

3512.5300 VARIANCE.

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. 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 variance from the rule would serve a compelling public purpose;
- 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 issue a variance from a rule if the applicant provides evidence that applying the rule to the applicant's individual circumstances would not serve any of the purposes of the rule. The board may not issue 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 the applicant's request, the board may permit an applicant to present an oral argument defending a variance application.

Subp. 5. **Notice.** Notice must be provided consistent with Minnesota Statutes, section 14.056, subdivision 3.

Subp. 6. **Order; timing.** Within 60 days of receiving a completed variance application, the board must issue or deny a variance and specify the scope and period of the variance. The board must not issue a variance for a period longer than one year. The board's order must state the relevant facts and the reasons for the board's action.

Subp. 7. **Limitations.** The board may issue a variance only for the specific circumstances the applicant described in the variance application. The applicant may not apply the variance to other circumstances without specific board approval and is prohibited from transferring a variance to other individuals or entities in similar situations without specific board approval.

Subp. 8. **Fees.** The fee for the variance application must be charged consistent with Minnesota Statutes, section 14.056.

Subp. 9. **Reconsideration.** A board decision to issue or deny a variance is final unless the board reverses the decision through a subsequent board action. The applicant may submit an application for reconsideration if the applicant submits additional information to support the variance request.

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

Subp. 11. **Variance for director of community education.** Subject to the conditions in this subpart, the board must annually issue an administrative variance to a school district to allow the district to use an individual who is not fully licensed as the director of community education if the school district is unable to employ a fully licensed director of community education.

A. The board must issue an administrative variance to school districts only if the individual is enrolled in a board-approved program leading to licensure as a director of community education and can show evidence the individual will complete the program within three school years.

B. A school district must apply annually for an administrative variance and must not exceed the three years stated in item A for any one individual.

C. The superintendent must verify how the district advertised the director of community education position and that the district did not place a licensed director of community education interested in the position on unrequested leave of absence. The superintendent must verify in writing the district's decision not to contract with a fully licensed director of community education because:

(1) the unlicensed applicant has additional skills, experience, education, or other qualifications that better align with the requirements of the position than a licensed applicant possesses;

(2) no applicant holding a director of community education license applied for the position; or

(3) no applicant holding a director of community education license accepted the position.

Statutory Authority: *MS s 14.055; 122A.14*

History: *27 SR 426; 44 SR 1385*

Published Electronically: *June 25, 2020*