

July 7, 2026

VIA EMAIL ONLY

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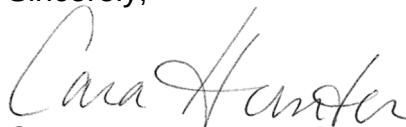
**Re: *In the Matter of the Proposed Rules Relating to K-12 Academic Standards in Health, Minnesota Rules 3501*
CAH 65-9005-40585; Revisor ID R-4924**

Dear Corrie A. Oberg:

Enclosed please find the Amended Order of the Chief Administrative Law Judge on Review of Rules in the above-entitled matter. The Amended Order corrects an error in the Order issued by the Chief Judge on July 2, 2026, related to the Department of Education's initial notice to legislators under Minn. Stat. § 14.116(c).

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
Legislative Coordinating Commission

July 7, 2026

VIA EMAIL ONLY

Representative Jim Nash, Co-Chair
State and Local Government Finance and
Policy
Centennial Office Building
658 Cedar St.
Saint Paul, MN 55155
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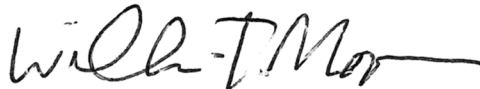
Representative Ginny Klevorn, Co-Chair
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**Re: In the Matter of the Proposed Permanent Rules Relating to
Academic Standards in Health, Minnesota Rules Chapter 3501
CAH 65-9005-40585; Revisor ID R-4924**

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 Amended Order of the Chief Administrative Law Judge on Review of Rules. The Amended Order corrects an error in the Order issued by the Chief Judge on July 2, 2026, relating to the Department of Education's initial service of notice upon legislators under Minn. Stat. § 14.116(c).

Sincerely,



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

**AMENDED 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 Minn. R. 1400.2100(A), (B), (D), (G).

1. The Chief Administrative Law Judge **CONCURS** that the proposed rules must be disapproved because the Department failed to comply with the procedural 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 7, 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

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.

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 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 the chief house and senate authors of the bills authorizing this rulemaking.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.

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). The Chief Judge issued an order on July 2, 2026, containing an error regarding the Department’s initial compliance with Minn. Stat. § 14.116(c). That statute does not require notice to all listed authors of a bill, but only to the chief house and senate authors. Upon further review, the Court has determined that the Department served the chief authors in both chambers on December 15, 2025. Ex. K.; see State of Minnesota, *Journal of the House*, Ninety-Third Session 12867 (Apr. 2, 2024) (reflecting introduction of H.F. No. 5237 in the House by Representative Cheryl Youakim); State of Minnesota, *Journal of the Senate*, Ninety-Third Session 13333 (Apr. 2, 2024) (reflecting introduction of S.F. No. 5252 in the Senate by Senator Mary Kunesh). This correction does not change the Court’s disapproval of the rules, however, because the Department’s subsequent failure to notify legislators of the rescheduled hearing dates under Minn. Stat. § 14.116(b), (c), remains a prejudicial procedural defect.

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).

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.

Here, the Department failed to notify any legislators or the Legislative Coordinating Commission of the rescheduled hearing date. This failure to provide notice 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 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

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).

¹⁷ Minn. Stat. § 14.131(2), (5).

¹⁸ *Id.*

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:

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

¹⁹ Ex. D at 39 (SONAR).

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 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

²⁰ *Id.* at 40.

²¹ Ex. C (proposed rule).

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 in 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.").

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 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),

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.").

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).

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.

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

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

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

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.

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.

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 the chief authors of 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.