

July 2, 2026

VIA EMAIL ONLY

Corrie A. Oberg
Deputy General Counsel
Minnesota Department of Education
400 NE Stinson Blvd
Minneapolis, MN 55413
corrie.a.oberg@state.mn.us

**Re: *In the Matter of the Proposed Rules Relating to K-12 Academic Standards in Health, Minnesota Rules 3501*
CAH 65-9005-40585; Revisor ID R-4924**

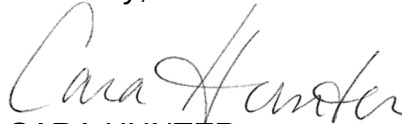
Dear Corrie A. Oberg:

Enclosed please find the Order of the Chief Administrative Law Judge on Review of Rules in the above-entitled matter, the Report of Administrative Law Judge issued by Judge Ann C. O'Reilly, and the official record. The Department may resubmit the rule to the Chief Administrative Law Judge for review after making modifications, request that the Chief Administrative Law Judge reconsider the disapproval, or withdraw the rule.

If the Department chooses to resubmit the rule to the Chief Administrative Law Judge for review after making modifications, or to request reconsideration, the Department must file the documents required by Minn. R. 1400.2240, subps. 4 and 5. If the Department chooses to withdraw the rule, the Department must submit a notice of withdrawal to the Chief Judge by a person authorized to withdraw the rules.

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,



CARA HUNTER
Legal Assistant

Enclosure

cc: Office of the Revisor of Statutes (report only)
Legislative Coordinating Commission (report only)

July 2, 2026

VIA EMAIL ONLY

Representative Jim Nash, Co-Chair
State and Local Government Finance and
Policy
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VIA EMAIL ONLY

Senator Tou Xiong, Chair
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Representative Ginny Klevorn, Co-Chair
State and Local Government Finance and
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**Re: In the Matter of the Proposed Permanent Rules Relating to
Academic Standards in Health, Minnesota Rules Chapter 3501
CAH 65-9005-40585; Revisor ID R-4924**

Dear Representative Nash, Representative Klevorn, and Senator Xiong:

Pursuant to Minn. Stat. § 14.26, the Court of Administrative Hearings is required to send to the legislative policy committees with primary jurisdiction over state governmental operations a copy of the statement of reasons for disapproval of agency rules. Enclosed please find the Order of the Chief Administrative Law Judge on Review of Rules and the Report of Administrative Law Judge issued by Judge Ann C. O'Reilly.

Under Minnesota law, the Department may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Administrative Law Judge reconsider the disapproval. If the Department does not wish

to follow the suggested actions of the Chief Administrative Law Judge to correct the defects found, the Department may follow the process outlined in Minn. Stat. § 14.15, subd. 4.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Moore", with a long horizontal flourish extending to the right.

WILLIAM MOORE

Rules Coordinator

Telephone: (651) 361-7893

Enclosure

cc: Corrie A. Oberg, Minnesota Department of Education

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules
Relating to K-12 Academic Standards in
Health, Minnesota Rules Chapter 3501

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

This matter came before the Chief Administrative Law Judge pursuant to Minn. Stat. § 14.15, subd. 4 (2024), and Minn. R. 1400.2240, subp. 4 (2025). These provisions require that the Chief Administrative Law Judge review an administrative law judge's disapproval of a proposed agency rule.

This rulemaking concerns rules proposed by the Minnesota Department of Education (Department or MDE) establishing statewide academic standards in health education for kindergarten through twelfth grade (K-12) under Minn. Stat. §§ 120B.018, subd. 6, .021, subd. 1 (2024), and 2024 Minn. Laws ch. 115, art. 2, §§ 1, 2.

Administrative Law Judge Ann C. O'Reilly issued a report on June 22, 2026, in which she disapproved the proposed rule for procedural and substantive defects. Judge O'Reilly determined that the Department failed to provide notice to legislators under Minn. Stat. § 14.116(b), (c) (2024), and failed to adequately address the probable cost of the proposed rules under Minn. Stat. § 14.131(2), (5) (2024). She determined that these defects were not harmless error under Minn. Stat. § 14.15, subd. 5 (2024). Judge O'Reilly further determined that the Department failed to meet its burden to establish that the proposed rule complied with Minn. R. 1400.2100 (2025). Specifically, Judge O'Reilly determined that: (1) the proposed rule and rulemaking process did not comply with the procedural requirements of law and rule; (2) the Department did not show that the rule was rationally related to the agency's objective or that the rule is needed and reasonable; (3) the rule exceeds, conflicts with, does not comply with, or grants the agency discretion beyond that allowed by its enabling statute or other applicable law; and (4) the rule is not a "rule" as defined by Minn. Stat. § 14.02, subd. 4 (2024), or by its own terms cannot have the force and effect of law.¹

Based upon Judge O'Reilly's Report and the record, and as explained in the Memorandum below, the Chief Administrative Law Judge concludes the following:

1. The Chief Administrative Law Judge **CONCURS** that the proposed rules must be disapproved because the Department failed to comply with the procedural

¹ Minn. R. 1400.2100(A), (B), (D), (G).

requirements for rulemaking by giving notice to members of the legislature, and further determines that this defect is not harmless error.

2. The Chief Judge agrees that the Department's discussion of costs under Minn. Stat. § 14.131(2), (5) was deficient, but respectfully **DISAGREES** with the Administrative Law Judge as to the nature of this error. The Chief Judge determines that this deficiency was not prejudicial and, based upon this record, constitutes harmless error.

3. The Chief Judge **CONCURS** with the Administrative Law Judge that the rule must be disapproved under Minn. R. 1400.2100(A), (B), (D) and (G).

Dated: July 2, 2026


JESSICA A. PALMER-DENIG
Chief Administrative Law Judge

MEMORANDUM

I. Notice to Legislators

Rulemaking is subject to procedural requirements under statute and rule.² An agency's failure to follow these procedural requirements may render a rule invalid.³ Agencies must provide adequate notice of the rulemaking to the public,⁴ and doing so promotes one of the purposes of the Minnesota Administrative Procedure Act (MAPA) – to increase public participation in the formulation of administrative rules.⁵

Among the notice requirements, Minn. Stat. § 14.116(b) requires that when an agency mails notice of its intent to adopt rules under Minn. Stat. §§ 14.14 or 14.22 (2024),⁶ it “must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.” Minn. Stat. § 14.116(c) contains an additional requirement when the agency mails the notice within two years of the

² *Minnesota Env't Sci. and Econ. Review Bd. v. Minnesota Pollution Control Agency*, 870 N.W.2d 97, 101 (Minn. Ct. App. 2015) (“Agency rulemaking is strictly controlled by statute and the statutory procedures must be followed in order to create a valid rule.”).

³ *Builders Ass'n of the Twin Cities v. Minn. Dep't of Labor and Industry*, 872 N.W.2d 263, 272 (Minn. Ct. App. 2015).

⁴ See Minn. Stat. § 14.131, .14, subds. 1, 1a, .22, subd. 1(a) (2024); *In re PERA Salary Determinations Affecting Retired and Active Employees of the City of Duluth*, 820 N.W.2d 563, 572 (Minn. Ct. App. 2012) (quoting *Swenson v. Emerson Elec. Co.*, 374 N.W.2d 690, 702 (Minn. 1985)).

⁵ Minn. Stat. § 14.001(5) (2024).

⁶ See Minn. Stat. §§ 14.14, subd. 1a(a), .22, subd. 2.

effective date of the legislation authorizing the agency to adopt the rules. When this standard applies, “the agency shall make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority.”

The Department issued a Dual Notice for the rulemaking in this case advising the public that it would adopt the proposed rules without a hearing unless 25 or more individuals requested a hearing during the initial comment period.⁷ The notice provided that such rulemaking hearings would be held on March 16 and 17, 2026.⁸ On December 15, 2025, the Department emailed a copy of the Dual Notice, its Statement of Need and Reasonableness (SONAR), and proposed rules to the chairs and ranking minority party members of the House Education Policy Committee, House Education Finance Committee, Senate Education Policy Committee, Senate Education Finance Committee, and to the Legislative Coordinating Commission.⁹ Because the notice was issued within two years after enactment of the legislation authorizing the Department to adopt the rules,¹⁰ the Department was also required to make “reasonable efforts” to notify the chief house and senate authors of the bill. On December 15, 2025, the Department provided the Dual Notice, SONAR, and proposed rules to only three of the ten legislators it needed to notify under Minn. Stat. § 14.116(c).¹¹

The Department subsequently rescheduled the hearing dates;¹² it published a Notice of Hearing in the *State Register* and provided notice to persons who had registered for notice on its rulemaking list and who were identified in its Additional Notice Plan.¹³ The Department did not provide notice of the rescheduled hearing dates to any of the legislators it was required to notify under Minn. Stat. § 14.116(b), (c), or to the Legislative Coordinating Commission.

Notice to legislators is an essential part of the rulemaking process. Agencies exercise only the powers granted to them by the legislature,¹⁴ and may engage in rulemaking only upon a legislative delegation of authority.¹⁵ Agencies exercise judgment and rely on their specialized expertise in formulating administrative rules,¹⁶ but the statutory requirement for notice to legislators recognizes that the agency does not operate entirely independent from the oversight function that the legislature plays in our divided system of government.

⁷ Ex. F (Dual Notice as published in *State Register*).

⁸ *Id.*

⁹ Ex. K (email to Legislators and Legislative Coordinating Commission).

¹⁰ 2024 Minn. Laws. ch. 115, art. 2, § 21.

¹¹ *Id.*; <https://www.revisor.mn.gov/bills/93/2024/0/HF/5237/?body=house> (last visited June 29, 2026).

¹² See Order on Review of Notice of Hearing under Minn. R. 1400.2080 (Mar. 3, 2026).

¹³ Ex. F.1 (Notice of Hearing as published in the *State Register*, but missing page 897); Ex. F.2 (Certificate of Mailing the Notice of Hearing to the Rulemaking Mailing List and Persons on the Additional Notice Plan).

¹⁴ *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

¹⁵ Minn. Stat. § 14.05, subd. 1 (2024); see also Minn. Stat. § 14.001(1) (2024) (stating that one of the purposes of MAPA is to “provide oversight of powers and duties delegated to administrative agencies”).

¹⁶ *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 169 N.W.2d 100, 103 (Minn. Ct. App. 1991).

Here, the Department failed to notify any legislators or the Legislative Coordinating Commission of the rescheduled hearing date. It also failed in its initial obligation to notify seven legislators of the original hearing dates, meaning that these legislators never received any notice regarding the rulemaking proceeding at any point. This failure to provide notice was not a single inadvertent error – it is a broad failure to comply with a procedural requirement directly related to the delegation of statutory authority.

The Chief Judge determines that the Department's failure to provide notice to legislators under Minn. Stat. § 14.116(b), (c) was prejudicial because it denied legislators an opportunity to participate meaningfully in this matter. Minn. R. 1400.2240, subp. 4, requires the chief judge to explain why a rule is disapproved and what changes or actions are necessary for approval. Here, the Department did not, and now cannot, cure this defect. The complete failure to notify any legislators of the rescheduled hearing date, or to notify some of them of the rulemaking entirely, is not harmless error under Minn. Stat. § 14.15, subd. 5. Further, this procedural defect means that the rules must be disapproved under Minn. R. 1400.2100(A).

II. Analysis of Costs under Minn. Stat. § 14.131(2), (5)

Pursuant to Minn. Stat. § 14.131(2), (5) an agency must make a “reasonable effort” to ascertain the probable costs to that agency or any other agency for implementation and enforcement of the proposed rules and “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 government units, businesses, or individuals.”¹⁷ Together, these provisions require the rulemaking agency to consider and advise the public as to the scope of the probable costs to state government and regulated parties.

Judge O'Reilly determined the Department failed to adequately describe the probable costs that it will bear in implementing and enforcing the proposed rule, and failed to make an effort to estimate the cost impact on school districts and charter schools, identified as local education agencies (LEAs), which will be required to develop curriculum and implement the new standards.¹⁸ The Administrative Law Judge concluded that the Department's cost analysis denied the public a meaningful opportunity to participate in the rulemaking process, was a prejudicial and not harmless error, and required disapproval of the rule.

The Chief Judge concurs with Judge O'Reilly that the cost analysis contains defects. Regarding the costs it will bear in implementing and enforcing the proposed rules, the Department discussed the costs it has incurred so far in formulating the rules, and then offered the following:

¹⁷ Minn. Stat. § 14.131(2), (5).

¹⁸ *Id.*

MDE will incur planned costs for providing training and technical assistance to support implementation of the proposed rules. Since there is not legislatively appropriated ongoing funding for a Health Specialist, MDE is exploring options. The level of implementation support MDE provides [to LEAs, including school districts] will depend, in part, on funding availability.¹⁹

The second and third statement in this summary are vague and ambiguous. Regarding the second sentence, it is unclear whether the Department anticipates staffing costs, what “options” it could be exploring, or what the costs associated with any options might be. The third sentence suggests that the Department’s costs for implementation will depend on how much money the legislature appropriates to it, but that is not a projection of costs. If this were sufficient, every SONAR could simply state that an agency’s costs will match its eventual funding. That kind of statement does not provide the public, and taxpayers, with a meaningful understanding of the costs of a rule before it is adopted.

Regarding the costs to identifiable categories of affected parties, the Department stated:

LEAs may face initial increased costs to implement the new rules, including for professional development, curriculum development, and instructional material review and adoption. However, LEAs typically anticipate and undertake a regular curriculum adoption cycle, so many of these costs would be borne regardless of the adoption into rule of the proposed standards. The department has generally allowed for a three to five-year implementation timeline, and the costs for adjusting curriculum will be spread out over the years.

As outlined by [Minnesota Management and Budget], and based on its definition of “local government”, because this rule primarily affects LEAs, there is no fiscal impact or fiscal benefit to units of local government. However, LEAs are likely to experience costs when implementing the new health standards, including for professional development, curriculum development, and instructional material review/adoption. These costs will vary by LEA, and in many cases will have been previously anticipated.²⁰

The Department’s statement regarding the implementation timeline is inaccurate in the context of this rulemaking. While it may have followed that timeline with regard to other statewide standards, under proposed rule Part 3501.1500, subp. 11, “[t]hese standards must be implemented by school districts by the beginning of the 2028-2029 school year.”²¹ Therefore, LEAs will not have a three to five-year window to adjust to the

¹⁹ Ex. D at 39 (SONAR).

²⁰ *Id.* at 40.

²¹ Ex. C (proposed rule).

costs they will incur. The inaccurate statement regarding the timeline for costs creates confusion about the probable costs to LEAs and is a defect.

A SONAR “must be sufficiently specific so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.”²² A deficient SONAR causes prejudice “when it does not adequately preview the agency’s intentions, evidence, and rationale so as to afford parties the opportunity to meaningfully participate in the rulemaking process.”²³ However, a procedural defect must be considered harmless error when it does not deprive any person or entity of an opportunity for meaningful participation.²⁴

The requirement that an agency analyze its own costs and those of impacted parties is not intended to be onerous. While some of the Department’s statements are conclusory, and the better practice would be to include more detail,²⁵ the Department did provide some information about the probable costs that it and LEAs will bear from the rollout of the new standards. The Chief Judge cannot determine that the Department’s discussion of costs under Minn. Stat. § 14.131(2), (5) was so deficient that it caused actual prejudice. Therefore, the Chief Judge determines that the defects constitute harmless errors.

In the future, the Department is encouraged to examine its discussion of costs to ensure that it is clear and accurate, and that relevant details are included in the SONAR.²⁶ The Minnesota Rulemaking Manual suggests that agencies request comments on the regulatory analysis, and that it may be particularly useful to solicit comments on the costs for compliance.²⁷ The Manual also suggests that if an agency uses an advisory committee, committee members could provide information that is helpful to an analysis of costs.²⁸ An agency may also supplement the regulatory analysis in the SONAR by including additional analysis of costs as part of its affirmative

²² Minn. R. 1400.2070, subp. 1 (2025).

²³ *Builders Ass’n of the Twin Cities v. Bd. of Elec.*, 965 N.W.2d 350, 360-61 (Minn. Ct. App. 2021).

²⁴ Minn. Stat. § 14.15, subd. 5.

²⁵ See *Water in Motion, Inc. v. Minn. Dep’t of Labor and Industry*, No. A16-0335, 2016 WL 7041978, *6 (Minn. Ct. App. Dec. 5, 2016); see also *Minn. League of Credit Unions v. Minn. Dep’t of Commerce*, 486 N.W.2d 399, 405-06 (Minn. 1992) (holding rule was properly adopted despite ambiguous statement the SONAR, where the agency offered additional reasoning at the hearing and no party was prejudiced).

²⁶ While administrative law judges are neutral and do not assist agencies in meeting the rulemaking requirements, early on in this proceeding Judge O’Reilly suggested that the Department examine its cost analysis. See Order on Review of Additional Notice Plan and Dual Notice under Minn. R. 1400.2060, .2080 at n.1 (Dec. 8, 2025) (“The Administrative Law Judge recommends that the Department review the draft SONAR with respect to the probable costs to the agency and any other agency (including local education agencies) and the probable costs of complying with the proposed rules, to ensure that the Department’s analysis is sufficiently robust.”)

²⁷ Minnesota Rulemaking Manual § 2.5.1 (May 2026).

²⁸ *Id.* at § 4.4.2 (“The agency must use reasonable methods to get the information required for the regulatory analysis. A broadly representative advisory committee is, in many cases, your best source of information for doing the regulatory analysis. If you decide to use an advisory committee, ask members to identify costs, benefits, parties affected, and other regulatory analysis factors.”).

presentation of facts at a hearing.²⁹ If an agency determines that a procedural defect may exist, the hearing process offers the agency an opportunity to cure that defect before it is too late.

III. Compliance with Minn. R. 1400.2100

The Administrative Law Judge's Report contains an extensive analysis determining that the proposed rules must be disapproved under Minn. R. 1400.2100. The Chief Judge concurs in that analysis.

Under Minn. Stat. § 14.02, subd. 4, agencies may adopt a "rule" "to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure." Rules are generally considered to be either legislative (promulgated under delegated powers to make substantive law) or interpretive (to make specific the law enforced or administered by the agency).³⁰ Properly promulgated rules have the force and effect of law.³¹

Because rules are legal standards binding an agency and regulated parties, rules must be "sufficiently specific to provide fair warning" of the conduct regulated under the rule.³² "A rule, like a statute, is void for vagueness if it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement."³³ A proposed rule must also be within the scope of the agency's delegated authority and offer enough guidance that the rule does not afford unbridled discretion to administrative officers.³⁴

The Department was directed to adopt "rigorous core academic standards in health" through rulemaking.³⁵ Under Minn. Stat. § 120B.021, subd. 2(b)(1) (2024), academic standards must be "clear, concise, objective, measurable, and grade-level appropriate." Even when restricted to the mandatory subject areas contained in proposed subpart 10,³⁶ academic standards that say: "The student will use functional health knowledge to enhance health and well-being," "The student will demonstrate interpersonal communication skills to enhance health and well-being," and "The student will demonstrate practices and behaviors to enhance health and well-being,"³⁷ are not "clear, concise, objective, measurable, and grade-level appropriate" standards. These standards do not comply with the legislature's directions and do not contain sufficient specificity to be enforceable rules.

²⁹ See Minn. Stat. § 14.14, subd. 2; *Builders Ass'n of the Twin Cities*, 965 N.W.2d at 361 (recognizing that evidence beyond the SONAR may be presented at a rulemaking hearing).

³⁰ *Minn. Transitions Charter Sch. v. Comm'r of Minn. Dep't of Educ.*, 844 N.W.2d 223, 233 (Minn. Ct. App. 2014).

³¹ Minn. Stat. § 14.38 (2024).

³² *Thompson v. City of Minneapolis*, 300 N.W.2d 763, (Minn. 1980) (quoting *Colten v. Kentucky*, 407 U.S. 104, 110 (1972)).

³³ *In re Charges of Unprofessional Conduct Against N.P.*, 361 N.W.2d 386, 394 (Minn. 1985).

³⁴ Minn. R. 1400.2100(D); *Lee v. Delmont*, 228 Minn. 101, 113, 36 N.W.2d 530, 538 (1949).

³⁵ Minn. Stat. § 120B.021, subd. 3(b) (2024).

³⁶ See Department's Response to Comments and Modified Proposed Rule (May 4, 2026).

³⁷ Proposed Rule 3501.1500, subps. 2, 5, 8.

The SONAR contains additional information defining terms that are undefined in the rule and discussing the knowledge and skills that the Department believes fall within these standards,³⁸ but the SONAR is not the rule. Similarly, the Department has developed a substantial array of supporting benchmarks,³⁹ to the point that many commenters addressed their substantive comments to the language of the benchmarks rather than the rule. But the benchmarks are also not rules, not within the scope of this rulemaking, expressly exempt from the rulemaking process, and not yet final.⁴⁰

The lack of specificity in the rules affords the Department discretion beyond that allowed by the governing statutes. The Department developed substantial learning objectives outside the rulemaking process in draft benchmarks. However, both the SONAR and draft benchmarks identify subject areas not reflected in the proposed rule, including “growth and development, safety, nutrition, physical activity, mental health, disease prevention, and healthy relationships.”⁴¹ The Department could have developed standards in these subject areas in its proposed rule under its authority to set “other expectations for learning identified through the standards development process.”⁴² It did not do so.

The Chief Judge agrees with Judge O’Reilly that the Department’s proposed rule language is so vague that it cannot properly constitute a rule, the proposed rules are not consistent with the legislature’s direction regarding the promulgation of statewide health standards, and they afford the agency discretion greater than that allowed by law. Based on this record, the Department has not shown that the rules it proposes, as written, are reasonable. The rules do not meet the standards in Minn. R. 1400.2100(A), (B), (D), and (G). When a rule does not meet these standards, it “must be disapproved.”⁴³

Under Minn. R. 1400.2240, subp. 4, the chief administrative law judge must advise the agency of actions that will correct the defects. The Court suggests that the Department revise the proposed rules to define essential terms like “functional health knowledge.” The Department should clearly articulate the subject matter areas in which students will be required to develop knowledge in order to “enhance health and well-being.” The Department may wish to look to the language it used in its other approved statewide standards, as Judge O’Reilly did, to ground the health standards in similar specificity. The Department may also look to the details in the SONAR and benchmarks to find more specific language to incorporate into the rule.

³⁸ See, e.g., Ex. D at 24-27.

³⁹ Minn. Stat. § 120B.018, subd. 3 (2024) (“‘Benchmark’ means specific knowledge or skill that a student must master to complete part of an academic standard by the end of the grade level or grade band.”).

⁴⁰ Minn. Stat. § 120B.023, subd. 1(d) (2024).

⁴¹ Ex. D at 33; Ex. 1 at 6 (Draft #3).

⁴² 2024 Minn. Laws. ch. 115, art. 2, § 21, subd. 3(5).

⁴³ Minn. R. 1400.2100.

IV. Conclusion

The Chief Judge appreciates that the Department and many members of the public have expended substantial time in the development of the Department's proposed rules or in offering comment to fully develop the rulemaking record. The Chief Judge is mindful that disapproval of a rule is a significant and consequential event, and she does not take this step lightly. Yet, the failure to provide notice to legislators under Minn. Stat. § 14.116(b), (c), is a prejudicial procedural defect that deprived members of the legislature, including those who authored the provisions delegating rulemaking authority, of an opportunity to participate meaningfully in the rulemaking process. This defect impacts the entire rulemaking. Further, the Department has not shown that proposed subparts 2 through 10 comply with the standards in Minn. R. 1400.2100. The remaining rule subparts cannot stand on their own. Therefore, the Chief Judge **CONCURS** with the Administrative Law Judge and **DISAPPROVES** the rule.

Pursuant to Minn. Stat. § 14.16, subd. 2 (2024), the agency must either withdraw the rule or make the modifications required. In this case, because the Department cannot correct the procedural defect, the Chief Judge recommends the Department withdraw this proposed rule in its entirety.

J. P. D.

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Rules
Relating to K-12 Academic Standards in
Health, Minnesota Rules 3501

**REPORT OF
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Ann C. O'Reilly for rulemaking public hearings on April 13 and 14, 2026. The public hearings were conducted via interactive video conference and telephone connection using WebEx technology.

The Minnesota Department of Education (Department or MDE) proposes rules establishing statewide academic standards in health education for kindergarten through twelfth grade (K-12) in Minnesota public schools.¹

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act (MAPA).² The purpose of this process is to ensure that state agencies meet all requirements established by law for adopting rules.

The hearing process permits agency representatives and the Administrative Law Judge to hear public comments regarding the impact of the proposed rules and what changes might be appropriate. Further, the hearing process provides the public an opportunity to review, discuss, and critique the proposed rules.

The hearing was open to all members of the public who wished to attend. The proceedings continued until all interested persons, groups, or associations had an opportunity to be heard concerning the proposed rules. Sixteen members of the public made statements or asked questions during the hearing,³ and 139 written comments were received during the comment period.⁴

At the close of the hearing, the Administrative Law Judge kept the rulemaking record open for another 20 calendar days, until May 4, 2026, to permit interested persons and the Department to submit written comments. Following the initial comment period, the hearing record was open an additional five business days to permit interested parties and the Department an opportunity to reply to earlier-submitted comments.⁵ The hearing record closed on May 11, 2026.

¹ Exhibit (Ex.) D (Statement of Need and Reasonableness (SONAR)).

² See Minn. Stat. §§ 14.131-.20 (2024).

³ See Hearing Transcripts (Hrg. Tr.) Volumes I and II (Vol. I and Vol. II).

⁴ See Ex. I (pre-hearing comments) and eComments PDF Reports (post-hearing comments).

⁵ See Minn. Stat. § 14.15, subd. 1 (2024).

On June 4, 2026, the Chief Administrative Law Judge extended the due date for the Report to June 22, 2026, pursuant to Minn. Stat. § 14.15, subd. 2 (2024), due to the complexity of issues addressed below.⁶

SUMMARY OF CONCLUSIONS

The Administrative Law Judge concludes that the Department has failed to comply with all procedural requirements of rule and law. Specifically, the Department has failed to comply with Minn. Stat. §§ 14.116(b) and (c) and 14.131(2) and (5). These procedural defects are not harmless under Minn. Stat. § 14.15, subd. 5.

In addition, while the Department has broad legal authority to adopt rules establishing statewide academic standards in health education, and although some rules are needed based upon the 2024 legislative directive to the Department: (1) the record does not demonstrate the reasonableness of the proposed rule; (2) the Department has failed to establish that the rule is rationally related to the stated goals; (3) the rule does not comply with its enabling legislation and grants the agency discretion beyond that which is allowed by law; and (4) the rule contains subparts (2 through 9) that cannot, by their own terms, have the force and effect of law.

The Administrative Law Judge, therefore, **DISPPROVES** the proposed rule, as modified by the Department.

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

FINDINGS OF FACT

I. Background of the Proposed Rules

A. Removal of Health Standards from Local Control

1. Minn. Stat. §§ 120B.018, subd. 6 and 120B.021, subd. 1 (2024) require that certain core academic subjects be taught in Minnesota public schools, including language arts, mathematics, science, social studies, physical education, health, and arts.

2. Prior to 2024, only language arts, mathematics, science, social studies, physical education, and art were required to follow statewide academic standards established by the Commissioner of the Minnesota Department of Education (Commissioner).⁷ Health education, however, was left to “locally adopted” standards, established by individual school districts in Minnesota.⁸

3. In 2024, the Minnesota Legislature amended Minn. Stat. §§ 120B.018, subd. 6, and 120B.021, subd. 1.⁹ The amendments require that health, as a core

⁶ Order Granting Extension (Jun. 4, 2026).

⁷ Minn. Stat. §§ 120B.018, subd. 6, .021, subds. 1, 3 (2022).

⁸ *Id.*

⁹ 2024 Minn. Laws ch. 115, art. 2, §§ 1, 2.

academic subject, be dictated by statewide standards, thereby taking health education standards out of local school district control.¹⁰

4. To that end, the legislature authorized the Commissioner to adopt administrative rules establishing and implementing “statewide rigorous core academic standards” for health education.¹¹ In addition, the legislature appropriated \$627,000 for the “rulemaking and administrative costs” to promulgate the health education standards.¹²

B. Health Standards Review Committee

5. Pursuant to the legislature’s directive, the Department began work on drafting the health standards rules in the fall of 2024.¹³ The Commissioner first solicited applications from members of the public who had an interest in the formulation of the rules to be part of a Health Standards Review Committee (Committee).¹⁴

6. Minn. Stat. § 120B.021, subd. 2 (2024), requires that the Commissioner consider advice from “at least the following stakeholders in developing statewide rigorous core academic standards” in health:¹⁵

- (1) parents of school-age children and members of the public throughout the state;
- (2) teachers throughout the state currently licensed and providing instruction in language arts, mathematics, science, social studies, health, or the arts and licensed elementary and secondary school principals throughout the state currently administering a school site;
- (3) currently serving members of local school boards and charter school boards throughout the state;
- (4) faculty teaching core subjects at postsecondary institutions in Minnesota;
- (5) representatives of the Minnesota business community;
- (6) representatives from the Tribal Nations Education Committee and Tribal Nations and communities in Minnesota, including both Anishinaabe and Dakota; and
- (7) current students, with input from the Minnesota Youth Council.

¹⁰ Minn. Stat. §§ 120B.018, subd. 6 and 120B.021, subd. 1.

¹¹ 2024 Minn. Laws ch. 115, art. 2, § 4.

¹² 2024 Minn. Laws. ch. 115, art. 2, § 22, subd. 4.

¹³ Ex. D at 10.

¹⁴ *Id.*

¹⁵ Minn. Stat. § 120B.021, subd. 2 (2024).

7. The Department received 52 applications from adults and eight applications from students to be part of the Committee.¹⁶

8. As required by statute,¹⁷ the Department consulted with a small group of representatives from the Minnesota Department of Health (MDH) and the Department of Human Services (DHS), but did not include those agency representatives in the Committee applicant pool.¹⁸ The Department also made a request to the Tribal Nations Education Committee (TNEC) for its recommendation on individuals to appoint to the Committee.¹⁹

9. From the applicant pool, and using the selection criteria contained in Minn. Stat. § 120B.021, subd. 2, the Commissioner appointed 36 people to the Committee – 33 adults (two of which were selected by the TNEC) and three high school students.²⁰

10. Because the Committee included both adults and students, the Department subdivided the Committee into an Adult Health Standards Committee (Adult Committee) and a Student Health Standards Committee (Student Committee).²¹

11. To guide the Adult Committee's work, the Department developed a document entitled "2024-25 Adult Health Standards Committee's Guiding Assumptions" (Adult Guiding Assumptions).²² The Department developed a separate document for the Student Committee, entitled "2024-25 Student Health Standards Committee's Guiding Assumptions" (Student Guiding Assumptions).²³

12. Both sets of Guiding Assumptions (collectively, Guiding Assumptions) provide that the Committee was responsible for drafting proposed academic standards in health, as well as the corresponding benchmarks, based on input and feedback from various sources.²⁴

13. The Guiding Assumptions:

- directed the Committee to study "exemplary standards and benchmarks from national organizations, other states, and Local Education Authorities";²⁵
- required that the standards "be grounded in current research";

¹⁶ Ex. D at 10.

¹⁷ 2024 Minn. Laws ch. 115, art. 2, § 21.

¹⁸ Ex. D at 10.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 8.

²² Ex. 4.

²³ Ex. 5.

²⁴ Exs. 4, 5.

²⁵ Exs. 4, 5.

- provided that the National Consensus for School Health Education (NCSHE)²⁶ standards and the Society of Health and Physical Educators (SHAPE) America's National Health Education Standards be used in drafting the standards.²⁷

14. For its end product, the Commissioner directed the Committee to create a minimum of three drafts during the process: (1) a first draft containing the grade level standards (i.e., the rules); (2) a second draft containing both the grade-level standards (rules) and benchmarks (the “specific knowledge or skill that a student must master to complete part of an academic standard”)²⁸; and (3) a comprehensive third draft, including both standards and benchmarks.²⁹ While input from the individuals or groups delineated in Minn. Stat. § 120B.021, subd. 2 was required, the Commissioner, not the Committee, maintains final authority over the standards and, particularly, the benchmarks ultimately adopted.³⁰

C. Academic Standards and Benchmarks

15. “Academic standard” is defined in statute as “a summary description of student learning in a required content area.”³¹ “Required academic standard” is defined as “a statewide adopted expectation for student learning in the content areas of language arts, mathematics, science, social studies, physical education, health, and the arts.”³² In contrast, “benchmark” is defined as “specific knowledge or skill that a student must master to complete part of an academic standard by the end of the grade level or grade band.”³³

16. In 2024, the legislature authorized the Commissioner to establish statewide academic standards for health education through the formal rulemaking process set forth in the Minnesota Administrative Procedure Act (MAPA) and related rules, Minn. Stat. ch. 14.001 - .47 (2024) and Minn. R. 1400.2000 - .2570 (2025).³⁴

17. Under Minn. Stat. § 120B.023, subd. 1(a) (2024), the Commissioner “must supplement required state academic standards with grade-level benchmarks.”

18. The formulation of benchmarks, however, is not subject to the rulemaking process.³⁵ The legislature has explicitly exempted benchmarks from the rulemaking

²⁶ NCSHE is a collaborative of nongovernmental health organizations, including the American School Health Association, Eta Sigma Gamma, the Foundation for the Advancement of Health Education, the National Commission for Health Education Credentialing, the Society for Public Health Education, and the Society of State Leaders of Health and Physical Education. See <https://www.schoolhealtheducation.org/standards/>.

²⁷ Ex. D at 9.

²⁸ Minn. Stat. § 120B.018, subd. 3 (2024).

²⁹ Ex. D at 9. See *also* Exs. 4, 5.

³⁰ See Minn. Stat. § 120B.021, .023 (2024).

³¹ Minn. Stat. § 120B.018, subd. 2 (2024).

³² *Id.*, subd. 6.

³³ *Id.*, subd. 3.

³⁴ 2024 Minn. Laws ch. 115, art. 2, §§ 1, 2. (amending Minn. Stat. §§ 120B.018, subd. 6, and 120B.021, subd. 1 to include health in statewide standards).

³⁵ Minn. Stat. § 120B.023, subd. 1(d) (“The benchmarks are not subject to chapter 14 and section 14.386 does not apply.”). In other words, the benchmarks are not “exempt rules” under Minn. Stat. § 14.386.

process³⁶ and granted the Commissioner full discretion over the initial creation of benchmarks.³⁷ This is important because benchmarks establish the specific knowledge or skills required at each grade level or “grade band” (several grades in one, such as K-3, or 6-8) to satisfactorily complete the academic standard by graduation from high school.³⁸ Put simply, the academic standards are the knowledge and skills students are expected to obtain by graduation; benchmarks are the specific measures and assessments for each grade level or grade grouping.

19. Unlike academic standards, which must be vetted through the formal rulemaking process (which includes public notice, opportunity for public comment, and judicial review), benchmarks become automatically effective upon publication by the Commissioner in the *State Register* and public availability.³⁹ Consequently, there is no formal process for public comment or legal review of benchmarks prior to their implementation.

20. Once established and published, benchmarks are final and effective.⁴⁰ The Commissioner may later change the benchmarks, but only with specific legislative authorization and after completing a review under Minn. Stat. § 120B.021, subd. 4 (the ten-year review cycle for academic standards and benchmarks).⁴¹

21. With respect to the academic standards for health and their related benchmarks (which are currently being formulated by the Commissioner), the first review after adoption is scheduled to occur in the 2034-2035 academic year.⁴² Thus, the benchmarks that the Commissioner is now creating to supplement the health standards, will be effective upon publication (after approval of the health standards rule) and will not be subject to review for approximately eight or more years.

D. Legislative Requirements for the Health Standards

22. Minnesota law currently requires that certain subject matters related to health be taught in public schools. These subjects include:

- a one-time cardiopulmonary resuscitation (CPR) and automatic external defibrillator instruction in grades 7 through 12;⁴³

Exempt rules are required to undergo a legal review by an administrative law judge prior to becoming effective. See Minn. Stat. § 14.386.

³⁶ Minn. Stat. § 120B.023, subd. 1(d).

³⁷ Minn. Stat. § 120B.023, subd. 1(a), (c) (“Once established, the commissioner may change the benchmarks only with specific legislative authorization and after completing a review under section 120B.021, subdivision 4.”).

³⁸ Minn. Stat. §§ 120B.018, subd. 3; 120B.023, subd. 1(a) (“Schools must offer and students must achieve all benchmarks for an academic standard to satisfactorily complete that state standard.”); 120B.023, subd. 1(b) (“The commissioner must use benchmarks in developing career and college readiness assessments under section 120B.307.”).

³⁹ Minn. Stat. § 120B.023, subd. 1(b).

⁴⁰ *Id.*, subd. 1(b), (c).

⁴¹ *Id.*, subd. 1(c).

⁴² Minn. Stat. § 120B.021, subd. 4(h).

⁴³ Minn. Stat. § 120B.236 (2024).

- vaping prevention instruction at least once to students in grades 6 through 8 (and “strongly encouraged” to provide evidence-based vaping prevention instruction for students in grades 9 through 12);⁴⁴
- cannabis and substance use education (including fentanyl use), for middle and high school students (grades 6 through 12);⁴⁵
- a program to prevent and reduce the risk of sexually transmitted infections (STIs) and sexually transmitted diseases (STDs), including human immune deficiency virus (HIV) and human papilloma virus (HPV);⁴⁶ and
- mental health instruction for students in grades 4 through 12, that includes prevention of suicide or self-harm and encompasses the mental health components of the National Education Standards and benchmarks developed by the Department's quality teaching network in health and best practices in mental health education.⁴⁷

23. As part of the 2024 law changes (i.e., the enabling legislation), the legislature mandated that the Commissioner include all of the subject areas listed above in the health standards.⁴⁸ For ease of reference, these five subject areas will be referred to as the Required Subject Areas.

24. Minnesota statutes also provide that certain other subject matters “may” be taught by school districts. These optional (or, in some cases, recommended) subject areas include:

- child sexual abuse prevention instruction, including age-appropriate instruction on recognizing sexual abuse and assault, boundary violations, and ways offenders groom or desensitize victims, as well as strategies to promote disclosure, reduce self-blame, and mobilize bystanders;⁴⁹
- violence prevention programs for students in kindergarten through 12th grade;⁵⁰

⁴⁴ Minn. Stat. § 120B.238, subd. 3 (2024).

⁴⁵ Minn. Stat. § 120B.215 (2024). (Subdivision 3 expressly allows a parent or adult student to opt out of instruction provided under the statute with no academic or other penalty, and requires that the school district inform parents and adult students of the right to opt out of such instruction.)

⁴⁶ Minn. Stat. § 121A.23 (2024). Pursuant to this statute, the program *must* include “a comprehensive, technically accurate, and updated curriculum that includes helping students to abstain from sexual activity until marriage” and “involvement of parents”. Minn. Stat. § 121A.23, subd. 1(2), (5) (emphasis added).

⁴⁷ Minn. Stat. § 120B.21 (2024) (this is a requirement for all school districts starting in the 2026-2027 school year).

⁴⁸ 2024 Minn. Laws ch. 115, art. 2, § 21.

⁴⁹ Minn. Stat. §§ 120B.021, subd. 1(c), 120B.234 (2024).

⁵⁰ Minn. Stat. § 120B.22 (2024). The programs are “encouraged” to include, among other things: (1) a comprehensive, accurate, and age appropriate curriculum on violence prevention, nonviolent conflict resolution, sexual, racial, and cultural harassment, self-protection, and student hazing that promotes

- character development education that includes, but is not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, and resourcefulness;⁵¹ and
- developmentally appropriate programmatic instruction to help students: (1) identify, prevent, and reduce bullying and other prohibited conduct⁵²; (2) value diversity in school and society; (3) develop and improve students' knowledge and skills for solving problems, managing conflict, engaging in civil discourse, and recognizing, responding to, and reporting bullying and “prohibited conduct”.⁵³

For ease of reference, these four subject areas shall be referred to as the Optional Subject Areas.

25. The 2024 enabling legislation authorized the Commissioner to include into the statewide health standards, the four “other health-related subject areas” listed above (i.e., the Optional Subject Areas).⁵⁴

26. And finally, the enabling legislation authorized the Commissioner to include into the statewide health standards “other expectations for learning identified through the standards development process.”⁵⁵ These “other expectations for learning” are referred to herein as Discretionary Subject Areas – subject areas left wholly to the Department’s discretion to include in the standards.

27. Pursuant to Minn. Stat. § 120B.021, subd. 4(a), (j), and (k) (2024), when drafting or revising academic standards and related benchmarks, the Commissioner must also:

- “examine the alignment of each required academic standard and related benchmark with the knowledge and skills students need for career and college readiness and advanced work in the particular subject area”;

equality, respect, understanding, effective communication, individual responsibility, thoughtful decision making, positive conflict resolution, useful coping skills, critical thinking, listening and watching skills, and personal safety; and (2) planning materials, guidelines, and other accurate information on preventing physical and emotional violence, identifying and reducing the incidence of sexual, racial, and cultural harassment, and reducing child abuse, including physical abuse, and neglect; and (3) parental involvement. Minn. Stat. § 120B.22, subd. 1(b)(1), (2), (4).

⁵¹ Minn. Stat. § 120B.232 (2024).

⁵² “Prohibited conduct” is defined as “bullying or cyberbullying as defined under this subdivision or retaliation for asserting, alleging, reporting, or providing information about such conduct or knowingly making a false report about bullying.” Minn. Stat. § 121A.031, subd. 2(h) (2024).

⁵³ *Id.*, subd. 5.

⁵⁴ 2024 Minn. Laws ch. 115, art. 2, § 21.

⁵⁵ *Id.*

- “include the contributions of Minnesota American Indian Tribes and communities, including urban Indigenous communities”;
- “embed Indigenous education for all students consistent with recommendations from Tribal Nations and urban Indigenous communities in Minnesota regarding the contributions of American Indian Tribes and communities”, including but not limited to, “American Indian experiences in Minnesota, Tribal histories, Indigenous languages, sovereignty issues, cultures, treaty rights, governments, socioeconomic experiences, contemporary issues, and current events”;
- “embed technology and information literacy standards consistent with recommendations from school media specialists into the state’s academic standards and graduation requirements”; and
- “embed ethnic studies as related to the academic standards during the review and revision of the required academic standards”.

28. These requirements apply to all core academic standards (such as math, science, language arts, etc.).⁵⁶

29. Until the rules implementing the statewide health standards are adopted and are “required to be implemented in the classroom,” the locally developed academic standards in health continue to apply.⁵⁷

E. Drafts of Standards and Benchmarks

30. The Committee met in person ten times between January and August 2025.⁵⁸ The Committee reviewed foundational research, analyzed public feedback, and worked in grade-band subcommittees, as well as topic-specific committees, to draft and refine the standards and benchmarks.⁵⁹

31. The Committee began by drafting a statement of Career, College, and Community Readiness (CCCR), establishing an organizational structure for the standards and benchmarks, and identifying eight “anchor standards.”⁶⁰ According to the Committee’s first draft of the standards, the eight “anchor standards” “reflect the knowledge and skills students need for graduation to be career, college, and community ready.”⁶¹ The eight “anchor standards” include:⁶²

⁵⁶ Minn. Stat. § 120B.021, subd. 4(a), (j), and (k).

⁵⁷ Minn. Stat. § 120B.018, subd. 6; 120B.021, subd. 1(e) (2024).

⁵⁸ Ex. D at 10.

⁵⁹ *Id.*

⁶⁰ *Id.* at 11.

⁶¹ Ex. 3 (Draft #1).

⁶² *Id.*

Standard 1: Use functional health information to enhance health and wellbeing of self and others.

Standard 2: Analyze influences that affect health and wellbeing of self and others.

Standard 3: Access valid and reliable information, products, and services to enhance health and wellbeing of self and others.

Standard 4: Demonstrate interpersonal communication skills to enhance health and wellbeing of self and others.

Standard 5: Demonstrate a decision-making process to enhance health and wellbeing of self and others.

Standard 6: Demonstrate a goal-setting process to enhance health and wellbeing of self and others.

Standard 7: Apply practices and behaviors to enhance health and wellbeing of self and others.

Standard 8: Promote health and wellbeing of self and others.

32. The first draft of the CCCR and a first draft of the anchor standards (Draft #1) were made available for public review on the Department's website in March 2025.⁶³ The Department opened an online survey for comments on the drafts from March 19 to April 9, 2025.⁶⁴ The Department received 462 responses to that survey.⁶⁵

33. Using the 31 comments received during the Request for Comments period, the 462 responses received on the first draft of the CCCR and standards (Draft #1), and the Committee's research results, the Committee prepared a second draft of the standards, which also included benchmarks organized in grade-levels and grade bands (Draft #2).⁶⁶ The anchor standards were the same as in Draft #1, but this time, the Committee included its first draft of benchmarks.⁶⁷

34. Draft #2 contained over 600 benchmarks, comprising 59 pages.⁶⁸ The benchmarks were separated into grades (kindergarten, 1st, 2nd, 3rd, 4th, 5th) and grade bands (6th – 8th, and 9th – 12th); subject matter “strands,” and anchor standards.⁶⁹ For example:⁷⁰

⁶³ Ex. D at 11.

⁶⁴ See Ex. 3 (Draft #1).

⁶⁵ Ex. D at 11.

⁶⁶ *Id.* at 11; Ex. 2 (Draft #2).

⁶⁷ Ex. 2 (Draft #2).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.* at 23.

Grade	Strand	Anchor Standard	Code ⁷¹	Benchmark
3	Sexual Health	Standard 1 – Use functional health information to enhance health and wellbeing of self and others	3.4.1.02	Describe internal and external reproductive body parts using medically accurate terms in a gender-neutral way.

35. The “strands” represent the subject area within the general subject of health for study. There were seven “strands” in Draft #2: food and nutrition (K-12); mental and emotional health (K-12); personal health and wellness (K-12); sexual health (K-12); substance use and misuse prevention (K-12); violence prevention (K-12); and basic emergency response (K-12).⁷² These “strands” generally related to the Required Subject Areas, Optional Subject Areas, and Discretionary Subject Areas the legislature authorized the Commissioner to include in the statewide standards/rules.⁷³

36. The “anchor standards” reflect the general type of skills the Commissioner determined should be applied to the “strands” (i.e., substantive subject areas): functional health knowledge; analyze influences; access valid and reliable information; communication skills; decision making; goal setting; practices and behaviors; and promote health, safety, and well-being.⁷⁴

37. Draft #2 was made available for public review on the Department’s website in June 2025.⁷⁵ The Department opened an online survey for comments on Draft #2 from June 16 to July 18, 2025.⁷⁶ The Department also held feedback sessions with the Minnesota Youth Council, pediatricians, and other “targeted groups” in July 2025.⁷⁷ The Department received more than 8,000 comments on Draft #2.⁷⁸

38. Substantial refinements were made to the benchmarks and a third Committee draft was presented to the Commissioner for approval.⁷⁹

39. The academic “anchor standards” were published as the Department’s proposed rule on December 15, 2025, as set forth below.⁸⁰

⁷¹ “Code” combines the grade level, strand number, anchor standard number, and benchmark number for that grade. Ex. 2 at 11.

⁷² Ex. 2 at 8.

⁷³ 2024 Minn. Laws ch. 115, art.2, § 21.

⁷⁴ Ex. 2 at 8-11.

⁷⁵ Ex. D at 11.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* The 8,000 comments the Department received on Draft #2 were not offered as exhibits in the rulemaking record.

⁷⁹ Ex. D at 11, 19-22.

⁸⁰ Ex. F.

40. Around the same time that the Department published the proposed rule, the Department released the “Commissioner’s Approved” draft (Draft #3), which contains an explanation of the anchor standards and the revised benchmarks.⁸¹

41. Draft #3 reduced the number of benchmarks to approximately 266.⁸² The revised benchmarks are organized in the same format and groupings as Draft #2.⁸³ The “strands” changed slightly to the following seven subject areas: food and nutrition (K-12); human growth and development (K-5) and human growth and development and sexual health (6-12); mental and emotional health (K-12); personal health and wellness (K-12); personal safety and violence prevention (K-12); substance use awareness and prevention (6-12); and “skill standards 2-8”, which can be locally determined where to apply within strands 1 through 6.⁸⁴

42. According to the Department, once the proposed rule is approved, the Commissioner will finalize the benchmarks and publish them pursuant to Minn. Stat. § 120B.023, subd. 1(b).⁸⁵

43. Given the broad authority to establish academic benchmarks outside of the rulemaking and legislative process, as set forth in Minn. Stat. § 120B.023,⁸⁶ the Commissioner has the authority to change the benchmarks any time prior to publication. Therefore, the Commissioner’s Approved Draft (Draft #3) may not be the benchmarks that the Commissioner ultimately implements. There is no legal requirement for public input or Committee approval of the final benchmarks.

II. Rulemaking Authority

44. In the 2024 enabling bill, the Minnesota Legislature authorized the Commissioner to establish academic standards for health education through the formal rulemaking process set forth in MAPA.⁸⁷ The enabling legislation, found in 2024 Minn. Laws ch. 115, art. 2, §§ 2-4, 6, and 21, expressly provides that “the commissioner *must* adopt statewide rules for implementing statewide rigorous core academic standards in health.”⁸⁸

45. As guidance for the rulemaking, the enabling legislation provides that the Commissioner:⁸⁹

⁸¹ Ex. 1 (Draft #3).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.* at 6.

⁸⁵ Hrg. Tr. Vol II. at 167-168.

⁸⁶ Minn. Stat. § 120B.023, subd. 1(d) (“The “benchmarks are not subject to chapter 14 and section 14.386 [exempt rulemaking] does not apply.”)

⁸⁷ 2024 Minn. Laws ch. 115, art. 2, §§ 2-5. (amending Minn. Stat. §§ 120B.018, subd. 6 and 120B.021, subd. 1 to include health in statewide standards).

⁸⁸ Emphasis added.

⁸⁹ 2024 Minn. Laws ch. 115, art. 2, § 21 (emphasis added).

- “*must* begin the rulemaking process to adopt statewide academic standards in health in accordance with Minnesota Statutes, chapter 14 and section 120B.021”;
- “*must* consult with the commissioner of health and the commissioner of human services in developing the proposed rules”;
- “*must* include at least the expectations for student learning listed in subdivision 2” of the legislation (the Required Subject Areas);
- “*may* include the expectations in subdivision 3” of the enabling legislation (the Optional Subject Areas”), and
- *may* include “other expectations for learning identified through the standards development process” (the Discretionary Subject Areas).

46. The Required Subject Areas that the legislature directed the Commissioner to include in the statewide health education standards are: CPR, vaping awareness/prevention, cannabis and substance use education, STI/STD education, and mental health education.⁹⁰

47. The Optional Subject Areas that legislature authorized the Commissioner to include in the health education standards are: sexual abuse prevention; violence prevention; character development; and safe schools/anti-bullying education.⁹¹

48. And finally, the Discretionary Subject Areas that the legislature authorized the Commissioner to include in the health education standards are the “other expectations for learning identified through the standards development process.”⁹²

49. The Administrative Law Judge finds that the Commissioner has the legal authority to adopt, by rule, statewide academic standards in health, including all of the Required Subject Areas, Optional Subject Areas, and Discretionary Subject Areas set forth above.

III. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400

A. Request for Comments

50. Minn. Stat. § 14.101 (2024), requires that an agency, at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing, solicit comments from the public on the subject matter of a proposed rulemaking. Such notice must be published in the *State Register*.⁹³

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Minn. Stat. § 14.101.

51. On February 3, 2025, the Department published in the *State Register* a Request for Comments seeking comments on its proposed development of rules governing statewide academic standards in health.⁹⁴

52. The Request for Comments allowed members of the public to submit comments from February 3 to April 4, 2025.⁹⁵

53. The Request for Comments was published at least 60 days prior to the publication of the Notice of Intent to Adopt Rules, as discussed below.

54. Thirty-one (31) people or entities submitted comments on the proposed rule during the initial request for comment period.⁹⁶

55. The Administrative Law Judge finds that the Department complied with the requirements set forth in Minn. Stat. § 14.101.

B. Publication of Notice of Hearing

56. Minn. Stat. § 14.14, subd 1a (2024), and Minn. R. 1400.2080, subp. 6 (2025), require that an agency publish in the *State Register* a notice of intent to adopt rules with or without a hearing (dual notice) at least 30 days prior to the date of hearing and at least 30 days prior to the end of the comment period.

57. An agency may request approval of its dual notice or notice of hearing by an administrative law judge prior to service.⁹⁷

58. On November 10, 2025, the Department requested approval of its Additional Notice Plan and Dual Notice of Intent to Adopt Rules With or Without a Hearing (Dual Notice).⁹⁸ The Department's filing contained only its draft Dual Notice and a copy of the proposed rules.⁹⁹ The filing did not include the Statement of Need and Reasonableness (SONAR) or the Additional Notice Plan, as required by Minn. R. 1400.2060, rendering the filing incomplete.¹⁰⁰

59. When advised of its error, the Department refiled the draft Dual Notice, proposed rules, draft SONAR (including its Additional Notice Plan), and an explanation for the Additional Notice Plan, on December 1, 2025.¹⁰¹

⁹⁴ Ex. A (Request for Comments).

⁹⁵ *Id.*

⁹⁶ Ex. D at 15 (SONAR). The Department did not offer the comments received during the Request for Comment period into the hearing record, but they are available on the Court of Administrative Hearings eComment portal.

⁹⁷ Minn. R. 1400.2080 (2025); Minn. Stat. § 14.22 (2024).

⁹⁸ Letter requesting review of dual notice and approval of additional notice plan and attachments (Nov. 10, 2025).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Letter requesting review of the revised dual notice and approval of additional notice plan (Dec. 1, 2025).

60. After consultation with the Court of Administrative Hearings, on December 8, 2025, the Department filed a revised Dual Notice for review and approval.¹⁰²

61. The Administrative Law Judge approved the Department's revised Notice of Hearing for form and substance that same day, on December 8, 2025.¹⁰³

62. The Dual Notice was published in the *State Register* on December 15, 2025.¹⁰⁴ The Dual Notice informed the public that the hearing would take place via WebEx on March 10, 2022, that the initial comment period closed five working days after the hearing date (but could be extended up to 20 calendar days by the Administrative Law Judge), and that a five-working-day rebuttal period followed the close of the comment period.¹⁰⁵ The Notice of Hearing was published more than 30 days prior to the hearing date and the end of the comment period.¹⁰⁶

63. The Dual Notice identified the date and time for two days of public hearings, should 25 or more individuals request a hearing.¹⁰⁷ The dates selected for two virtual hearings conducted by WebEx were March 16 and 17, 2026, and the Dual Notice provided information and a link to join the virtual hearings.¹⁰⁸

64. The Dual Notice contained all information required in Minn. Stat. § 14.22 and Minn. R. 1400.2080.

65. On or about February 9, 2026, the Department erroneously cancelled the rule hearings scheduled by WebEx, thereby rendering the links in the Dual Notice no longer viable. The Department mistakenly cancelled the hearing because it failed to count the requests for hearing submitted on the eComments website. More than 25 commenters requested a public hearing, thereby requiring that a hearing be held under Minn. Stat. § 14.25 and Minn. R. 1400.2080. Because the virtual hearing instructions and link in the Dual Notice were no longer valid and could not be restored, the Department was required to reschedule the public hearings and publish and serve a new Notice of Hearing.

66. On March 3, 2026, the Department submitted its Notice of Hearing for review and approval pursuant to Minn. R. 1400.2080.¹⁰⁹ That same day, the Judge issued an Order Approving Notice of Hearing.¹¹⁰

¹⁰² Revised Dual Notice for review and approval (Dec. 8, 2025).

¹⁰³ Ex. K-3 (Order on Request for Review and Approval of Additional Notice Plan and Dual Notice (Dec. 8, 2025)).

¹⁰⁴ Ex. F (Dual Notice as published in *State Register*).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ See Request for Review of Notice of Hearing (Mar. 3, 2026), on file and of record with the Court of Administrative Hearings. Prior to the Department submitting the Notice of Hearing to the Court, the Judge had provided suggested changes, which the Department incorporated in the Notice of Hearing it filed for approval on March 3, 2026.

¹¹⁰ Ex. K-3 (Order on Review of Notice of Hearing Pursuant to Minn. R. 1400.2080 (Mar. 3, 2026)).

67. The Notice of Hearing was published in the *State Register* on March 9, 2026.¹¹¹ The copy of the Notice of Hearing published in the *State Register* entered into the record as Exhibit F.1 fails to contain page 897.¹¹² However, the Judge has confirmed that the version of the Notice of Hearing published in the *State Register* on March 9, 2026, is the same as the version approved by the Judge on March 3, 2026.¹¹³

68. The Notice of Hearing informed the public that hearings would take place via WebEx on April 13 and 14, 2026, that the comment period would be extended for 20 calendar days after the close of the hearing, and that a five-working-day rebuttal period would follow the close of the comment period.¹¹⁴ The Notice of Hearing provided information and a link to join the virtual hearings both by telephone and by computer.¹¹⁵ The Notice of Hearing was published more than 30 days prior to the hearing date and the end of the comment period.¹¹⁶

69. The Notice of Hearing contained all information required in Minn. Stat. § 14.22 and Minn. R. 1400.2080. The Notice of Hearing was also timely published.

C. Notice Requirements

1. Notice to Official Rulemaking List

70. 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.

71. On December 15, 2025, the Department emailed a copy of the Dual Notice and proposed rules to all persons and entities on its official rulemaking list.¹¹⁷ The Department sent the Dual Notice and proposed rules to 12,617 email addresses.¹¹⁸

72. On March 9, 2026, the Department emailed a copy of the Notice of Hearing and proposed rules, to all persons and entities on its official rulemaking list.¹¹⁹ The Department sent the Notice of Hearing and proposed rules to 13,005 email addresses.¹²⁰

73. Minn. Stat. § 14.14, subd. 1a, requires that agencies give notice of 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 hearing.

¹¹¹ Ex. F.1 (Notice of Hearing as published in the *State Register*, but missing page 897).

¹¹² *Id.*

¹¹³ See <https://mn.gov/admin/bookstore/register.jsp#/list/appId/1/filterType/filterValue//page/2/sort/order/> (last accessed May 26, 2026).

¹¹⁴ Ex. F.1 (Notice of Hearing as published in the *State Register*, but missing page 897).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Ex. G (Certificate of Mailing of Dual Notice on Rulemaking List). It appears that the Department also served the interested persons or entities contained in the Additional Notice Plan.

¹¹⁸ *Id.* Because the hearings noticed on the Dual Notice were rescheduled, this paragraph is included only for context.

¹¹⁹ Ex. F-2 (Certificate of Mailing of Notice of Hearing on Rulemaking List and Additional Notice Plan List).

¹²⁰ *Id.*

74. 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.

75. There were at least 33 days between the date of service of the Notice of Hearing on the rulemaking list (March 9, 2026) and the first hearing date (April 13, 2026).

76. The Administrative Law Judge concludes that the Department fulfilled the notice requirements set forth in Minn. Stat. § 14.14 (2024) and Minn. R. 1400.2080, subp. 6.

2. Additional Notice

77. Minn. Stat. § 14.14, subdivision 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.¹²¹ This notice is referred to as “additional notice” and is detailed by an agency in its additional notice plan.

78. Minn. Stat. §§ 14.131 and 14.23 (2024) require 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.¹²²

79. An agency may request approval of its additional notice plan by an administrative law judge prior to service.¹²³

80. The Department requested approval of its Additional Notice Plan on December 1, 2025.¹²⁴

81. On December 8, 2025, the Administrative Law Judge approved the Department’s Additional Notice Plan, but recommended that the Department include the following agencies and organizations in the Additional Notice Plan: the Child Protection League (Minnesota chapter), Moms for Liberty (Minnesota chapters), Minnesota Parents United a/k/a Standing Together and Never Divided Up (S.T.A.N.D Up), the Center for the American Experiment, and the Minnesota Department of Health.¹²⁵

82. While the Department did not amend its Additional Notice Plan in the SONAR to reflect the recommendation of the Judge, it did include representatives from

¹²¹ Minn. Stat. § 14.14, subd. 1a(a).

¹²² Minn. Stat. §§ 14.131, .23.

¹²³ Minn. R. 1400.2060, subp. 3 (2025).

¹²⁴ Letter requesting review and approval of Dual Notice and Additional Notice Plan (Dec. 1, 2026), on file and of record with the Court of Administrative Hearings. The request was amended on December 8, 2025, with a revised Dual Notice.

¹²⁵ Ex. K-3 (Order on Request for Review and Approval of Additional Notice Plan and Dual Notice (Dec. 8, 2025)).

all of the groups recommended by the Judge, when it served its Dual Notice and Notice of Hearing.¹²⁶

83. On March 9, 2026, the Department served the Notice of Hearing and proposed rules on the individuals, organizations, governmental agencies and entities included on the Additional Plan, plus representatives from the groups recommended by the Judge in the Order Approving the Additional Notice Plan.¹²⁷ In total, the Department served a copy of the Notice of Hearing and proposed rules on 13,005 email addresses.¹²⁸ The Judge confirmed that the email addresses from the Additional Notice Plan list included representatives from all of the groups recommended by the Judge.¹²⁹

84. The Administrative Law Judge finds that the Department complied with its Additional Notice Plan set forth in its SONAR, as well as providing notice on the additional groups recommended by the Judge. The Department has fulfilled the additional notice requirements set forth in Minn. Stat. §§ 14.14, subd. 1a(a), .131, .23.

3. Notice to Legislators

85. Minn. Stat. § 14.116 (2024) requires the agency to send a copy of the notice of intent to adopt rules and the SONAR to certain legislators and the Legislative Coordinating Commission at the time it serves its notice of intent to adopt to persons on its rulemaking list and pursuant to its additional notice plan.¹³⁰

86. When an agency mails its notice of intent to adopt rules under Minn. Stat. §§ 14.14 (notice of hearing) or 14.22 (notice of intent to adopt without hearing and dual notice), the agency must send a copy of the same notice and a copy of the SONAR to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.¹³¹

87. In addition, if the mailing of a notice of intent to adopt rules or notice of hearing is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make “reasonable efforts” to send a copy of the notice and the SONAR to all sitting legislators who were chief house of representative and senate authors of the bill granting the rulemaking authority.¹³²

88. On December 15, 2025, the Department emailed a copy of the Dual Notice, SONAR, and proposed rules to the chairs and ranking minority party members of the House Education Policy Committee, House Education Finance Committee, Senate

¹²⁶ Hrg. Tr. Vol. I at 35-37; Exs. F-2; G, H.

¹²⁷ Ex. F-2 (Certificate of Mailing of Notice of Hearing on Rulemaking List and Additional Notice Plan List).

¹²⁸ *Id.*

¹²⁹ *Id.* See *specifically* the Additional Notice Plan List.

¹³⁰ Minn. Stat. § 14.116(b), (c) (2024).

¹³¹ Minn. Stat. § 14.116(b).

¹³² Minn. Stat. § 14.116(c).

Education Policy Committee, Senate Education Finance Committee, and to the Legislative Coordinating Commission.¹³³

89. However, when the Department had to serve and publish a Notice of Hearing to reschedule the hearings, the Department did not mail a copy of the Notice of Hearing to the chairs and ranking minority legislative committee members or to the Legislative Coordinating Commission, as required by Minn. Stat. § 14.116(b). The Department, thus, did not comply with Minn. Stat. § 14.116(b).

90. With respect to Minn. Stat. § 14.116(c), the effective date of the law granting the Department authority to adopt the proposed rules was May 19, 2024, the day after enactment of H.F. 5237.¹³⁴ The authors of H.F. 5237 (and companion bill S.F. 5252) were: Rep. Cheryl Youakim, Rep. Heather Edelson, Rep. Sydney Jordan, Rep. Frances Clardy, Rep. Emma Greeman, Rep. Samantha Sencer-Mura, Rep. Kristi Pursell, Rep. Josiah Hill, Rep. Dave Pinto, and Sen. Mary Kunesh (author of S.F. 5252).¹³⁵

91. The Dual Notice and Notice of Hearing were served within two years of the effective date of H.F. 5237 (May 19, 2024). Therefore, the Department was required to “make reasonable efforts” to send a copy of the Dual Notice, Notice of Hearing, SONAR, and proposed rules to all authors of H.F. 5237 and S.F. 5252 pursuant to Minn. Stat. § 14.116(c).

92. On December 15, 2025, the Department emailed a copy of the Dual Notice, SONAR, and proposed rules to Rep. Sydney Jordan (a co-chair of the House Education Policy Committee), Rep. Cheryl Youakim (co-chair of the House Education Finance Committee), and Sen. Mary Kunesh (Senate Education Finance Committee), but did not serve the other seven authors of H.F. 5237. The Department also failed to serve any of the authors with a copy of the Notice of Hearing, which would have alerted them to the rescheduled hearing dates.

93. Consequently, the Department has not fulfilled its responsibilities under Minn. Stat. § 14.116(b) and (c). Specifically, the Department did not serve the required legislators and the Legislative Coordinating Commission with a copy of the Notice of Hearing advising them of the rescheduled hearing date. The Department also failed to provide any notice of the rulemaking to seven of the ten authors of the bill granting the Department its rulemaking authority.

94. The Department’s failure to fully comply with the procedural requirements of Minn. Stat. § 14.116(b) and (c) was not harmless error under Minn. Stat. § 14.15, subd. 5.

95. A failure to satisfy a procedural requirement in a rulemaking action is harmless only if: (1) the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or (2) the agency has taken corrective

¹³³ Ex. K (email to Legislators and Legislative Coordinating Commission).

¹³⁴ 2024 Minn. Laws ch. 115, art. 2, § 4.

¹³⁵ See <https://www.revisor.mn.gov/bills/93/2024/0/HF/5237/?body=house>.

action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.¹³⁶

96. The chairs and ranking members of the applicable legislative committees and the Legislative Coordinating Committee were served with the Dual Notice, SONAR, and proposed rules. However, the Department failed to serve the chairs, ranking members, and Legislative Coordinating Committee with the Notice of Hearing.

97. In addition, only three of the ten authors of the bills granting the Department its rulemaking authority were served with the Dual Notice, SONAR, and proposed rules, and none of the bill's authors were served with the Notice of Hearing to advise them of the change in hearing dates. Moreover, seven of the ten authors of the enabling legislation received no notice whatsoever of the proposed rule, the SONAR, or of the rule hearings.

98. The Notice of Hearing would have alerted these key legislators and the Legislative Coordinating Committee of the new rule hearing dates. This is material because it may have deprived these legislators of the opportunity to participate in the rulemaking process. Given the substantive defects in the proposed rule (discussed below) and how the Department has chosen to interpret the enabling legislation, notice to these key legislators, particularly the bill authors, is not something that can be dismissed as "harmless."

4. Notice to the Legislative Reference Library

99. Minn. Stat. §§ 14.23 and 14.131, and Minn. R. 1400.2070, subp. 3 (2025), require the agency to send a copy of the SONAR to the Legislative Reference Library when a notice of intent to adopt rules is served.

100. On December 15, 2025, the Department emailed a copy of the SONAR to the Legislative Reference Library.¹³⁷

101. The Administrative Law Judge concludes that the Department fulfilled its responsibilities under Minn. Stat. §§ 14.23 and .131.

5. Notice of Impact on Farming Operations

102. Minn. Stat. § 14.111 (2024), imposes additional notice requirements when the proposed rules affect farming operations.

103. The SONAR did not address Minn. Stat. § 14.111.

104. Based upon the substance of the proposed rule, the rule does not impact farming operations. Thus, although the Department did not address Minn. Stat. § 14.111 in the SONAR, as required by law, this defect is harmless.

¹³⁶ Minn. Stat. § 14.15, subd. 5 (2024).

¹³⁷ Ex. E (letter to Legislative Reference Library).

D. Rule Hearing

105. Two public hearings were held on the proposed rules: the first on April 13, 2026, and the second on April 14, 2026.¹³⁸

106. Both hearings were conducted by videoconference and telephone using WebEx technology. Members of the public who did not have access to the internet were able to call into the hearing and participate through audio.

107. The hearing on April 13, 2026, commenced at 2:00 p.m. and ended at approximately 6:00 p.m. The hearing on April 14, 2026, commenced at 9:30 a.m. and ended at approximately 12:15 p.m.¹³⁹

108. At the first hearing, the Department offered copies of the following documents, as required by Minn. R. 1400.2220 (2025):

Ex. A: the Department's Request for Comments as published in the *State Register* on February 3, 2025;

Ex. B: Petition for Rulemaking (omitted as not applicable)

Ex. C: the proposed rules dated November 24, 2026, including the Revisor's approval;

Ex. D: the SONAR, dated December 10, 2025;

Ex. E: a copy of the transmittal email of the SONAR to the Legislative Reference Library on December 15, 2025;

Ex. F: the Dual Notice as emailed and published in the *State Register* on December 15, 2025;

Ex. F-1: the Notice of Hearing as emailed and published in the *State Register* on March 9, 2026;

Ex. F-2: the Certificate of Mailing of the Notice of Hearing to the Rulemaking Mailing List and Persons on the Additional Notice Plan and Certificate of Accuracy of [Rulemaking] Mailing List (April 6, 2026);

Ex. G: the Certificate of Mailing of the Notice of Intent to Adopt Rules [With or] Without a Public Hearing [Dual Notice] to the Rulemaking Mailing List and Persons on the Additional Notice Plan and Certificate of Accuracy of [Rulemaking] Mailing List (January 14, 2026);

¹³⁸ See Hrg. Tr. Vol. I and II.

¹³⁹ See Hrg. Tr. Vol. I and Vol. II.

Ex. H: the Certificate of Mailing of the Notice of Intent to Adopt Rules [With or] Without a Public Hearing [Dual Notice] [According] to the Additional Notice Plan (January 14, 2026);

Ex. I: written comments received by February 9, 2026;

Ex. J: Omitted as inapplicable;

Ex. K: copy of transmittal letters sending notice to legislators and Legislative Coordinating Commission according to Minn. Stat. § 14.116;

Ex. K-1: Memorandum from Minnesota Management and Budget dated December 8, 2025;

Ex. K-2: Department responses to comments received between December 15, 2025, and February 9, 2026; and

Ex. K-3: Order on Review of Additional Notice Plan and Dual Notice Under Minn. R. 1400.2060, .0280 and Order on Review of Notice of Hearing Under Minn. R. 1400.2080.

109. Other exhibits entered into the hearing record were:

Ex. 1: 2025 Minnesota K-12 Health Academic Standards – Commissioner Approved (containing both the standards and benchmarks);

Ex. 2: 2025 Minnesota K-12 Health Academic Standards – Draft 2 (containing both the standards and benchmarks);

Ex. 3: 2025 Minnesota Health Standards First Draft and Request for Public Comment;

Ex. 4: 2024-2025 Adult Health Standards Committee's Guiding Assumptions; and

Ex. 5: 2024-2025 Student Health Standards Committee's Guiding Assumptions.

110. The Department's case was presented by Jennifer Dugan, the Department's Director of Academic Standards, Instruction, and Assessment. The Department called no witnesses at the hearings.

111. Both hearings were open to the public. The proceedings continued until all interested persons, groups, and associations had an opportunity to be heard concerning the proposed rules.

112. Fourteen (14) members of the public made statements or asked questions during the hearing on April 13, 2026.¹⁴⁰

¹⁴⁰ See Hrg. Tr. Vol. I.
[239959/1]

113. Twelve (12) members of the public made statements or asked questions during the hearing on April 14, 2026.¹⁴¹

114. Ninety-seven (97) written comments were received during the pre-hearing comment period (from December 15, 2025 to February 9, 2026);¹⁴² Thirty-eight (38) written comments were received during the 20-day post-hearing comment period (from April 14 to May 5, 2026);¹⁴³ and four (4) reply comments were received during the five-day rebuttal comment period (May 6 to May 11, 2026).¹⁴⁴ All comments are available for public review on the eComments website at <https://minnesotaoah.granicusideas.com/>.

115. The Department responded to the pre- and post-hearing comments with a response filed in eComments on May 4, 2026.¹⁴⁵ The Department's response also contained modifications the Department made to the proposed rules, including a Revisor-approved version of the modified proposed rule.¹⁴⁶

116. The Department did not file rebuttal comments.

IV. Statutory Requirements for the SONAR

A. Regulatory Factors

117. The Minnesota Administrative Procedure Act (MAPA) requires that an agency adopting rules address eight factors in its SONAR.¹⁴⁷ 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;
- (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;

¹⁴¹ See Hrg. Tr. Vol. II.

¹⁴² Ex. I; see *also*, eComments PDF Report and Attachments for Pre-Hearing Comments (February 10, 2026).

¹⁴³ See eComments PDF Report and Attachments for Post-Hearing Comments (May 6, 2026).

¹⁴⁴ See eComments PDF Report and Attachments for Reply Comments (May 12, 2026).

¹⁴⁵ Department's Responses to Comments and Modifications (May 4, 2026).

¹⁴⁶ *Id.*

¹⁴⁷ Minn. Stat. § 14.131.

- (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.¹⁴⁸

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

118. Minn. Stat. § 14.131(1), requires that the SONAR describe the classes of persons who will likely be affected by the proposed rules, including the classes of persons that will bear the costs of the proposed rules and the classes that will benefit from the proposed rules.

119. The SONAR identified the following classes of persons or entities that will be affected or benefitted by the proposed rules include:¹⁴⁹

- Minnesota parents and students;
- Minnesota schools and districts, including charter schools;
- educators and teachers implementing the standards; and
- school district curriculum specialists and directors.

120. With respect to the persons or entities who will bear the costs of the proposed rule, the SONAR asserts that there will not be any significant costs to individuals affected or benefitted by the rule, but there may be some “minimal costs” related to implementation for both the Department and by local education agencies (LEAs), including Minnesota school districts and charter schools.¹⁵⁰ The Department argues that

¹⁴⁸ *Id.*

¹⁴⁹ Ex. D at 39.

¹⁵⁰ *Id.*

students will benefit the most from the rules through “greater levels of health literacy and competency,” thereby preparing them for life after high school.¹⁵¹

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

121. Minn. Stat. § 14.131, requires that an agency make “reasonable effort” to ascertain, among other things, the probable costs to the agency for implementation and enforcement of the proposed rules.¹⁵²

122. The SONAR only analyzed the probable costs to the Department to devise and implement the proposed rule changes.¹⁵³ With respect to costs that the Department will incur in the implementation of the proposed rule, the SONAR states:¹⁵⁴

The passed [2024] legislation provided one-time funding available over multiple years for a Health Education specialist position in the amount of \$627,000. This has provided support for the development of the proposed rules and support throughout the rulemaking process.

MDE will incur planned costs for providing training and technical assistance to support implementation of the proposed rules. Since there is not legislatively appropriated ongoing funding for a Health Specialist, MDE is exploring options. The level of implementation support MDE provides [to LEAs, including school districts] will depend, in part, on funding availability.¹⁵⁵

123. Contrary to the Department’s interpretation, the 2024 legislation does not direct the \$627,000 appropriation for the hiring of a “health education specialist.” Rather, the 2024 legislation appropriated a one-time \$627,000 payment to the Department “[f]or rulemaking and administrative costs related to health education standards.”¹⁵⁶ This appropriation is available to the Department until June 30, 2027.¹⁵⁷

124. The SONAR appears to state that the Department has used (or will use) the \$627,000 appropriation for the development of the proposed rules, but that ongoing implementation and support for LEAs (school districts and charter school), will require additional funding from the legislature.

125. The cost for ongoing implementation, support to local school districts, and enforcement of the rules has not been calculated or estimated by the Department in the SONAR, as required by Minn. Stat. § 14.131(2). This is significant because the 2024 legislation removed local school district control over the health education taught in their schools. It requires all Minnesota school districts and charter schools to review,

¹⁵¹ *Id.*

¹⁵² Minn. Stat. § 14.131 (2).

¹⁵³ Ex. D at 39.

¹⁵⁴ *Id.*

¹⁵⁵ Emphasis added.

¹⁵⁶ 2024 Minn. Laws ch. 115, art. 2, § 22.

¹⁵⁷ *Id.*

revise, and devise health education curriculum consistent with the Department's statewide standards and benchmarks, which may be significantly different from the curriculum currently used by some or all school districts.

126. As is discussed in detail in section 5 below, the SONAR also does not provide an estimate of the probable costs LEAs (school districts and charter schools) will incur to comply with the proposed rules, specifically, the costs to implement the standards and benchmarks by changing existing or drafting new health curriculum for each grade level or grade band in the school or school district.

127. The public has an interest in knowing what the implementation and enforcement will cost the Department, LEAs, and, thus, taxpayers. By making no effort to estimate the probable costs that will be incurred by the Department for implementing and enforcing the proposed rule, and by failing to make any effort to estimate the cost impact on LEAs for implementation of the new standards, the Department has failed to comply with Minn. Stat. § 14.131(2).

128. The Department's failure to fully comply with the procedural requirements of Minn. Stat. § 14.131(2) is not harmless error under Minn. Stat. § 14.15, subd. 5. This defect or error deprived members of the public and LEAs with an opportunity to participate meaningfully in the rulemaking process by knowing cost estimates before the comment period ended. At this point in the process, the Department cannot take corrective action to cure the error or defect.

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

129. Minn. Stat. § 14.131(3), requires that the SONAR evaluate whether there are less costly or less intrusive methods for achieving the purpose of the proposed rules.

130. The purpose of the proposed rules is to achieve consistency and uniformity in health education across the state by establishing statewide standards for health instruction in Minnesota's public schools. The SONAR states that because the health standards are mandated by the legislature, "there is no less costly or less intrusive method for achieving the purpose of the proposed rules."¹⁵⁸ In other words, because the legislature has required the Department to devise statewide academic standards in health through rulemaking, there were no other ways that the Department could have achieved that directive without implementing the proposed rules.

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

131. Minn. Stat. § 14.131(4), requires that the SONAR evaluate whether there were alternative methods for achieving the purpose of the proposed rules.

¹⁵⁸ *Id.* at 39.

132. The stated purpose of the proposed rules is to replace the variety of local academic standards for health education with uniform statewide academic standards. The SONAR explains that because the legislature directed the Commissioner to adopt statewide health standards through rulemaking, there are no other alternative means for achieving that purpose.¹⁵⁹

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

133. Minn. Stat. § 14.131(5), requires that the Department make “reasonable effort” to ascertain, among other things, “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 government units, businesses, or individuals.”¹⁶⁰

134. The SONAR only identifies the parties most likely to incur costs as a result of the rules -- LEAs (school districts and charter schools). The SONAR does not address how much those costs will likely be for local school districts. Instead, the SONAR summarily states:

LEAs may face initial increased costs to implement the new rules, including for professional development, curriculum development, and instructional material review and adoption. However, LEAs typically anticipate and undertake a regular curriculum adoption cycle, so many of these costs would be borne regardless of the adoption into rule of the proposed standards. The [D]epartment has generally allowed for a three to five-year implementation timeline, and the costs for adjusting curriculum will be spread out over the years.

135. Under the 2024 statutory changes, locally developed academic standards in health must end when the proposed rules establishing statewide standards “are required to be implemented in the classroom.”¹⁶¹ Under proposed rule Part 3501.1500, subp. 11, “[t]hese standards must be implemented by school districts by the beginning of the 2028-2029 school year.”¹⁶² Therefore, all school districts in Minnesota must align their health curriculum for grades K-12 to the proposed rule standards (and presumably the accompanying benchmarks) before the fall of 2028.

136. Given that the 2025-2026 school year is over, that leaves school districts just two years (the 2026-2027 and 2027-2028 school years) to develop their own curriculum for each grade, purchase the necessary materials for each grade level, hire additional staff, and train its teachers – all at the school districts’ own cost. Whether Minnesota school districts and charters school anticipated and budgeted for these new

¹⁵⁹ *Id.* at 40.

¹⁶⁰ Minn. Stat. § 14.131(5).

¹⁶¹ See Minn. Stat. § 120B.021, subd. 1(e) (2024) (“Locally developed academic standards in health apply until statewide rules implementing statewide health standards under subdivision 3 are required to be implemented in the classroom.”)

¹⁶² Ex. C (proposed rule).

costs is unknown. Also, as the Department has advised above, it does not anticipate any state funding available for assistance and support of school districts to implement the rules unless additional appropriations are made by the legislature in the future

137. The Department has failed to calculate the probable costs of complying with the proposed rules for LEAs.

138. Notably, the Judge summarily reviewed the draft SONAR as part of her review of the Dual Notice and Additional Notice Plan in December 2025.¹⁶³ In the Order Approving the Dual Notice and Additional Notice Plan, the Judge advised in a footnote:¹⁶⁴

The Administrative Law Judge recommends that the Department review the draft SONAR with respect to the probable costs to the agency and any other agency (including local education agencies) and the probable costs of complying with the proposed rules, to ensure that the Department's analysis is sufficiently robust.

139. Thus, several months ago, the Judge urged the Department to undertake a thorough analysis of costs, especially to LEAs, prior to submitting the rule for approval. The Department did not follow that suggestion.

140. Minn. Stat. § 14.131 provides that an agency must consult with the Commissioner of Minnesota Management and Budget (MMB) “to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.”¹⁶⁵ The Department consulted with MMB in December 2025.¹⁶⁶ Avery Turman, Executive Budget Officer for MMB, undertook the analysis on behalf of the Commissioner of Management and Budget.¹⁶⁷

141. Turman noted that, pursuant to Minn. Stat. § 120B.021, the Commissioner must adopt rules for implementing statewide core academic standards in health “and must implement a review of the academic standards and related benchmarks in health beginning in the 2034-2035 school year and every ten years thereafter.”¹⁶⁸ It is unclear in the letter whether Turman understood that, under the proposed rules, local school districts

¹⁶³ The draft SONAR is not presented to an administrative law judge for legal review and analysis until the rules are presented for approval (in this case, upon the completion of the public hearings and post-hearing comment period). The judge is not expected to provide legal advice or counsel to agencies on how to draft SONARs or comply with the rulemaking procedures and requirements. A judge's role is to review the proposed rules, SONAR, comments, and exhibits to ensure compliance with the law and rules, not to advise or assist agencies in their rulemaking. While the SONAR must be drafted before issuance of the Notice of Hearing under Minn. Stat. § 14.14, subd. 1a, there is no provision in MAPA that allows an agency to submit the SONAR for review and approval prior to final submission of the proposed rules for approval. Therefore, it is imperative that agencies undertake the analysis required for SONARs in Minn. Stat. § 14.131 prior to submitting the rule for approval.

¹⁶⁴ Order on Review of Additional Notice Plan and Dual Notice Under Minn. R. 1400.2060 and .2080 (Dec. 8, 2025) at Fn1.

¹⁶⁵ Emphasis added.

¹⁶⁶ Ex. K-1. The Department did not offer into the rulemaking record what information the agency provided to MMB for review and consideration.

¹⁶⁷ Ex. K-1.

¹⁶⁸ *Id.*

must implement the standards (and presumably the accompanying benchmarks) by the beginning of the 2028-2029 school year.¹⁶⁹ The first review of the standards and benchmarks by the Department will occur in the 2034-2035 school year and every ten years after that.¹⁷⁰

142. MMB acknowledged that “LEAs are likely to experience costs when implementing the new health standards, including for professional development, curriculum development, and instructional material review/adoption.”¹⁷¹ However, MMB did not analyze those costs.¹⁷²

143. Instead, MMB concluded that, under Minn. Stat. § 14.131, its role is only to evaluate the fiscal impacts and benefits of a proposed rule “on units of local government.”¹⁷³ Relying on a definition contained in Minn. Stat. § 14.128 (2024), MMB concluded that “local government” is limited to “a town, county, or home rule charter or statutory city.”¹⁷⁴ Because school districts and charter schools do not fall under the § 14.128 definition of “local government,” MMB provided no cost analysis for the state’s school districts.¹⁷⁵ Instead, MMB concluded that there would be “no fiscal impact or fiscal benefit to units of local government.”¹⁷⁶

144. It is MMB’s position that its role under Minn. Stat. § 14.131 is only to evaluate costs of proposed rules as they apply to towns, counties, and cities, but not as they apply to other governmental units, such as other state agencies, local governmental bodies, and school districts. MMB’s reliance on the definition of “local government” in Minn. Stat. § 14.128 is misplaced.

145. Minn. Stat. § 14.128 requires an “agency to determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule.” In the context of § 14.128, it makes sense that a “local government” is limited to a town, county, or city. But Minn. Stat. § 14.128 is separate and unrelated to the cost analysis required by MMB in Minn. Stat. § 14.131.¹⁷⁷

146. Under § 14.131, MMB is “to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government.” It was improper for MMB to rely on the definition of “local government” contained in Minn. Stat. § 14.128 and apply it

¹⁶⁹ Under Min. Stat. § 120B.021, subd. 4(h), the next review of the health standards and benchmarks, which are being established as part of this rulemaking, will occur in the beginning of the 2034-2035 school year, and then reviewed again every 10 years thereafter. However, the standards and benchmarks are being established now, and school districts must implement the standards by the beginning of the 2028-2029 school year. Ex. C (proposed rule at subpart 11).

¹⁷⁰ Minn. Stat. § 120B.021, subd. 4(h).

¹⁷¹ Ex. K-1.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Minn. Stat. § 645.08 (2024); *Jaeger v. Palladium Holdings, LLC*, 884 N.W.2d 601, 605 (Minn. 2016) (“When a statute or a rule does not contain a definition of a word or phrase, we look to [dictionary definitions]” See also, *Matter of Restorff*, 932 N.W.2d 12, 20 (Minn. 2019) “Using the daycare licensing rules to define supervision under the Act was improper.”

to Minn. Stat. § 14.131. This rendered an absurd result and did not conform with the intent of the legislature. Had the legislature intended the definition of “local government” in Minn. Stat. § 14.128 to apply to chapter 14 generally, it would have placed that definition in Minn. Stat. § 14.02 “Definitions”.¹⁷⁸

147. Irrespective of MMB’s interpretation of § 14.131, the fact remains that neither the Department nor MMB undertook *any* analysis of the financial impact the proposed rules will have on local school districts and charter schools, even though local school districts and charter school will bear the lion’s share of the cost of the rules.¹⁷⁹ Ultimately, the Department, not MMB, is required to evaluate the costs on impacted classes. These costs are material to the public’s analysis of the rules and an analysis of these costs is required in Minn. Stat. § 14.131.

148. How much Minnesota school districts and charter schools will spend to implement the health standards is a relevant and material fact for this rulemaking. The health standards apply to all grades, from kindergarten through 12th grade. Given the extensive scope and detail of the draft benchmarks (Draft #3), it is likely that significant curriculum modification will be necessary for many districts, and will likely include new instructional materials (textbooks, etc.), additional teacher training, and other expenses. This is particularly true in light of the Department’s admission in the SONAR that it spent all of the \$627,000 legislative appropriation to draft the rules and does not have funding to provide implementation support or assistance to local school districts.

149. The legislature directed the Department to initiate this rulemaking and draft statewide standards. Thus, it is the legislature, not the Department, that has ultimately imposed cost of compliance on local school districts and charter schools. Nonetheless, Minn. Stat. § 14.131(5) requires that the agency undertake an analysis of the cost of compliance that the proposed rules will impose on affected parties, including units of government.¹⁸⁰

150. The cost analysis required in the SONAR by Minn. Stat. § 14.131(5), has the express purpose of providing interested parties and the public with the information needed to fully understand, consider, and comment on the proposed rules. This is tied to the fundamental purpose of MAPA: to provide oversight of the powers and duties delegated to administrative agencies, increase public accountability, increase public access to government information, increase public participation in the formulation of rules, and increase fairness in the administrative process.¹⁸¹

¹⁷⁸ Minn. Stat. § 645.17 (2024).

¹⁷⁹ It is even more perplexing that no school districts submitted comments during this rule proceeding. This could mean: (1) school districts do not anticipate significant costs related to the implementation of the proposed rule standards and benchmarks; (2) school districts have accepted the additional expenses as the cost of doing business; (3) school districts are unaware of the scope of the changes to their curriculum the proposed rule will require; or (4) school districts simply have not yet considered the costs the 2024 legislation and proposed rule will bring.

¹⁸⁰ Minn. Stat. § 14.131(5) does not reference “local government.” It requires an analysis of “the probable cost 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.” (Emphasis added).

¹⁸¹ Minn. Stat. § 14.001 (2025).

151. Simply stating that Minnesota school districts may face costs to implement the new rules is insufficient under Minn. Stat. § 14.131. And the Department has not made any “reasonable effort to undertake the required analysis. Consequently, the Department has failed to comply with Minn. Stat. § 14.131(5).

152. The Department’s failure to fully comply with the procedural requirements of Minn. Stat. § 14.131(5), is not harmless error under Minn. Stat. § 14.15, subd. 5. This defect or error deprived members of the public and LEAs with an opportunity to participate meaningfully in the rulemaking process by knowing cost estimates before the end of the comment period. At this point in the process, the Department cannot take corrective action to cure the error or defect.

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

153. In addition to identifying the costs of implementing, enforcing, and complying with the proposed rule, the SONAR must also evaluate “the probable costs or consequences of not adopting the proposed rule.”¹⁸²

154. The Department’s SONAR explained that:

Not adopting statewide health standards will continue to result in differing health instruction and content in LEAs across the state, which does not permit LEAs to benefit from streamlined instructional materials and curriculum aligned to state standards. Students around the state would continue [to] receive differing health standards resulting in varied health education outcomes.¹⁸³

155. Because the legislature has mandated that the Department establish statewide academic standards in health education in rule, the Department asserts there is no option of not adopting a rule establishing such standards.

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

156. Minn. Stat. § 14.131(7) requires that the SONAR contain “an assessment of any difference between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.”

157. The SONAR asserts that there is not a “significant difference” between the proposed rules and existing federal regulations governing state academic standards. It references the federal Every Student Succeeds Act of 2025 (ESSA),¹⁸⁴ asserting that Minnesota complies with federal requirements regarding state standards, but does not

¹⁸² Minn. Stat. § 14.131(6).

¹⁸³ Ex. D at 40.

¹⁸⁴ Pub. L. No. 114-95, 129 Stat. 1802, 2099.

specify what federal laws or regulations are applicable, nor does the SONAR analyze the federal law in comparison with the proposed rules.¹⁸⁵ Instead, the SONAR states that the ESSA expanded the “core academic subjects” referenced in the federal No Child Left Behind Act (NCLBA), to define “well-rounded education,” giving states the authority to establish educational standards for more subjects, including English, reading and language arts, writing, physical education, and health (among many others).¹⁸⁶

158. There is no evidence in the record that the proposed rule would directly conflict with any federal law or regulations.

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

159. Minn. Stat. § 14.131(8) requires that a SONAR contain an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

160. The SONAR states:¹⁸⁷

The proposed rules are intended to align with state laws that govern academic standards and with federal legislation, ESSA, which requires states to submit a state plan that provides assurances that the state has adopted challenging academic standards aligned with academic achievement. The proposed standards do not establish overlapping or additional requirements; rather, they comply with existing requirements related to academic standards that are permitted (and required) by federal and state law.

161. There is no evidence in the record that there will be any cumulative effect of the proposed rules with other federal and state regulations.

B. Performance-Based Regulation

162. The Minnesota Administrative Procedure Act requires an agency to describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems.¹⁸⁸ 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.¹⁸⁹

163. The SONAR explains that the proposed rules and benchmarks will bring clarity and consistency to K-12 health education across Minnesota.¹⁹⁰ The Department asserts that the rules and benchmarks were drafted to be understandable and flexible so that teachers, curriculum developers, and school districts will be able to craft high-quality

¹⁸⁵ Ex. D at 40-41.

¹⁸⁶ *Id.* at 41.

¹⁸⁷ *Id.*

¹⁸⁸ Minn. Stat. §§ 14.002 and 14.131 (2024).

¹⁸⁹ Minn. Stat. § 14.002.

¹⁹⁰ Ex. D at 41.

curriculum.¹⁹¹ The Department notes that the proposed rules “extend duties and burdens no further than is necessary to meet the state’s academic standard requirements.”¹⁹² Moreover, by purposefully drafting the standards in broad, general terms, the rules offer flexibility for school districts to create and modify their own curriculum in alignment with the state standards and benchmarks.¹⁹³

164. As explained below, the rules are too vague to address and emphasize student achievement. When that problem is appropriately addressed, the requirement for performance-based regulation will be met.

C. Consultation with the Commissioner of Minnesota Management and Budget

165. Minn. Stat. § 14.131, requires that agencies consult with the Commissioner of MMB to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

166. The Department consulted with MMB as part of the rulemaking process.¹⁹⁴ On December 8, 2025, MMB issued a Memorandum analyzing the fiscal impacts and benefits of the proposed rules on “local units of government.”¹⁹⁵

167. As explained above, while MMB acknowledged that LEAs (i.e., school districts and charter schools) are likely to experience costs when implementing the new health standards, MMB did not analyze those costs.¹⁹⁶ Instead, MMB concluded that, under Minn. Stat. § 14.131, its role is only to evaluate the fiscal impacts and benefits of a proposed rule “on units of local government.”¹⁹⁷ Relying on the definition of “local government” contained in Minn. Stat. § 14.128, MMB concluded that its financial analysis in rulemaking is limited to impacts on towns, counties, or cities only.¹⁹⁸ MMB asserts that school districts are not “local units of government,” so it provided no cost analysis for the state’s school districts.¹⁹⁹ Consequently, MMB concluded that there would be “no fiscal impact or fiscal benefit to units of local government” as a result of the proposed rule.²⁰⁰

168. The Department fulfilled its legal requirement to consult with the MMB under Minn. Stat. § 14.131.

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

169. The Department has met the requirements set forth in Minn. Stat. § 14.131(1), (3), (4), and (6)-(8), including consideration and implementation of the

¹⁹¹ *Id.* at 41-42.

¹⁹² *Id.* at 42.

¹⁹³ *Id.* at 41-42.

¹⁹⁴ *Id.* at 46.

¹⁹⁵ Ex. K-1 (MMB letter).

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

legislative policy supporting performance-based regulatory systems and consultation with MMB on the fiscal impact on “units of local government.”

170. The Department has not, however, complied with the requirements of Minn. Stat. § 14.131(2) and (5), which require the agency to make reasonable efforts to ascertain the probable costs on the agency and any other agency in implementing and enforcing the proposed rule, as well as the probable costs of complying with the proposed rule on affected parties, specifically Minnesota’s school districts and charter schools. These defects are not harmless pursuant to Minn. Stat. § 14.15, subd. 5. The failures deprived interested persons and entities of information necessary to meaningfully participate in the rulemaking process; and the defects were not corrected.

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

171. Minn. Stat. § 14.127 (2024), requires the Department 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 Department must make this determination before the close of the hearing record, and the administrative law judge must review the determination and approve or disapprove it.²⁰¹

172. The Department determined that the cost of complying with the proposed rule changes will not exceed \$25,000 for any business or city in the first year after the rule takes effect because the proposed rules do not impact businesses or cities.²⁰²

173. There is no evidence in the record that any business or city will incur expenses as a result of the proposed rule. As a result, the Department has made the determination required by Minn. Stat. § 14.127.

F. Adoption or Amendment of Local Ordinances

174. Under Minn. Stat. § 14.128 (2024), 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. “Local government,” for purposes of Minn. Stat. § 14.128, is “a town, county, or home rule charter or statutory city.”²⁰³

175. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.²⁰⁴

176. The Department concluded that no town, county, or city would need to adopt or amend an ordinance or other regulation to comply with the proposed rules.²⁰⁵

²⁰¹ Minn. Stat. § 14.127, subds. 1 and 2.

²⁰² Ex. D at 46. Apparently, the Department does not consider charter schools “businesses.”

²⁰³ Minn. Stat. § 14.128, subd. 1.

²⁰⁴ *Id.*

²⁰⁵ Ex. D at 46.

177. There is no evidence in the record that any local ordinance or regulation will be impacted.

178. The Department has made the determination required by Minn. Stat. § 14.128.

V. Public Comments

179. Eighty-eight (88) individuals submitted a total of 97 written comments during the prehearing comment period.²⁰⁶ Over 25 of those pre-hearing comments requested a hearing be held on the proposed rules.²⁰⁷

180. Sixteen (16) members of the public made statements during the hearing on April 13, 2026.²⁰⁸ Twelve (12) members of the public made statements during the hearing on April 14, 2026.²⁰⁹

181. Another 28 written comments were received following the hearings.²¹⁰ On May 4, 2026, the Department filed a response to public comments made during the hearings and post-hearing comment period.²¹¹ An additional four (4) written comments were submitted by members of the public during the rebuttal comment period.²¹²

182. The 168 total comments can be grouped into three general categories: (1) opposition to the proposed rules; (2) support of the proposed rules; and (3) support of the proposed rules, but with specific modifications.

A. Proposed Rules and Benchmarks

183. The record reflects that many commenters were confused by the difference between the Department's proposed rules and benchmarks. This point was directly addressed in the comment made by Kathy Ziebarth, a member of the Department's Health Standards Committee since its inception. Ziebarth stated that, despite the statutory research and work involved in being on the Committee, she was "completely unaware" that the benchmarks, which the Committee "spent approximately 80% of . . . time

²⁰⁶ See eComments PDF Report (Dual Notice Comment Period) (Feb. 9, 2026) (Dual-Notice eComments); *and* Public Comments Received via Email (Dual Notice Comment Period) (Feb. 9, 2026) (Dual-Notice Email Comments).

²⁰⁷ *Id.*; *also see* Comment of Paul Stephany (Dual-Notice eComment 35); Comment of Laura Lee (Dual-Notice eComment 43); Comment of Janice Blum (Dual-Notice eComment 44); *and* Comment of Vicki Holst (Dual-Notice eComment 48).

²⁰⁸ See Tr. Vol. I.

²⁰⁹ See Tr. Vol. II.

²¹⁰ See eComments PDF Report (Post-Hearing Comment Period) (May 4, 2026) (Post-Hearing eComments); *and* Public Comments Received by Email (Post-Hearing Comment Period) (May 4, 2026) (Post-Hearing Email Comments).

²¹¹ Department Response to Comments and Proposed Rule Modifications (May 4, 2026).

²¹² See eComments PDF Report (Rebuttal Comment Period) (May 11, 2026) (Rebuttal eComments).

developing”, were not part of the rulemaking process until the hearing in this matter.²¹³ Ziebarth writes:

This is absolutely astonishing to me that I have been actively involved in this process for nearly 1½ years, and only yesterday [at the rule hearing] became fully aware of the ‘backroom’ power of the benchmarks as separate from the approval process for the comparatively brief 8 academic standards.

...

Unfortunately, this statutory ‘divorce’ of the benchmarks from the standards has the practical effect of delegating the real power of dictating the benchmarks and compliance to unaccountable and unknown members of [the Department].

...

The potential for viewpoint discrimination using the benchmarks as outcome measures cannot be overlooked or overstated. This is an area ripe for exploitation of a particular viewpoint, such as the social aspects of sexual health content. As an example, if [Department] benchmarks require the ‘skill’ of ‘affirming’ certain sexual identity, sexual behaviors, or gender identify viewpoints, a district, student, or groups of students can be found to be ‘not in compliance’ if they disagree with the viewpoints promoted by [the Department]. It can also lead to potential issues of students being evaluated as not ‘progressing’ toward graduation standards. . . . This can lead to substantial legal and constitutional issues, as we have seen recently with U.S. Supreme Court school decisions.

...

While the standards and [the Department] do not formally require specific curricula, the benchmark process has the effect of forcing districts to purchase and implement curricula that are in compliance with [the Department’s] viewpoints and benchmarks. There is no formal process to challenge the [Department’s] benchmarks by a district, or the public. . . .

...

[The Department] has created a heavily flawed process that superficially appears to comply with legal and procedural requirements for the 8 standards, but has the practical effect of protecting their unique and coercive power of authority and compliance with the benchmarks process. [The Department] has, in my opinion, actively mishandled the process of

²¹³ Comment of Kathy Ziebarth (Post-Hearing eComment 4). (All eComments and emailed comments are filed in batched reports, grouped by when and how they were made. Citations in this report number them indicating their position in their respective reports, with 1 indicating the first comment in a report.).

transparency and actively sought to obfuscate notices and process from the public. . . . I have personally observed what I would characterize as active misdirection and proactive plans to obscure and confuse the process from the public.²¹⁴

184. The Department's responsive comments, filed on May 4, 2026, discuss the differences between standards and benchmarks and how they relate to statutory rulemaking procedure.²¹⁵ The Department highlights that the benchmarks' exemption from formal rulemaking requirements is the result of explicit statutory language.²¹⁶ This is because benchmarks "are developed as supporting guidance" for standards.²¹⁷ The Department also points out that this procedural division between academic standards and benchmarks has been in place since 2003, and that similar exemptions for specific or limited aspects of agency action are relatively common.²¹⁸

185. The Department also notes that all academic standards proposed by the Department as rules since 2003 have been approved without involving any of the associated benchmarks in the rulemaking process.²¹⁹

186. Many of the comments in opposition to the proposed rules, or in support of the proposed rules with modifications, also offer input and feedback on the benchmarks included in the Department's Draft #2 and Draft #3.²²⁰ Many comments do not distinguish between comments on the proposed rules and the benchmarks.

187. The Department's use of benchmarks as "supporting guidance" for the standards, as opposed to them being the "specific knowledge or skill that a student must master to complete part of an academic standard," is a tacit admission that the standards themselves are too vague.

B. Opposition to the Proposed Rules

188. Approximately half of the substantive comments submitted opposed the Department's proposed rules in their entirety. Commenters opposing the rules consistently raised a variety of concerns outlined below.

189. Many commenters believe that the language in the proposed rule is overly broad or vague, which, in turn, creates a lack of transparency as to what Minnesota's health education will actually entail. The standards are actually being written in the benchmarks, which do not require judicial review or public comment, and are left to the discretion of the Commissioner. These commenters assert that the eight "anchor

²¹⁴ *Id.*

²¹⁵ Department Response to Comments and Proposed Rule Modifications (May 4, 2026) (Department Response Comment).

²¹⁶ Department Response Comment at 2-3.

²¹⁷ *Id.* at 2.

²¹⁸ *Id.* at 3-4.

²¹⁹ *Id.* at 3.

²²⁰ *See, e.g.,* Comment of Meg Bartlett-Chase (Dual-Notice eComment 38); *and* Comment of Natalie Kasper (Post-Hearing eComment 10).

standards” do little more than provide overly broad and general aspirations, and the rule only restates the statutory requirement for substantive areas of instruction. Yet the optional subject areas and other subject areas that the Department is authorized to adopt are not included. Comparing the proposed rule to the draft benchmarks, the commenters note that the substantive details of most of what will be taught in Minnesota schools is cabined or hidden in the benchmarks. This concern is heightened by the fact that the benchmarks are not subject to the rulemaking process.²²¹

190. Multiple members of the Department’s Health Standards Committee made comments disputing the effect of the benchmarks not being subject to rulemaking procedures. They also noted that local jurisdictions would retain control over specific curriculum choices, allowing parents involvement in their students’ health education.²²²

191. Many commenters were opposed to the proposed rules on political grounds, arguing that they amount to mandating that children be taught “progressive” or “liberal” social values. But these comments focused on language in the draft benchmarks that require teaching children about LGBTQIA+ and gender identity-related topics. Commenters also raised concerns that abstinence and waiting until marriage to engage in sexual activity were being minimized in comparison with education about contraception, in contravention of the express direction by the legislature in Minn. Stat. § 121A.23.²²³

²²¹ Comment of John Billo (Dual-Notice eComment 5); Comment of Sam Holland (Dual-Notice eComment 6); Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Sarah Butler (Dual-Notice eComment 8); Comment of Constance Lee (Dual-Notice eComment 12); Comment of Terry Stoops (Dual-Notice eComment 15); Comment of Michael McCarthy (Dual-Notice eComment 20); Comment of Amy Spale (Dual-Notice eComment 21); Comment of John Verheyen (Dual-Notice eComment 39); Comment of Rebekah Bradfield (Dual-Notice eComment 41); Comment of Karin Miller (Dual-Notice eComment 49); Comment of Jeanine Hansen (Dual-Notice eComment 50); Comment of Lisa Rydning (Dual-Notice eComment 54); Comment of John Rydning (Dual-Notice eComment 58); Comment of Robert Deutsch (Dual-Notice eComment 59); Comment of Kristin Deutsch (Dual-Notice eComment 60); Comment of Nicole Vogt (Dual-Notice eComment 66); Comment of Jeremy Vogt (Dual-Notice eComment 71); Comment of Linda Stanton (Dual-Notice eComment 74); Comment of David Decker (Dual-Notice eComment 76); Comment of (Dual-Notice eComment); Comment of Julie Quist (Tr. Vol. I at 56-60); Comment of Michael McCarthy (Tr. Vol. I at 61-73); Comment of Connie Ferris (Tr. Vol. I at 124-130); Comment of Kathy Ziebarth (Post-Hearing eComment 4); Comment of Amy Spale (Post-Hearing eComment 18); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Courtney Corbello (Post-Hearing eComment 33); Comment of Connie Ferris (Post-Hearing eComment 35); Comment of LaDawn Severin (Post-Hearing Email Comment 1); Comments of David Benson-Staebler (Post-Hearing Email Comment 2, 4-45 Tr. at 247-266, and Rebuttal eComment 4).

²²² Comment of Kristen Ford (Tr. Vol. I at 134-140); Comment of Jen Syverson (Tr. Vol. I at 146-149); Comment of Stephen Chapin (Tr. Vol. II at 205-212).

²²³ Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Sarah Butler (Dual-Notice eComment 8); Comment of Doug Kern (Dual-Notice eComment 9); Comment of Mrs. Kal (Dual-Notice eComment 13); Comment of Terry Stoops (Dual-Notice eComment 15); Comment of Haley Vancura (Dual-Notice eComment 19); Comment of Amy Spale (Dual-Notice eComment 21); Comment of Bruce Ferris (Dual-Notice eComment 46); Comment of Julie Gowen (Dual-Notice eComment 52); Comment of Gus Booth (Dual-Notice eComment 56); Comment of Kate Harri (Dual-Notice eComment 61); Comment of Rhonda Moore (Dual-Notice eComment 65); Comment of Nicole Vogt (Dual-Notice eComment 66); Comment of Wanda Gorgoschlitz (Dual-Notice eComment 69); Comment of Jeremy Vogt (Dual-Notice eComment 71); Comment of Linda Stanton (Dual-Notice eComment 74); Comment of Marilyn Ingebrigtsen (Dual-Notice eComment 75); Comment of Ronald Wrolson (Dual-Notice eComment 77); Comment of Trisha Deutsch (Dual-Notice eComment 82); Comment of (Dual-Notice eComment); Comment of Wanda Gorgoschlitz (Dual-Notice Email Comment 2); Comment of Karla Garcia (Dual-Notice Email

Section 121A.23, subdivision 1(2), requires that STI/STD instruction include “a comprehensive, technically accurate, and updated curriculum that includes helping students to abstain from sexual activity until marriage”.

192. Relatedly, many comments also expressed concern that the proposed rules infringe on parental rights or religious rights. Many of the comments opposed to the proposed rules on the basis of parental rights concerns also noted the lack of any explicit opt-out option for parents who do not want their children exposed to certain subjects or ideas.²²⁴ Multiple commenters cited the recent United States Supreme Court case, *Mahmoud v. Taylor*,²²⁵ as the basis for their concern over the lack of an explicit opt-out option for parents.²²⁶

193. Some commenters were concerned that the proposed rules, when combined with the benchmarks, would bring Minnesota into conflict with the Federal government over curriculums involving gender identity and diversity, equity and inclusion (DEI), which could result in a loss of federal funding based on recent-issued federal Executive Orders. They point to steps taken by the Federal government, such as the Federal Department of Education’s elimination of funding for California and Title IX actions (including in Minnesota), as the basis for these concerns.²²⁷

Comment 3); Comment of Kate Harri (Tr. Vol. I at 46-54); Comment of Julie Quist (Tr. Vol. I at 56-60); Comments of Michael McCarthy (Tr. Vol. I at 61-73, Tr. Vol. II at 242-246); Comment of Connie Ferris (Tr. Vol. I at 124-130); Comment of Natalie Kasper (Post-Hearing eComment 10); Comment of Linda Stanton (Post-Hearing eComment 13); Comment of Michael McCarthy (Post-Hearing eComment 14); Comment of Thomas Hansen (Post-Hearing eComment 21); Comment of Karin Miller (Post-Hearing eComment 25); Comment of Dr. Michelle Cretella (Post-Hearing eComment 26); Comment of Julie Quist (Post-Hearing eComments 27 and 32); Comment of Hannah Biesiada (Post-Hearing eComment 29); Comment of Courtney Corbello (Post-Hearing eComment 33); Comment of Connie Farris (Post-Hearing eComment 35); Comment of Michael McCarthy (Rebuttal eComment 1).

²²⁴ Comment of John Billo (Dual-Notice eComment 5); Comment of Sam Holland (Dual-Notice eComment 6); Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Melanie Swedwell (Dual-Notice eComment 32); Comment of Roseanne Reed (Dual-Notice eComment 33); Comment of John Verheyen (Dual-Notice eComment 39); Comment of Julie Quist (Dual-Notice eComment 40); Comment of Rebekah Bradfield (Dual-Notice eComment 41); Comment of Bruce Ferris (Dual-Notice eComment 46); Comment of Julie Gowen (Dual-Notice eComment 52); Comment of (Dual-Notice eComment); Comment of Robert Deutsch (Dual-Notice eComment 59); Comment of Kristin Deutsch (Dual-Notice eComment 60); Comment of Kate Harri (Dual-Notice eComment 61); Comments of Wanda Gorgoschlitz (Dual-Notice eComment 69, and Dual-Notice Email Comment 2); Comment of Linda Stanton (Dual-Notice eComment 74); Comment of Karla Garcia (Dual-Notice Email Comment 3); Comment of Natalie Kasper (Post-Hearing eComment 10); Comment of Linda Stanton (Post-Hearing eComment 13); Comment of Amy Spale (Post-Hearing eComment 18); Comment of Tamera Wimbley (Post-Hearing eComment 19); Comment of Thomas Hansen (Post-Hearing eComment 21); Comment of Belinda Kuhn (Post-Hearing eComment 22); Comment of Julie Jacobs (Post-Hearing eComment 24); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Courtney Corbello (Post-Hearing eComment 33); Comment of Connie Ferris (Post-Hearing eComment 35).

²²⁵ *Mahmoud v. Taylor*, 606 U.S. 522, 523, 145 S. Ct. 2332 (2025).

²²⁶ Comment of Julie Quist (Dual-Notice eComment 40); Comment of Michael McCarthy (Post-Hearing eComment 14); Comment of Linda Stanton (Post-Hearing eComment 13).

²²⁷ Comment of John Billo (Dual-Notice eComment 5); Comment of Sam Holland (Dual-Notice eComment 6); Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Doug Kern (Dual-Notice eComment 9); Comment of Julie Gowen (Dual-Notice eComment 52).

194. Other commenters were specifically opposed to any reference to, reliance on, or alignment with work done by the Sexuality Information and Education Council (SIECUS), with a particular focus on eliminating any reference to the National Sex Education Standards (NSES). These commenters assert that these organizations are politically motivated, explicitly working to foster progressive political values and social change, and directly opposed to conservative or faith-based beliefs and values.²²⁸

195. Finally, several commenters were concerned about the effects that the proposed rules, when combined with the draft benchmarks, could have on children. They argue that teaching children about gender identity (anything other than the biological sexes of male and female), LGBTQIA+ issues, and minor consent for sexual conduct arises to “indoctrination” and coercion, in conflict with many families’ deeply held beliefs and values.²²⁹ Most of these commenters coordinated in expressing support for an alternative “Pro-Family K-12 Academic Health Standards” filed by Michael McCarthy. The document presents an alternative draft of proposed language for K-12 Academic Standards in Health.²³⁰

196. Multiple commenters expressed concerns with what would be taught about drugs, particularly fentanyl and cannabis. These commenters generally did not discuss the rules or benchmarks outside this specific topic. Some argued that cannabis being described as “plant-based medicine” minimizes and conceals the danger cannabis poses to children, especially adolescents who are particularly susceptible to mental health issues (such as cannabis-induced schizophrenia, an increasingly diagnosed condition related to the strong variations of cannabis available in the marketplace). Others noted that there are no direct or explicit mentions of fentanyl and its effects in the rules, in violation of the legislative directive set forth in Minn. Stat. § 120B.215. These commenters

²²⁸ Comment of Mrs. Kal (Dual-Notice eComment 13); Comment of Haley Vancura (Dual-Notice eComment 19); Comment of Julie Quist (Dual-Notice eComment 40); Comment of Bruce Ferris (Dual-Notice eComment 46); Comment of Karin Miller (Dual-Notice eComment 49); Comment of Gus Booth (Dual-Notice eComment 56); Comment of Robert Deutsch (Dual-Notice eComment 59); Comment of Kristin Deutsch (Dual-Notice eComment 60); Comment of Rhonda Moore (Dual-Notice eComment 65); Comment of Nicole Vogt (Dual-Notice eComment 66); Comment of Jeremy Vogt (Dual-Notice eComment 71); Comment of Marilyn Ingebrigtsen (Dual-Notice eComment 75); Comment of Ronald Wrolson (Dual-Notice eComment 77); Comment of Trisha Deutsch (Dual-Notice eComment 82); Comment of Karyn Clare (Dual-Notice eComment 87); Comment of (Dual-Notice eComment); Comment of Karla Garcia (Dual-Notice Email Comment 3); Comment of Connie Ferris (Tr. Vol. I at 124-130); Comment of Dr. Michelle Cretella (Post-Hearing eComment 26); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Julie Quist (Post-Hearing eComment 32); Comment of Connie Ferris (Post-Hearing eComment 35).

²²⁹ Comment of Constance Lee (Dual-Notice eComment 12); Comment of Melanie Swedwell (Dual-Notice eComment 32); Comment of Mark Streimer (Dual-Notice eComment 51); Comment of Kate Harri (Dual-Notice eComment 61); Comment of Wanda Gorgoschlitz (Dual-Notice eComment 69); Comment of Natalie Kasper (Post-Hearing eComment 10); Comment of Linda Stanton (Post-Hearing eComment 10); Comment of Tamera Wimbley (Post-Hearing eComment 19); Comment of Belinda Kuhn (Post-Hearing eComment 22); Comment of Karin Miller (Post-Hearing eComment 25); Comment of Hannah Biesiada (Post-Hearing eComment 29).

²³⁰ Comment of Karin Miller (Dual-Notice eComment 49); Comment of John Rydning (Dual-Notice eComment 58); Comment of Amy Spale (Post-Hearing eComment 18); Comment of Tamera Wimbley (Post-Hearing eComment 19); Comment of Thomas Hansen (Post-Hearing eComment 21); Comment of Belinda Kuhn (Post-Hearing eComment 22); Comment of Julie Jacobs (Post-Hearing eComment 24); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Hannah Biesiada (Post-Hearing eComment 29); Comment of LaDawn Severin (Post-Hearing Email Comment 1).

note the significant increase in fentanyl being found in a variety of other drugs children may experiment with, as well as the explosion in fentanyl-related deaths or overdoses. With respect to both cannabis and fentanyl, the comments urged for an increased focus in the standards on the negative effects and possible long-term harms of those drugs.²³¹

C. Support for the Proposed Rules

197. Approximately half of the substantive comments supported the Department's proposed rules. Several of those commenters expressed full support of the proposed rules.²³² Many others included suggestions for ways the proposed rules might be improved.

198. A common theme important to supporters was that the rules should focus on teaching children medically accurate vocabulary regarding anatomy. These comments focused on how this information empowers children to properly recognize, respond to, and report sexual abuse. Some commenters also discussed how a specific and medically accurate education was important for preventing STDs and pregnancies.²³³

199. Other commenters included a request that education about menstruation and puberty be included, expanded, and taught earlier. Several commenters were concerned that draft benchmarks contained no reference at all to menses (menstruation), a naturally occurring development that all children need to understand and female children need to prepare for. Commenters discussed how both puberty and menstruation can be difficult for children to navigate and are generally starting earlier. They emphasize that increased and earlier education on these important topics would directly address these problems.²³⁴

²³¹ Comment of John Kingrey (Dual-Notice eComment 84); Comment of Dr. Flora Howie (Tr. Vol. I at 100-107); Comment of Paul Ostrow (Tr. Vol. I at 113-118); Comment of John Kingrey (Tr. Vol. I at 131-133); Comment of Dr. Flora Howie (Post-Hearing eComment 7); Comment of Jonathan Kingrey (Post-Hearing eComments 5 and 6).

²³² Comment of Sage Rippiebakke (Dual-Notice eComment 18);

²³³ Comment of Karina Kpahn (Dual-Notice eComment 14); Comment of Jill Hoffman (Dual-Notice eComment 16); Comment of Kathleen Kelly (Dual-Notice eComment 22); Comment of Elena Wood (Dual-Notice eComment 24); Comment of Shelby Miller (Dual-Notice eComment 27); Comment of Max Clepper (Dual-Notice eComment 28); Comment of Ella Helmrichs (Dual-Notice eComment 29); Comment of Tipheret Pena (Dual-Notice eComment 30); Comment of Paul Pham (Dual-Notice eComment 31); Comment of Emily Matson (Dual-Notice eComment 36); Comment of Gina Farrell (Dual-Notice eComment 37); Comment of Meg Bartlett-Chase (Dual-Notice eComment 38); Comment of Rachelle Jenson (Dual-Notice eComment 45); Comment of Kara Cowell (Dual-Notice eComment 47); Comment of Elena Leomi (Dual-Notice eComment 88); Comment of Sydney Corbeil-Wild (Dual-Notice eComment 89); Comment of Austin Bartlett-Chase (Dual-Notice eComment 91); Comment of Angie Gentile (Dual-Notice eComment 92); Comment of Dr. Kathleen Miller (Tr. Vol. II at 192-197); Comment of Nicole Lewandowski (Tr. Vol. II at 218-221); Comment of Juliana Olson (Tr. Vol. II at 256-260); Comment of Alison Feigh (Post-Hearing eComment 11).

²³⁴ Comment of Elena Wood (Dual-Notice eComment 24); Comment of Tipheret Pena (Dual-Notice eComment 30); Comment of Paul Pham (Dual-Notice eComment 31); Comment of Margaret Kenny (Dual-Notice eComment 42); Comment of Kara Cowell (Dual-Notice eComment 47); Comment of Charlotte Stow (Dual-Notice eComment 62); Comment of Catherine Kenny (Dual-Notice eComment 63); Comment of Joan Kenny (Dual-Notice eComment 64); Comment of Mary Kenny (Dual-Notice eComment 67); Comment of Judith Kahn (Dual-Notice eComment 72); Comment of Maarit Mattson (Dual-Notice eComment 73); Comment of Sydney Corbeil-Wild (Dual-Notice eComment 89); Comment of

200. Many supporters of the proposed rule focused on the benefits that comprehensive health education provides for children. Commenters noted that this included improved long-term outcomes involving STIs, teen pregnancies, healthy relationships, and bullying. These comments also often discussed how important it was that these standards be applied equally on a state-wide basis to ensure that all children have access to this type of education. Commenters also noted that when children are exposed to unhealthy behaviors or relationships in their home life, the importance of teaching them about healthy behaviors in school is paramount.²³⁵

201. Multiple educators expressed that, while they support the intent of the rule (statewide health education), they were concerned that the language in the standards was overly broad, impossible to apply, and could be applied to just about any subject matter. They urged better specificity and clarity, particularly as to the general subject matter, to provide guidance to educators in designing curriculum, lesson plans, and assessments.²³⁶

D. The Department's Response

202. On May 4, 2026, the Department filed a response to the comments made during the hearings and the post-hearing comment period.²³⁷

203. The Department's response was limited to discussion of the formal requirements involved in rulemaking and commentary related to that process and the standards themselves.²³⁸

Austin Bartlett-Chase (Dual-Notice eComment 91); Comment of Angie Gentile (Dual-Notice eComment 92); Comment of Martha Krikava (Tr. Vol. 1 at 150-151); Comment of Kara Cowell (Tr. Vol. II at 197-204); Comment of Roselyn Buensuceso (Tr. Vol. II 213-215); Comment of Elena Wood (Tr. Vol. II at 215-218); Comment of Roselyn Buensuceso (Post-Hearing eComment 30); Comment of Elena Wood (Post-Hearing eComment 31).

²³⁵ Comment of Julia Hamann (Dual-Notice eComment 11); Comment of Austin Dean (Dual-Notice eComments 23 and 25); Comment of Temki Newell (Dual-Notice eComment 26); Comment of Diane Durnick (Dual-Notice eComment 57); Comment of Miranda Estes (Dual-Notice eComment 78); Comment of Tamara Sobel (Dual-Notice eComment 79); Comment of Bailey Hovland (Dual-Notice eComment 83); Comment of Sydney Ramon (Dual-Notice eComment 86); Comment of Jill Farris (Tr. Vol. I at 38-45); Comment of Eva Goldfarb (Tr. Vol. I at 74-79); Comment of Anuraa Venkat (Tr. Vol. I at 79-82); Comment of Brianna Raddatz (Tr. Vol. I at 82-95); Comment of Karina Kpahn (Tr. Vol. I at 109-112); Comment of Dr. Kathleen Miller (Tr. Vol. II at 192-197); Comment of Stephen Chapin (Tr. Vol. II at 205-212); Comment of Roselyn Buensuceso (Tr. Vol. II at 213-215); Comment of Elena Wood (Tr. Vol. II at 215-218); Comment of Nicole Lewandowski (Tr. Vol. II at 218-221); Comment of Noral Gelperin (Tr. Vol. II at 227-233); Comment of Lisa Lieberman (Tr. Vol. II at 234-239); Comment of Juliana Olson (Tr. Vol. II at 256-260); Comment of Stephen Chapin (Post-Hearing eComment 1); Comment of Nora Gelperin (Post-Hearing eComment 2); Comment of Alison Feigh (Post-Hearing eComment 11); Comment of Lisa Lieberman (Post-Hearing eComment 12); Comment of Elena Wood (Post-Hearing eComment 31);

²³⁶ Comment of Bailey Scully (Dual-Notice eComment 1); Comment of Justin LaValle (Dual-Notice eComment 2); Comment of Dalen Dirth (Dual-Notice eComment 3); Comment of Mary Dye (Dual-Notice eComment 4).

²³⁷ Department Response Comments.

²³⁸ *Id.* at 11.

204. The Department's response states that the proposed rules "define what students should know and be able to do, not how districts must teach, thereby preserving local control over curriculum and instructional delivery," as required by law.²³⁹ The rules also "align with existing statutory protections for parental involvement, student rights, and district-level decision[-]making, and do not introduce requirements that conflict with or override those provisions."²⁴⁰ This includes the protection of a parent's right to object to content or instructional materials as laid out in Minn. Stat. § 120B.20 (2024).²⁴¹

205. The Department also states that the proposed rule aims to "strike an intentional balance." According to the Department, the rule provides "clear learning expectations, what students should know and be able to do." But the rule does not "determine curriculum, instructional materials, or how the content is taught."²⁴² The Department also asserts that the proposed rule is not improperly vague and reflects the goal of outlining "learning goals, not specific curriculum."²⁴³

VI. Rulemaking Legal Standards

206. Under MAPA and associated rules, an agency proposing to adopt rules must: (1) establish its statutory authority to adopt the proposed rules; (2) show that it has fulfilled all relevant legal and procedural requirements; and (3) demonstrate the need for and reasonableness of each portion of the proposed rules with an affirmative presentation of facts.²⁴⁴

207. Pursuant to Minn. Stat. § 14.14, subd. 2, and Minn. R. 1400.2100, the agency must establish the need for and reasonableness of a proposed rule by an affirmative presentation of facts. In support of a rule, the agency may rely upon materials developed for the hearing record,²⁴⁵ "legislative facts" (namely, general and well-established principles that are not related to the specifics of a particular case, but that guide the development of law and policy),²⁴⁶ and the agency's interpretation of related statutes.²⁴⁷

208. 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."²⁴⁸ By contrast, a proposed rule will be deemed arbitrary and capricious

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.* at 12.

²⁴² *Id.* at 15.

²⁴³ *Id.*

²⁴⁴ Minn. Stat. §§ 14.05, subd. 1, .14, subd. 2; Minn. R. 1400.2100.

²⁴⁵ 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).

²⁴⁶ Compare generally, *U.S. v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

²⁴⁷ See *Mammenga v. Agency of Human Services*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

²⁴⁸ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

where the agency's choice is devoid of articulated reasons or not rationally related to the objective sought to be achieved.²⁴⁹

209. 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 that is selected by the agency is a rational one.²⁵⁰ 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.²⁵¹

210. A rule, however, must be disapproved if it:

- was not adopted in compliance with procedural requirements of Minn. Stat. ch. 14 and Minn. R. part 1400 (unless the administrative law judge decides that the error is harmless error under Minn. Stat. §§ 14.15, subd. 5 or 14.26, subd. 3(d));
- is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;
- is substantially different than the proposed rule, and the agency did not follow the procedures of Minn. R. 1400.2110;
- exceeds, conflicts or does not comply with, or grants the agency discretion beyond that which is allowed by law, its enabling statutes or other applicable law;
- is unconstitutional or illegal;
- improperly delegates the agency's powers to another agency, person or group;
- is not a "rule" as defined in Minn. Stat. § 14.02, subd. 4, or by its own terms cannot have the force and effect of law; or
- is subject to Minn. Stat. § 14.25, subd. 2, and the notice that hearing requests have been withdrawn and written response to it show that the withdrawal is not consistent with Minn. Stat. § 14.001(2), (4) and (5).²⁵²

211. Because the Department made changes to the proposed rules after the date the rules were originally published in the *State Register*, it is also necessary for the

²⁴⁹ 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); *Manufactured Hous. Inst.*, 347 N.W.2d at 244; *Builders Ass'n of Twin Cities v. Minnesota Dept. of Labor and Industry*, 872 N.W. 2d 263, 268-9 (Minn. Ct. App. 2015)

²⁵⁰ *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

²⁵¹ *Minn. Chamber of Commerce*, 469 N.W.2d at 103.

²⁵² Minn. R. 1400.2100.

Administrative Law Judge to determine if this new language is substantially different from that which was originally proposed.²⁵³

212. During the response period, the Department detailed revisions it would make to the proposed rules in response to the stakeholder feedback received during the hearing and comment period. On May 4, 2026, the Department filed its response to comments and a revisor's approved copy of its modifications to the proposed rule.²⁵⁴

213. The standards to determine whether any changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2 (2024). The statute specifies that a modification does not make a proposed rule substantially different if:

- (1) the differences are within the scope of the matter announced in the notice of hearing and are in character with the issues raised in that notice;
- (2) the differences are a logical outgrowth of the contents of the notice of hearing, and the comments submitted in response to the notice; and
- (3) the notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.²⁵⁵

214. In reaching a determination regarding whether modifications result in a rule that is substantially different, the Administrative Law Judge is to consider whether:

- (1) persons who will be affected by the rule should have understood that the rulemaking proceeding could affect their interests;
- (2) the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the hearing notice; and
- (3) the effects of the rule differ from the effects of the proposed rule contained in the hearing notice.²⁵⁶

215. The modifications made by the Department to the proposed rules are addressed in the rule-by-rule analysis below.

VII. Rule-by-Rule Analysis

The proposed rule is Part 3501.1500 and contains 11 subparts.

216. Subpart 1 identifies the purpose of the proposed rule. Subparts 2 through 9 address knowledge (Subpart 2) and skills (Subparts 3 through 9) students are expected

²⁵³ Minn. R. 1400.2110 (2025).

²⁵⁴ Department Responses to Comments (May 4, 2026).

²⁵⁵ Minn. Stat. § 14.05, subd. 2.

²⁵⁶ See Minn. Stat. § 14.05, subd. 2.

to utilize to meet the standards. Subpart 10 identifies the substantive health-related subject areas that the standards address and that must be taught in public schools.

217. For ease of reference, the text of the proposed rule is set forth below, with proposed modifications made after the public hearings.²⁵⁷

3501.1500 HEALTH EDUCATION STANDARDS.

Subpart 1.**Purpose and application.** The purpose of these standards is to establish statewide standards for health that govern instruction of students in kindergarten through grade 12.

Subp. 2.**Functional health.** The student will use functional health knowledge to enhance health and well-being.

Subp. 3.**Analyze influences.** The student will analyze influences that affect health and well-being.

Subp. 4.**Access valid and reliable information.** The student will access valid and reliable information, products, and services to enhance health and well-being.

Subp. 5.**Communication skills.** The student will demonstrate interpersonal communication skills to enhance health and well-being.

Subp. 6.**Decision making.** The student will demonstrate decision-making skills to enhance health and well-being.

Subp. 7.**Goal setting.** The student will demonstrate goal-setting skills to enhance health and well-being.

Subp. 8.**Practices and behaviors.** The student will demonstrate practices and behaviors to enhance health and well-being.

Subp. 9.**Promote health, safety, and well-being.** The student will promote health, safety, and well-being of self and others.

Subp. 10.**Apply knowledge and skills.** The student will combine content knowledge with practical skill development, as indicated by subpart 2, and apply what they learn to real-world health situations, as indicated in subparts 3 to 9, on various the following health-related topics; including but not limited to:

A. cardiopulmonary resuscitation and automatic external defibrillator education that allows districts to provide instruction to students in grades 7 through 12 in accordance with Minnesota Statutes, section 120B.236;

²⁵⁷ Ex. C; Department's Responsive Comments and Modified Proposed Rule (May 4, 2026).
[239959/1]

B. vaping awareness and prevention education that allows districts to provide instruction to students in grades 6 through 8 in accordance with Minnesota Statutes, section 120B.238, subdivision 3;

C. cannabis use and substance use education, including fentanyl, that allows districts to provide instruction to students in grades 6 through 12 in accordance with Minnesota Statutes, section 120B.215;

D. sexually transmitted infections and diseases education that meets the requirements of Minnesota Statutes, section 121A.23; and

E. mental health education for students in grades 4 through 12 that includes prevention of suicide or self-harm and mental health components of the National Education Association standards for students in grades 4 through 12 in accordance with Minnesota Statutes, section 120B.21.

Subp. 11.**Implementation.** These standards must be implemented by school districts by the beginning of the 2028-2029 school year.

218. Each subpart is addressed below, with Subpart 10 appearing out of order for purposes explained below.

A. Subpart 1: Purpose and Application

219. Subpart 1 is approved and reflects the purpose of the standards as articulated and authorized by the legislature in 2024 Minn. Laws ch. 115, art. 2, §§ 2-4, 21.

B. Subpart 10: Apply Knowledge and Skills

220. Subpart 10 of the modified proposed rule reads:

The student will combine content knowledge with practical skill development, as indicated by subpart 2, and apply what they learn to real-world health situations, as indicated in subparts 3 to 9, on ~~various~~ the following health-related topics, including but not limited to:

A. cardiopulmonary resuscitation and automatic external defibrillator education that allows districts to provide instruction to students in grades 7 through 12 in accordance with Minnesota Statutes, section 120B.236;

B. vaping awareness and prevention education that allows districts to provide instruction to students in grades 6 through 8 in accordance with Minnesota Statutes, section 120B.238, subdivision 3;

C. cannabis use and substance use education, including fentanyl, that allows districts to provide instruction to students in grades 6 through 12 in accordance with Minnesota Statutes, section 120B.215;

D. sexually transmitted infections and diseases education that meets the requirements of Minnesota Statutes, section 121A.23; and

E. mental health education for students in grades 4 through 12 that includes prevention of suicide or self-harm and mental health components of the National Education Association standards for students in grades 4 through 12 in accordance with Minnesota Statutes, section 120B.21.

1. Proposed Modification to Subpart 10 – Removing “including but not limited to”

221. With respect to the first proposed modification in Subpart 10, the Department reasoned that removing “including but not limited to” is reasonable “because [if that phrase remains in the subpart,] it may be interpreted to allow the [D]epartment to impose additional, unspecified elements without giving notice of what the elements are.”²⁵⁸ The Department writes that the modification “clarifies the [D]epartment’s intent” and removes the possibility that the Department will be adding additional topics or subject areas to the standards.²⁵⁹

222. Through these statements, the Department represents that the only subject areas that will be included in the standards/rules are those identified in Subpart 10, paragraphs A through E. Those are the mandatory “expectations for learning” (Required Subject Areas) that the legislature directed the Department to include in the standards and rules in the enabling legislation.²⁶⁰

223. However, the Department’s statements in its Responsive Comments are contrary to the representations in the SONAR, as well as the subject areas (“strands”) contained in the draft benchmarks. While the SONAR only analyzed need and reasonableness of the five Required Subject Areas, the SONAR repeatedly references other subject areas that it contends *are* included in the standards, such as “sexual health”²⁶¹, growth and development, nutrition, physical activity, and healthy relationships.²⁶² Yet these subject areas appear nowhere in the proposed standards (i.e., rule).

²⁵⁸ Department’s Response to Comments at 10-11 (May 4, 2026).

²⁵⁹ *Id.*

²⁶⁰ 2024 Minn. Laws ch. 115, art. 2, § 21.

²⁶¹ “Sexual health” is not included in Subpart 10 and is not part of the Required Subject Areas in the enabling legislation. It appears that the Department is attempting to expand required STI/STD education to include all “sexual health” education. This is not what the enabling legislation directed. See 2024 Minn. Laws ch. 115, art. 2, § 21. If the Department seeks to include “sexual health” education, generally, as a Discretionary Subject Area (which it is fully authorized to do in the enabling legislation), then the Department must include that subject area expressly in the rule/standards.

²⁶² Ex. D at 33.

224. The SONAR also states that “[t]he standards address all legislatively mandated *and optional content areas*.”²⁶³ But that, too, is not correct. Subpart 10 only identifies the Required Subject Areas, not the Optional or Discretionary Subject Areas.

225. Similarly, the Draft #3 benchmarks include “strands” relating to the subject areas of food and nutrition; human growth and development and sexual health; mental and emotional health; personal health and wellness; personal safety and violence prevention; substance use awareness and prevention; and general “skill standards.”²⁶⁴ None of these subject areas are included in the standards/rule. It is apparent that the Department misunderstands its legislative authority – to draft, *in rules*, academic standards for health education. The legislature did not authorize the Department to craft its standards in benchmarks, outside of rulemaking review and scrutiny.

226. The Department’s proposed modification to Subpart 10 highlights the overall defect in the rule itself, which will be discussed in detail below.

2. Proposed Modification to Subpart 10C – Addition of Fentanyl

227. With respect to the second modification, the inclusion of fentanyl in paragraph C, the Department explains that the addition is consistent with Minn. Stat. § 120B.215, which includes references to fentanyl. This modification is consistent with the requests from several commenters who urged the Department to include fentanyl in substance abuse education.

228. However, to be fully consistent with Section 120B.215, Subpart 10, paragraph C should read (recommendation denoted with double underline):

C. cannabis use and substance use education, including but not limited to the use of fentanyl or mixtures containing fentanyl, that allows districts to provide instruction to students in grades 6 through 12 in accordance with Minnesota Statutes, section 120B.215;

229. Should the Department decide to revise and resubmit the rule, the Department should consider making the rule consistent with Minn. Stat. § 120B.215, as required by the legislature in the enabling legislation and suggested above.

3. Need and Reasonableness of Subpart 10

230. In the SONAR, the Department argues that Subpart 10 is needed because the legislature expressly required the Department to include these five subject areas in the health education academic standards.²⁶⁵ The Department is correct; the legislature does require the Required Subject Areas to be included in the academic standards for health.²⁶⁶

²⁶³ *Id.* at 32.

²⁶⁴ Ex. 1 at 6.

²⁶⁵ Ex. D at 38-39.

²⁶⁶ 2024 Minn. Laws ch. 115, art. 2, § 21.

231. However, as explained above, both the SONAR and the draft benchmarks evidence that the Department will be requiring school districts to include both the Optional Subject Areas and other Discretionary Subject Areas in their curricula without including these subject areas in the proposed rule/standard. The Department intends to do this by including these additional subject areas in the benchmarks, not the rules. This strategy, however, evades the rulemaking requirements of establishing need and reasonableness, legality and constitutionality, and rational relationship to agency objective – as well as public notice, legal scrutiny, and public comment. As a result, it is not legally permissible because the enabling legislation requires that the Department include in the rules whatever Optional and Discretionary Subject Areas the Department decides to include in the statewide standards.

232. The enabling legislation authorized the Department to create standards in health and identify the subject matters of study in the rule. While the Department was not required to include any of the Optional or Discretionary Subject Areas in the health standards, if the Department intends to require all Minnesota school districts to teach these subjects, then the subject areas must be part of the standards and stated in the rule itself.

233. According to Draft #3 of the benchmarks, school districts will be required to include instruction on the following eight subject areas or “strands” in their health education curriculum:²⁶⁷

- (1) food and nutrition (for K-12);
- (2) human growth and development (for K-5) and human growth, development and sexual health (for 6-12);
- (3) mental and emotional health (for K-12);
- (4) personal health and wellness (for K-12);
- (5) personal safety and violence prevention (for K-12);
- (6) substance use awareness and prevention (for 6-12); and
- (7) “skill standards” (for grades 2–8). (“Skill standards” are topics or “skills” that individual school districts can determine where to insert into strands numbers 1 through 6.)²⁶⁸

²⁶⁷ Ex. 1. The topics and strands in Draft #3 are slightly different from the topics and “strands” in Draft #2. The topics/strands in Draft #2 are: food and nutrition (K-12); mental and emotional health (K-12); personal health and wellness (K-12); sexual health (K-12); substance use and misuse prevention (K-12); violence prevention (K-12); and basic emergency response (7-12). Ex. 2.

²⁶⁸ These “skill standards” include, for example: analyzing how public health policies, laws, and environments influence health practices and behaviors; analyzing how culture, peers, perceived norms, personal attitudes, values, and beliefs influence health practices and behaviors; using and evaluating the validity, reliability, and accessibility of health information, products, services, and other resources; conflict

234. While the Department did not include the draft benchmarks in the SONAR,²⁶⁹ the Department repeatedly references these additional subject areas in the SONAR, as if they appear in the standards or rule -- but they do not.²⁷⁰ As the SONAR states: “[t]he standards address all legislatively mandated *and optional* content areas....”²⁷¹ But the proposed rule does not. It only identifies the Required Subject Areas, not the Optional and Discretionary Subject Areas.

235. More importantly, the SONAR does not establish which of those Optional and Discretionary Subject Areas that the Department intends to include in the standards and does not provide any discussion of need, reasonableness, or legality to those additional subject areas. This is a significant defect in the rule.

236. Administrative rules have force and effect of law. Therefore, administrative agencies can only engage in rulemaking when specifically authorized by the legislature.²⁷² In 2024, the legislature gave a specific mandate to the Department: to “adopt statewide rules for implementing statewide rigorous core academic standards in health.”²⁷³ The enabling law expressly states:²⁷⁴

The rules *must* include at least *the expectations for student learning* listed in subdivision 2 [required health-related subject areas], and may include the *expectations* in subdivision 3 [other health-related subject areas], in addition to *other expectations for learning* identified through the standards development process.

237. Put simply, the legislature:²⁷⁵

- (1) directed that the rule/standards include five “required health-related subject areas” or “expectations for student learning”: CPR, vaping awareness and prevention, cannabis/substance use education, STI/STD education, and “mental health education” (the Required Subject Areas);
- (2) permitted the Department to include in the rule/standards certain “other health-related subject areas” or “expectations for learning”: child abuse prevention, violence prevention, character development,

resolution and negotiation skills to prevent, manage, or resolve conflict in a variety of health-related situations; communication skills related to boundaries and expressing or withdrawing consent; choosing healthy options and goal setting; analyzing options and potential consequences of health-related decisions; evaluating supports and barriers to engaging in health-related practices. Ex. 1.

²⁶⁹ For context and understanding, the Judge included the draft benchmarks, Exs. 1-3, in the hearing record at the rule hearings.

²⁷⁰ Ex. D.

²⁷¹ *Id.* at 32 (emphasis added).

²⁷² See e.g., Minn. Stat. § 14.05, subd. 1 (2024) (Agencies may only adapt, amend, suspend, or repeal rules “pursuant to authority delegated by law and in full compliance with its duties and obligations.”)

²⁷³ 2024 Minn. Laws ch. 115, art. 2, § 4.

²⁷⁴ Emphasis added.

²⁷⁵ 2024 Minn. Laws ch. 115, art. 2, § 21.

and school safety/anti-bullying education (Optional Subject Areas);
and

- (3) authorized the Department to include “*in the statewide standards*” (i.e., the rules) “other expectations for learning identified through the standards development process” (Discretionary Subject Areas)²⁷⁶

238. The legislature did not authorize the Department to establish the Optional and Discretionary Subject Areas outside of rulemaking (i.e., through the creation of benchmarks). Rather, the legislature authorized the Department to include these Optional and Discretionary “expectations of learning” *in the rule*.²⁷⁷

239. As declared in Minn. Stat. § 1210B.02, subd. 1(a): “The legislature is committed to establishing rigorous academic standards for Minnesota’s public school students. To that end, the commissioner *shall adopt in rule* statewide academic standards.”²⁷⁸ While benchmarks work together with academic standards, they cannot replace the standards themselves.

240. Academic standards and benchmarks serve two separate purposes. Under Minn. Stat. § 120B.018, “academic standard” means “a summary description of student learning in a required content area.”²⁷⁹ A “required standard” means “a statewide adopted *expectation for student learning* in the content areas of language arts, mathematics, science, social studies, physical education, *health*, and the arts.”²⁸⁰ In contrast, a “benchmark” is defined as “specific knowledge or skill that a student must master to complete part of an academic standard by the end of the grade level or grade band.”²⁸¹

241. In other words, academic standards identify the general topics and subject matters to be covered in a content area; provide general guidelines for how those topics should be taught; and establish the general expectations of what knowledge and skills a student should obtain before graduating from high school.²⁸² In contrast, benchmarks fill in the standards with the specific skills or knowledge a student must master *at each grade level or grade band* to meet the standards by graduation.²⁸³ Benchmarks provide measurable milestones to track and assess progress toward meeting the standard; they do not establish the standard itself.²⁸⁴ Put simply, standards set the destination; benchmarks are the checkpoints along the way.

242. The difference between standards and benchmarks is significant. The law requires the Department to establish academic standards through the public rulemaking

²⁷⁶ Emphasis added.

²⁷⁷ 2024 Minn. Laws ch. 115, art. 2, §§ 4, 21.

²⁷⁸ Emphasis added.

²⁷⁹ Minn. Stat. § 120B.018, subd. 2 (2024).

²⁸⁰ *Id.*, subd. 6 (emphasis added).

²⁸¹ *Id.*, subd. 3.

²⁸² See e.g., Minn. R. 3501.0660 (language arts standards); .0750 (math standards); .0960 (science standards); .1350 (social studies standards).

²⁸³ Minn. Stat. § 120B.018, subd. 3 (emphasis added).

²⁸⁴ See Minn. Stat. § 120B.023, subd. 1(a) (“The commissioner must *supplement* required state academic standards with grade-level benchmarks.”) (emphasis added).

process, which involves notice, public comment, and judicial review.²⁸⁵ In contrast, benchmarks are exempt from rulemaking because they merely “fill in the details” of the standards by grade level; they do not establish education policy.²⁸⁶

243. The evidence in the record establishes that the Department seeks to sidestep the rulemaking requirements by inserting additional Option and Discretionary Subject Areas and expectations of learning (i.e., academic standards) into the benchmarks, rather than in the rule. In doing so, the Department avoids public scrutiny of those additional subject areas/standards in a rulemaking proceeding. This is not authorized under the enabling legislation (2024 Minn. Laws ch. 115, art. 2, §§ 4, 21) and Minn. Stat. §§ 120B.02 and 120B.021, which require all standards to be set forth in rule. In addition to being a misuse of the rulemaking process, it lacks transparency and diminishes public trust, unnecessary outcomes given the broad scope of the legislative authority.

244. Minn. R. 1400.2100 requires that the judge disapprove a rule if, among other things: (1) the proposed rule is not rationally related to the agency’s objective; (2) the record does not demonstrate the reasonableness of the rule; (3) the proposed rule conflicts with or does not comply with the enabling statute; or (4) the proposed rule grants the agency discretion beyond what is allowed in the enabling statute.

245. Based upon the Department’s inconsistent representations in its Responsive Comments and the SONAR, as supplemented by the draft benchmarks, the Judge cannot determine the agency’s objectives in this rule. Consequently, the Department has failed to satisfy its burden of demonstrating that the proposed rule is reasonable. The Department’s conflicting representations also evidence that the Department intends to create the standards through benchmarks, not rules, thereby conflicting with, and failing to comply with, the enabling legislation. In doing so, the Department is attempting to grant itself discretion beyond what is allowed by law. For these reasons, Subpart 10 is **DISAPPROVED**.

C. Subparts 2 through 9 (“Anchor Standards”)

246. The Department explains that the proposed rule includes eight “anchor standards,” organized in the proposed rule as Subpart 2 (functional health knowledge) and Subparts 3 through 9 (skills development).²⁸⁷ The Department asserts that the “[e]ight standards reflect the knowledge and skills students need for graduation to be career, college, and community ready.”²⁸⁸

²⁸⁵ Minn. Stat. §§ 120B.02, .018, .021.

²⁸⁶ Minn. Stat. § 120B.023.

²⁸⁷ Ex. D at 22-27.

²⁸⁸ *Id.* at 24.

247. Subpart 10 combines these eight “standards” (“knowledge” + “skills”) and requires their application to the five Required Subject Areas mandated in the enabling legislation (but no other subject areas²⁸⁹).²⁹⁰

248. In developing these eight health “standards,” the Department ignores the enabling legislation, which expressly directs the Department to include *in the rule* – as standards – the required and optional “health-related subject areas” and “other expectations of learning” that the Department deems reasonable and necessary to include in the standards.²⁹¹ As set forth above, the enabling law expressly states:²⁹²

The rules *must* include at least *the expectations for student learning* listed in subdivision 2 [required health-related subject areas], and may include the *expectations* in subdivision 3 [other health-related subject areas], in addition to *other expectations for learning* identified through the standards development process.

249. By using the term “expectations for learning” for both the Required Subject Areas and the Optional and Discretionary Subject Areas, the legislature is incorporating the definition of “required academic standard” in Minn. Stat. § 120B.018, subd. 6.²⁹³ In other words, the legislature is making the Required, Optional, and Discretionary Subject Areas part of the *standards* to be established in rule.

250. Both a literal and commonsense reading of the enabling legislation makes clear that the legislature intended the Required, Optional, and Discretionary Subject Areas to be part of the standards in the rule, as has been the practice for other core content areas (e.g., math, science, language arts, social studies), as discussed in more detail below. Instead, the Department crafted eight vague and general proclamations that could apply to most any academic subject, declared them to be the “anchor standards,” and left the Optional and Discretionary Subject Areas out of the rule and standards altogether.²⁹⁴

251. A “required standard” is “a statewide adopted *expectation for student learning*.”²⁹⁵ What the Department has drafted as “anchor standards” are not “expectations for student learning” at all; they are general statements of learning in the area of health (e.g., “use functional knowledge,” “analyze influences,” “access valid and reliable information,” “demonstrate interpersonal communication skills,” “demonstrate decision-making,” “demonstrate goal-setting,” “demonstrate practices and behaviors,” and “promote health, safety, and well-being”).

252. For example, Subpart 2 of the proposed rule reads:

²⁸⁹ According to the modification. Department Response Comments and Modified Proposed Rule (May 4, 2026).

²⁹⁰ Ex. C; Modified Proposed Rule (May 4, 2026).

²⁹¹ 2024 Minn. Laws ch. 115, art. 2, § 21.

²⁹² Emphasis added.

²⁹³ 2024 Minn. Laws ch. 115, art. 2, § 21.

²⁹⁴ Ex. C; Modified Proposed Rule (May 4, 2026).

²⁹⁵ Minn. Stat. 120B.018, subd. 6 (emphasis added).

Subp. 2. **Functional Health.** The student will use functional health knowledge to enhance health and well-being.

253. The Department asserts that this general “standard” means that students will obtain “foundational knowledge that makes skill application of health skills meaningful.”²⁹⁶ In the SONAR, the Department claims that Subpart 2 serves to:²⁹⁷

- “fulfill the cognitive understanding requirements embedded throughout Minnesota’s health education legislation”;
- “ensure students learn essential, accurate, age-appropriate, culturally inclusive, and relevant science-based health information mandated by state law across all required health concepts”;
- provide the “context required to understand and apply the skills addressed in the [other] standards”;
- “equip students with practical health knowledge needed to make safe, informed decisions”;
- give students an “understanding of real-world health concepts, including growth development, safety, nutrition, physical activity, mental health, disease prevention, and healthy relationships”; and
- ensure “instruction is comprehensive, evidence-based, and accurate.”

254. The Department has failed to demonstrate how this “standard,” as written, will accomplish the above stated goals. The first standard only states that “students will use functional health knowledge.” What does this mean? What is “functional health knowledge”? Functional knowledge of what?

255. Additionally, Subpart 2 utilizes the word “use” knowledge and not “obtain” or “gain” knowledge, rendering the standard confusing, vague, and ambiguous. A student must first obtain or gain knowledge before that knowledge can be used.

256. Subparts 3 through 9 are similarly unclear, vague, overbroad, and impossible to measure without tethering them to subject matters:

Subp. 3.**Analyze influences.** The student will analyze influences that affect health and well-being.

²⁹⁶ Ex. D at 32-33.

²⁹⁷ *Id.*

Subp. 4.**Access valid and reliable information.** The student will access valid and reliable information, products, and services to enhance health and well-being.

Subp. 5.**Communication skills.** The student will demonstrate interpersonal communication skills to enhance health and well-being.

Subp. 6.**Decision making.** The student will demonstrate decision-making skills to enhance health and well-being.

Subp. 7.**Goal setting.** The student will demonstrate goal-setting skills to enhance health and well-being.

Subp. 8.**Practices and behaviors.** The student will demonstrate practices and behaviors to enhance health and well-being.

Subp. 9.**Promote health, safety, and well-being.** The student will promote health, safety, and well-being of self and others.

257. In the SONAR, the Department explained that it intends to flesh out what “knowledge” and “information” students will be taught through the creation of benchmarks, which have not yet been finalized and are not part of this rule review. In doing so, the Department is withholding from the rules the actual standards the legislature directed it to develop.

258. At the same time, the SONAR contends that the “functional knowledge” will include “growth and development, safety, nutrition, physical activity, mental health, disease prevention, and healthy relationships”²⁹⁸ but nothing in the proposed rule identifies standards for “growth and development,” “safety,” “nutrition,” “physical activity,” or “healthy relationships.”

259. The Department has the burden to establish the need for, and reasonableness of, a proposed rule by an affirmative presentation of facts.²⁹⁹ 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.”³⁰⁰

260. An academic standard under Minnesota law means: (1) “a summary description of student learning in a required content area,” (2) which is “clear, concise, objective, measurable, and grade-level appropriate.”³⁰¹ Subparts 3 through 9 are none of these things. They are not a description of what students will be learning in the area of health; they are simply generalized statements with no substantive “teeth.” Nor are Subparts 3 through 9 clear, grade-level specific, or measurable, as required by Minnesota law.

²⁹⁸ Ex. D at 33.

²⁹⁹ Minn. Stat. § 14.14, subd. 2; Minn. R. 1400.2100.

³⁰⁰ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

³⁰¹ Minn. Stat. § 120B.021, subd. 2(b).

261. The Department also claims in the SONAR that the “anchor standards” (Subparts 2 through 9) are the “standards” and that Subpart 10 is just a list of some of the subject areas to which they apply – and that the benchmarks will include a larger list of subjects to which those standards apply. But this would conflict with the modified language in Subpart 10 (and representations made in the Response to Comments). Moreover, it would exceed the authority granted to the Department in the enabling legislation, which requires the Department to include subject areas and “expectations for learning” *in the rules*. While the enabling legislation gives the Department discretion to choose which subject areas to include in the rule standards, it does not give the Department discretion to purposefully leave out subject areas from the rule standards, include them in the benchmarks, and then enforce the benchmarks under the legal authority of the rule.

262. According to the SONAR, the Department adopted seven of the eight “anchor standards” from the National Consensus for School Health Education’s “National Health Education Model Guidance for Curriculum and Instruction.”³⁰² However, the Department neglected to include the type of performance standards included with that model, which give clarity, substance, and measurability to the “standards.” In addition, the National Consensus for School Health Education was not applying Minnesota legal requirements or the enabling legislation.

263. On their face, Subparts 2 through 9 are too broad, general, and vague to fall within the definition of a rule or be measurable.

264. Under Minn. Stat. § 14.02, subd. 4, a “rule” means “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.”³⁰³ Without application to specific subject areas, the anchor standards make nothing specific; nor do they have the force or effect of law. Therefore, they must be “anchored” to subject matters contained in Subpart 10 to be approved. And the Department’s conflicting submissions in this rulemaking proceeding evidence that the subject matters contained in Subpart 10 are not the only subject matters the Department intends to enforce as the standards which all Minnesota school districts to incorporate in their curricula.

D. Comparison with Other Minnesota Required Academic Standards

265. The overly-broad, vague, and imprecise nature of the health standards are most apparent when contrasted with other statewide required academic standards, including social studies, science, mathematics, and language arts. In each of these areas, the Department identifies the general subject matters that are included in the standard.

266. The social studies academic standards, found at Minn. R. 3501.1350, set forth five subject areas of instruction: citizenship and government, economics, geography, U.S. and world history, and ethnic studies. Then, within each of those topics, the standard

³⁰² See <https://www.schoolhealtheducation.org/standards/>.

³⁰³ Emphasis added.

establishes expectations for what students will be taught and what knowledge or skills students should be learning.³⁰⁴

267. For example, for citizenship and government, the subpart identifies six subcategories within that topic: civic skills; democratic values and principles; rights and responsibilities; governmental institutions and political processes; public policy; and tribal nations.³⁰⁵ Within each topic, the standard identifies what students are expected to be taught so that schools can fashion curriculum to meet the expectations of the standards. See, for example, below:³⁰⁶

Subp. 2. Citizenship and government.

A. Civic Skills: The student will apply civic reasoning and demonstrate civic skills for the purpose of informed and engaged lifelong civic participation.

B. Democratic Values and Principles: The student will explain democratic values and principles that guide governments, societies, and communities and analyze the tensions within the United States constitutional government.

C. Rights and Responsibilities: The student will explain and evaluate rights, duties, and responsibilities in democratic society.

D. Governmental Institutions and Political Processes: The student will explain and evaluate processes, rules, and laws of the United States governmental institutions at local, state, and federal levels and within Tribal Nations.

E. Public Policy: The student will analyze how public policy is shaped by governmental and nongovernmental institutions, and how people and communities take action to solve problems and shape public policy.

F. Tribal Nations: The student will evaluate the unique political status, trust relationships, and governing structures of sovereign Tribal Nations and the United States.

268. Similarly, the academic standards in mathematics set forth in Minn. R. 3501.0750 identifies three areas of instruction and knowledge: data analysis, spatial reasoning, and patterns and relationships. Then, within those topics, the standards identify what students will be expected to learn and how, as set forth below:

³⁰⁴ Minn. R. 3501.1350.

³⁰⁵ *Id.*, subp. 2.

³⁰⁶ *Id.*

Subp. 2. **Data analysis.**

A. The student will identify, formulate, and investigate statistical questions by collecting data considering cultural perspectives, analyzing and interpreting data, and communicating the results.

B. The student will apply and explain the concepts of probability to interpret data, generate questions, predict and make informed decisions to solve problems, and communicate ideas.

Subp. 3. **Spatial reasoning.**

A. The student will investigate measurement using a variety of tools, units, systems, processes, and techniques in various cultures. The student will explain and reason with attributes, estimations, and formulas to communicate measurements and relationships effectively. The student will justify decisions and consider the reasonableness of the measurement.

B. The student will analyze characteristics of geometric shapes to make mathematical arguments and justifications about geometric relationships. The student will use visualization and geometric modeling to compare, solve problems, and communicate ideas.

Subp. 4. **Patterns and relationships.**

A. The student will describe, interpret, and use quantities, relationships between quantities, representations of quantities, and number systems. The student will describe operations and the relationship between operations. The student will use strategies and procedures accurately, efficiently, and flexibly. The student will assess the reasonableness of the results.

B. The student will use concepts and properties of equivalence and relational thinking to represent and compare numerical expressions, proportional relationships, algebraic expressions, and equations.

C. The student will represent and connect mathematical patterns and relationships using verbal descriptions, generalizations, tables, and graphs; and use representations to generate questions, make predictions, and solve mathematical problems.

269. The math standards also specifically identify the criteria used to determine if a student has met the statewide requirements for graduation.³⁰⁷ It states:

Subp. 5. **High school preparedness.** By the end of grade 8, a student will meet the following criteria, which prepares the student for three credits of mathematics in grades 9 through 12, including Algebra II, Integrated Mathematics III, or an equivalent.

A. **Data analysis:** The student will analyze bivariate data by creating and using linear and geometric models.

B. **Spatial reasoning:** The student will apply the Pythagorean Theorem to find side lengths and calculate distances using algebraic reasoning, use similar triangles to explore lines and slope on a coordinate plane, and analyze types of solutions to systems of linear equations.

C. **Patterns and relationships:** The student will classify real numbers, use properties of exponents, solve financial contexts involving exponents, solve algebraic equations and inequalities, and analyze linear systems and nonlinear functions.

270. The academic standards for science set out four general areas for instruction: exploring phenomena or engineering problems; looking at data and empirical evidence to understand phenomena or solve problems; developing possible explanations of phenomena or designing solutions to engineering problems; and communicating reasons, arguments, and ideas to others.³⁰⁸ Then, within the four topical areas, the standards provide specific knowledge and skills students are expected to learn:

³⁰⁷ *Id.*, subd. 5.

³⁰⁸ Minn. R. 3501.0960 (2025).

Subpart 1. Exploring phenomena or engineering problems.

A. Asking questions and defining problems. Students will be able to ask questions about aspects of the phenomena they observe, the conclusions the students draw from their models or scientific investigations, each other's ideas, and the information they read.

B. Asking questions and defining problems. Students will be able to ask questions about a problem to be solved so constraints and specifications can be defined for possible solutions.

C. Planning and carrying out investigations. Students will be able to design and conduct investigations in the classroom, laboratory, and/or field to test students' ideas and questions, and organize and collect data to provide evidence to support claims the students make about phenomena.

Subp. 2. Looking at data and empirical evidence to understand phenomena or solve problems.

A. Analyzing and interpreting data. Students will be able to represent observations and data in order to recognize patterns in the data, the meaning of those patterns, and possible relationships between variables.

B. Using mathematics and computational thinking. Students will be able to use mathematics to represent physical variables and their relationships, compare mathematical expressions to the real world, and engage in computational thinking as the students use or develop algorithms to describe the natural or designed worlds.

Subp. 3. Developing possible explanations of phenomena or designing solutions to engineering problems.

A. Developing and using models. Students will be able to develop, revise, and use models to represent the students' understanding of phenomena or systems as they develop questions, predictions and/or explanations, and communicate ideas to others.

B. Constructing explanations and designing solutions. Students will be able to apply scientific principles and empirical evidence (primary or secondary) to explain the causes of phenomena or identify weaknesses in explanations developed by the students or others.

C. Constructing explanations and designing solutions. Students will be able to use their understanding of scientific principles and the engineering design process to design solutions that meet established criteria and constraints.

Subp. 4. Communicating reasons, arguments, and ideas to others.

A. Arguing from evidence. Students will be able to engage in argument from evidence for the explanations the students construct, defend, and revise their interpretations when presented with new evidence, critically evaluate the scientific arguments of others, and present counter arguments.

B. Arguing from evidence. Students will be able to argue from evidence to justify the best solution to a problem or to compare and evaluate competing designs, ideas, or methods.

C. Obtaining, evaluating, and communicating information. Students will be able to read and interpret multiple sources to obtain information, evaluate the merit and validity of claims and design solutions, and communicate information, ideas, and evidence in a variety of formats.

D. Obtaining, evaluating, and communicating information. Students will be able to gather information about and communicate the methods used by various cultures, especially those of Minnesota American Indian Tribes and communities, to develop explanations of phenomena and design solutions to problems.

271. The academic standards for English language arts sets out three general topical areas of instruction: reading; writing; and speaking, listening, viewing and exchanging ideas.³⁰⁹ Then, within these three topics, the standards identify what the instruction should entail and what knowledge or skills in those areas that students are expected to learn.³¹⁰ For example, the reading standard reads as follows:³¹¹

³⁰⁹ Minn. R. 3501.0660 (2025).

³¹⁰ *Id.*

³¹¹ *Id.*, subp. 2.

Subp. 2. **Reading.**

A. The student will demonstrate knowledge of oral language, phonological and phonemic awareness, phonics, and morphology to read accurately and fluently.

B. The student will read and comprehend independently both self-selected and teacher-directed texts; complex literary and informational texts; and texts from multiple sources representing perspectives and identities like and unlike their own from dominant, nondominant, and marginalized social groups.

C. The student will independently read and comprehend both self-selected and teacher-directed complex literary and informational texts representing perspectives of historical and contemporary Dakota and Anishinaabe people.

D. The student will read critically to comprehend, interpret, and analyze themes and central ideas in complex literary and informational texts.

E. The student will apply knowledge of text structure to understand and evaluate a wide variety of complex literary and informational texts.

F. The student will analyze influences on content, meaning, and style of text, including fact and fiction, time period, and author perspective and identity, including Dakota and Anishinaabe perspective, in complex literary and informational texts.

G. The student will evaluate arguments and specific claims from complex informational texts.

H. The student will examine the impact of vocabulary, including words and phrases, on content, style, and meaning of complex literary and informational texts.

I. The student will access and gather information from a variety of sources representing diverse perspectives and assess the relevance and credibility of the information.

272. Now compare the science, math, language arts, and social studies academic standards with the health standards. The health standards simply state:

- The student will use functional health knowledge to enhance health and wellbeing;
- The student will analyze influences that affect health and well-being;
- The student will access valid and reliable information, products, and services to enhance health and well-being;
- The student will demonstrate interpersonal communication skills to enhance health and well-being;
- The student will demonstrate decision-making skills to enhance health and well-being;
- The student will demonstrate goal-setting skills to enhance health and well-being;
- The student will demonstrate practices and behaviors to enhance health and well-being;
- The student will promote health, safety, and well-being of self and others.

273. In sum, the “anchor standards” create no meaningful standards at all unless they are tethered to subject matter (hence the term “anchor”). Otherwise, there is no way to implement these standards; no way to determine what the students will be expected to learn; no expectation of what must be taught by schools; and no way to measure if the standard is met. Thus, in order for Subparts 2 through 9 to have the force and effect of a law, they must be accompanied by the subject matters identified in Subpart 10 and cannot

be divorced from that important subpart. Therein lies the dilemma: Subparts 2 through 9 have no effect without attachment to the subject matters to which they apply and without performance expectations to be measured. But the Department has not made clear in the rule or its rulemaking submissions what subject matters will be included in the standard or what performance expectations will be applied or enforced.

274. A rule that does not comply with applicable law must be disapproved.³¹²

275. Minnesota law requires that an academic standard include “a summary description of student learning in a required content area,” and be “clear, concise, objective, measurable, and grade-level appropriate.”³¹³ In addition, a rule must, by its own terms, have the force and effect of law.³¹⁴ Without identifying all of the subject areas to learn and master prior to graduation, the rule lacks the force and effect of law. The proposed rule Subparts 2 through 9 fail to meet these requirements and are, thus, **DISAPPROVED**.

276. The Department may be able to correct the substantive deficiencies of the proposed rule by modifying Subpart 10 to include the substantive Option and Discretionary Subject Areas to which Subparts 2 through 9 will apply. Whether this would result in a substantially different rule would have to be considered upon review of the modifications.

E. Constitutionality Generally

277. Finally, several commenters argued that the proposed rule, which does not contain an opt-out provision for parents and guardians, is unconstitutional under *Mahmoud v. Taylor*, 606 U.S. 522 (2025), a recent United States Supreme Court case.³¹⁵ Given the recency of the *Mahmoud* decision and its direct relevance to the subject matter of this rulemaking proceeding, the Judge will address this issue, despite the disapproval of the proposed rule on other grounds.

³¹² Minn. R. 1400.2100D.

³¹³ Minn. Stat. §§ 120B.018, subd. 2, 120B.021, subd. 2(b)(1).

³¹⁴ Minn. R. 1400.2100G; Minn. Stat. § 14.02, subd. 4.

³¹⁵ Comment of John Billo (Dual-Notice eComment 5); Comment of Sam Holland (Dual-Notice eComment 6); Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Melanie Swedwell (Dual-Notice eComment 32); Comment of Roseanne Reed (Dual-Notice eComment 33); Comment of John Verheyen (Dual-Notice eComment 39); Comment of Julie Quist (Dual-Notice eComment 40); Comment of Rebekah Bradfield (Dual-Notice eComment 41); Comment of Bruce Ferris (Dual-Notice eComment 46); Comment of Julie Gowen (Dual-Notice eComment 52); Comment of (Dual-Notice eComment); Comment of Robert Deutsch (Dual-Notice eComment 59); Comment of Kristin Deutsch (Dual-Notice eComment 60); Comment of Kate Harri (Dual-Notice eComment 61); Comments of Wanda Gorgoschlitz (Dual-Notice eComment 69, and Dual-Notice Email Comment 2); Comment of Linda Stanton (Dual-Notice eComment 74); Comment of Karla Garcia (Dual-Notice Email Comment 3); Comment of Natalie Kasper (Post-Hearing eComment 10); Comment of Linda Stanton (Post-Hearing eComment 13 Comment of Amy Spale (Post-Hearing eComment 18); Comment of Tamera Wimbley (Post-Hearing eComment 19); Comment of Thomas Hansen (Post-Hearing eComment 21); Comment of Belinda Kuhn (Post-Hearing eComment 22); Comment of Julie Jacobs (Post-Hearing eComment 24); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Courtney Corbello (Post-Hearing eComment 33); Comment of Connie Ferris (Post-Hearing eComment 35).

278. In *Mahmoud*, the Court held that a school board’s policy of not allowing parents prior notice of instruction and the option to opt their children out of instruction, which they believe is contrary to their religious beliefs, violated the Free Exercise Clause of the First Amendment to the Constitution.³¹⁶

279. The Mahmoud case involved a Maryland school district that incorporated several LGBTQ+-inclusive storybooks into its elementary school instruction as part of its English Language Arts curriculum.³¹⁷ A group of parents objected to the books and sought to have their children excused from the classroom during instruction using those books.³¹⁸ At first, the school board agreed to notify parents in advance of when the books would be used and allow parents to excuse their children from that instruction.³¹⁹ However, the school board later reversed course and declared that it would no longer provide notice or allow parents to opt their children out of the curriculum, due to the disruption and number of parents choosing to “opt out” their children.³²⁰

280. Tamer Mahoud, a Muslim parent of a student, along with a group of other parents, sought an injunction in federal district court to prohibit the school board from exposing their children to the instruction over their parental objection.³²¹ The plaintiffs asserted that exposing their children to such instruction conflicted with their religious beliefs and would undermine their rights to direct their children’s religious education.³²² The lower court denied the injunction and the Fourth Circuit Court of Appeals affirmed the trial court decision.³²³

281. In a 6-to-3 decision, the Supreme Court reversed, holding:

. . . that the Board’s introduction of the ‘LGBTQ+-inclusive storybooks’ – combined with the decision to withhold notice to parents and to forbid opt outs – substantially interferes with the religious development of their children and imposes the kind of burden on religious exercise that [*Wisconsin v.*] *Yoder* found unacceptable.³²⁴

282. Relying on *Mahmoud*, commenters in this rule proceeding assert that certain topics included in the sex education portion of the draft benchmarks, may infringe on some parents’ First and Fourteenth Amendment rights to direct the religious education of their children.³²⁵ Therefore, to avoid potential litigation for public schools and districts

³¹⁶ *Mahmoud*, 606 U.S. at 550.

³¹⁷ *Id.* at 532-540.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ *Id.*

³²¹ *Id.* at 540, 543.

³²² *Id.* at 540.

³²³ *Id.* at 544-546.

³²⁴ *Id.* at 550.

³²⁵ Comment of John Billo (Dual-Notice eComment 5); Comment of Sam Holland (Dual-Notice eComment 6); Comment of Julie Jacobs (Dual-Notice eComment 7); Comment of Melanie Swedwell (Dual-Notice eComment 32); Comment of Roseanne Reed (Dual-Notice eComment 33); Comment of John Verheyen (Dual-Notice eComment 39); Comment of Julie Quist (Dual-Notice eComment 40); Comment of Rebekah Bradfield (Dual-Notice eComment 41); Comment of Bruce Ferris (Dual-Notice eComment 46); Comment of Julie Gowen (Dual-Notice eComment 52); Comment of (Dual-Notice

arising out of the *Mahmoud* case, the commenters urge the Commissioner to include clear prior notice and “opt-out” provisions in the health standards rules, similar to the provisions included in the cannabis education statute, Minn. Stat. § 120B.215, subd. 3.³²⁶

283. Notably, Maryland regulations, the state where the *Mahmoud* case arose, had an opt-out provision related to other school activities, including the “family life and human sexuality” units of instruction.³²⁷ However, that regulation was not applied by the school district to the English Language Arts instruction, underscoring the commenters’ recommendation for clear opt out language in the proposed rule.³²⁸

284. The commenters’ concerns have some merit. However, unlike in *Mahmoud*, Minnesota statutes do impose a general notice and “alternative instruction” requirement for all subjects and school districts. Minn. Stat. § 120B.20 (2024) provides:

Each school district shall have a procedure for a parent, guardian, or an adult student, 18 years of age or older, to review the content of the instructional materials to be provided to a minor child or to an adult student and, if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction. Alternative instruction may be provided by the parent, guardian, or adult student if the alternative instruction, if any, offered by the school board does not meet the concerns of the parent, guardian, or adult student. The school board is not required to pay for the costs of alternative instruction provided by a parent, guardian, or adult student. School personnel may not impose an academic or other penalty upon a student merely for arranging alternative instruction under this section. School personnel may evaluate and assess the quality of the student's work.

285. This statute establishes an opportunity for parents to review curriculum and to arrange for alternative instruction when objectionable content is being taught by the school. Parents in Minnesota can arguably invoke Minn. Stat. § 120B.20 if they have religious objections to certain health curriculum. This statute, however, does not require

eComment); Comment of Robert Deutsch (Dual-Notice eComment 59); Comment of Kristin Deutsch (Dual-Notice eComment 60); Comment of Kate Harri (Dual-Notice eComment 61); Comments of Wanda Gorgoschlitz (Dual-Notice eComment 69, and Dual-Notice Email Comment 2); Comment of Linda Stanton (Dual-Notice eComment 74); Comment of Karla Garcia (Dual-Notice Email Comment 3); Comment of Natalie Kasper (Post-Hearing eComment 10); Comment of Linda Stanton (Post-Hearing eComment 13); Comment of Amy Spale (Post-Hearing eComment 18); Comment of Tamera Wimbley (Post-Hearing eComment 19); Comment of Thomas Hansen (Post-Hearing eComment 21); Comment of Belinda Kuhn (Post-Hearing eComment 22); Comment of Julie Jacobs (Post-Hearing eComment 24); Comment of Linda Stanton (Post-Hearing eComment 28); Comment of Courtney Corbello (Post-Hearing eComment 33); Comment of Connie Ferris (Post-Hearing eComment 35).

³²⁶ Minn. Stat. § 120B.215, subd. 3 states: “Notwithstanding any law to the contrary, each school district shall have a procedure for a parent, a guardian, or an adult student 18 years of age or older to review the content of the instructional materials to be provided to a minor child or to an adult student pursuant to this section. The district or charter school must allow a parent or adult student to opt out of instruction under this section with no academic or other penalty for the student and must inform parents and adult students of this right to opt out.”

³²⁷ *Mahmoud*, 606 U.S. at 540.

³²⁸ *Id.*

direct notice before potentially objectionable subject matter (like sex education) is presented to students, and parents may not be widely aware of the option to provide alternative instruction.

286. Thus, to be clear and protect school districts from potential conflicts based upon the Court's decision in *Mahmoud*, the Department may wish to consider including an express notice and opt-out provision in the final version of proposed rule, similar to the one included in the cannabis education statute.³²⁹

Based upon the Findings of Fact and the contents of the rulemaking record, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has authority and jurisdiction to review these rules under Minn. Stat. § 14.14, .15, .50 (2024), and Minn. R. 1400.2100 (2025).

2. Pursuant to Minn. R. 1400.2100, the Administrative Law Judge must disapprove a rule if, among other things, the rule: (1) was not adopted in compliance with the procedural requirements of applicable law and rule; (2) is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the proposed rule; (3) exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law; or (4) is not a "rule" as defined in Minn. Stat. § 14.02, subd. 4, or, by its own terms, cannot have the force and effect of law.

3. The Department failed to meet the notice requirements of rule and law. Specifically, the Department failed to comply with Minn. Stat. § 14.116(b) and (c). The failure to provide notice of the rescheduled hearing deprived the legislators of an opportunity to meaningfully participate in the rulemaking process. The Department did not take corrective action to cure the defect. Accordingly, the failure cannot be deemed harmless under Minn. Stat. § 14.15, subd. 5.

4. The Department also failed to fulfill the procedural requirements of Minn. Stat. § 14.131(2) and (5). Specifically, the Department failed to make reasonable effort to ascertain the probable costs to the agency and LEAs related to the enforcement and implementation of the proposed rule, as well as the probable costs of complying with the proposed rule on LEAs. These errors deprived interested persons and entities, including LEAs, with an opportunity to meaningfully participate in the rulemaking process,

³²⁹ The cannabis education statute, Minn. Stat. § 120B.215, subd. 3, provides:

Subd. 3. **Parental review.** Notwithstanding any law to the contrary, each school district shall have a procedure for a parent, a guardian, or an adult student 18 years of age or older to review the content of the instructional materials to be provided to a minor child or to an adult student pursuant to this section. The district or charter school must allow a parent or adult student to opt out of instruction under this section with no academic or other penalty for the student and must inform parents and adult students of this right to opt out.

and the Department has not taken any corrective action to cure this defect. Accordingly, these procedural defects cannot be deemed harmless under Minn. Stat. § 14.15, subd. 5.

5. The Department has failed to show that the proposed rule is rationally related to the agency's objectives; and the Department has not established, by an affirmative presentation of facts in the record, the reasonableness of the proposed rule.

6. The proposed rule does not establish a summary description of student learning, which is clear, concise, objective, measurable, and grade-level appropriate, as required by Minn. Stat. §§ 120B.018, subd. 2 and 120B.021, subd. 2(b)(1). As a result, the proposed rule conflicts with, and does not comply with, applicable law.

7. Subparts 2 through 9 do not arise to a "rule" as defined in Minn. Stat. § 14.02, subd. 4, and cannot, by their own terms, have the force and effect of law.

8. Finally, the Department's intent to use benchmarks, as opposed to the rule, to establish academic standards, thereby evading rulemaking scrutiny, not only fails to comply with the enabling legislation, it grants the agency discretion beyond that which is allowed by the enabling legislation.

9. In short, the Department has the statutory authority to establish academic standards involving a wide range of health-related subjects. However, the Department must establish those subjects *by rule*, not by benchmarks, which are outside of the rulemaking process. By using the benchmarks to impose additional standards/subjects, the Department thwarts the rulemaking process and gives itself unfettered discretion beyond that which was authorized by law in the enabling legislation.

10. As a result of these numerous procedural and substantive defects, the proposed rule is **DISAPPROVED**.

11. Due to the disapproval of the proposed rule, this Report has been submitted to the Chief Administrative Law Judge for her consideration pursuant to Minn. Stat. § 14.15 and Minn. R. 1400.2240, subp. 4.

12. Any Finding of Fact that might properly be termed a Conclusion of Law, and any Conclusion of Law that might properly be termed a Finding of Fact, are hereby adopted as such.

13. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude, and should not discourage, the Department from further modification of the proposed rule, provided that the rule finally adopted is based upon facts appearing in this rule hearing record and the Department complies with the requirements of Minn. R. 1400.2110, if the modification results in a substantially different rule.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the proposed rule, as modified, be **DISAPPROVED**.

Dated: June 22, 2026



ANN C. O'REILLY
Administrative Law Judge

NOTICE

The Department 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 Department 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 rule is defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for her approval. If the Chief Administrative Law Judge approves the adverse findings contained in this Report, she will advise the Department of actions that will correct the defects, and the Department may not adopt the rules until the Chief Administrative Law Judge determines that the defects have been corrected.

However, if the Chief Administrative Law Judge identifies defects that relate to the issues of need or reasonableness, the Department may either adopt the actions suggested by the Chief Administrative Law 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 Department 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 Department is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Department's submission.

If the Department elects to adopt the actions suggested by the Chief Administrative Law Judge and makes no other changes, and the Chief Administrative Law Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Department makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Administrative Law 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 Administrative Law 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 Department 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 Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Department, and the Department will notify those persons who requested to be informed of their filing.