

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA BOARD OF TEACHING

In the Matter of the  
Proposed Adoption of Rules  
Governing Teacher Education  
Curriculum, Minnesota Rules,  
Part 8700.2810; and Teacher  
Education Program Evaluation,  
Minnesota Rules, Part 8710.7710.

REPORT OF THE  
ADMINISTRATIVE LAW JUDGE

The above-entitled matter came on for hearing before Administrative Law Judge Jon L. Lunde on April 26, 1990, at 9:00 a.m. in the Capitol Square Building, Conference Room 716, 550 Cedar Street, St. Paul, Minnesota.

This report is part of a rulemaking proceeding held pursuant to Minn. Stat. §§ 14.131 to 14.20, to hear public comment, to determine whether the Minnesota Board of Teaching (Board) has fulfilled all relevant substantive and procedural requirements of law or rule, to determine whether the proposed rules are needed and reasonable, and whether or not the rules, if modified, are substantially different from those originally proposed.

Bernard E. Johnson, Special Assistant Attorney General, 608 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 appeared on behalf of the Board at the hearing. The agency panel appearing in support of the proposed rules consisted of Ken Peatross, Executive Director for the Board; Jean Carlson, Vice Chair of the Board; and Dale Rapp, Chair of the Board.

Forty-one persons attended the hearing. Thirty persons signed the hearing register. The Administrative Law Judge received twenty-nine exhibits from the Board as evidence during the hearing. Sixteen exhibits were received into evidence from members of the public in attendance at the hearing. The hearing continued until all interested persons, groups or associations had an opportunity to be heard concerning the adoption of these rules.

The record remained open for the submission of written comments for five business days following the date of the hearing or May 3, 1990. Pursuant to Minn. Stat. § 14.15, subd. 1 (1988), three business days were allowed for the filing of responsive comments. On May 8, 1990, the rulemaking record closed for all purposes.

Eleven post-hearing comments were received by the Administrative Law Judge. The Board submitted a written comment responding to matters discussed at the hearing and in the post-hearing comments.

This Report must be available for review to all affected individuals upon request for at least five working days before the agency takes any further action on the rule(s). The agency may then adopt a final rule or modify or withdraw its proposed rule. If the Board makes changes in the rule other than those recommended in this report, it must submit the rule with the complete hearing record to the Chief Administrative Law Judge for a review of the changes prior to final adoption. Upon adoption of a final rule, the agency must submit it to the Revisor of Statutes for a review of the form of the rule. The agency must also give notice to all persons who requested to be informed when the rule is adopted and filed with the Secretary of State.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

##### Procedural Requirements

1. On February 20, 1990, the Board filed the following documents with the Chief Administrative Law Judge:
  - (a) A copy of the proposed rules certified by the Revisor of Statutes.
  - (b) The Order for Hearing.
  - (c) The Statement of Need and Reasonableness.
  - (d) The Notice of Hearing proposed to be issued.
2. On March 19, 1990, a Notice of Hearing and a copy of the proposed rules were published at 14 State Register 2231.
3. On March 16, 1990, the Board mailed the Notice of Hearing to all persons and associations who had registered their names with the Commission for the purpose of receiving such notice.
4. On March 29, 1990, the Board filed the following documents with the Administrative Law Judge:
  - (a) The Notice of Hearing as mailed.
  - (b) The Agency's certification that its mailing list was accurate and complete.
  - (c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
  - (d) The Affidavit of Addition Notice.
  - (e) The names of Commission personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
  - (f) A copy of the pages of the State Register on which the notice was published.

The documents were available for inspection and copying at the Office of Administrative Hearings from the date of filing to May 8, 1990, the date the record closed.

### Nature of the Proposed Rules.

7. The proposed rules establish standards for teacher education programs to be conducted at four year colleges and universities. The standards are presented in the form of a curriculum which must be offered to a student seeking teacher certification. These standards are intended to assure persons attaining certification will be proficient in those areas outlined by the proposed rules. The proposed rules also establish a system of evaluating the effectiveness of teacher education programs by measuring the degree to which students in these programs attain the degree of proficiency deemed necessary.

### Statutory Authority.

8. In its Statement of Need and Reasonableness (SONAR), the Board cites Minn. Stat. § 125.185, subd. 4 (1987) as authorizing the Board to adopt the proposed rules. Minn. Stat. § 125.185, subd. 4 requires that the Board adopt rules to approve teacher education programs. The rules must "implement a research based, results-oriented curriculum that focuses on the skill teachers need in order to be effective." Minn. Stat. § 125.185, subd. 4. Further, the Board must also "implement new systems of teacher education program evaluation to assure program effectiveness based on proficiency of graduates in demonstrating attainment of program outcomes." Minn. Stat. § 125.185, subd. 4. These rules were to be adopted by October 1, 1988. Minn. Stat. § 125.185, subd. 4. No commentator objected to the Board missing the statutory deadline. The Board asserted that missing the date required in the statute did not divest the Board of authority to adopt the proposed rules. The Administrative Law Judge finds that the Board's statutory authority did not expire in 1988. The Board has general authority to adopt these rules.

### Small Business Considerations in Rulemaking.

9. Minn. Stat. § 14.115, subd. 2 (1988) requires state agencies proposing rules affecting small businesses to consider methods for reducing adverse impact on those businesses. The proposed rules will have no impact on small businesses. No one objected to the rules as having any adverse impact on small businesses. The Board has met the requirements of Minn. Stat. § 14.115, subd. 2 with respect to the impact of the proposed rules on small businesses.

### Fiscal Note.

10. Minn. Stat. § 14.11, subd. 1 requires proposers of rules requiring the expenditure of public funds in excess of \$100,000 per year by local public bodies to publish an estimate of the total cost to local public bodies for a two-year period. The Board asserts that the proposed rules will not require expenditures by local public bodies over the two-year period immediately following adoption of the rules. "Local public bodies" are defined as "officers and governing bodies of the political subdivisions of the state and other officers and bodies of less than statewide jurisdiction which have the authority to levy taxes." Minn. Stat. § 14.11, subd. 1.

Gunnar Wikstrom, Jr., Director of Academic Affairs of the Inter Faculty Organization (IFO) objected to the Board's assessment of the expenditure of public funds which would be required by the proposed rules. Wikstrom maintains that the proposed rules will require expenditures in the areas of:

- a) administration;
- b) changing academic programs;
- c) exit interviews of teaching candidates;
- d) training exit interviewers;
- e) developing instruments to measure outcomes;
- f) training individuals to evaluate outcome measurements;
- g) potential portfolio development;
- h) travel expenses to implement cooperative agreements; and,
- i) longitudinal studies.

Wickstrom also cites examples from the University of Tennessee at Knoxville and Northeast Missouri State University in which these institutions received 5.5 million dollars and 478,000 dollars for funding outcome-based assessments, respectively. The funds referred to at those two institutions were related to educating students, not candidates for teaching licensure. The Board asserted that the bulk of the areas mentioned by Wickstrom are not required by the proposed rules. Those areas that are required by the proposed rules relate to curriculum revision. Tom Nelson, the Commissioner of the Department of Education (DOE), submitted a written comment which stated that:

Although colleges and universities will need to redesign programs to meet the program outcomes, I do not anticipate any adverse fiscal impact resulting from the adoption of this rule, since curriculum revision is an ongoing process.

(Exhibit 28). Additionally, should expenditures be required under these rules, they would not be required of local public bodies. The expenditures would be made by the post secondary institutions which maintain teacher education programs. No doubt some expenditures will be made by local school districts in relation to the proposed rules. However, those expenditures would be the same with, or without, the proposed rules and the amounts will be far less than the \$100,000 per year specified by Minn. Stat. § 14.11, subd. 1. The Board has complied with the fiscal note requirement of Minn. Stat. § 14.11, subd. 1.

#### Substantive Provisions.

11. The portions of the proposed rules which received comment or otherwise need to be examined will be discussed below. Any rule not mentioned is found to be needed and reasonable. Also, any rule not mentioned is found to be specifically authorized by statute.

#### Proposed Rule 8700.2810 -- Teacher Education Curriculum.

12. Proposed Rule 8700.2810 contains 4 subparts setting forth both general and specific elements of the proposed rules. Subpart 1 states the intent of the proposed rules. Subpart 2 requires teacher education programs to be developed with specific goals, based on a variety of

educational theories, be results oriented and incorporate teaching experience. Subpart 3 lists dispositions and skills required in approved teacher education programs. Subpart 4 establishes a transition period lasting until July 1, 1995 for implementation of the rule. Each subpart will be discussed separately.

Proposed Rule 8700.2810, Subpart 1 -- In General.

13. Subpart 1 states that the proposed rules are intended to guide those colleges and universities that conduct teacher education programs to produce candidates for teacher licensure who meet the ultimate goal of being effective teachers. The general concepts which underly the Board's approach were developed through the production of a document entitled, Minnesota's Vision for Teacher Education: Stronger Standards, New Partnerships ("Visions"). (Exhibit 14). Visions was prepared through a task force composed of representative of the Board, the Commissioner of Education, the Higher Education Coordinating Board, teachers, administrators, school board members, teacher education students, and teacher education faculty. Support for the proposed rules was received from Winona State University; the Rand Corporation; Kathleen Kies, Executive Director of the New Mexico Commission on Higher Education; Craig Kissock, Chair of the Division of Education at the University of Minnesota at Morris; Minnesota State Senator Jim Pehler; Minnesota State Senator Jerome Hughes; Nancy Zimpher and Kenneth Howey, faculty in the College of Education of Ohio State University; Trudi Osnes, Director of Elementary Programs at the College of St. Thomas; the Minnesota Association of School Administrators; the Minnesota Association of Colleges for Teacher Education; and the Minnesota Private College Council.

The general purpose of the proposed rules was objected to by Gunner Wickstrom, Academic Affairs Director of the Inter Faculty Organization (IFO). Wickstrom argues that the proposed rules violate the constitutionally protected rights of professors to exercise academic freedom in the conduct of their classes. Sweezy v. State of New Hampshire, 77 S.Ct. 1203 (1957) was cited by Wickstrom as standing for the proposition that the Board cannot set standards to be carried out by an educational institution without violating that institution's First Amendment right to academic speech. In Sweezy, a professor was convicted of contempt for refusing to testify before an investigative commission about the content of lectures he delivered as part of his courses and names of persons he had associated with. The Supreme Court overturned his conviction on the ground that New Hampshire had not expressed a legitimate interest connecting the investigation with the professor's conduct. Sweezy, 77 S.Ct. at 1212-14..

The Board has shown a legitimate connection between a state interest and the intrusion into academic affairs caused by the proposed rules. The State is entitled to set minimum standards for teachers. The State is also entitled to set minimum standards for teacher education programs, both to assure well trained teachers and to protect the expectations of students seeking to be teachers that they will be eligible for licensure upon completion of such programs. Nothing in the First Amendment requires that all academic programs be eligible for treatment as teacher education programs. Any institution which chooses not to offer a teacher education program is not bound by these rules. To apply Sweezy in the

manner suggested by Wickstrom would transform academic freedom into academic entitlement. The freedom to establish one's own curriculum does not mandate that such curriculum must be deemed appropriate for teacher education programs. Such a result would require the Board to delegate its statutory duty to the particular institution being evaluated. This is equivalent to the Board abandoning its obligation to evaluate teacher education programs. The First Amendment does not prohibit the Board from setting standards by which teacher education programs are evaluated and teachers are certified.

The powers enumerated in this proposed rule part all fall within the Board's statutory authority. The proposed rule does not restrict First Amendment academic freedoms. The proposed rule is needed and reasonable.

Proposed Rule 8700.2810, Subpart 2 -- Program Development and Implementation.

15. This portion of the proposed rule is divided into four items. Item A requires teacher education programs to be based on a statement of philosophy. This statement must include a concept of effective teachers. The Board has not specified what constitutes an effective teacher. The statement must be developed by various listed groups. The concept of the effective teacher contained in the statement of philosophy must form the basis of the program's curriculum. The item requires that the curriculum include a liberal arts component; knowledge of the discipline; and dispositions, skills, and knowledge for teaching.

Item B requires combination of a variety of educational theories as the base of teacher education programs. Item C requires the programs be results oriented and based on knowledge, research, and sound practice. This item also requires focus on dispositions, skills, and knowledge needed by beginning teachers to emulate effective teachers. Item D lists the experiential aspects to be included in teacher education programs.

Dr. Carol Holmberg, Academic Affairs Committee Chair of IFO objected to the tone and content of the rules in general and the framework of program development in particular. Holmgren recommended that, rather than use an outcome-oriented approach, the Board develop a "competence based" approach to instilling and measuring the appropriateness of teacher education program. This method is used by Metropolitan State University (Metro State) for its general student population. This approach consists of: 1) the theoretical aspect of the subject; 2) the practical aspects of a subject; 3) the subject itself; and, 4) the levels of mastery achieved in that subject. However, in applying Metro State's approach, both the particular area of knowledge and the depth of that knowledge must be specified and defined. By requiring a predetermined content, this approach is more likely to infringe on the autonomy of individual colleges and universities than outcome-based programs. More importantly (at least from the standpoint of rulemaking), the Legislature has determined that an outcome-based approach be taken. Any other approach could not be promulgated as a rule since it would conflict with the Board's authorizing statute. The framework of teacher education programs chosen by the Board is needed, reasonable, and consistent with Minn. Stat. § 125.185, subd. 4.

Proposed Rule 8700.2810, Subpart 3 -- Program Outcomes.

16. Proposed Rule 8700.2810, Subpart 3 lists the specific skills and knowledge which teacher education programs must assure beginning teachers possess and can demonstrate. Commentators raised objections about several matters not specifically included in the proposed rules and about the subpart as a whole.

Several commentators objected to the use of the word "assure" in setting the obligation of teacher education programs. Subpart 3 requires teacher education programs to assure that students of these programs can demonstrate effective teaching. The commentators' concern was that the programs would be seen as "guaranteeing" the performance of these students. Subpart 3 appears to be a rewording of Recommendation #2 of Visions (p. 41). The term "assure" also appears in the Board's authorizing statute, Minn. Stat. § 125.185, subd. 4. However, in that context, the language is almost identical to that used in Recommendation #2. Recommendation #2 states:

New systems of teacher education program evaluation and teacher licensure assessment should be developed to assure program effectiveness based on proficiency of graduates in demonstrating attainment of task force program outcomes.

The word "assure" has several meanings. The American Heritage Dictionary contains the following listing:

assure . . . 1. To inform confidently, with a view to removing doubt. 2. To cause to feel sure; convince. 3. To give confidence to; reassure. 4. To make certain; ensure. . . 6. Chiefly Brit. To insure, as against loss. . . .

The Administrative Law Judge concludes that "assure," as used in Subpart 3, means teacher education programs must use methods which inspire confidence that the program is training effective teachers, but the programs are not required to "guarantee" the performance of their students. This conclusion is based on the definition of "assure" and the sources of the word (in Visions and the authorizing statute), as well as the evidence presented in the hearing record. Were the Board to have stated that "assure" means "guarantee," there would be a defect in the proposed rule, since the Board has not shown that such a rule is reasonable. The inherent difficulty in "guaranteeing" the performance of an individual in such a difficult area as teaching compels the conclusion that "assure" is intended to be a lesser standard.

Wickstrom of IFO objected to the entirety of the subpart as being unreasonable, because the subpart lists 174 different indices which beginning teachers are expected to meet. This concern is echoed by the Administrative Council of the College of Education at the University of Minnesota. (Public Exhibit P). The Board maintains that Subpart 3 mandates no measurement of teaching student performance. However, Subpart 3 does require programs "assure" that such students have and can demonstrate the listed skills and knowledge. This suggests that colleges and universities must apply the content of Subpart 3, items B and C to the curriculum of their teacher education programs. Close examination of

the content of items B and C reveals that the large number of specific aspects of teaching skills and background knowledge are neither arcane nor unwieldy. For example, Subpart 3(C)(1) reads as follows:

C. Knowledge. Teacher education programs shall assure that beginning teachers possess and can demonstrate knowledge in areas listed in this item.

(1) Knowledge about people:

(a) demonstrate knowledge of philosophical beliefs and ethical values that shape societies and the impact of educational systems have on the evolution of these beliefs and values;

(b) understand how social organizations function and influence people and how people influence organizations;

(c) comprehend the challenges and the opportunities facing people in culturally diverse societies;

(d) comprehend the challenges and the opportunities facing academically diverse populations;

(e) understand how to work with people in complex social settings; and

(f) make informed judgments regarding issues of professional ethics.

This part of the rules alone has between 6 and 14 indices (depending on how they are counted) of knowledge that teacher education programs must impart to their teaching students. No particular aspect of Subpart 3(C) is vague, unclear, or difficult to incorporate into an education program. Most of the indices listed in Subpart 3 are of this general nature. Reducing these indices to their most basic level, the program outcomes subpart of the proposed rules merely requires beginning teachers to keep open minds toward other possibilities and aspects of world and local cultures which otherwise might not be presented to their students. There has been no suggestion that any of the particular indices listed in Subpart 3 are, individually, impossible to assure in teaching students. The proposed rules are not unreasonable per se from the total number of indices required of teaching students. The particular points of emphasis in the rules are only specific facets of the general approach to teaching desired from beginning teachers.

Holmgren of IFO objected to the requirements for skills and knowledge being divided into separate areas. Holmgren asserts that many teachers find such a division "problematic." As with the objection to the number of indices in the proposed rule, the division of skills and knowledge is not to focus on specific facets of any particular skill or area of knowledge. Rather, the specificity in the proposed rules is meant to instill in all beginning teachers the basic components of effective teaching. These components are to be used holistically in the course of teaching.



Larry Johnson of the Ramsey International/Fine Arts School suggested that storytelling be explicitly included as a teaching method. The Board responded that the existing language of the proposed rules meets this concern without making storytelling an explicit requirement of program outcomes. Proposed rule 8700.2810, subp. 3(C)(6)(b) and (c) requires a knowledge of a variety of communication techniques on both a theoretical and practical level. No specific communication techniques are required by the proposed rules. This portion of the proposed rule meets Johnson's concerns without intruding into the autonomy of those colleges and universities which sponsor teacher education programs.

The Minnesota Music Educators Association; Pam Paulson, Program Associate of the Minnesota Center for Arts Education; Gloria Kiester, Chair of the Minnesota Council of Music Teacher Education; Ann Wagner, Chair of the Department of Dance at St. Olaf College; and Beth Kendall all strongly urged that a fine arts component be integrated into the program outcomes. As with the suggestion regarding storytelling, the Board responded that the broad scope of the rules is intended to include some element of fine arts awareness in the eventual teaching method. The Board seeks to avoid overly restricting the methods used to train effective teachers. Additionally, the Board notes that some of the comments are directed at the music teacher licensure rule, which is not at issue in this rulemaking proceeding.

Dawn Allan of the Minneapolis Public Schools Mentor Program suggested that the proposed rules should get existing classroom teachers more actively involved in teacher education. Allan also asserted that the proposed rules would result in fewer teachers of native american indian languages being licensed. She suggested that variances be granted to students in teacher education programs in appropriate cases. The Board treated this objection as being related to the partnership program, which is a separate initiative and not part of this rulemaking proceeding. No commentator has shown that promulgation of these proposed rules would adversely effect minority candidates for teaching licensure.

The Board has shown that Subpart 3 is needed and reasonable, as proposed, to establish standards that teacher education programs must assure in beginning teachers.

#### Proposed Rule 8700.2810, Subpart 4 -- Transition.

17. Proposed rule 8700.2810, subp. 4 received no critical comment at the hearing or in the post-hearing comments. This subpart allows for a five year transition period in which all approved teacher education institutions must submit annual reports showing progress in compliance with these rules. In addition, any interested person may suggest changes in the these rules during that five year period. Subpart 4 is needed and reasonable to permit colleges and universities enough time to modify their teacher training programs.

#### Proposed Rule 8700.7710 -- Teacher Education Program Evaluation.

18. Subpart 1 of proposed rule 8700.7710 sets forth the criteria to be used in evaluating each institution's teacher education program. Subpart 2 establishes a transition period to last until July 1, 1995, during which time the criteria from Subpart 1 will be phased in and

suggestions for changing the evaluation process will be considered. This rule part received no critical comment and the Board demonstrated that the proposed rule part is needed and reasonable.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

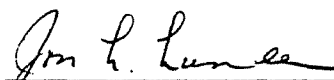
1. The Board gave proper notice of the hearing in this matter.
2. The Board has fulfilled the procedural requirements of Minn. Stat. §§ 14.14, and all other procedural requirements of law or rule.
3. The Board has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3 and 14.50 (i) and (ii).
4. The Board has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii).
5. The Board has made no additions or amendments to the proposed rules after publication of the proposed rules in the State Register and, as such, the proposed rules are not substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3, Minn. Rule 1400.1000, Subp. 1 and 1400.1100.
6. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.
7. A finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Board from further modification of the rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

It is hereby recommended that the proposed rules be adopted consistent with the Findings and Conclusions made above.

Dated: June 6<sup>th</sup>, 1990.



JON L. LUNDE  
Administrative Law Judge