

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF EDUCATION

In the Matter of the Proposed Rules of the  
Minnesota Department of Education  
Governing Secondary Career and  
Technical Education

**ORDER ON REVIEW OF  
RULES UNDER MINNESOTA  
STATUTES, SECTION 14.26**

The Minnesota Department of Education ("Department" or "agency") is seeking review and approval of the above-entitled rules ("proposed rules"), which were adopted by the agency without a hearing. Review and approval is governed by Minn. Stat. § 14.26. On December 2, 2008, the Office of Administrative Hearings received the documents that must be filed by the agency under Minn. Stat. § 14.26 and Minn. R. 1400.2310. The Department supplemented the record on December 10, 2008. Based upon a review of the written submissions and filings, and for the reasons set out in the Memorandum which follows,

**IT IS ORDERED:**

1. The Department has the statutory authority to adopt the proposed rules.
2. The proposed rules were adopted in compliance with all procedural requirements of Minn. Stat. Chap. 14 and Minn. R. Chap. 1400.
3. The proposed rules are needed and reasonable, with the exception of the failure to adopt as rules "the career and technical education program quality assessment rubrics" referred to in parts 3505.2500, 3505.2600 and 3505.4300. Accordingly, those rule parts are **DISAPPROVED** as not meeting the requirements of Minn. R. 1400.2100 D.
4. Pursuant to Minn. Stat. § 14.26, subd. 3(b), and Minn. R. 1400.2300, subp. 6, this Order and the proposed rules will be submitted to the Chief Administrative Law Judge for review.

Dated: December 17, 2008



STEVE M. MIHALCHICK  
Administrative Law Judge

## MEMORANDUM

Pursuant to Minn. Stat. § 14.26, the agency has submitted these rules to the Administrative Law Judge for a review as to legality. The rules adopted by the Office of Administrative Hearings<sup>1</sup> identify several types of circumstances under which a rule must be disapproved by the Administrative Law Judge or the Chief Administrative Law Judge. These circumstances include situations in which a rule was not adopted in compliance with procedural requirements, unless the judge finds that the error was harmless in nature and should be disregarded; the rule is not rationally related to the agency's objectives or the agency has not demonstrated the need for and reasonableness of the rule; the rule is substantially different than the rule as originally proposed and the agency did not comply with required procedures; the rule grants undue discretion to the agency; the rule is unconstitutional<sup>2</sup> or illegal; the rule improperly delegates the agency's powers to another entity; or the proposal does not fall within the statutory definition of a "rule."

### **Defects in Rules 3505.2500, 3505.2600 and 3505.4300**

The Administrative Law Judge finds that language in the proposed rules referring to "the career and technical education program quality assessment rubrics" as the standard used for approval of an instructional program, program components, and certain community-based education constitutes a defect because it does not comply with applicable law in violation of Minn. R. 1400.2100 D. That rule provides that the Administrative Law Judge must disapprove a proposed rule if, among other things, it grants the agency discretion beyond what is allowed by its enabling statute or other applicable law. In the proposed rules, the Department would have unbridled discretion to modify the rubrics, which are the standards for approving a program, at any time without any appropriate process.

In this rulemaking proceeding, the Department relies on the "career and technical education program quality assessment rubrics" to establish an approval standard in three separate rule parts:

---

<sup>1</sup> Minn. R. 1400.2100.

<sup>2</sup> To be constitutional, a rule must be sufficiently specific to provide fair warning of the type of conduct to which the rule applies. *Cullen v. Kentucky*, 407 U.S. 104, 110 (1972); *Thompson v. City of Minneapolis*, 300 N. W.2d 763, 768 (Minn. 1980).

### **Part 3505.2500 Instructional Program Approval**

The commissioner of education shall approve programs on the following basis. Approval shall be on the basis of a complete program as defined in parts 3505.2600 to 3505.4100 career and technical education program quality assessment rubrics.

### **Part 3505.2600 Program Components and Time Standards.**

All program components and learner outcomes for specific program areas as specified in parts 3505.2700 to 3505.4100 career and technical education program quality assessment rubrics must be addressed to qualify for approval; however, emphasis shall be at the discretion of the local education agency with guidance from the program advisory committee.

### **Part 3505.4300 Community-Based Education**

When a vocational career and technical program includes a segment in which students are placed on a paid or unpaid experience outside the vocational career and technical class or laboratory for more than 40 hours during the program, the local education agency shall meet the requirements for the employment related community-based education option of a program as stated in parts 3500.3500 and 3505.4400 to 3505.4700 career and technical education program quality assessment rubrics.

According to the Statement of Need and Reasonableness (SONAR), the Department established standards for state approval of career and technical education programs in 2001, following the 1993 legislature's repeal of specific rules for many of these education programs.<sup>3</sup> Those 2001 standards "were set into the Career and Technical Education Program Quality Assessment Rubrics and shared with practitioners throughout the state. The rubrics have been used as a monitored self-assessment tool for approving career and technical education programs since 2003."

Although the rubrics are available on the Department's website, nothing in the rule language formally adopts them as rule language or incorporates them by reference. Minnesota Statutes section 14.02 defines a "rule" as "every agency statement of general applicability and future effect . . . adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure."<sup>4</sup> The rubrics are an agency statement of general applicability and future effect, adopted to make specific the law administered by the Department. The Department is using the

<sup>3</sup> SONAR at page 34; see 1993 Minnesota Session Laws, Chapter 224, art. 12, § 39..

<sup>4</sup> *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100 (Minn. App. 1991) *rev. denied* (Minn. July 24, 1991).

rubrics to determine program approval which in turn will affect funding of career and technical education programs. In order for the Department to use the rubrics in this manner, it must adopt them as rules. It cannot continue to use unpromulgated rules for the purpose of approving career and technical education programs. The proposed language in parts 3505.2500, 3505.2600 and 3505.4300 referring to the career and technical education rubrics is defective because the rubrics themselves are not adopted rules and were not proposed for adoption as rules here.

The Administrative Law Judge recommends that the Department cure this defect by inserting into the body of the proposed rules the minimum standards for career and technical programs set forth in the rubrics available on the Department website as of December 2008. The Department should use essentially the same language setting forth the standards as it currently has displayed on its website. Incorporation of that language (with minor changes that the Department might deem necessary for purposes of clarity or grammatical accuracy) would not result in a finding of Substantial Change since the public is already on notice that the rubrics were proposed as the standards in the proposed rules. If the Department wishes to also include the higher standards set forth in the rubrics (emerging, quality and exemplary), it may include that language as examples of best practices or aspirational goals. Alternatively, the rule could include only the minimum standards but also refer to the Department's website for more information on the higher (but not mandatory) standards of the rubrics.

In addition to the new language described above, parts of rules 3505.2500, .2600 and .4300 referring to the rubrics must either be deleted or must refer instead to additional rule language which includes the language of the rubrics. These changes to the proposed rule would be needed and reasonable and would not be substantial changes from the rule as proposed.

### **Recommended Technical Changes**

Proposed rule 3505.1150 is a new rule which sets minimum standards for part of a career and technical education program to qualify for science, mathematics or arts credit when a district chooses to permit such credit. The SONAR explains that the impetus for this rule was the reaction of school districts to the 2007 legislative action allowing districts to grant the described credits. According to the SONAR, "districts have sought advice from the Department regarding how to implement this provision in the statute" which puts the decision regarding granting credit entirely in the discretion of individual districts.

Subpart 2 of the rule is titled "Guidelines for granting credit." The opening paragraph of the proposed subdivision states:

For the purposes of Minnesota Statutes, section 120B.024 paragraph (c), districts electing to offer science, mathematics, or arts credits for participation in career and technical education may consider granting credit when the following three criteria are met:

The Administrative Law Judge recommends two technical changes to this subpart. First, because the subpart does more than establish guidelines but actually sets minimum standards a course must meet in order to qualify for credit, the Administrative Law Judge recommends that the title be changed to "Minimum Standards for Granting Credit." Second, to further clarify that districts have the option to determine whether credit should be granted as long as the Department's minimum standards are met, the Administrative Law Judge recommends that the opening paragraph of subpart 2 be rewritten as follows:

If a district chooses to grant credit for a science, mathematics, or art credit for participation in career and technical education, pursuant to Minnesota Statutes, section 120B.024, paragraph (c), it may do so provided that the program for which the credit is offered meets the following criteria:

This change to the proposed rule would be needed and reasonable and would not be a substantial change from the rule as proposed.

### **Public Comments**

The Department received only one comment and request for hearing during the comment period following publication of the Dual Notice. Mr. Bruce Houck expressed concerns regarding the repeal of parts 3505.1000, subparts 37, 43 and 45. However, all three of these subparts are replaced with updated language – subpart 37 is replaced by subpart 31a and subparts 43 and 45 are replaced with subparts 4b and 4d. Part 3505.5000 does not eliminate the existence of the placement offices it describes. Instead, the rule now allows those staffing decisions to be made locally based on the legislature's elimination, effective in 2001, of state aid for regular secondary career and technical education.<sup>5</sup>

S.M.M.

---

<sup>5</sup> SONAR at page 39; see 1999 Minnesota Laws, Chap. 241, art. 3, § 5.