

CHAPTER 3512

DEPARTMENT OF CHILDREN, FAMILIES, AND LEARNING

QUALIFICATIONS AND LICENSURE OF SCHOOL PERSONNEL

3512.5300 VARIANCE

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Subpart 1. Scope. Pursuant to Minnesota Statutes, section 14.055, a person or entity may apply for a variance from any rule or portion of a rule under the jurisdiction of the board of school administrators. The board may not consider a request for a variance from a statute or court order.

Subp. 2. Application. The applicant must file an application for a variance in writing on a form provided by the board. The application form must comply with Minnesota Statutes, section 14.056, subdivision 1, and must include instructions for completing the form and a description of the variance process.

Subp. 3. Criteria. In reviewing a variance request, the board must consider the information required under Minnesota Statutes, section 14.056, subdivision 1, and the following:

A. whether application of the rule to the individual circumstances of the applicant would serve the purpose of the rule;

B. whether application of the rule to the individual circumstances of the applicant would result in hardship or injustice;

C. whether variance from the rule would be consistent with the public interest and the educational interests of students, school districts, and the profession;

D. whether variance from the rule would positively serve an educational need or opportunity;

E. whether variance from the rule would compromise the purpose of the rule, and

F. whether variance from the rule would prejudice the substantial legal or economic rights of any person or entity.

Pursuant to Minnesota Statutes, section 14.055, subdivision 3, the board must grant a variance from a rule if the applicant can provide evidence that application of the rule to the individual circumstances of the applicant would not serve the purpose of the rule. The board may not grant a variance under any circumstances if the variance would compromise the purpose of the rule or the variance would prejudice the substantial legal or economic rights of any person or entity.

Subp. 4 Oral argument. Upon request from the applicant, the board may permit an applicant to present an oral argument in defense of a variance application.

Subp. 5. Notice. Upon submitting a variance application, the applicant must send written notice of the application to any individual or entity that may be affected by the variance. The notice must include a description of the variance request and a statement indicating that if the individual or entity opposes the variance, it may submit written arguments to the board, and the board may permit the individual to present an oral argument in opposition to the variance. The applicant must submit to the board with its application for a variance a list of the names and addresses of the impacted parties who were notified of the variance request and a sufficient explanation of how the parties were notified. The board will not consider a variance request until it has received the list and explanation from the applicant. Each month the board's monthly meeting notice must include a list of all variance requests to be considered that month.

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Subp. 6. Order; timing. Within 60 days of receipt of a completed variance application, the board must issue a written order granting or denying a variance and specifying the scope and period of the variance. The board must not grant a discretionary variance for a period longer than one year. The order must include a statement of relevant facts and the reasons for the board's action.

Subp. 7. Limitations. A variance may be granted to the applicant only for the specific circumstances for which the request is made. The applicant may not apply the variance to other circumstances without specific approval from the board, and a variance is not transferable to other individuals or entities in similar situations without specific approval from the board.

Subp. 8 Fees. The application must include a nonrefundable processing fee of \$25. An application is not complete until the board receives the processing fee. The applicant may be charged additional fees if the cost for the board to process the variance application exceeds \$25.

Subp. 9 Reconsideration. A decision of the board to grant or deny a variance is final unless the decision is reversed by subsequent board action. The applicant may submit an application for reconsideration if the applicant is able to submit additional information in support of its variance request.

Subp. 10. Record. The board must maintain a record of all orders granting and denying variances in compliance with Minnesota Statutes, section 14.056, subdivision 7.

Statutory Authority: *MS s 14.055*

History: *27 SR 426*