to the rulemaking mailing list on May 2, 2022;
- Ex. G2: Certificate of Accuracy of Mailing List;
- Ex. H: Certificate of Giving Additional Notice Under the Additional Notice Plan on May 2, 2022;
- Ex. I: Certificate of Mailing the SONAR to the Legislative Reference Library on April 27, 2022.
- Ex. J: All written comment and submissions on the proposed rule changes that the Board received during the prehearing comment period;
- Ex. K1: Board resolution authorizing rulemaking, adopted Sept. 14, 2018, revised Dec. 14, 2018 and June 14, 2019;

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<sup>90</sup> See Ex. D at 27.

<sup>91</sup> See Tr. at 6.

<sup>92</sup> *Id.* at 17-24.

<sup>93</sup> *Id.* at 25-26.

- Ex. K2: Notice to Close Comment Period (as published in State Register on May 3, 2021);
- Ex. K3: Certificate of Sending Notice and the SONAR to Legislators and the Legislative Coordinating Commission, May 2, 2022;
- Ex. K4: Letter to Minnesota Management and Budget (MMB);
- Ex. L: Response to prehearing comments
- Ex. M1: Draft proposed rule changes, dated Aug. 16, 2022;
- Ex. M2: Revisions adopted by the Board on July 29, 2022, and included in the draft dated August 16, 2022.

75. Between 400 and 500 people attended the hearing on August 24, 2022. The hearing was conducted from 9:15 a.m. until 5:00 p.m. Over 75 members of the public made statements during the hearing.<sup>94</sup>

76. The Judge extended the time for submission of public comments for another 20 calendar days – until September 13, 2021 – to permit interested persons and the Board additional time to submit written comments.<sup>95</sup> During the post-hearing initial public comment period, members of the public submitted more than 375 written comments.<sup>96</sup>

77. Following the initial comment period, the hearing record remained open an additional five business days to permit interested persons and the Agency to reply to the earlier-submitted comments. A handful of rebuttal comments were filed including rebuttal from the Board. The rebuttal comment period closed on September 20, 2022, and the hearing record closed on that date.

## **V. Statutory Requirements**

### **A. Regulatory Factors**

78. The Administrative Procedure Act requires an agency adopting rules to address eight factors in its SONAR.<sup>97</sup> Those factors are:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

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<sup>94</sup> See *id.* at 3-4.

<sup>95</sup> *Id.* at 13; see Minn. Stat. § 14.15, subd. 1.

<sup>96</sup> Response to Comments Made at the Hearing and during the Post-Hearing Comment Period at 1 (Sept. 19, 2022) (Board Rebuttal Comments).

<sup>97</sup> Minn. Stat. § 14.131.

- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- (6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- (7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and
- (8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.<sup>98</sup>

## **1. Classes of Persons Affected, Benefitted, or Bearing Costs of the Proposed Rule**

### **(a) Tiered Licensure Rules**

79. The Board states that with regard to the tiered licensure rules, school districts and current teachers will be minimally affected by the proposed changes because the changes are mainly clarifications.<sup>99</sup> Changes to the out-of-field permissions, however, should help school districts and teachers process applications easier in certain situations.<sup>100</sup>

80. Teachers holding a Tier 2 license who use an out-of-field permission for more than 50 percent of their job assignments will be more greatly impacted under the

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<sup>98</sup> *Id.*

<sup>99</sup> Ex. D at 20.

<sup>100</sup> *Id.*

proposed rules. They will need to obtain a Tier 1 license rather than an out-of-field permission, and it must be renewed more frequently.<sup>101</sup>

### **(b) License-specific Rules**

81. Teacher preparation providers will be affected by the rule changes concerning license-specific rules.<sup>102</sup> This is because they are responsible for aligning their programs with any rule changes.<sup>103</sup> Teacher candidates will also be affected because they will benefit from the learning opportunities aligned to the new standards.<sup>104</sup> The proposed changes do bring the license-specific rules into alignment with national standards and the current field of practice for teaching.<sup>105</sup>

82. Teacher candidates completing teacher preparation programs for developmental adaptive physical education (DAPE) will no longer be required to complete learning opportunities and assessments aligned with the special education core skills.<sup>106</sup> DAPE licensing candidates will not be required to complete special education core skills examinations in order to obtain a Tier 3 license. This may improve access to Tier 3 and Tier 4 licenses for many candidates.<sup>107</sup>

### **(c) Standards of Effective Practice Rules**

83. Teacher preparation providers will be affected by the proposed changes to the standards of effective practice because they must align their programs in such a way that candidates learn the skills they need to meet the standards.<sup>108</sup> Further, students will be affected by teachers who are better prepared to deal the needs of students from all walks of life.<sup>109</sup>

## **2. Probable Costs to the Agency and Other Agencies for Implementation and Enforcement and Effect on State Revenues**

84. The Board does not anticipate that other agencies will have costs associated with the implementation and enforcement of the proposed rule changes.<sup>110</sup>

85. The Board expects nominal costs for itself to update application forms and tiered licensure materials as a result of changes to the tiered licensure rules.<sup>111</sup>

86. The changes to license-specific rules and the standards of effective practice are anticipated to result in some costs to teacher preparation providers who must update

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 21.

<sup>111</sup> *Id.*

their programs to align with the changes.<sup>112</sup> In addition, the Board may incur some costs for additional meetings to review those updated programs, including the costs for mileage or small stipends for Program Review Panel members.<sup>113</sup>

### **3. Less Costly or Less Intrusive Methods for Achieving the Purpose of the Proposed Rule**

#### **(a) Tiered Licensure Rules**

87. The proposed changes to the tiered licensure rules simplify or clarify the application and renewal process for licenses and permissions. The Board is not aware of less costly methods or less intrusive methods for achieving these purposes.<sup>114</sup>

#### **(b) License-specific Rules**

88. The Board determined the changes to the license-specific rules will decrease costs for teacher preparation providers and licensure candidates. This is because the changes align the rule to national model standards and reduce barriers previously identified by stakeholders - such as the clinical experience requirements for teacher candidates completing initial licensure programs in Adult Basic Education or Parent and Family Education.<sup>115</sup>

#### **(c) Standards of Effective Practice Rules**

89. The Board is not aware of less costly methods or less intrusive methods for overhauling the state's pedagogical standards. It asserts that it worked with an expansive stakeholder base to ensure the proposed standards were aligned with student needs while limiting the impact on teacher preparation providers and candidates. This resulted into the number of standards being directly aligned to national model standards and a reduction in standards from 125 to closer to 70.<sup>116</sup>

### **4. Description of Alternative Methods for Achieving the Purpose of the Proposed Rule Considered by the Agency and Why Alternatives Were Rejected**

#### **(a) Tiered Licensure Rules**

90. Because the policies and requirements specific to licensure are in rule, pursuing changes through the rulemaking process is the only method for implementing new policies and clarifying existing policies.<sup>117</sup>

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<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 22.



**(b) License-Specific Rules**

92. The Board is not aware of any alternative methods to updating licensure standards without entering into rulemaking.<sup>118</sup>

**(c) Standards of Effective Practice Rules**

93. Many stakeholders encouraged the Board to consider adopting the InTASC Model Core Teaching Standards. Teacher preparation providers who are accredited by the Council for the Accreditation of Educator Preparation (CAEP) must implement these standards; which means there are a number of providers already meeting these standards. Other stakeholders recommended using some of the InTASC Model Core Teaching Standards, in certain cases, but to also consider other practice-based standards and state standards.<sup>119</sup>

94. The Board declined to adopt the InTASC standards in full because they do not include enough emphasis on culturally-responsive pedagogy. Rather, the Board aligned many of the proposed standards with InTASC standards. The Board is proposing other standards to fill gaps not addressed by the InTASC standards. Additionally, the Board is utilizing the model standards as a framework for its own standards. Finally, the Board has released a number of resources comparing the existing standards of effective practice, the proposed standards of effective practice, and the InTASC standards, so that providers and members of the public can see where there is overlap.<sup>120</sup>

**5. Probable Costs of Complying with Proposed Rules, Including the Portion of the Total Costs Borne by Identifiable Categories of Affected Parties**

**(a) Tiered Licensure Rules**

95. The Board does not anticipate that the proposed changes to the tiered licensure rules will result in costs for affected parties.<sup>121</sup>

**(b) Standards of Effective Practice Rules**

96. Teacher preparation providers will be directly impacted by the proposed changes to the SEPs and license-specific rules. Each provider will have to evaluate their current licensure programs to determine whether their programs meet the new standards. For some providers, this may mean revising, adding, or deleting courses for teacher candidates. For other providers, the new standards are already embedded into their programs. The time for review and the scope of changes will vary drastically between the 35 different providers in the state.<sup>122</sup>

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

**6. Probable Costs or Consequences of not Adopting the Proposed Rules, Including Costs Borne by Individual Categories of Affected Parties**

97. The Board states the primary costs and consequences of not adopting the proposed rules are the potential impact on students, families, and future teachers. For example, the existing standards of effective practice lack standards specific to culturally-relevant pedagogy, which the Board maintains is an effective tool to increase student outcomes. Additionally, several of the proposed amendments seek to remove known barriers to teacher licensure, such as completion of the Special Education Core Skills examination for applicants seeking an endorsement in DAPE.<sup>123</sup>

**7. Assessment of Differences Between Proposed Rules and Existing Federal Regulations**

98. There are no known differences between the proposed rule and existing federal regulations.<sup>124</sup>

**8. Assessment of the Cumulative Effect of the Rule with Other Federal and State Regulations**

99. The Board is proposing these rule amendments to improve and clarify tiered licensure and to improve and update licensing standards for teachers, solely a state function. The proposed changes do not establish overlapping requirements with other state and federal requirements. The Board asserts that the cumulative effect of the proposed changes to tiered licensure and licensure standards will be a higher quality education for all of Minnesota's students.<sup>125</sup>

**B. Performance-Based Regulation**

100. An agency is required to describe in its SONAR the manner in which the agency has considered and implemented the legislative policy supporting performance-based regulatory systems.<sup>126</sup> A performance-based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.<sup>127</sup>

101. The Board has sought to develop rules that help support an educational system that ensures all Minnesota students have high quality educators in their schools. The Board's proposals will streamline or clarify the application and renewal process for teachers; update outdated pedagogical and license-specific standards; and remove

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<sup>123</sup> *Id.* at 23.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> Minn. Stat. §§ 14.002, .131 (2022).

<sup>127</sup> Minn. Stat. § 14.002.

barriers for teacher candidates completing licensure programs in Developmental Adapted Physical Education, Adult Basic Education, and Parent and Family Education.<sup>128</sup>

102. The Board believes the proposed rules strengthen Minnesota’s pedagogical and license-specific standards and will result in Minnesota’s teachers being better prepared for the first day in the classroom. The Board believes the proposed standards are performance—based to the extent possible, because the proposed rules streamline or remove barriers, when possible, and establish minimum standards for teachers seeking a Tier 3 license (replacing outdated or obsolete standards). This is particularly true of the Board’s proposed changes to the standards of effective practice. The Board maintains that the changes reduce the total number of standards and will allow teacher preparation providers more flexibility while ensuring the foundational knowledge and skills remain in all preparation programs.<sup>129</sup>

103. The Board has described how it considered the legislative policy related to performance-based regulatory systems, in compliance with Minn. Stat. § 14.131.<sup>130</sup>

### **C. Consultation with the Commissioner of Minnesota Management and Budget**

104. Minn. Stat. § 14.131 requires that agencies consult with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

105. On June 14, 2022, the Executive Budget Officer for MMB reviewed the proposed rule changes and determined that because local education agencies (LEAs) are not units of local government as defined under Minn. Stat. § 14.128, subd. 1, and because the rules primarily affect LEAs, the proposed rules are not anticipated to cause a fiscal impact on local units of government.<sup>131</sup>

### **D. Summary of Requirements Set Forth in Minn. Stat. § 14.131**

106. The Judge finds that the Board has met the requirements established by Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems, and the fiscal impact on units of local government.

### **E. Cost to Small Businesses and Cities under Minn. Stat. § 14.127**

107. Minn. Stat. § 14.127, requires the Agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The

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<sup>128</sup> Ex. D at 24.

<sup>129</sup> *Id.*

<sup>130</sup> Minn. Stat. § 14.131.

<sup>131</sup> Ex. K-4.

Board must make this determination before the close of the hearing record, and the Judge must review the determination and approve or disapprove it.<sup>132</sup>

108. The Board determined the cost of complying with the rule changes in the first year after they take effect will not exceed \$25,000 for any small city or small business.<sup>133</sup>

109. The Judge finds that the Board has made the determinations required by Minn. Stat. § 14.127 and approves those determinations.

## **F. Adoption or Amendment of Local Ordinances**

110. Under Minn. Stat. § 14.128, the agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Judge must review the determination and approve or disapprove it.<sup>134</sup>

111. The Board has determined that the proposed rule changes do not require adoption or amendments to local ordinances because the proposed rules pertain to teacher licensure and teacher preparation, and do not pertain to the activities of local governments. Compliance with the rules falls solely on approved teacher preparation providers, license applicants, licensed teachers, and school districts seeking to hire teachers. Enforcement of the rules falls solely on the Board.<sup>135</sup>

112. The Judge finds that the Board has made the determination required by Minn. Stat. § 14.128 and approves that determination.

## **G. Teacher Supply and Demand**

113. In addition to the factors to be considered as required by Minn. Stat. § 14.131, the Board is required by statute to include a description of proposed rules' probable effect on teacher supply and demand in the SONAR.<sup>136</sup>

### **1. Proposed Changes to Tiered Licensure**

114. The Board maintains that the proposed changes to tiered licensure primarily clarify and streamline the process for issuing and reviewing licensure and permission applications and will have no effect on supply and demand.<sup>137</sup>

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<sup>132</sup> Minn. Stat. § 14.127, subs. 1-2.

<sup>133</sup> Ex. D at 27.

<sup>134</sup> Minn. Stat. § 14.128, subd. 1.

<sup>135</sup> Ex. D at 27.

<sup>136</sup> Minn. Stat. § 122A.09, subd. 9(e) (2022).

<sup>137</sup> Ex. D. at 25.

115. According to the Board, the following proposed changes should ease the impact of teacher shortages in districts:

- Allowing school districts in some specific circumstances to offer an assignment to a teacher requiring an out-of-field permission without first posting the assignment for a number of days; and
- Allowing a district to fill a teacher absence or vacancy with a short-call substitute for 20 days (instead of 15 days).<sup>138</sup>

116. The Board is also proposing to limit the ability of a teacher, who holds a Tier 2 license, to use an out-of-field permission for more than 50 percent of their assignments. An individual who qualified for a Tier 2 license in one field can apply for a Tier 1 license in another field if it is more than 50 percent of their assignment. The Board believes this will have no effect on teacher supply.<sup>139</sup>

## **2. Proposed Changes to License-Specific Standards**

117. According to the Board, all changes in the licensure-specific standards clarify, update, and simplify the standards to be met in each licensure area. The Board maintains that the changes will have no impact on the number of candidates for Physical Education and Health licenses (neither increase nor decrease the number) but should increase candidates in DAPE, Adult Basic Education, and Parent and Family Education. The Board argues that reduced requirements and streamlined placement opportunities will increase the number of candidates for these fields.<sup>140</sup>

## **3. Proposed Changes to SEPs**

118. According to the Board, reducing, streamlining, and updating the standards for new teachers should have a direct impact on increasing the number of teachers entering the profession. Standards more aligned to current student needs, cultural relevance, and the necessary knowledge and skills to be an effective teacher should all help potential teachers enter the profession, complete training to remain in the profession for many years.<sup>141</sup>

119. The Judge concludes that the Board has adequately considered the probable effect of the proposed rule changes on teacher supply and demand.

## **VI. Rulemaking Legal Standards**

120. A rulemaking proceeding under the APA must include the following inquiries: whether the agency has statutory authority to adopt the rule; whether the rule is unconstitutional or otherwise illegal; whether the agency has complied with the rule adoption procedures; whether the proposed rule grants undue discretion to government

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<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

officials; whether the rule constitutes an undue delegation of authority to another entity; and whether the proposed language meets the definition of a rule.<sup>142</sup>

121. Under Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, the agency must establish the need for, and reasonableness of, a proposed rule through an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,<sup>143</sup> “legislative facts” (namely, general and well-established principles that are not related to the specifics of a particular case, but which guide the development of law and policy),<sup>144</sup> and the agency’s interpretation of related statutes.<sup>145</sup>

122. A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”<sup>146</sup>

123. By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim or devoid of articulated reasons, or if it “represents its will and not its judgment.”<sup>147</sup>

124. An important corollary to these standards is that, when proposing new rules, an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative selected by the agency is a rational one. Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.<sup>148</sup>

125. The delegation of rulemaking authority is drawn from the Minnesota Legislature and is conferred upon the promulgating agency. A judge does not fashion requirements that the judge regards as best suited for the regulatory purpose. The legal review under the APA begins with this important premise.<sup>149</sup>

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<sup>142</sup> See Minn. R. 1400.2100.

<sup>143</sup> See *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984); *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

<sup>144</sup> *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

<sup>145</sup> See *Mammenga v. Agency of Human Servs.*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

<sup>146</sup> *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

<sup>147</sup> See *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*, 251 N.W.2d 350, 357-58 (Minn. 1977).

<sup>148</sup> *Minn. Chamber of Commerce*, 469 N.W.2d at 103; see also *Peterson v. Minn. Dep’t of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

<sup>149</sup> See *Manufactured Hous. Inst.*, 347 N.W.2d at 244 (instructing that the state courts are to restrict the review of agency rulemaking to a “narrow area of responsibility, lest [the court] substitute its judgment for that of the agency”); see also *In re the Proposed Rules of the Minn. Pollution Control Agency Governing Permits for Greenhouse Gas Emissions*, Minnesota Rules Chapters 7005, 7007 and 7011, No. 8-2200-22910-1 at 20, REPORT OF THE ADMINISTRATIVE LAW JUDGE (Minn. Office Admin. Hearings Nov. 9, 2012).

## VII. General Analysis of Hearing Comments and Board Responses<sup>150</sup>

126. This rulemaking proceeding generated significant public interest and the record contains many comments in favor of and opposing the rule. The Judge has read and considered all comments submitted. This report does not discuss every comment received or issue identified, but instead includes a discussion of representative comments addressing issues raised with legitimate detail and concern by commenters or that give rise to a genuine dispute about the reasonableness of the Board's regulatory choices.

127. During the public comment period, approximately 120 written comments were submitted by mail<sup>151</sup> or fax and approximately 455 written comments were submitted via EComments. An additional 20 comments were submitted via EComments during the rebuttal period. In addition, 78 people spoke at the public hearing.<sup>152</sup> While comments received prior to the hearing were largely in favor of the rule changes, the comments received at and after the hearing were largely in opposition to the proposals. Many of the comments were merely general opinions without specific attention to particular changes, or about the process. Comments with specific objections and rationale for rule changes were given close scrutiny.

### A. Summary and Examples of Comments Expressing Opposition to the Rule

128. A general theme in many of the comments in opposition to the SEPs is the opinion that the rules incorporate objectionable views about the historical power balance in the state and country. The objectional views are based on race, gender, sexual orientation, sexual identity, socio-economic class, and so forth. The incorporation of such views, according to many of the commenters, is contrary to the goals of a color-blind and gender-neutral school system and society.

129. Another group of comments argued that the proposed changes to the standards of effective practice either impermissibly infringed on teachers' religious faiths or were a government effort to support a particular religion. Nothing in the proposed changes, however, references or addresses a particular faith or deity of worship. They do require teachers to be cognizant and respectful of students' religious backgrounds.

130. On August 25, 2022, various members of the Minnesota House of Representatives Republican caucus submitted a written comment in opposition to the proposed rules.<sup>153</sup> The representatives stated that there was an "obvious conflict between the proposed rules and state law" and that "the proposed rules send an undeniable signal that only teachers who are politically aligned left of center need apply."<sup>154</sup> Of top concern,

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<sup>150</sup> A sample of the over 500 comments received are included in this report. All of the comments were reviewed looking for substantive concerns.

<sup>151</sup> One couple submitted the same comment ten times each, and these are only counted as two comments.

<sup>152</sup> See Public Hearing Tr. (Aug. 24, 2022).

<sup>153</sup> Comment by Rep. Sondra Erickson, Rep. Ron Kresha, et. al (Aug. 25, 2022); see also Comment by Margaret Enquist (Sept. 1, 2022), Comment by Linda Moore (Sept. 2, 2022), Comment by Phyllis Close (Sept. 2, 2022), Comment by Larry Close (Sept. 2, 2022).

<sup>154</sup> Comment by Rep. Sondra Erickson, Rep. Ron Kresha, et. al (Aug. 25, 2022).

the representatives believe “the proposed rules clearly conflict with the role of parents . . . as the first and primary educator of their children.”<sup>155</sup> The representatives further contend that “the new rule will have a negative impact to both supply and demand for educators,” that particular terms of the proposed rules “lack definitions,” and that the licensing board “lacks the capacity to assure compliance with their new rules.”<sup>156</sup> In sum, the representatives stated: “[W]e urge you, in the strongest terms possible, to reject the proposed draft rules with an advisory to the licensing board to stay within their lane as a regulatory body without improper incursions into the legislative arena.”<sup>157</sup>

131. On August 29, several members of the Minnesota Senate Republican caucus also submitted a written comment in opposition to the proposed rules.<sup>158</sup> The senators noted that “[t]he Legislature has not approved conforming the teaching profession to a singular ideological concept or imposing a politicized belief system on teacher candidates.”<sup>159</sup> They further stated that these rules appear to “adopt a particular philosophical, societal, and worldview perspective.”<sup>160</sup> The senators concluded that there is no “rational or clearly discernible need” for these rules, which will “erect new barriers to entrants as teacher preparation programs, assessments, and requirements are shuffled in an unpredictable, ambiguous, and politicized manner, and measurable skills and objective academic subject knowledge are neglected.”<sup>161</sup>

132. Other written public comments in opposition to the rules fell into a few main categories. First, several commenters noted that the rules would require teachers to violate their religious beliefs, and thus violate the First Amendment.<sup>162</sup>

133. Numerous commentors contended that these rules promote a partisan ideological agenda and Marxist worldview, rather than focusing on academic excellence, and that schools should not take on the role of parenting.<sup>163</sup>

134. Other commenters expressed concern that these sweeping changes were being made outside of the legislative process, without most people knowing about them.<sup>164</sup>

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> Comment by Sen. Roger Chamberlain, et. al (Aug. 25, 2022).

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *See, e.g.*, Comment by Rich Sr. (Aug. 25, 2022), Comment by Andrew Rigge (Aug. 29, 2022), Comment by Emily Baekonushi (Sept. 9, 2022), Comment by Michael & Karen Price (Sept. 13, 2022).

<sup>163</sup> *See, e.g.*, Comment by Wendy Nelson (Aug. 25, 2022), Comment by Phil Rydning (Aug 31, 2022), Comment by Judy Hansen (Sept. 2, 2022), Comment by Luann Eager (Sept. 2, 2022), Comment by Dawn Lundeen (Sept. 2, 2022), Comment by Kenna Pretts (Sept. 2, 2022).

<sup>164</sup> *See, e.g.*, Comment by David and Kathleen May (Aug. 29, 2022), Comment by Dawn Van Keulen (Aug. 30, 2022), Comment by Carmen and Mark Sminesvik (Sept. 1, 2022), Comment by Colenda Span (Sept. 2, 2022), Comment by David Benson-Staebler (Sept. 11, 2022).



135. Many commenters felt that the rule changes were vague, unnecessary, and unreasonable.<sup>165</sup>

136. Some commenters noted that teachers should only be required to teach the basic subjects, and not act as “[s]ocial worker[s], multilinguistic, mental therapist[s], physical therapist[s], psychologist[s], medical doctor[s], and cultural specialist[s]” and that the proposed requirements would push many teachers out of the education field.<sup>166</sup>

137. It was also opined that these proposed rules demonstrate “the speed at which this country and this state is deteriorating morally and spiritually,” and that the decline occurring on the “education front . . . is contributing to the overall decline in society.”<sup>167</sup> To that end, some parents indicated their intent to home school or enroll their children in religious schools if these proposed rules are approved.<sup>168</sup>

138. Several of the comments within these general categories are included here for illustration. Andrew Rigge, a school board member and parent whose children attend a private Christian school, noted that many of these changes would require licensed teachers to “violate [their] religious beliefs.”<sup>169</sup> He also stated that neither the Bible nor this country’s founding documents include “Marxist language . . . pitting people into oppressor and victim groups.”<sup>170</sup>

139. Dr. Ronald and Marlene Schultz commented: “In a free county, no one should be forced to accept and teach a theory as fact in order to enter the esteemed field of education. That is called indoctrination, which has no place in public education.”<sup>171</sup>

140. Phil Rydning noted that these rules would turn teachers “into politically correct police officers instead of educators.”<sup>172</sup>

141. Sandra Whitney “completely disagree[s] that the [Board] has the legal authority to introduce . . . teacher controls involving cultural and sexual topics in the classroom for ALL school age children. This is directly an attack on our family’s core values and morals. . . . These rules are child grooming and indoctrination of our children. We need to stop the sexualization of our children and be able to trust that schools could be a safe place again.”<sup>173</sup>

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<sup>165</sup> See, e.g., Comment by Lisa Jansa (Aug. 26, 2022), Comment by Ted Hansen (Aug. 31, 2022), Comment by David Priebe (Sept. 1, 2022).

<sup>166</sup> See, e.g., Comment by Dianna Jenkins (Aug. 31, 2022), Comment by Robert Pretts (Sept. 2, 2022).

<sup>167</sup> See, e.g., Comment by Rev. Daniel Fleischer (Sept. 2, 2022), Comment by Timothy Myers (Sept. 4, 2022), Comment by Val Peterson (Sept. 8, 2022), Comment by Wayne Mause (Sept. 8, 2022).

<sup>168</sup> See, e.g., Comment by Elizabeth Husom (Sept. 3, 2022), Comment by John Anderson (Sept. 11, 2022).

<sup>169</sup> Comment by Andrew Rigge (Aug. 29, 2022).

<sup>170</sup> *Id.*

<sup>171</sup> Comment by Dr. Ronald and Marlene Schultz (Sept. 6, 2022).

<sup>172</sup> Comment by Phil Rydning (Aug. 31, 2022).

<sup>173</sup> Comment by Sandra Whitney (Aug. 25, 2022).

142. Charles Wallace, a member of the Board of Directors for a private school, noted that, “[t]he proposed changes to the state licensure rule (R-4615) will make a [Minnesota] teachers license a serious liability to any teachers applying at our school.”<sup>174</sup>

143. Josepha Amarachi argued: “Implementing this change will lead to the end of America as we know it. Let’s not ruin our state or country.”<sup>175</sup>

## **B. Summary and Examples of Comments Favoring the Rule**

144. In addition, numerous commenters also wrote to support the proposed rules. In general, commenters supporting the changes to the standards of effective practice believe the acknowledgment of factors such as race, gender, sexual orientation, sexual identity, socio-economic class, among others, in the classroom is essential to overcoming problems with student achievement. Ensuring success for all students, argues these commenters, requires teachers to be aware of these factors in order to reduce their influence on student achievement.

145. James Peterson views the proposed rules as “a necessary tool to ensure that all students feel seen, supported and included.”<sup>176</sup>

146. On September 11, several additional members of the Minnesota House of Representatives and the Minnesota Senate, all from the Democratic-Farmer-Labor caucus, submitted a written statement in support of the proposed rules.<sup>177</sup> These representatives and senators stated, in part:

The proposed rules take important strides forward to provide actionable, precise guidance on how best to create a welcoming classroom for all of Minnesota’s students. . . . The guidelines provide a roadmap to an ideal classroom environment where students from different backgrounds and with different life experiences will be able to share their own unique perspectives and be heard by their peers. This is critically important in Minnesota in particular, because we continue to rank at or near the bottom when it comes to the opportunity gap and racial disparities in education outcomes. . . . These rules are designed to ensure that teachers in Minnesota’s public school classrooms will be fully prepared to support our future leaders into an adulthood, equipping them with the substantive knowledge and the enriching and supportive environment that they will need to thrive.<sup>178</sup>

147. Several professors from Bemidji State University wrote in support of the proposed rules, stating:

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<sup>174</sup> Comment by Charles Wallace (Sept. 7, 2022).

<sup>175</sup> Comment by Joseph Amarachi (Sept. 11, 2022).

<sup>176</sup> Comment by James R. Peterson (Sept. 1, 2022); see also Comment by Jean Peterson (Sept. 1, 2022).

<sup>177</sup> Comment by Rep. Sandra Feist, Sen. Jason Isaacson, et. al. (Sept. 11, 2022).

<sup>178</sup> *Id.*

Maintaining the status quo will not allow Minnesota’s children to realize their full potential. Adopting the new [rules] is one way forward that will ensure teachers have the knowledge, skills, and dispositions to ensure ALL Minnesota’s children thrive. The new [rules] help confront the opportunity gaps too prevalent in our state. It is time to do what is right for our children.<sup>179</sup>

148. D.E. Anderson stated that, “[c]ontrary to the popular narrative right now, these changes are not a fundamental change, but rather work to ensure that students who exist in marginalized groups in Minnesota have opportunity in the classroom.”<sup>180</sup>

149. V.A. Lund stated that “this proposal provides the necessary elements of support to avoid expensive litigation for not meeting the needs of students within our protected classes and equips educators with resources and understanding to carry out our MN values that everyone has the care they need and support to achieve their dreams.”<sup>181</sup>

150. Sandra Reishus stated: “As a teacher for 21 years and a parent to young children, these changes embody the environment in which I want my children to learn.”<sup>182</sup>

151. Michael Larson, a multilingual-learner teacher, stated: “I sometimes see criticism that teaching about systemic racism and LGBTQ+ inclusivity will be divisive, and on this, I agree! However, the division that we create is one between the past, where hatred and discrimination against these people was allowed to grow and fester, and the future, where we can work toward a better world that includes everyone.”<sup>183</sup>

152. Ross Newlund, a social worker, believes that asking “beginning teachers to learn about people with backgrounds different than their own is basic, common sense.”<sup>184</sup>

153. OutFront Minnesota noted that “[t]hese important standards will help to shape the training of our teachers and teacher candidates to better serve the broad array of identities that Minnesota students bring into the classroom and reflect the state’s commitment to not only protect but to nurture historically marginalized members of our community.”<sup>185</sup>

### **C. Summary of the Board’s Rebuttal Comments**

154. While the majority of comments received during the rebuttal period fit within either of the two categories above, the Board’s rebuttal comments require special

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<sup>179</sup> Comment by Layna Cole, Ph.D., Porter Coggins III, Ph.D., et al. (Sept. 13, 2022).

<sup>180</sup> Comment by D.E. Anderson (Aug. 25, 2022).

<sup>181</sup> Comment by VA Lund (Aug. 25, 2022).

<sup>182</sup> Comment by Sandra Reishus (Aug. 27, 2022).

<sup>183</sup> Comment by Michael Larson (Aug. 28, 2022).

<sup>184</sup> Comment by Ross Newlund (Aug. 29, 2022).

<sup>185</sup> Comment by OutFront Minnesota (Sept. 2, 2022).

attention. The Board's rebuttal comments address what the Board believes are misunderstandings about the proposed changes, particularly with respect to the SEPs.

155. The Board divided its responses into three categories addressing: (1) critiques of the SEPs; (2) the license-specific rules; and 3) tiered licensure.<sup>186</sup>

### **1. Summary of Responses to Comments Concerning Proposed SEPs**

156. The Board clarified that the proposed changes would not require teachers who currently hold a Tier 3 or Tier 4 license (about 96 percent of current teachers) to demonstrate compliance with the proposed changes to SEPs. The new standards will be required by teacher candidates completing initial licensure programs in Minnesota and existing teachers seeking a Tier 3 license through the licensure via portfolio process. The Board also notes that Minn. Stat. §§ 122A.181, subd. 3(b)(3); .182, subd. 3; and .197, subd. 3 (2022), all require teachers have cultural competency training.<sup>187</sup>

157. The Board clarified that the proposed changes would not require private school teachers to meet the proposed SEPs. The standards of effective practice are for teacher candidates seeking licensure through teacher preparation programs and through the portfolio process. Further, people who teach in private schools are not required to be licensed by the state.<sup>188</sup>

158. The Board clarified that the SEPs are not applicable to candidates for licensure who went through a teacher preparation program in another state.<sup>189</sup>

159. The Board stated that the SEPs are not content standards or curriculum for students. Further, because the proposed rules at Minn. R. 8710.2000, subp. 4(C), did not refer to local discipline-specific standards, the rule could be revised to add a reference to "local" standards. Further, the Board recommended a possible revision to proposed Minn. R. 8710.4500, subp. 3(C)(1), to include references to both national and local academic standards.<sup>190</sup>

160. The Board maintains that the SEPs "do not dictate a particular curriculum or teaching style that must be used in the classroom."<sup>191</sup> As the Judge finds below, the Board must take care to ensure its rules do not supplant the academic standards or curriculum for students as determined by state statute, authorized rule, or local policy. Statements in the rules which require teachers to add to the curriculum what has been omitted are outside of the licensing authority of the Board.

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<sup>186</sup> Response to Comments Made at the Hearing and during the Post-Hearing Comment Period (Sept. 19, 2022) (Board Response).

<sup>187</sup> *Id.* at 2-3.

<sup>188</sup> *Id.* at 3.

<sup>189</sup> *Id.* at 4.

<sup>190</sup> *Id.* at 4-5.

<sup>191</sup> *Id.* at 6.

161. The Board maintains that the SEPs do not supplant any curriculum choices made at the local level, including with parents. The Board noted how provisions in the new rules consider the role of parents and families in relation to classroom teaching.<sup>192</sup> Again, to the extent a properly determined curriculum omits some type of content, it is beyond the scope of the Board's authority to direct teachers, through licensing requirements, how to fill these gaps.

162. The Board holds that the SEPs will not impinge on teachers' constitutional rights. The Board stated that a teacher need not hold a particular political or religious view to comply with the standards. Nor must a teacher participate with a student's religious practices. Rather, teachers must respect all students' religious beliefs and practices, not infringe on students' rights with regard to religion, or otherwise discriminate against them in violation of the Minnesota Human Rights Act.<sup>193</sup>

163. The Board stated that the changes do not remove enforcement of statutory requirements concerning reading and technology strategies. Such statutory requirements are addressed in current Minn. R. 8710.1010, subp. 1(B)(6) and (8) (2021), which are not changed by the Board's proposal. Further, according to the Board, at least three changes to the SEPs do pertain to teacher knowledge about reading and technology, specifically proposed Minn. R. 8710.2000, subps. 1(K), 5(J), and 6(J).<sup>194</sup>

164. The Board disagreed with comments that it did not have authority to change the SEPs. The Board pointed to Minn. Stat. § 122A.092, subd. 2, which requires the Board to use the rule-making process to make amendments to the standards. The SEPs are statutorily based on the Interstate New Teacher Assessment and Support Consortium 1992 Model Standards (core standards). The Board points out that the SEPs have always been grounded in the core standards, and amendments were last made through rule-making in 2010. The Board maintains that the proposed changes continue to align with and meet the core standards.<sup>195</sup>

165. The Board rebutted comments that the proposed changes would negatively impact teacher supply and demand. The Board pointed to the difference in percentages of students of color and indigenous students compared to the percentages of the same groups of teachers. The Board maintains that the definition of "shortage area" at Minn. Stat. § 122A.06, subd. 6(2) (2022), reflects the legislature's determination to close the gap between the percentages of students of color and the percentages of teachers of color. According to the Board, the proposed changes will have a positive impact on teacher supply and meet demand to address the shortage of teachers of color.<sup>196</sup>

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.* at 7.

<sup>194</sup> *Id.* at 8-9.

<sup>195</sup> *Id.* at 9-10.

<sup>196</sup> *Id.* at 10.

## 2. Summary of Responses to Comments Related to License-specific Rules

166. The Board maintains that it has authority to adopt amendments to Minn. R. 8710.4100, Teachers of American Indian Language, History, and Culture, pursuant to Minn. Stat. § 122A.09, subp. 9(a). The Board holds that it can limit the issuance of American Indian language, history, and culture licenses to Tier 3 and Tier 4 and that the proposed rule language at 8710.4000 implements Minn. Stat. § 124D.75. The Board argues that it should treat licenses to teach American Indian language, history, and culture like licenses for related services providers.<sup>197</sup>

167. The Board responded to a comment about the failure of the proposed changes to the license standards for health teachers lacking a reference to “locally adopted standards.” The Board agreed such a reference is appropriate and proposed a revision to Minn. R. 8710.4500, subp. 3(C)(1), to include references to both national and local academic health standards.<sup>198</sup>

## 3. Summary of Responses to Comments Related to Tiered Licensure

168. The Board seeks to clarify the current definition of “teacher of record” with the proposed revision to Minn. R. 8710.0310, subp. 1(N). The Board wants to exclude those who teach in a home-school setting from the regulatory definition of “teacher of record.” As the Board points out, there is no school district oversight of the planning, provision of instruction, or assessment of student learning for such individuals.<sup>199</sup>

## VIII. Rule by Rule Analysis

169. The Board’s proposed rule changes include repealing all or portions of 20 rules, as follows:<sup>200</sup>

- 1) 8710.0400
- 2) 8710.0550
- 3) 8710.3310, subparts 4, 5
- 4) 8710.3320, subpart 4
- 5) 8710.3330, subpart 4
- 6) 8710.3340, subpart 4
- 7) 8710.3350, subpart 4
- 8) 8710.3360, subpart 4
- 9) 8710.4525, subpart 4
- 10) 8710.4770, subpart 3
- 11) 8710.4925, subpart 4
- 12) 8710.5900, subpart 4

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<sup>197</sup> *Id.* at 11-12.

<sup>198</sup> *Id.* at 12-13.

<sup>199</sup> *Id.* at 13-14.

<sup>200</sup> Ex. C1 at 127.

- 13) 8710.8018, subpart 4
- 14) 8710.8020, subpart 4
- 15) 8710.8030, subpart 4
- 16) 8710.8040, subpart 4
- 17) 8710.8050, subpart 5
- 18) 8710.8060, subpart 4
- 19) 8710.8070, subpart 4
- 20) 8710.8080, subpart 4

170. As discussed above, the proposed changes to the Board's rules concern three areas: tiered licensure rules, license-specific rules, and the rule governing SEPs.

171. As detailed in Section K below, proposed amendments to Minn. R. 8710.2000, governing the SEPs, generated the most comments.

#### **A. Minn. R. 8710.0200 (Fees)**

172. This proposed change is designed to bring the rule into alignment with current state statute following the creation of the Board in 2017. Consistent with changes to Minn. Stat. § 122A.21 (2022), the proposed rule changes require license fees to be paid to the Board, as opposed to the Commissioner of Education.<sup>201</sup>

173. This amendment is needed and reasonable. It removes outdated language and brings the rule into compliance with current state statute. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendment to Minn. R. 8710.0200 is approved.

#### **B. Minn. R. 8710.0310 (Definitions and General Rules for Teaching Licenses)**

174. Subpart 1 of this rule contains definitions applicable to Chapter 8710. The Board proposes changes to three definitions: "cultural competency training," "good cause," and "teacher of record."<sup>202</sup> The Board proposes to add two definitions for "day" and "substitute teacher." The Board proposes to delete the definition of "innovative program." The Board also proposes to make changes to items C and D under subpart 2, and add items F and G.<sup>203</sup>

##### **1. Subpart 1 Amendments to Definitions**

175. The Board proposes to modify the definition of "cultural competency training" to remove a reference to "subpart 4" of Minn. R. 8710.2000. This change is

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<sup>201</sup> Ex. D at 159.

<sup>202</sup> Ex. D at 160-162.

<sup>203</sup> *Id.* at 162-64.

necessary if the Board successfully modifies Minn. R. 8710.2000, which will result in the elimination of the current subpart 4.<sup>204</sup>

176. The Board proposes to modify the definition of “good cause” in order to provide added flexibility to schools and teachers when considering and relying on out-of-field placements.<sup>205</sup>

177. The Board proposes to modify the definition of “teacher of record” to clarify that the phrase does not include paraprofessionals, short-term substitutes, teacher aides, teachers in home-schools, or instructors of post-secondary students outside of the E-12 setting.<sup>206</sup>

178. The Board proposes to add a definition for “day” so that timelines set forth within the regulatory scheme are clear. The proposed definition states that “day” means a calendar day, unless otherwise noted.<sup>207</sup>

179. The Board proposes to add a definition for “substitute teacher.” This addition is intended to provide clarity to the proposed changes to the regulatory scheme for substitute teaching.<sup>208</sup>

180. The Board proposes to add a rule part elsewhere which will render the current definition of “innovative program” obsolete. As a result, it proposes to delete the definition from Minn. R. 8710.0310, subp. 1.<sup>209</sup>

## **2. Subpart 2 Amendments to General Teacher Licensure Rules**

181. The Board proposes to amend Minn. R. 8710.0310, subp. 2(C), to replace “innovative program” with “cross-curricular delivery” in accordance with changes elsewhere to the innovative programs permissions.<sup>210</sup>

182. In 2019, the legislature amended state statute to require the Board to contract with the Department of Human Services to obtain background information about applicants. As a result, the Board proposes to amend Minn. R. 8710.0310, subp. 2(D), to conform with the statute.<sup>211</sup> Further, by using the services of the Department of Human Services, new background information is able to be obtained without an entirely new background study, saving costs.<sup>212</sup>

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<sup>204</sup> *Id.* at 160.

<sup>205</sup> *Id.* at 160-61.

<sup>206</sup> *Id.* at 161-62.

<sup>207</sup> *Id.* at 160.

<sup>208</sup> *Id.* at 161.

<sup>209</sup> *Id.* at 161, 178.

<sup>210</sup> *Id.* at 163.

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*



183. The Board proposes to add items F and G to the subpart, which jointly require applicants and teachers to provide current address and contact information to the Board.<sup>213</sup>

184. The proposed amendments to Minn. R. 8710.0310 are necessary to articulate definitions used under the rule and to effectuate implementation of the Board's regulatory scheme. The Board has shown that these amendments are needed and reasonable, and the Judge approves them.

**C. Minn. R. 8710.0311 (Tier 1 License)**

185. The Board proposes amending Minn. R. 8710.0311, by deleting provisions concerning the Board's duties to fill emergency teaching positions while background checks on the applicants are underway. This is to comply with a 2019 legislative change removing such authority from the Board.<sup>214</sup>

186. The Board has shown that this amendment is needed and reasonable and the change is approved. It brings the rule into compliance with current statutory requirements.

**D. Minn. R. 8710.0313 (Tier 3 License)**

187. The Board proposes adding language to Minn. R. 8710.0313, subp. 2(C)(4), to clarify that Tier 3 applicants relying on their out-of-state license for their coursework requirement may fulfill the requirement for two-years of teaching experience in that other state.<sup>215</sup>

188. The Board proposes to amend Minn. R. 8710.0313, subp.5(B), to provide additional pathways for teachers to expand the scope of their Tier 3 license. The Board proposes the following three pathways, as opposed to the current single pathway: two years of teaching experience in the content area for the type of Tier 3 license they are applying for and within two grade levels of their current license; completion of field-specific student teaching within two grade levels of a currently-approved Minnesota license; or completion of certain work in a state-approved teacher preparation program and field experience aligned to the scope of a currently-approved Minnesota license.<sup>216</sup>

189. The Board proposes to add subpart 6, which simply moves the language currently found at Minn. R. 8710.0310, subp. 3, to Minn. R. 8710.0313.<sup>217</sup>

190. The Board proposes to add subpart 7, concerning "middle level licenses." This pertains to applicants for Tier 3 who come with an out-of-state license to teach middle level communication arts and literature, math, science, or social studies. Such content areas are "endorsements" on a Minnesota license, which means the teacher must hold a

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<sup>213</sup> *Id.*

<sup>214</sup> *Id.* at 165.

<sup>215</sup> *Id.* at 166.

<sup>216</sup> *Id.* at 167.

<sup>217</sup> *Id.* at 168.

different license to which the endorsement applies. Thus, the out-of-state applicant with a license in one of those content areas may not be able to align with a Minnesota license under the current rule. So, the Board's proposal will permit applicants with out-of-state licenses in one of the listed middle level content areas to obtain a Tier 3 license in any of those areas.<sup>218</sup>

191. The Board has established that these proposed amendments are needed and reasonable. The Judge approves the proposed changes. The changes are reasonable policy decisions within the Board's statutory authority to regulate teacher licensure.

#### **E. Minn. R. 8710.0314 (Tier 4 License)**

192. The Board proposes to amend Minn. R. 8710.0314, subp. 3, to permit a teacher with one or more licenses to add another license if the teacher has or had an out-of-state license in good standing. To qualify for the exemption the out-of-state license must be aligned to the Minnesota licensure area sought and be supported by at least two years of experience teaching in that area. The proposal will also set the expiration dates for multiple Tier 4 licenses as one, based on the expiration date of the first obtained license. These changes are based on current provisions in effect for Tier 3 licenses.<sup>219</sup>

193. The Board proposes to amend Minn. R. 8710.0314, subp. 6(B), to provide additional pathways for teachers to expand the scope of their Tier 4 license. Similar to the changes the Board proposes for Tier 3 licenses, the Board proposes the following three pathways, as opposed to the current single pathway: two years of teaching experience in the content area for the type of Tier 4 license they are applying for and within two grade levels of their current license; completion of field-specific student teaching within two grade levels of a currently-approved Minnesota license; or completion of certain work in a state-approved teacher preparation program and field experience aligned to the scope of a currently-approved Minnesota license.<sup>220</sup>

194. The Board proposes to add a subpart concerning the necessary renewal and clock hour requirements when moving to a Tier 4 license. The change ensures teachers complete the renewal requirements as set forth in Minn. Stat. § 122A.187 (2022) and Minn. R. 8710.7200 (2021).<sup>221</sup>

195. The Board has established that these proposed amendments are needed and reasonable. The Judge approves the proposed changes. The changes are reasonable policy decisions within the Board's statutory authority to regulate teacher licensure.

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<sup>218</sup> *Id.* at 168-69.

<sup>219</sup> *Id.* at 170.

<sup>220</sup> *Id.* at 171.

<sup>221</sup> *Id.* at 172.

## **F. Minn. R. 8710.0320 (Out-Of-Field Permission)**

196. The Board proposes to make technical changes to Minn. R. 8710.0320, subp. 1. Specifically, the Board proposes to remove language referring to a field not aligned with the current license and replace it with “an assignment outside of the scope or field of” the current license. The change gives the rule part a clearer and more complete standard to follow for out-of-field permissions (OFPs).<sup>222</sup>

197. The Board proposes to modify subpart 2(A)(3), to clarify its meaning. Under the proposal, when a school district requests OFP for an applicant, the school district need only show the applicant holds a bachelor’s degree, if it is required by statute or rule to teach the field for which the permission is sought.<sup>223</sup>

198. The Board proposes to modify subparts 2(A)(5) and 4(B), to require school districts to provide supports for teachers who will be teaching in an assignment outside of the scope or field of their license. Relatedly, the Board proposes to modify subparts 2(A)(6) and 4(C) to clarify the OFP posting requirement, including the two situations in which a school district may bypass the OFP posting requirement.<sup>224</sup>

199. The Board proposes to remove subparts 2(D) and 4(D), in order to bring the rule into compliance with a 2019 statutory change.<sup>225</sup>

200. The Board proposes to amend subpart 3, to clarify for how long an OFP is valid.<sup>226</sup>

201. The Board proposes to add subpart 6(D), to the rule in order to limit the amount of time a teacher holding a Tier 2 license may teach outside of the field or scope of their license to no more than 50 percent of the teacher’s total assignments.<sup>227</sup>

202. The Board has established that these proposed amendments are needed and reasonable. The Judge approves the proposed changes to Minn. R. 8710.0320. The changes are reasonable policy decisions within the Board’s statutory authority to regulate teacher licensure.

## **G. Minn. R. 8710.0321 (Innovative Program Permission)**

203. The Board is proposing four changes to Minn. R. 8710.0321 in order to clarify the requirements for Innovative Program Permissions. These largely concern teachers working with students in alternative learning centers (ALCs) and the revision will ensure the teachers can teach multiple subjects to a single group of students. The Board

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<sup>222</sup> *Id.* at 173.

<sup>223</sup> *Id.* at 173-74.

<sup>224</sup> *Id.* at 174, 176.

<sup>225</sup> *Id.* at 175.

<sup>226</sup> *Id.* at 176.

<sup>227</sup> *Id.* at 177.

first proposes to replace the term “innovative program permission” with “cross-curricular delivery permission.”<sup>228</sup>

204. The Board proposes to modify subpart 1, to clarify that the cross-curricular delivery permission is aligned to the delivery model, not the particular program.<sup>229</sup>

205. The Board proposes to modify subpart 2, concerning the permission requirements, to clarify when a teacher is eligible to receive a cross-curricular delivery permission.<sup>230</sup>

206. The Board proposes to add subpart 2a, which sets forth specific limitations on cross-curricular delivery permission. The limitations align to state and federal requirements concerning who can be licensed as a teacher and which funding can be used for certain teachers. The proposal also obviates the need for such permission for elementary and early childhood education, where licensed teachers already provide instruction in multiple content areas.<sup>231</sup>

207. The Board proposes to modify subpart 3, to clarify how long the permission is valid. The proposed amendment includes exceptions for summer school and part of a year-round program or school.<sup>232</sup>

208. The Board has established that these proposed amendments are needed and reasonable. The Judge approves the proposed changes to Minn. R. 8710.0321. The changes are reasonable policy decisions within the Board’s statutory authority to regulate teacher licensure.

#### **H. Minn. R. 8710.0325 (Short-Call Substitute License)**

209. The Board is proposing four changes to Minn. R 8710.0325, concerning “short-call” substitute teaching. The proposed amendments are designed to increase the availability of short-call substitute teachers. The Board notes that school districts have struggled to fill these positions.<sup>233</sup>

210. The Board proposes to modify subpart 1, to increase the number of days a short-call substitute can fill a vacancy. The proposed increase is from 15 to 20 consecutive school days. This change will help school districts to be able to have one substitute while hiring a new permanent teacher because background checks often take up to 20 days. Further, the substitute may be the candidate sought.<sup>234</sup>

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<sup>228</sup> *Id.* at 178.

<sup>229</sup> *Id.* at 179.

<sup>230</sup> *Id.*

<sup>231</sup> *Id.* at 180.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* at 181-84.

<sup>234</sup> *Id.* at 181.

211. The Board proposes to modify subpart 2(A), to expand the possible short-call substitute license applicants by removing the requirement for a degree from a regional college.<sup>235</sup>

212. The Board proposes to modify subpart 2(D), to increase the supply of short-call license holders by permitting any individual who is enrolled in an approved teacher-preparation program, and who has completed student teaching, to qualify for the license.<sup>236</sup>

213. The Board proposes to delete subpart 2(C), and replace it with subpart 2a, which is a modification of the career and technical education (CTE) short-call substitute teaching license. The revision to the CTE short-call substitute rule will align with a statutory requirement to permit persons who meet CTE requirements in Minn. Stat. § 122A.181 (2022) to receive a short-call substitute license and only to teach in career and technical education assignments.<sup>237</sup>

214. The Board has established that these proposed amendments are needed and reasonable. The Judge approves the proposed changes to Minn. R. 8710.0325. The changes are reasonable policy decisions within the Board's statutory authority to regulate teacher licensure.

#### **I. Minn. R. 8710.0327 (Substitute Teaching)**

215. The Board is proposing a new rule, Minn. R. 8710.0327, which also addresses and compliments the two current rules on substitute teaching. The purpose of the addition is to clarify:

- The difference between short-call and long-term substitute teaching (the latter is not currently expressly addressed in chapter 8710);
- When a substitute teaching license is required;
- When an extension to a short-call teaching assignment may occur; and
- Limitations on substitute teaching.<sup>238</sup>

216. The Board has established that this proposed amendment is needed and reasonable. The Judge approves the proposed changes to Minn. R. 8710.0327. The changes are reasonable policy decisions within the Board's statutory authority to regulate teacher licensure.

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<sup>235</sup> *Id.* at 181-82.

<sup>236</sup> *Id.* at 182.

<sup>237</sup> *Id.* at 183-84.

<sup>238</sup> *Id.* at 185-87.

## **J. Minn. R. 8710.0330 (Teacher Licensure via Portfolio Application)**

217. The Board is proposing four changes to Minn. R. 8710.0330, which addresses the non-traditional pathway to teacher licensure referred to as the portfolio process.<sup>239</sup>

218. The Board proposes to change subpart 1, by deleting the current language and replacing it with a succinct description of the intent of the licensure-by-portfolio process.<sup>240</sup>

219. The Board proposes to add subpart 1a, and modify subpart 2(D), to separate the eligibility requirements into a single subpart (subpart 1a) and provide specifics regarding the different tiers of licensure for the portfolio process.<sup>241</sup>

220. The Board proposes to modify subpart 2(E) and (G), to ensure some consistency in the reconsideration process after an applicant with a teaching portfolio is denied licensure. The proposal treats a portfolio resubmitted more than one year from the denial of a portfolio application as an initial portfolio submission.<sup>242</sup>

221. The Board proposes to amend subpart 4, to clarify that the portfolio process is available to applicants for a CTE license.<sup>243</sup>

222. The Board has established that the proposed amendments are needed and reasonable. The Judge approves the proposed changes to Minn. R. 8710.0330. The changes are reasonable policy decisions within the Board's statutory authority to regulate teacher licensure.

## **K. Minn. R. 8710.2000 (Standards of Effective Practice)**

223. The SEPs have been in place since 2001.<sup>244</sup> They describe the knowledge and skills Minnesota's teachers must possess in order to effectively teach all students in Minnesota.<sup>245</sup> In 2010, several technology standards were added, and the SEPs have otherwise remained unchanged since their adoption.<sup>246</sup>

224. While students in Minnesota come from increasingly diverse ethnic, religious, and racial background, the teacher workforce has not undergone similar changes.<sup>247</sup> In order to diversify the teaching workforce more rapidly, the Board argues that one factor, among many, is to increase anti-racist and equity language used in teacher preparation programs.<sup>248</sup> The Board worked with a wide range of experts in the

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<sup>239</sup> *Id.* at 188-91.

<sup>240</sup> *Id.* at 188.

<sup>241</sup> *Id.* at 189.

<sup>242</sup> *Id.* at 190.

<sup>243</sup> *Id.* at 191.

<sup>244</sup> *Id.* at 192.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

<sup>248</sup> *Id.*

field of pedagogy to develop SEPs that incorporate anti-racism, cultural competency, and awareness of implicit bias.<sup>249</sup> The Board's goal is to ensure lessons learned over the past 20 years are applied to foster positive conditions for learning, supportive relationships between students and teachers, and increase student performance.<sup>250</sup>

225. The Board proposes to delete the current language in Minn. R. 8710.2000 and replace it with the eight proposed standards and their sub-standards. The revisions reflect the current SEPs and have been refined.<sup>251</sup>

## **1. Standard 1. Student Learning**

226. The first standard consists of 14 sub-standards (A through N). The standard is intended to address the knowledge and skills teachers must have about how students learn.<sup>252</sup>

227. Sub-standards A through H address the various ways students may learn and emphasizes the importance of the unique identity of each student and how that can be used for learning and engagement.<sup>253</sup>

228. Sub-standards I through N address the need for understanding of the differences in students so that appropriate approaches to teaching them can be employed by teachers.<sup>254</sup>

### **(a) SEP 1(A)**

229. The Board proposes this standard to ensure teachers understand and approach their work and students with a student-focused mindset which is positive toward every student, regardless of the student's background or identity with a particular group.<sup>255</sup>

230. Proposed SEP 1(A) is based on InTASC Model Core Teaching Standards (InTASC) 2(j), and current Minnesota SEPs 3(A), 3(F), and 6(E).<sup>256</sup>

231. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* at 192-18; Ex. C1 at 60-82.

<sup>252</sup> Ex. D at 192.

<sup>253</sup> *Id.* at 192-93.

<sup>254</sup> *Id.* at 193-96.

<sup>255</sup> *Id.* at 193.

<sup>256</sup> *Id.*

**(b) SEP 1(B)**

232. The Board proposes this standard to ensure teachers have the foundational knowledge to understand how children’s identities form so that teachers can foster the growth of positive social identities in their students.<sup>257</sup>

233. Proposed SEP 1(B) is based on current SEP 10(D).<sup>258</sup>

234. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 1(C)**

235. The Board proposes this standard to ensure teachers have the foundational knowledge about how children learn.

236. Proposed SEP 1(C) is a succinct distillation of InTASC 1(d) and current SEP 2(A).<sup>259</sup>

237. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 1(D)**

238. The Board proposes this standard to ensure teachers have the foundational knowledge of the connections between students’ cultural backgrounds and how they learn effectively.<sup>260</sup>

239. Proposed SEP 1(D) is based on current SEP 3(H).

240. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>257</sup> *Id.*

<sup>258</sup> *Id.*

<sup>259</sup> *Id.*

<sup>260</sup> *Id.* at 193-94.



**(e) SEP 1(E)**

241. The Board proposes this standard to ensure teachers have the foundational knowledge to understand the cognitive processes behind learning and different ways the brain operates in relation to learning.<sup>261</sup>

242. Proposed SEP 1(E) is based on InTASC 8(j) and current SEP 4(B) and pulls a portion of each of those items to form a new and distinct standard.<sup>262</sup>

243. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 1(F)**

244. The Board proposes this standard to ensure teachers have the foundational knowledge about how culture influences students' cognitive processes and how to use culture to help students learn.<sup>263</sup>

245. Proposed SEP 1(F) is based on InTASC 8(j) and current SEP 4(B) and pulls a portion of each of those standards into a distinct standard.<sup>264</sup>

246. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 1(G)**

247. The Board proposes this standard to ensure teachers have the foundational knowledge to provide student-specific instruction based on each students' traits that affect learning.<sup>265</sup>

248. Proposed SEP 1(G) is based on InTASC 1(e) and current SEPs 2(B) and (D).<sup>266</sup>

249. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>261</sup> *Id.* at 194.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

**(h) SEP 1(H)**

250. The Board proposes this standard to ensure teachers have foundational knowledge on the role of language and culture in learning. The standard requires teachers to know how to modify instruction to make language understandable to learners, and make instruction relevant, accessible, and challenging for them.<sup>267</sup>

251. Proposed SEP 1(H) is based on InTASC 1(g) and current SEPs 3(E) and (O).<sup>268</sup>

252. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(i) SEP 1(I)**

253. The Board proposes this standard to ensure teacher have foundational knowledge about language development and how speaking and reading in more than one language benefits learners. The standard seeks to ensure teachers know how to effectively address language development in learners.<sup>269</sup>

254. Proposed SEP 1(I) is based on InTASC 2(i) and current SEPs 3(C) and 6(A).<sup>270</sup>

255. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(j) SEP 1(J)**

256. The Board proposes this standard to ensure teachers are able to appropriately address the needs of exceptional needs of students, such as those who are gifted and those with disabilities.<sup>271</sup>

257. Proposed SEP 1(J) is based on InTASC 2(h) and current SEPs 3(B) and (N).<sup>272</sup>

258. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a

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<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.* at 194-95.

<sup>270</sup> *Id.*

<sup>271</sup> *Id.* at 195.

<sup>272</sup> *Id.*

reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(k) SEP 1(K)**

259. The Board proposes this standard to ensure that teachers can fulfill their role in their school districts' responsibility to identify students with reading disabilities (required by 34 C.F.R. § 300.111 and Minn. R. 3525.0750 (2021)) and provide appropriate accommodations.<sup>273</sup>

260. Proposed SEP 1(K) is based on the International Dyslexia Association's Knowledge and Practice Standards for Teachers of Reading (KPSTR) 2.3 and 4A.3, and current SEP 3(M).<sup>274</sup>

261. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(l) SEP 1(L)**

262. The Board proposes this standard to ensure teachers can identify learners who have, or are experiencing, various kinds of trauma, and can responsibly support them in continuing to learn.<sup>275</sup>

263. Proposed SEP 1(L) is based on a similar California standard and on current SEP 10(B).<sup>276</sup>

264. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(m) SEP 1(M)**

265. The Board proposes this standard to ensure teachers can recognize symptoms of mental health illness, understand the impact of mental illness on learning, and know how to address the impact when teaching learners with mental illness.<sup>277</sup>

266. Proposed SEP 1(M) is based on Minn. Stat. § 122A.187, subd. 6, which directs the Board to require at least one hour of suicide prevention training every time a

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<sup>273</sup> *Id.*

<sup>274</sup> *Id.*

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> *Id.*

teacher license is up for renewal. The statute further requires initial training to include understanding the key warning signs of early-onset mental-illness.<sup>278</sup>

267. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

#### **(n) SEP 1(N)**

268. The Board proposes this standard to ensure teachers understand the influence the use of various drugs have on student life and learning.<sup>279</sup>

269. Proposed SEP 1(N) is based on current SEP 10(E) and Minn. Stat. § 122A.66 (2022). That statute requires teacher preparation programs to offer a program in the personal use of, misuse, and dependency on various drugs, and requires students in such programs to satisfactorily complete the program.<sup>280</sup>

270. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

### **2. Standard 2. Learning Environments**

271. The second standard consists of six sub-standards (A through F). The standard is intended to address the knowledge and skills teachers must have to create and maintain learning environments in which all students can learn and thrive.<sup>281</sup>

272. Sub-standards A and D address the need for teachers to incorporate student identity within the learning environment.<sup>282</sup>

273. Sub-standards B and F address the need for teachers to be able to manage the learning environment.<sup>283</sup> Relatedly, sub-standard C addresses teacher ability to create a learning environment in which negative student behavior issues can be prevented or, when negative behavior occurs, to appropriately respond.<sup>284</sup>

274. Sub-standard E addresses teacher ability to support students as they deal with bias, discrimination, and other inequities.<sup>285</sup>

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<sup>278</sup> *Id.* at 195-96.

<sup>279</sup> *Id.* at 196.

<sup>280</sup> *Id.*

<sup>281</sup> *Id.*

<sup>282</sup> *Id.*

<sup>283</sup> *Id.*

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

**(a) SEP 2(A)**

275. The Board proposes this standard to ensure teachers have the foundational knowledge to not only teach, but to learn from students about their cultural backgrounds to create welcoming classrooms that do not make any student feel excluded. This standard applies to the physical and virtual spaces, expectations, and organizational routines used by the teacher.<sup>286</sup>

276. Proposed SEP 2(A) is based on InTASC 3(k), a Washington standard, advice from the Learning Policy Institute, and current SEPs 3(Q), and 5(C), (E), and (H).<sup>287</sup>

277. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(b) SEP 2(B)**

278. The Board proposes this standard to ensure teachers have the foundational knowledge to effectively work with all students being self-directed and invested in learning.<sup>288</sup>

279. Proposed SEP 2(B) is based on InTASC 3(i), and current SEPs 5(A), (F), (J), and (K).<sup>289</sup>

280. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 2(C)**

281. The Board proposes this standard to ensure that teachers deal with student behavior problems in ways that will lead to improved student outcomes and avoid excluding students.<sup>290</sup>

282. Proposed SEP 2(C) is based on advice from the Learning Policy Institute, and current SEP 9(C).<sup>291</sup>

283. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a

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<sup>286</sup> *Id.* at 197.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* at 197-98.

<sup>290</sup> *Id.* at 198.

<sup>291</sup> *Id.*

reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 2(D)**

284. The Board proposes this standard to ensure teachers will protect all students from unreasonable discrimination and create a classroom environment where students are supported based on who they are and sufficiently comfortable to successfully learn.<sup>292</sup>

285. Proposed SEP 2(D) is based on advice from the Learning Policy Institute, standards from New York and Washington, and current SEPs 3(H) and 10(D).<sup>293</sup>

286. Many comments opposed the amendments to the SEPs on the grounds that they introduce identity politics into the classroom. To the extent proposed SEP 2(D) addresses student identities, the purpose is to ensure students are not shamed or effectively excluded from the classroom and learning. The regulation does not require teaching a particular political or religious viewpoint. The acceptance and protection of all individuals is established and protected under our state constitution, and SEP 2(D) supports – it does not contravene – those rights and privileges.<sup>294</sup>

287. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(e) SEP 2(E)**

288. The Board proposes this standard to ensure teachers have the foundational knowledge and can assist students in navigating the societal ills stemming from power based on a group identity. The Board's position is that this knowledge will ensure academic growth is less encumbered by such ills.<sup>295</sup>

289. Proposed SEP 2(E) is based on advice from the Learning Policy Institute, a standard from Washington, InTASC 5(g), and current SEP 3(D).<sup>296</sup>

290. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> Minn. Const. Art. 1, § 2 (“No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”).

<sup>295</sup> Ex. D at 198.

<sup>296</sup> *Id.*

**(f) SEP 2(F)**

291. The Board proposes this standard to ensure teachers have the skills to effectively communicate to all students so that learning is less encumbered.<sup>297</sup>

292. Proposed SEP 2(F) is based on InTASC 3(f), standards from Washington, and current SEPs 6(B), (C), (D), (F), and (G).<sup>298</sup>

293. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**3. Standard 3. Assessment**

294. The third standard consists of eight sub-standards (A through H). The standard is intended to address the knowledge and skills teachers must have to understand all learners' progress, how to plan and adjust instruction to ensure academic progress, and how to document progress and provide feedback.<sup>299</sup>

295. Sub-standards A, B, C, and H address teacher understanding of assessments, their use, and interpretation.<sup>300</sup>

296. Sub-standards D and E address teacher communication of student progress.<sup>301</sup>

297. Sub-standard F addresses address teachers' abilities to effectively use assessment data in providing effective instruction for all students.<sup>302</sup> Relatedly, sub-standard G addresses teacher ability to analyze and use assessment data to improve teaching.<sup>303</sup>

**(a) SEP 3(A)**

298. The Board proposes this standard to ensure teachers have foundational knowledge about the types and purposes of various assessments.<sup>304</sup>

299. Proposed SEP 3(A) is based on InTASC 6(k) and current SEPs 8(B) and (C).<sup>305</sup>

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<sup>297</sup> *Id.* at 199.

<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.* at 200.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

300. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(b) SEP 3(B)**

301. The Board proposes this standard to ensure teachers understand how to design, adapt, or select assessments for particular students in order to accurately address specific learning goals based on particular student differences.<sup>306</sup> Like other amendments to the SEPs the Board is proposing, this standard recognizes that one size does not fit all, and so teachers must be cognizant of the variables involved in students, assessment tools, and they must be able to make informed choices.

302. Proposed SEP 3(B) is based on current SEPs 8(E) and (G).<sup>307</sup>

303. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 3(C)**

304. Building on the prior sub-standards of this SEP, the Board proposes this standard to specifically ensure teachers understand bias is assessments and know how to identify it and address bias in both standardized and teacher-created assessments.<sup>308</sup>

305. Proposed SEP 3(C) is based on InTASC 6(b) and (k), and current SEP 8(D).<sup>309</sup>

306. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 3(D)**

307. The Board proposes this standard to ensure teachers have the skills to provide effective feedback to learners and parents in order to assist learners in identifying quality work.<sup>310</sup>

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*



308. Proposed SEP 3(D) is based on InTASC 6(n) and current SEP 8(M).<sup>311</sup>

309. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(e) SEP 3(E)**

310. The Board proposes this standard to ensure teachers have the foundational knowledge to assist learners in understanding their assessment results and to help them in setting goals for learning.<sup>312</sup>

311. Proposed SEP 3(E) is based on InTASC 6(d) and 8(b), and current SEP 8(l).<sup>313</sup>

312. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 3(F)**

313. The Board proposes this standard to ensure teachers understand the need for regular assessment for both individuals and groups of students. The standard requires teachers to understand the purpose of such assessments are to design and modify instruction based on assessed performance.<sup>314</sup>

314. Proposed SEP 3(F) is based on InTASC 1(a) and current SEP 2(E).<sup>315</sup>

315. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 3(G)**

316. The Board proposes this standard, related to assessment overall, to ensure teachers are able to intelligently examine student performance, including in collaboration with other teachers, by relying on appropriately disaggregated data, in order to adapt teaching to the needs of individual learners.<sup>316</sup>

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<sup>311</sup> *Id.*

<sup>312</sup> *Id.* at 201.

<sup>313</sup> *Id.*

<sup>314</sup> *Id.*

<sup>315</sup> *Id.*

<sup>316</sup> *Id.*

317. Proposed SEP 3(G) is based on InTASC 9(C) and current SEPs 8(F), (H), (J), (N), and 9(H).<sup>317</sup>

318. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

#### **(h) SEP 3(H)**

319. The Board proposes this standard, related to the other sub-standards, to ensure teachers appropriately rely on assessments that are non-discriminatory so that various learner differences do not impede collecting data on their true academic and functional performance.<sup>318</sup>

320. Proposed SEP 3(H) is based on an Illinois standard.<sup>319</sup>

321. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

#### **4. Standard 4. Planning for Instruction**

322. The fourth standard consists of nine sub-standards (A through I). The standard is designed to address teachers' abilities to plan for instruction of learners and provide that instruction effectively.<sup>320</sup> The standard requires teachers to understand the subject matter being taught, know the learners, know the school's community, and know the school district's curriculum goals.<sup>321</sup> The standard seeks to ensure teachers prioritize culturally-relevant resources in instruction and in selecting materials and technologies.<sup>322</sup> The standard requires teachers to know how to implement appropriate accommodations when necessary to support student learning.<sup>323</sup>

323. Sub-standards A, B, C, G, and I address the knowledge and skills teachers need to plan instruction aligned to academic standards, and the ability to use various resources and student information as part of the instruction process.<sup>324</sup>

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<sup>317</sup> *Id.*

<sup>318</sup> *Id.* at 202.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Id.*

324. Sub-standards D, E, and F address teachers' needs to understand who their students are and to use that information to make instruction individualized, relevant, and meaningful for learners to improve educational outcomes.<sup>325</sup>

325. Sub-standard H addresses teachers' abilities to create opportunities for students to learn about systems of oppression and apply these lessons in order to eliminate historical and contemporary injustices.<sup>326</sup> As noble as this sub-standard is, as explained below, it is beyond the statutory authority of the Board as written. Absent a modification ensuring the Board is not encroaching on curriculum development, the proposal must be disapproved.<sup>327</sup>

**(a) SEP 4(A)**

326. The Board proposes this standard to ensure teachers understand the state English language development standards framework. The purpose of the new requirements is to permit teachers to develop learning experiences for students to develop their development of language within content instruction.<sup>328</sup>

327. Proposed SEP 4(A) is based on Minn. R. 3501.1200 (2021) regarding the World-Class Instructional Design and Assessment English Language Development standards.<sup>329</sup>

328. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(b) SEP 4(B)**

329. The Board proposes this standard to ensure teachers understand cross-disciplinary instruction so that more content can be imparted to learners.<sup>330</sup>

330. Proposed SEP 4(B) is based on InTASC 7(h) and current SEP 1(J).<sup>331</sup>

331. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> The Board notes in the SONAR that this proposed rule is aligned with the proposed social studies standard being developed by the Department of Education. Because that standard is not yet law, any reference to it in these rules is premature.

<sup>328</sup> Ex. D at 202.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.* at 203.

<sup>331</sup> *Id.*

**(c) SEP 4(C)**

332. The Board proposes this standard to ensure that teachers understand their instruction, including assessments, must be based on state or, if unavailable, national or international academic standards.<sup>332</sup>

333. Proposed SEP 4(C) is based on InTASC 7(g), Minn. R. 8705.1010, subp. 1(B)(3) (2021), and current SEPs 4(A) and 8(A).<sup>333</sup>

334. In response to public comments that were concerned the Board was supplanting local curriculum, Board staff proposed to recommend the Board modify the proposal by adding “local” between “unavailable” and “national.”<sup>334</sup>

335. This amendment, with the proposed modification, is needed and reasonable. Based upon the record, and with the proposed modification, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved with the proposed modification.

**(d) SEP 4(D)**

336. The Board proposes this standard to ensure teachers design instruction to effectively connect with learners so as to enable their academic advancement.<sup>335</sup>

337. Proposed SEP 4(D) is based on advice from the Learning Policy Institute, InTASC 2(c), and current SEPs 1(G), 3(K), 4(F), 7(B), and 7(F).<sup>336</sup>

338. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(e) SEP 4(E)**

339. The Board proposes this standard to ensure teachers apply instruction that does not marginalize students and which connects with them based on their individual backgrounds and needs.<sup>337</sup>

340. Proposed SEP 4(E) is based on InTASC 7(b), a Washington standard, and current SEPs 7(C), (D), and (E).<sup>338</sup>

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<sup>332</sup> *Id.*

<sup>333</sup> *Id.*

<sup>334</sup> Board Rebuttal Comments at 5.

<sup>335</sup> Ex. D at 204.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.* at 205.

<sup>338</sup> *Id.*

341. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 4(F)**

342. The Board proposes this standard to ensure teachers include in instruction diverse perspectives which have traditionally not been part of Minnesota classroom curriculum.<sup>339</sup>

343. Proposed SEP 4(F) is based on current SEPs 1(G), 3(P), and advice from the Learning Policy Institute.<sup>340</sup>

344. Some comments expressed concern that this sub-standard exceeded the Board's authority by venturing into the creation of curriculum for students. The proposed sub-standard does not create, nor does it require teachers to create, curriculum. Rather, teachers must still apply authorized curriculum in the classroom. This sub-standard simply requires teachers to rely more on traditionally marginalized perspectives, presuming those perspectives are part of current public-school curricula. Thus, it does not exceed the Board's authority to regulate teacher licensure.

345. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 4(G)**

346. The Board proposes this standard to ensure teachers provide learners with opportunities to learn and use language in content areas.<sup>341</sup>

347. Proposed SEP 4(G) is based on InTASC 4(h) and current SEP 6(A).<sup>342</sup>

348. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(h) SEP 4(H)**

349. The Board proposes this standard to ensure that teachers create opportunities for students to learn about power, privilege, intersectionality, and systemic

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<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

oppression.<sup>343</sup> The proposal seeks to ensure teaching learners to be agents of social change to promote fairness.<sup>344</sup>

350. Proposed SEP 4(H) is based on a New York standard.<sup>345</sup>

351. Many comments objected to the proposed SEP based on the ideas it concerns (teaching students about social power imbalances and to be agents of social change), and because it exceeds the Board's authority by venturing into curriculum. The basis for the standard, the New York standard, specifically refers to an "inclusive curriculum" providing opportunities for students to learn about other perspectives.<sup>346</sup> The proposal is consistent with Minnesota constitutional provisions about fairness, equality, and the purpose of a public education system.<sup>347</sup> As forthright as the intention is, the proposed sub-standard is not within the Board's legislated authority because it determines what students will be taught.<sup>348</sup> That authority rests with the Department of Education, regional centers of excellence, and local school boards.<sup>349</sup>

352. Proposed SEP 4(H) exceeds the Board's statutory authority and, therefore, is disapproved as written. If the proposed language tied the sub-standard to existing local or statewide academic standards, avoiding the Board's imposition of what students will be taught, the sub-standard would be permissible.<sup>350</sup> Such modified language may be, however, effectively duplicative of other proposed sub-standards.<sup>351</sup>

#### **(i) SEP 4(I)**

353. The Board proposes this standard to ensure teachers use instructional design principles to create new and effective learning environments using technology.<sup>352</sup>

354. Proposed SEP 4(I) is based on International Society for Technology in Education standard (ISTE) 5(c) and current SEP 4(K).<sup>353</sup>

355. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> Minn. Const. Art. XIII, § 1. ("The stability of a republican form of government depending mainly upon the intelligence of the people" requires a uniform system of public schools.)

<sup>348</sup> Minn. Stat. §§ 122A.09, subd. 9; .092, subds. 1, 3; .18, subd. 10(a).

<sup>349</sup> Minn. Stat. §§ 120B.115, 120B.10, .11.

<sup>350</sup> E.g.: "Consistent with local curriculum, and state and local academic standards, a teacher must create opportunities for students...to promote equity if that is part of the authorized curriculum."

<sup>351</sup> See, e.g., proposed SEP 4(C), SEP 5.

<sup>352</sup> Ex. D at 206.

<sup>353</sup> *Id.*

## 5. Standard 5. Instructional Strategies

356. The fifth standard consists of 11 sub-standards (A through K).<sup>354</sup> The standard is designed to ensure that teachers will be able to improve the educational performance of all students through competency about the cultural background of all students.<sup>355</sup> The sub-standards require teachers to understand the need to draw on student community, language, and identity for the foundations of instructional strategies to use.<sup>356</sup>

357. Sub-standards B, C, E, F, G, I, and J address teachers' abilities to design and implement different learning opportunities to support student learning and skills, critical thinking, and problem solving.<sup>357</sup>

358. Sub-standards A, D, and H are intended to ensure teachers effectively use a student's culture and language to make instruction more relevant and meaningful, and to encourage critical thinking about race and culture.<sup>358</sup>

359. Sub-standard K is to ensure teachers can foster social-emotional learning, in order to help students learn to be caring, civil, problem-solving, and valuing excellence.<sup>359</sup>

### (a) SEP 5(A)

360. The Board proposes this standard to ensure teachers collaborate with students to design and implement culturally relevant learning experiences, identify student strengths, and access family and community resources to develop students' areas of interest.<sup>360</sup>

361. Proposed SEP 5(A) is based on InTASC 8(c), and Washington standard, and current SEPs 3(J), (O), 7(F), and 11(J).<sup>361</sup>

362. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>354</sup> Ex. C1 at 78-79; Ex. D at 207-209.

<sup>355</sup> Ex. D at 206.

<sup>356</sup> *Id.*

<sup>357</sup> *Id.*

<sup>358</sup> *Id.*

<sup>359</sup> *Id.*

<sup>360</sup> *Id.* at 207.

<sup>361</sup> *Id.*

**(b) SEP 5(B)**

363. The Board proposes this standard to ensure that teachers can implement instructional strategies that use real-world learning opportunities such as service learning, community-based learning, and project-based learning for students.<sup>362</sup>

364. Proposed SEP 5(B) is based on current SEPs 1(C), 1(J), and advice from the Learning Policy Institute.<sup>363</sup>

365. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 5(C)**

366. The Board proposes this standard to ensure that teachers develop learning experiences for learners that are collaborative, self-directed, and extend student interaction with a wide variety of people and ideas.<sup>364</sup>

367. Proposed SEP 5(C) is based on InTASC 3(b) and current SEP 5(L).<sup>365</sup>

368. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 5(D)**

369. The Board proposes this standard to ensure that teachers are effective with students whose first language is not English. Under the standard, teachers are to use such a learners' native language as a resource in creating differentiated instructional strategies to develop their literacy skills.<sup>366</sup>

370. Proposed SEP 5(D) is based on Minn. Stat. § 122A.092, subd. 5(a).<sup>367</sup>

371. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> *Id.*

<sup>365</sup> *Id.*

<sup>366</sup> *Id.*

<sup>367</sup> *Id.*



**(e) SEP 5(E)**

372. The Board proposes this standard to ensure that teachers use different ways to demonstrate concepts and skills to learner, relying on their varied ways of knowing. The standard also ensures learners' academic growth is assessed in a variety of ways, also considering their varied ways of knowing.<sup>368</sup>

373. Proposed SEP 5(E) is based on InTASC 8(e) and current SEPs 1(E), 3(L), and 4(I).<sup>369</sup>

374. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 5(F)**

375. The Board proposes this standard to ensure that teachers are effective at stimulating student discussion which will: aid the teacher in assessing student knowledge; enable the teacher to help students articulate their ideas and thinking processes; and stimulate student curiosity and their questioning.<sup>370</sup>

376. Proposed SEP 5(F) is based on InTASC 8(i) and current SEP 6(J).<sup>371</sup>

377. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 5(G)**

378. The Board proposes this standard to ensure that teachers help all students in develop higher order questioning skills and metacognitive processes.<sup>372</sup>

379. Proposed SEP 5(G) is based on InTASC 8(f) and current SEP 4(D) and 5(M).<sup>373</sup>

380. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>368</sup> *Id.* at 208.

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> *Id.*

**(h) SEP 5(H)**

381. The Board proposes this standard to ensure that teachers encourage students to think critically about culture and race by including missing narratives to the dominant culture in the curriculum.<sup>374</sup>

382. Proposed SEP 5(H) is based on standards from Illinois and New York.<sup>375</sup>

383. Many commenters objected to the education of students about culture and race, including those asserting that this encroached upon curriculum decisions by state and local authorities and parents.<sup>376</sup> Authority over curricula rests with the Department of Education, regional centers of excellence, and local school boards.<sup>377</sup>

384. Proposed SEP 5(H) exceeds the Board's statutory authority and, therefore, is disapproved as written. If the proposed language tied the sub-standard to existing local or statewide academic standards, avoiding the Board's imposition of what students will be taught or what it believes should be added to the curriculum, the sub-standard would be permissible.<sup>378</sup>

**(i) SEP 5(I)**

385. The Board proposes this standard to ensure that teachers will effectively teach to individuals, small groups, large groups, concerning a range of skills.<sup>379</sup>

386. Proposed SEP 5(I) is based on InTASC Rubric Progressions 3(2)(1) and current SEP 5(R).<sup>380</sup>

387. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(j) SEP 5(J)**

388. The Board proposes this standard to ensure that teachers effectively use technology as a tool to reach all learners.<sup>381</sup>

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<sup>374</sup> *Id.*

<sup>375</sup> *Id.*

<sup>376</sup> *See, e.g.,* Comment by Wendy Nelson (Aug. 25, 2022), Comment by Betty Gardner (Aug. 27, 2022), Comment by Phil Rydning (Aug 31, 2022), Comment by Judy Hansen (Sept. 2, 2022), Comment by Luann Eager (Sept. 2, 2022), Comment by Dawn Lundeen (Sept. 2, 2022), Comment by Kenna Pretts (Sept. 2, 2022), Comment by Norene Shephard (Sept. 10, 2022).

<sup>377</sup> Minn. Stat. §§ 120B.115, 120B.10, .11.

<sup>378</sup> E.g.: "Consistent with the local curriculum and state and local academic standards, a teacher will encourage critical thinking about culture and race."

<sup>379</sup> Ex. D at 209.

<sup>380</sup> *Id.*

<sup>381</sup> *Id.*

389. Proposed SEP 5(J) is based on ISTE 5(a) and current SEPs 3(R), 6(K), and 7(H).<sup>382</sup>

390. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

### **(k) SEP 5(K)**

391. The Board proposes this standard to ensure that teachers use a variety of strategies to help learners develop social and emotional competencies, including self-awareness, self-management, social awareness, relationship skills, and responsible decision-making.<sup>383</sup>

392. Proposed SEP 5(K) is based on advice from the Collaborative for Academic, Social, and Emotional Learning and from the Learning Policy Institute, current SEPs 5(D), (I), and (P), and a Massachusetts standard.<sup>384</sup>

393. This amendment is needed and reasonable. The Board has authority to promulgate this rule, particularly at Minn. Stat. § 122A.187, which requires the Board's rules to address teachers' abilities to help students meet graduation standards, despite mental health and behavioral needs.<sup>385</sup> Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

## **6. Standard 6. Professional Responsibilities**

394. The sixth standard consists of ten sub-standards (A through J).<sup>386</sup> The standard addresses the legal and ethical responsibilities of teachers.<sup>387</sup>

395. Sub-standards A, B, and I pertain to teacher obligations for protecting the rights of students.<sup>388</sup>

396. Sub-standards C and D address the Board's expectation that teachers understand the historical foundations of modern public education in Minnesota and the United States, including how some government policies have historically impacted the ability of all students to receive a high-quality education.<sup>389</sup>

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<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

<sup>384</sup> *Id.*

<sup>385</sup> Minn. Stat. § 122A.187, subds. 4, 6.

<sup>386</sup> Ex. C1 at 80-81; Ex. D. at 210.

<sup>387</sup> Ex. D. at 210.

<sup>388</sup> *Id.*

<sup>389</sup> *Id.*

397. Sub-standards E, F, G, H, and J require teachers to be continually reflective professionals, to consistently re-evaluate how their work affects others in their school environment, and to require them to actively seek out opportunities for professional growth.<sup>390</sup>

398. Several commenters were opposed to the rule, in part, because they did not agree that teachers have or may have biases and that systemic unfairness has historically existed in Minnesota's public school system.<sup>391</sup> While the commentors may disagree with the view of the Board, this does not make the Board's proposals on ethics, self-evaluation, and mitigation of historical and systemic inequities unnecessary, unreasonable, or otherwise illegal.

**(a) SEP 6(A)**

399. The Board proposes this standard to ensure that teachers understand the Code of Ethical Conduct for Minnesota Teachers and the role of social media, privacy, and the boundaries necessary in relationships with students.<sup>392</sup>

400. Proposed SEP 6(A) is based on Minn. R. 8705.1010, subp. 1(B)(2) (2021), InTASC 9(o), and current SEP 9(K).<sup>393</sup>

401. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(b) SEP 6(B)**

402. The Board proposes this standard to ensure teachers are aware of their obligations with respect to students' rights and their protections.<sup>394</sup>

403. Proposed SEP 6(B) is based on InTASC 9(j) and current SEPs 8(L), 10(C), (F), and (L).<sup>395</sup>

404. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>390</sup> *Id.*

<sup>391</sup> *See, e.g.*, Comment by Mrs. Frank (Aug. 27, 2022), Comment by Cindy Litchke (Aug. 28, 2022).

<sup>392</sup> Ex D at 210.

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*

<sup>395</sup> *Id.*

**(c) SEP 6(C)**

405. The Board proposes this standard to ensure that teachers are aware of the historical foundations of public education in Minnesota, including some of the laws, policies, and practices that lead to inequities in classrooms and outcomes for learners.<sup>396</sup>

406. Proposed SEP 6(C) is based on InTASC 10(I), current SEP 9(A), and a New York standard.<sup>397</sup>

407. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 6(D)**

408. The Board proposes this standard to ensure that teachers are knowledgeable about how prejudice, discrimination, and racism operates at various organizational levels.<sup>398</sup>

409. Proposed SEP 6(D) is based on an Illinois standard.<sup>399</sup>

410. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(e) SEP 6(E)**

411. The Board proposes this standard to ensure that teachers are self-reflective to understand who they are individually and how their identity affects how they operate as professionals.<sup>400</sup>

412. Proposed SEP 6(E) is based on Illinois standards.<sup>401</sup>

413. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

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<sup>396</sup> *Id.* at 210-11.

<sup>397</sup> *Id.*

<sup>398</sup> *Id.* at 211.

<sup>399</sup> *Id.*

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

**(f) SEP 6(F)**

414. Very similar to proposed SEP 6(E), the Board proposes this standard to also ensure teachers are self-reflective to understand who they are individually, and specifically how their own biases, perceptions, and disciplinary training may affect their teaching.<sup>402</sup> The proposed standard expects teachers to address their own behavior so that historically oppressive systems do not perpetuate.<sup>403</sup>

415. Proposed SEP 6(F) is based on InTASC 9(g) and an Illinois standard.<sup>404</sup>

416. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 6(G)**

417. Very similar to the prior two proposed sub-standards, the Board proposes this standard to ensure teachers are self-reflective to understand who they are individually and to employ adaptations and adjustments to their professional practice to ensure outcome are increasingly fair for learners.<sup>405</sup>

418. Proposed SEP 6(G) is based on InTASC 9(g) and current SEP 9(B).<sup>406</sup>

419. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(h) SEP 6(H)**

420. The Board proposes this standard to ensure that teachers advance professionally based upon verifiable data: teacher evaluations and observations; student performance; and school- and system-wide priorities.<sup>407</sup>

421. Proposed SEP 6(H) is based on InTASC 9(k) and current SEPs 9(E) and (F).<sup>408</sup>

422. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a

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<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*

<sup>405</sup> *Id.* at 211-12.

<sup>406</sup> *Id.*

<sup>407</sup> *Id.* at 212.

<sup>408</sup> *Id.*

reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(i) SEP 6(I)**

423. The Board proposes this standard to ensure that teachers model the safe and ethical use of technology used in the classroom for instruction.<sup>409</sup>

424. Proposed SEP 6(I) is based on InTASC 9(f) and current SEP 10(M).<sup>410</sup>

425. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(j) SEP 6(J)**

426. The Board proposes this standard to ensure that teachers are aware of and rely on a wide array of resources to assist them with continual professional development.<sup>411</sup>

427. Proposed SEP 6(J) is based on InTASC 9(d) and current SEPs 9(D), (G), (I), (J), (M), and 10(J).<sup>412</sup>

428. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**7. Standard 7. Collaboration and Leadership**

429. The seventh standard consists of six sub-standards (A through F). The standard addresses teachers' collaboration with everyone in the school community to ensure learner growth and teacher leadership for the benefit of the profession in general.<sup>413</sup>

430. Sub-standards A, B, and C concern teacher collaboration.<sup>414</sup>

431. Sub-standards D and E concern teacher assessment of curriculum and school practices in order to ensure all students are represented and supported.<sup>415</sup>

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<sup>409</sup> *Id.*

<sup>410</sup> *Id.*

<sup>411</sup> *Id.*

<sup>412</sup> *Id.* at 212-13.

<sup>413</sup> *Id.* at 213; Ex. C1 at 81-82.

<sup>414</sup> Ex. D at 213.

<sup>415</sup> *Id.*

432. Sub-standard F addresses teacher leadership and advocacy for students, the school, community, and the profession.<sup>416</sup>

**(a) SEP 7(A)**

433. The Board proposes this standard to ensure that teachers are effective communicators (both expressive and receptive) with student families about their students.<sup>417</sup>

434. Proposed SEP 7(A) is based on standards from Massachusetts, Kansas, and Texas, ISTE 4(d), and current SEP 10(I).<sup>418</sup>

435. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(b) SEP 7(B)**

436. The Board proposes this standard to ensure that teachers can effectively collaborate with families to support their students and secure appropriate services for students.<sup>419</sup>

437. Proposed SEP 7(B) is based on High-Leverage Practices in Special Education 3, and current SEP 10(K).<sup>420</sup>

438. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 7(C)**

439. The Board proposes this standard to ensure that teachers can effectively collaborate with other professionals with specialized expertise in order to design and deliver effective education to all learners.<sup>421</sup>

440. Proposed SEP 7(C) is based on InTASC 7(E) and current SEP 10(G).<sup>422</sup>

441. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a

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<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> *Id.*

<sup>419</sup> *Id.* at 214.

<sup>420</sup> *Id.*

<sup>421</sup> *Id.*

<sup>422</sup> *Id.*



reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 7(D)**

442. The Board proposes this standard to ensure that teachers add to the curriculum information that may be missing, such as additional perspectives, cultures, and backgrounds.<sup>423</sup>

443. Proposed SEP 7(D) is based on a New York standard.<sup>424</sup>

444. Some commenters objected to this standard because it is beyond the Board's authority to add to local curricula.<sup>425</sup> Curriculum content is under the authority of the Department of Education, regional centers of excellence, and local school boards, not the Board.<sup>426</sup>

445. Proposed SEP 7(D) exceeds the Board's statutory authority and, therefore, is disapproved.

**(e) SEP 7(E)**

446. The Board proposes this standard to ensure that teachers think critically about their work, work environment, and their beliefs about particular students, families, and communities which may adversely impact learning.<sup>427</sup>

447. Proposed SEP 7(E) is based on New York and California standards.<sup>428</sup>

448. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 7(F)**

449. The Board proposes this standard to ensure teachers can, if they choose, take on leadership roles at any level to advocate for students, their school, their community, and the teaching profession.<sup>429</sup>

450. Proposed SEP 7(F) is based on InTASC 10(k).<sup>430</sup>

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<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> See, e.g., Comment by Rachel V. (Aug. 26, 2022), Comment by Scott Coggins (Sept. 13, 2022), Comment by Jessica L. Johnson (Sept. 13, 2022).

<sup>426</sup> Minn. Stat. §§ 120B.115, 120B.10, .11.

<sup>427</sup> Ex. D. at 214.

<sup>428</sup> *Id.*

<sup>429</sup> *Id.*

<sup>430</sup> *Id.*

451. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

## **8. Standard 8. Racial Consciousness and Reflection**

452. The eighth standard consists of seven sub-standards (A through G).<sup>431</sup> This standard addresses the foundational knowledge concerning the historical and systemic impact race and racism have had on public education and the resulting skills all teachers must have to effectively educate all public-school students in Minnesota.<sup>432</sup> This standard was developed with a large group of stakeholders and were built upon established social science theories.<sup>433</sup>

453. Sub-standards A, B, C, and D address the different theories and concepts that a teacher must understand to demonstrate an awareness about race and racism.<sup>434</sup>

454. Sub-standards E and G address how different people in the United States have been impacted by the concept of race and by racism, including how other factors - class, gender, sexuality, religion, national origin, immigration status, language, ability, and age – also impact us.<sup>435</sup>

### **(a) SEP 8(A)**

455. The Board proposes this standard to ensure teachers understand multiple theories about race and ethnicity and their impact on people – both those who try to use such factors for power and the individuals and groups subjected to unfairness as a result of that power use.<sup>436</sup>

456. Proposed SEP 8(A) is based on a Washington standard.<sup>437</sup>

457. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

### **(b) SEP 8(B)**

458. The Board proposes this standard to ensure that teachers understand the definitions of and difference between prejudice, discrimination, bias, and racism.<sup>438</sup>

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<sup>431</sup> *Id.* at 215-17; Ex. C1 at 82.

<sup>432</sup> Ex. D at 215.

<sup>433</sup> *Id.*

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> *Id.* at 216.

<sup>437</sup> *Id.*

<sup>438</sup> *Id.*

459. Proposed SEP 8(B) is based on Illinois and Washington standards.<sup>439</sup>

460. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(c) SEP 8(C)**

461. The Board proposes this standard to ensure that teachers understand how ethno-centrism, eurocentrism, deficit-based teaching, and white-supremacy undermine fairness in education.<sup>440</sup>

462. Proposed SEP 8(C) is based on Washington standards.<sup>441</sup>

463. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(d) SEP 8(D)**

464. The Board proposes this standard to ensure that teachers understand that education is a social and cultural practice impacted by race and ethnicity, often resulting in racially disparate advantages and disadvantages.<sup>442</sup>

465. Proposed SEP 8(D) is based on an Illinois standard.<sup>443</sup>

466. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(e) SEP 8(E)**

467. The Board proposes this standard to ensure that teachers understand the background of racialized groups.<sup>444</sup>

468. Proposed SEP 8(E) is based on a Washington standard.<sup>445</sup>

469. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a

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<sup>439</sup> *Id.*

<sup>440</sup> *Id.*

<sup>441</sup> *Id.*

<sup>442</sup> *Id.*

<sup>443</sup> *Id.*

<sup>444</sup> *Id.*

<sup>445</sup> *Id.*

reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(f) SEP 8(F)**

470. The Board proposes this standard to ensure that teachers understand the background, perspectives, and ideas held by Native American tribes in Minnesota.<sup>446</sup>

471. Proposed SEP 8(F) is based on current SEP 3(G).

472. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**(g) SEP 8(G)**

473. The Board proposes this standard to ensure that teachers understand the impact of the combination of race and other factors, such as class, gender, sexuality, religion, national origin, immigration status, language, ability, and age, impact us.<sup>447</sup>

474. Proposed SEP 8(G) is based on a Washington standard.

475. This amendment is needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendment, and it has made a reasonable choice from the available policy alternatives. This proposed amendment is approved.

**L. Minn. R. 8710.3100 (Teachers of Parent and Family Education)**

476. The Board proposes to amend the Parent and Family Education (PFE) teacher licensure rule to clarify licensure requirements, update the content-area standards, and clarify clinical experience requirements.<sup>448</sup>

477. The Board proposes to amend subpart 1, scope of practice, to expand the number of programs than may be appropriate for a PFE teacher to teach or facilitate.<sup>449</sup>

478. The Board proposes to amend subpart 2, license requirements, by deleting the current language and adding new language consistent with current statutes and proposed revisions to this rule chapter addressing tiered licensure.<sup>450</sup>

479. The Board proposes adding subpart 2a, initial licensure program, which describes the requirements for teacher candidates completing an initial licensure

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<sup>446</sup> *Id.*

<sup>447</sup> *Id.*

<sup>448</sup> *Id.* at 219.

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

program. The proposed requirement aligns with Minn. R. 8705.2100 (2021), which requires all initial licensure programs to correspond to the license-specific standards of the license sought and the standards of effective practice.<sup>451</sup>

480. The Board proposes adding subpart 2b, additional licensure program, to clarify that a candidate completing an additional licensure program is only required to demonstrate the license-specific standards.<sup>452</sup>

481. The Board proposes adding subpart 2c, licensure via portfolio, to clarify that an individual seeking an initial Tier 3 PFE teacher license must complete a portfolio aligned to the license-specific standards of this rule part and a portfolio aligned to the SEPs with a focus on teaching parents and caregivers.<sup>453</sup>

482. The Board proposes adding subpart 2d, adding a license via portfolio, to clarify that an individual adding a PFE teaching license via portfolio process need only complete a portfolio aligned to the license-specific standards in this rule part.<sup>454</sup>

483. The Board proposes amending subpart 3, subject matter standard, to revise some of the language on subject matter standards to include additional emphasis on race, culture, trauma and the addition of understanding of the impact of technology on family life. The Board's changes are intended to ensure PFE teachers are prepared to guide and instruct new parents and caregivers.<sup>455</sup>

484. The Board proposes repealing subpart 4, and adding subpart 4a, which exempts PFE teacher candidates from 12 weeks of student teaching and instead requires 100 hours of clinical experience that is aligned with the typical job functions of a PFE teacher.<sup>456</sup>

485. The Board proposes adding subpart 4b, to provide specific and appropriate clinical experience requirements for candidates completing an additional licensure program in PFE which mirrors the intent of the updated clinical experience rules without being overly burdensome.<sup>457</sup>

486. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.3100 are approved.

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<sup>451</sup> *Id.*

<sup>452</sup> *Id.* at 220.

<sup>453</sup> *Id.*

<sup>454</sup> *Id.*

<sup>455</sup> *Id.*

<sup>456</sup> *Id.* at 220-21; Ex. C1 at 87.

<sup>457</sup> Ex. D at 221.

## M. Minn. R. 8710.4000 (Teachers of Adult Basic Education)

487. The Board proposes to amend the teacher of adult basic education (ABE) rule to add clarity and bring it into alignment with the overall changes made or proposed in other parts of chapter 8710.<sup>458</sup>

488. The Board proposes amending subpart 1, scope of practice, to remove learners who are 16 years old and older from the applicable student group, and specify that the group consists of learners who have aged-out of compulsory attendance.<sup>459</sup>

489. The Board proposes amending subpart 2, licensure requirements, to align with current tiered licensure requirements.<sup>460</sup>

490. The Board proposes adding subpart 2a, which describes the requirements for teacher candidates completing an initial licensure program. The proposed requirement corresponds to Minn. R. 8705.2100, which requires all initial licensure programs to be aligned with the license-specific standards of the license sought and the standards of effective practice.<sup>461</sup>

491. The Board proposes adding subpart 2b, to clarify that a candidate completing an additional licensure program is only required to demonstrate the license-specific standards.<sup>462</sup>

492. The Board proposes adding subpart 2c, to clarify that an individual seeking an initial Tier 3 ABE teacher license must complete a portfolio aligned to the license-specific standards of this rule part and a portfolio aligned to the SEPs.<sup>463</sup>

493. The Board proposes adding sub part 2d, to clarify that an individual adding an ABE teaching license via portfolio process need only complete a portfolio aligned to the license-specific standards in this rule part.<sup>464</sup>

494. The Board proposes amending subpart 3, to revise some of the language on subject matter standards to include additional emphasis on digital literacy. The Board's changes are intended to ensure ABE teachers are prepared to teach their students the skills necessary to be employed and gain additional skills for employment, digital literacy, using the English language, citizenship, and passing an approved high school equivalence test.<sup>465</sup>

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<sup>458</sup> *Id.* at 222-24; Ex. C1 at 88-99.

<sup>459</sup> Ex. D. at 222.

<sup>460</sup> *Id.*

<sup>461</sup> *Id.* at 222-23.

<sup>462</sup> *Id.* at 223.

<sup>463</sup> *Id.*

<sup>464</sup> *Id.*

<sup>465</sup> *Id.* at 223-24.

495. The Board proposes amending subpart 3a to update the requirements for ABE teacher candidate clinical experience to aligned with the typical experiences of an ABE teacher without being overly burdensome.<sup>466</sup>

496. The Board proposes adding subpart 3b to provide specific and appropriate clinical experience requirements for candidates completing an additional licensure program in ABE which mirrors the intent of the updated clinical experience rules without being overly burdensome.<sup>467</sup>

497. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.4000 are approved.

**N. Minn. R. 8710.4100 (Teachers of American Indian Language, History, and Culture)**

498. The Board proposes amendments to Minn. R. 8710.4100 to clarify how the rule works alongside the tiered licensure framework.<sup>468</sup>

499. The Board proposes to amend subpart 1, issuance of license authorized, to update the statutory reference following renumbering of statutes.<sup>469</sup>

500. The Board proposes to amend subpart 2, to change the learner range from kindergarten through grade 12, to birth through grade 12, consistent with other expanded licensure areas.<sup>470</sup>

501. The Board proposes to amend subpart 3 to bring the license requirements in line with the current tiered license framework. The proposed changes also reduce the number of resolutions from tribal governments a candidate must obtain, thereby reducing the regulatory burden on applicants.<sup>471</sup>

502. The Board proposes to add subpart 3a, license requirements for a Tier 4 license, to address how an applicant can obtain a Tier 4 license.<sup>472</sup>

503. The Board proposes to add subpart 6, limitations, to clarify that a license to teach American Indian Language, History, and Culture is only eligible as a Tier 3 or Tier 4 license.<sup>473</sup>

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<sup>466</sup> *Id.* at 224.

<sup>467</sup> *Id.*

<sup>468</sup> *Id.* at 225.

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

<sup>472</sup> *Id.* at 226.

<sup>473</sup> *Id.*

504. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.4100 are approved.

**O. Minn. R. 8710.4500 (Teachers of Health)**

505. The Board proposes to amend the teachers of health rule to add clarity and bring it into alignment with the overall changes made or proposed in other parts of chapter 8710.<sup>474</sup>

506. The Board proposes to amend subpart 2, licensure requirements, to align with current tiered licensure requirements.<sup>475</sup>

507. The Board proposes adding subpart 2a. The proposed rule aligns with Minn. R. 8705.2100 and requires all initial licensure programs to be consistent with the license-specific standards of the license sought and the standards of effective practice.<sup>476</sup>

508. The Board proposes adding subpart 2b, to clarify that a candidate completing an additional licensure program is only required to demonstrate the license-specific standards.<sup>477</sup>

509. The Board proposes adding subpart 2c, to clarify that an individual seeking an initial Tier 3 license to teach health must complete a portfolio aligned to the license-specific standards of this rule part and a portfolio aligned to the SEPs.<sup>478</sup>

510. The Board proposes adding subpart 2d, to clarify that an individual adding a license to teach health via portfolio process need only complete a portfolio aligned to the license-specific standards in this rule part.<sup>479</sup>

511. The Board proposes amending subpart 3, to revise the language on subject matter standards to better align with the Centers for Disease and Prevention's (CDC) Health Curriculum Analysis Tool (HECAT) and Society of Health and Physical Educator's (SHAPE) National Health Education Standards and resources.<sup>480</sup> The amendments ensure health teachers have the background and skills necessary to effectively implement local health education programs which are medically accurate, age-appropriate, and support student's in engaging in health-promoting decisions and behaviors.<sup>481</sup> The rule does not supplant local health education standards or curriculum.

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<sup>474</sup> *Id.* at 227; Ex. C1 at 103-12.

<sup>475</sup> Ex. D at 227.

<sup>476</sup> *Id.*

<sup>477</sup> *Id.*

<sup>478</sup> *Id.* at 228.

<sup>479</sup> *Id.*

<sup>480</sup> *Id.*

<sup>481</sup> *Id.*



512. The Board proposes amending subpart 3a to provide general requirements for health teacher candidate placements which depend on the field and scope of licensure.<sup>482</sup>

513. The Board proposes adding subpart 3b to specifically focus on the placement requirements for candidates completing an additional licensure program in health because the placement requirements vary in the field and scope of licensure.<sup>483</sup>

514. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.4500 are approved.

**P. Minn. R. 8710.4700 (Teachers of Physical Education)**

515. The Board proposes to amend the teachers of physical education rule to align with state physical education standards.<sup>484</sup>

516. The Board proposes to amend subpart 1, to incorporate prekindergarten-aged children in the group of learners physical education teachers must be prepared to teach, consistent with the state funding provided to school districts.<sup>485</sup>

517. The Board proposes to amend subpart 2, to align with current tiered licensure requirements.<sup>486</sup>

518. The Board proposes adding subpart 2a, which aligns with Minn. R. 8705.2100 and requires all initial licensure programs to be consistent with the license-specific standards of the license sought and the standards of effective practice.<sup>487</sup>

519. The Board proposes adding subpart 2b, to clarify that a candidate completing an additional licensure program is only required to demonstrate the license-specific standards.<sup>488</sup>

520. The Board proposes adding subpart 2c, to clarify that an individual seeking an initial Tier 3 license to teach physical education must complete a portfolio aligned to the license-specific standards of this rule part and a portfolio aligned to the SEPs.<sup>489</sup>

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<sup>482</sup> *Id.*

<sup>483</sup> *Id.* at 229.

<sup>484</sup> *Id.* at 230.

<sup>485</sup> *Id.*

<sup>486</sup> *Id.*

<sup>487</sup> *Id.*

<sup>488</sup> *Id.* at 231.

<sup>489</sup> *Id.*

521. The Board proposes adding subpart 2d, to clarify that an individual adding a license to teach physical education via portfolio process need only complete a portfolio aligned to the license-specific standards in this rule part.<sup>490</sup>

522. The Board proposes amending subpart 3, to revise the language on subject matter standards to align with the Society of Health and Physical Educators (SHAPE) kindergarten through grade 12 standards and benchmarks, which have been adopted by the Department of Education as physical education standards for students.<sup>491</sup> The proposed amendments will ensure physical education teachers will have the knowledge and skills to effectively implement those standards.<sup>492</sup>

523. The Board proposes amending subpart 3a to provide general requirements for physical education teacher candidate placements which depend on the field and scope of licensure.<sup>493</sup>

524. The Board proposes adding subpart 3b to specifically focus on the placement requirements for candidates completing an additional licensure program in physical education because the placement requirements vary in the field and scope of licensure.<sup>494</sup>

525. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.4700 are approved.

**Q. Minn. R. 8710.5300 (Teachers of Developmental Adapted Physical Education)**

526. The Board proposes to amend the rule for teacher of developmental adapted physical education (DAPE) to align with proposed physical education standards and student and district needs.<sup>495</sup> DAPE is not a stand-alone license, but rather an addition to a license to teach physical education. This is called an endorsement.<sup>496</sup>

527. The Board proposes amending subpart 1, to better align with Minn. R. 3525.1352, subp. 1 (2021), the definition of DAPE.<sup>497</sup>

528. The Board proposes amending subpart 2, licensure requirements, to clarify the requirements for the DAPE endorsement. In particular, the Board proposes to ensure the endorsement is consistent with the tiered licensing requirements, removing some redundancies from the rule. In addition, the Board proposes to remove any requirements

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<sup>490</sup> *Id.*

<sup>491</sup> *Id.*; see Minn. R. 3501.1410 (2021).

<sup>492</sup> Ex. D at 231-32.

<sup>493</sup> *Id.* at 232.

<sup>494</sup> *Id.*

<sup>495</sup> *Id.* at 233.

<sup>496</sup> *Id.*

<sup>497</sup> *Id.* at 233-34.

that preparations programs provide training aligned to each of the special education core skills standards in Minn. R. 8710.5000. Similarly, the Board proposes to remove a requirement that portfolio candidates must submit evidence of understanding the special education core skills. Further, the Board proposes that all applicants seeking a Tier 3 or Tier 4 license will not be required to complete the Special Education Core Skills examination.<sup>498</sup>

529. The Board proposes to clarify the requirement for a physical education teaching license before a DAPE endorsement can be added with the addition of subpart 2a.<sup>499</sup>

530. The Board proposes to add subpart 2b, to ensure candidates for the endorsement are only required to demonstrate license-specific standards.<sup>500</sup>

531. The Board proposes to add subpart 2c, which will require candidates with an existing physical education license to only complete a portfolio aligned to the license-specific standards in this rule part. Further, for candidates seeking the endorsement at the same time they are seeking the physical education license, the subpart requires completed content portfolio aligned to the physical education standards, a portfolio aligned to the SEPs, and a portfolio aligned to the license-specific standards under the DAPE rule.<sup>501</sup>

532. The Board proposes to amend subpart 3, to update the standards to ensure DAPE teachers have the knowledge and skills to meet their students' needs.<sup>502</sup> The proposed standards are built from the physical education teachers standards at Minn. R. 8710.7400 (2021), so that teachers can effectively identify children with disabilities and help make eligibility and planning determinations with individualized education program (IEP) teams, as well as implement IEPs.<sup>503</sup>

533. The Board proposes to amend subpart 3a, placements for candidates completing a licensure program, to align with recently updated clinical experience requirements for all teacher candidates completing licensure programs in Minnesota and clarify placement requirements for candidates completing a DAPE program.<sup>504</sup>

534. The amendments are needed and reasonable. Based upon the record, the Board has articulated the need for the proposed amendments, and it has made a reasonable choice from the available policy alternatives. The proposed amendments to Minn. R. 8710.5300 are approved.

Based upon the findings of fact and the contents of the rulemaking record, the Judge makes the following:

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<sup>498</sup> *Id.* at 234.

<sup>499</sup> *Id.* at 235.

<sup>500</sup> *Id.*

<sup>501</sup> *Id.*

<sup>502</sup> *Id.*

<sup>503</sup> *Id.* at 236.

<sup>504</sup> *Id.* at 236-37.

## CONCLUSIONS

1. The Judge has authority and jurisdiction to review these rules under Minn. Stat. §§ 14.14, .15, .50 (2022), and Minn. R. 1400.2100.
2. The Board gave notice to interested persons in this matter and fulfilled its additional notice requirements.
3. The Board fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
4. The Board demonstrated it has statutory authority to adopt the proposed rules, and it fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.50(i), (ii), with the exception of proposed Minn. R. 8710.2000, subps. 4(H), 5(H), and 7(D).
5. The Notice of Hearing, the proposed rules, and the SONAR complied with Minn. Stat. § 14.131, Minn. R. 1400.2080 (2021).
6. The Board has demonstrated the need for and reasonableness of its proposed rules by an affirmative presentation of facts in the record, as required by Minn. Stat. §§ 14.14 and 14.50(iii).
7. The record establishes a basis for disapproval only of proposed Minn. R. 8710.2000, subps. 4(H), 5(H), and 7(D).<sup>505</sup>
8. The modifications to the proposed rules suggested by Board staff after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; .15, subd. 3.
9. The modifications to the proposed rules suggested by the Administrative Law Judge after publication of the proposed rules in the *State Register* are not substantially different from the proposed rules as published in the *State Register* within the meaning of Minn. Stat. §§ 14.05, subd. 2; .15, subd. 3.
10. A finding or conclusion of need and reasonableness with regard to any particular rule does not preclude, and should not discourage, the Board from further modification of the proposed rules – provided that the rule finally adopted is not substantially different, within the meaning of Minn. Stat. § 14.05, subd. 2, and is based upon facts in the rulemaking record.

Based upon the foregoing conclusions, the Judge makes the following:

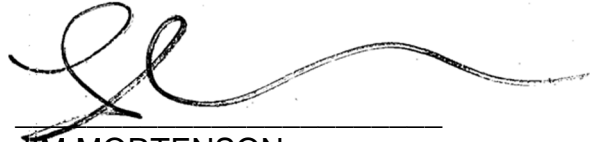
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<sup>505</sup> And subpart 4(C) if Board staff suggested modifications are not made.

## DETERMINATION AND RECOMMENDATION

**IT IS HEREBY RECOMMENDED** that, with and the exceptions at proposed Minn. R. 8710.2000, subps. 4(H), 5(H), and 7(D), the proposed amended rules, including the modification to proposed Minn. R. 8710.2000, subp. 4(C), be adopted.

Dated: November 22, 2022



JIM MORTENSON  
Administrative Law Judge

## NOTICE

The Board must make this Report available for review by anyone who wishes to review it for at least five working days before it may take any further action to adopt final rules or to modify or withdraw the proposed rules. If the Board makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

Because the Administrative Law Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for her approval. If the Chief Judge approves the adverse findings contained in this Report, she will advise the Board of actions that will correct the defects, and the Board may not adopt the rules until the Chief Judge determines that the defects have been corrected.

However, if the Chief Judge identifies defects that relate to the issues of need or reasonableness, the Board may either adopt the actions suggested by the Chief Judge to cure the defects or, in the alternative, submit the proposed rules to the Legislative Coordinating Commission for the Commission's advice and comment. If the Board makes a submission to the Commission, it may not adopt the rules until it has received and considered the advice of the Commission. However, the Board is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Board's submission.

If the Board elects to adopt the actions suggested by the Chief Judge and make no other changes and the Chief Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Board makes changes in the rules other than those suggested by the Judge and the Chief Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Board must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Judge will notify the Board, and the Board will notify those persons who requested to be informed of their filing.