STATE OF MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE BOARD OF TEACHING

In the Matter of the Proposed Permanent Rules of the Minnesota Board of Teaching Relating to Special Education Teacher Standards, Chapter 8710

REPORT OF THE ADMINISTRATIVE LAW JUDGE

Administrative Law Judge (ALJ) Manuel J. Cervantes conducted a hearing concerning the above rules on September 19, 2011, at the Minnesota Department of Education Building, 1500 Highway 36 West, Roseville, Minnesota.

The Hearing and this Report are part of a rulemaking process governed by the Minnesota Administrative Procedure Act. The legislature has designed the rulemaking process to ensure that state agencies have met all of the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable, that they are within the agency's statutory authority, and that any modifications that the agency may have made after the proposed rules were initially published are not impermissible substantial changes.

The rulemaking process includes a hearing when a sufficient number of persons request that a hearing be held. The hearing is intended to allow the agency and the Administrative Law Judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate. The Administrative Law Judge is employed by the Office of Administrative Hearings, an agency independent of the Board.

Bernard E. Johnson, Attorney for the Board of Teaching (Board or BOT), and Karen Balmer, Executive Director of the Board of Teaching, appeared at the rule hearing on behalf of the BOT.

Sixty people signed the hearing register and thirty interested persons spoke at the hearing, including the BOT Executive Director and five BOT witnesses. The five BOT witnesses included Karen Balmer, BOT Executive Director;² Erin Doan³, Marsha Baer representing the Autism Society of Minnesota (AUSM);⁴ Tanya Verdugo representing AUSM and speaking from the perspective of an educator and a parent with

¹ Minn. Stat. §§ 14.131 through 14.20 (2010).

² Hearing Transcript (Transcript).

³ Ex. GG

⁴ Ex. HH., Transcript.

an autistic child; Barbara Jo Stahl, a professor at the University of St. Thomas; 5 and Teri Wallace, Department Chair, Department of Special Education at the Minnesota State University of Mankato.6

The proceedings continued until all interested persons, groups or associations had an opportunity to be heard concerning the proposed rules.

After the hearing ended, the record remained open until October 10, 2011, to allow interested persons and the BOT an opportunity to submit written comments. Following the initial comment period, the record remained open for an additional five work-days to allow interested persons and the BOT the opportunity to file a written response to the comments submitted. The OAH hearing record closed for all purposes on December 7, 2011, upon receipt of an Addendum submitted by the BOT. All of the comments received were read and considered.

SUMMARY OF CONCLUSIONS

The Board has established that it has the statutory authority to adopt the proposed rules and that the proposed rules are necessary and reasonable.

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

FINDINGS OF FACT

Introduction

- 1. The Autism Society of Minnesota approached the BOT with concerns about the preparation of teachers who serve students with Autism Spectrum Disorders The BOT responded by gathering a cross-section of stakeholders for discussion. The proposed rules are the result of intensive stakeholder driven work that began in 2007. While there was a diversity of opinion as to what should be the response, it became clear that something should be done relative to ASD.
- In 2008, BOT took the following action: "[t]o include a comprehensive review of all Special Education licenses and related issues in the FY09 Board of Teaching goals."8
- A leadership team was created that included individuals from BOT, Minnesota Department of Education, and a representative from the Metro Educational Cooperative Services Unit.
- 4. Phase I of this work was launched in October 2008, with the following objectives:

⁶ Ex. JJ, Transcript.

⁵ Transcript.

⁷ Statement of Need and Reasonableness (SONAR) at 1. ⁸ *Id.*

- a. to conduct a comprehensive review of Minnesota's licensure structure for serving students with exceptionalities, including both disabilities and gifts, and
- b. to make recommendations to the BOT regarding the preparation of special education teachers and for all teachers serving students with exceptionalities.
- 5. In Phase I, participants addressed the policy question of whether Minnesota's current licensure standards and structure are appropriate, or whether different standards should be considered.
- 6. In the fourth quarter of 2008, representatives from stakeholder organizations analyzed the following data:
 - Student data and trends, including special education child count data;
 - Licensure data and trends, including the use of special permissions;
 - Promising practices in special education from emerging research;
 and
 - Licensure models from other states and data from national special education professional organizations.
- 7. The Phase I working group recommended "[t]o revise Minnesota's licensure structure to better serve special education students by preparing teachers in a hybrid model of disability-specific and cross-categorical system." 9
- 8. The Phase II work groups were comprised of teachers and higher education faculty members from teacher preparation programs, invited to participate because of their knowledge and experience specific to each of the special education licensure fields. Twelve Phase II work groups were established to flesh out the work of Phase I and develop draft rule language specific to each of the proposed licensure rules. Also in Phase II, the BOT convened a series of focus groups to solicit input from stakeholders. When the Phase II work groups completed their tasks of revising and proposing new licensure standards, Phase I participants were reconvened to review Phase II recommendations and develop final recommendations for the BOT (Phase III).¹⁰
- 9. In Phase III, the work group reviewed the Phase II recommendations in the context of:
 - Student impact;
 - Local impact, including size of district, capacity for various programs and settings;

¹⁰ *Id*.

⁹ *Id.* at 2.

- Capacity in higher education to offer programs, recruit candidates, sustain programs, and
- Transition planning and impact on current teaching force.

It was the intent of the Phase III work group to produce a clear and cohesive special education licensure structure. 11

10. In August, 2009, the BOT received a report containing the final recommendations from the Phase III work group. The BOT established a Technical Writing Team (TWT) charged with the technical responsibility of writing draft rules. In June 2010, the TWT presented their final rule drafts. After review of the draft rules, the BOT commenced the instant formal rulemaking process.

Rulemaking Legal Standards

- 11. Under Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100, a determination must be made in a rulemaking proceeding as to whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts. In support of a rule, an agency may rely upon legislative facts, namely general facts concerning questions of law, policy, and discretion, or it may simply rely upon interpretation of a statute, or stated policy preferences. The Board prepared a Statement of Need and Reasonableness (SONAR) in support of the proposed rules. At the hearing, the Board primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed rule. The SONAR was supplemented by comments made by Board representatives at the public hearing and in written post-hearing submissions.
- 12. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule. Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case. A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.
- 13. The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." An

¹¹ *Id*.

¹² Mammenga v. Department of Human Services, 442 N.W.2d 786 (Minn. 1989); Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984).

¹³ In re Hanson, 275 N.W.2d 790 (Minn. 1978); Hurley v. Chaffee, 231 Minn. 362, 367, 43 N.W.2d 281, 284 (1950).

¹⁴ Greenhill v. Bailey, 519 F.2d 5, 19 (8th Cir. 1975).

¹⁵ Mammenga, 442 N.W.2d at 789-90; Broen Memorial Home v. Department of Human Services, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

¹⁶ Manufactured Housing Institute, 347 N.W.2d at 244.

agency is entitled to make choices between possible approaches as long as the choice made is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the agency. The question is rather whether the choice made by the agency is one that a rational person could have made.¹⁷

14. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether the Agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule. ¹⁸

Procedural Requirements of Chapter 14

- 15. On October 22, 2010, the Board mailed copies of a Request for Comments Regarding Possible Amendments to and Establishment of Rules Governing Licensure Rules for Special Education Teachers to the Chairs, Vice Chairs, and members of the Senate and House Education Committees.¹⁹
- 16. On October 25, 2010, the Board published a Request for Comments on the proposed rules. The Request for Comments was published in the State Register at 35 S.R. 665.²⁰
- 17. By letter dated August 2, 2011, the Board asked the Commissioner of Minnesota Management and Budget (MMB) to evaluate the fiscal impact and benefit of the proposed rules on local units of government.²¹
- 18. By letter dated August 2, 2011, the Board requested that the Office of Administrative Hearings schedule a hearing on the proposed rules and assign an Administrative Law Judge. Along with the letter, the Agency filed a proposed Dual Notice, a copy of the proposed rules, and a draft of the SONAR. The Board also noted that its Additional Notice Plan was approved by Administrative Law Judge Beverly Jones Heydinger on October 14, 2010. 22
- 19. Administrative Law Judge Manuel J. Cervantes was assigned to the rule hearing. In a letter dated August 8, 2011, Judge Cervantes approved the Board's Dual Notice.²³
- 20. By letter dated August 8, 2011, MMB replied to the Board's request for evaluation and concluded that it believed that the proposed rule would have little fiscal

¹⁷ Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 233 (1943).

¹⁸ Minn. R. 1400.2100.

¹⁹ Ex. I.

²⁰ Ex. H.

²¹ Ex. S; Minn. Stat. § 14.131.

²² Ex. T.

²³ Ex. V.

impact on local units of government.²⁴ Specifically, MMB found that the primary stakeholders financially affected by the rule changes are higher education institutions and currently licensed teachers.²⁵

- 21. On August 15, 2011, a copy of the Dual Notice and proposed rules was published in the State Register at 36 S.R. 113.26
- On August 16, 2011, the Board mailed via U.S. mail or electronic mail a copy of the Dual Notice and proposed rules to all persons identified in the Additional Notice Plan.²⁷
- 23. On August 19, 2011, the Board electronically mailed a copy of the SONAR to the Legislative Reference Library.²⁸
- 24. From August 16 through August 29, 2011, the Board mailed via U.S. mail or electronic mail a copy of the Dual Notice and the proposed rules to all interested parties on its rulemaking mailing list.²⁹
- 25. On the day of the hearing, the Board placed the following documents in the record:

Exhibit A	Board of Teaching Authorizing Resolution	August 6, 2010
Exhibit B	Minutes from August 6 Board of Teaching Meeting	August 6, 2010
Exhibit C	Preliminary Proposal Form	September 27, 2010
Exhibit D	Tracking Number Assigned by Governor's Office	September 30, 2010
Exhibit E	Request for Approval of Additional Notice Plan	October 1, 2010
Exhibit F	Approval of Additional Notice Plan, Judge Heydinger	October 14, 2010
Exhibit G	Request for Comment	October 18, 2010
Exhibit H	Publication of Request for Comments in State Register	October 25, 2010
Exhibit I	Certificates of Mailing of Request for Comments	
	Legislative Chairs and Vice-Chairs	October 22, 2010
	BOT Rulemaking List	October 22, 2010
	BOT Mailing List	October 22, 2010

²⁴ Ex. W.

²⁵ Id.

²⁶ Ex. Y.

²⁷ Ex. Z.

²⁸ Ex. BB.

²⁹ Ex. Z.

Exhibit J	Certificates of Mailing of Request for Comments	
	Teacher Education Deans and Chairs Mailing List	October 25, 2010
	BOT Rulemaking List	October 25, 2010
Exhibit K	Certificates of Mailing of Request for Comments	
	MDE Superintendent Mailing	October 29, 2010
	Additional Notice Plan	October 25-26, 2010
Exhibit I	Comments Received during Comment Period	
Exhibit M	Revised Rule Drafts	
Exhibit N	Board of Teaching Action to revise rule drafts	December 10, 2010
Exhibit O	Proposed Rule with Revisor's Approval	May 3, 2011
Exhibit P	Exemption Request from State Register Rule Printing	August 1, 2011
Exhibit Q	Proposed Rule and SONAR Form	August 1, 2011
Exhibit R	Draft SONAR	August 1, 2011
Exhibit S	Request for review by the MMB	August 2, 2011
Exhibit T	Request for Approval of Notice of Hearing	August 2, 2011
Exhibit U	Approval of Exemption from State Register Printing	August 4, 2011
Exhibit V	Approval of Notice of Hearing, Judge Cervantes	August 8, 2011
Exhibit W	MMB Evaluation	August 8, 2011
Exhibit X	Notice of Hearing	August 9, 2011
Exhibit Y	Publication of Notice of Hearing in State Register	August 15, 2011
Exhibit Z	Certificates of mailing Notice of Hearing	
	Additional Notice Plan Stakeholders	August 16, 2011
	Participants in the Special Education initiative	
	Representatives from the MN Department of Education	on
	Individuals who requested information or commented	in the fall
	BOT Standards and Rules Committee	
	Teacher Education Deans and Chairs	
	Request for distribution through MDE to:	August 16, 2011

Special Education Directors

Special Education Advisory Panel

Special Education Institution of Higher Education

Regional Low-Incidence Facilitators

	MDE Superintendent Mailing	August 19, 2011
	Legislative Chairs, Vice-Chairs, and Minority Leads	August 29, 2011
	BOT Rulemaking List (electronic)	August 29, 2011
	BOT Rulemaking List (US mail)	August 29, 2011
Exhibit AA	Stripped Copies of Rules from the Revisor's Office	August 18, 2011
Exhibit BB	Certificate of SONAR sent to the Legislative Library	August 19, 2011
Exhibit CC	Final SONAR	August 15, 2011
Exhibit DD	BOT Witness List	September 19, 2011
Exhibit EE	Executive Director Testimony	September 19, 2011
Exhibit FF	Summary of BOT Public Meetings and	
	Stakeholder Outreach	September 19, 2011

26. On the day of the hearing, the Administrative Law Judge received the following documents and were made part of the record:

Exhibit GG	Proposed Licensure Application Supports for ASD Licensure submitted by Erin Doan
Exhibit HH	Written Hearing Testimony of Marsha Baer, Coordinator, Autism Society of Minnesota
Exhibit II	[No exhibit.]
Exhibit JJ	Written Hearing Testimony of Dr. Teri Wallace, Chair, Department of Special Education, Mankato State University
Exhibit KK	Kim Kang, The ARC Minnesota
Exhibit LL	Written Hearing Testimony of Scott Hare, Past President of Minnesota Administrators for Special Education
Exhibit MM	Letter dated September 19, 2011 from Mary Clarkson, Director of Special Education, Sarah Kriewall, Director of Employee Services, and Dennis Carlson, Superintendent of Schools, Anoka-Hennepin School District
Exhibit NN	Written Hearing Testimony of Lori Lorenz

Exhibit OO Letter dated September 19, 2011 from Stephanie A. Corby, Executive Director,

Burnsville-Eagan-Savage School District

Exhibit PP Letter dated September 19, 2011 from Susan Thomson

Exhibit QQ Written Hearing Testimony of Marla Olson and Peggi Page

Exhibit RR Cultivating Bilingualism ASL and English Pamphlet, Deaf Bilingual Coalition

27. The Board's responses and written public comments received after the hearing were read and considered and were also placed in the record.³⁰

28. The Administrative Law Judge finds that the Board has met all the procedural requirements under applicable law and rule.

Additional Notice

- 29. Minnesota Statutes §§ 14.131 and 14.23, require that the SONAR contain a description of the Agency's efforts to provide additional notice to persons who may be affected by the proposed rules. The Agency submitted an additional notice plan to the Office of Administrative Hearings, which reviewed and approved it by letter dated October 14, 2010. In addition to notifying those persons on the Agency's rulemaking mailing list for these proposed rules, the Agency represented that it would mail or electronically mail the Dual Notice to:
 - Participants in the Board of Teaching's Special Education initiative:
 - o Phase I and III stakeholder group (see Appendix A)
 - o Phase II working groups (see Appendix B)
 - o Technical Writing Team (see Appendix C)
 - Special Education Directors listsery
 - Special Education Advisory Panel
 - Special Education IRE (Institutions of Higher Education) Group
 - Minnesota Department of Education
 - Alice Seagren, Commissioner
 - o Karen Klinzing, Deputy Commissioner
 - o John Melick, Educator Licensing Director
 - o Eric Kloos and Joan Breslin-Larson, Supervisors, Special Education Policy Division and Special Education Policy staff members
 - Chairs and Vice-Chairs of the Education Committees of the Minnesota Senate and Minnesota House of Representatives
 - Individuals who have requested information on the Special Education Rulemaking initiative
 - Individuals and groups on the Board of Teaching's Rulemaking List

³⁰ See Office of Administrative Hearings website at: http://mn.gov/oah/administrative-law/comments/.

- All superintendents and charter school directors via the MDE Superintendent weekly email
- Deans and Chairs of all approved Minnesota teacher preparation programs
- Board of Teaching Standards & Rules Committee (BOT standing advisory committee)
- 30. The Administrative Law Judge finds that the Board fulfilled its additional notice requirement.

Statutory Authorization

- 31. Minn. Stat. § 122A.09 states, "[t]he Board of Teaching may adopt rules subject to the provisions of chapter 14 to implement sections 122A.05 to 122A.09, 122A.16, 122A.17, 122A.18, 122A.20, 122A.21, and 122A.23."
- 32. Minn. Stat. § 122A.09 gives the Board broad authority to license public school teachers and design teacher preparation programs, specifically, "[t]he Board must adopt rules to license public school teachers and interns..."³¹
- 33. The Administrative Law Judge finds that the Board has the statutory authority to adopt the proposed rules. The issue of whether the proposed rules are consistent with the governing statutes is addressed in the part-by-part analysis below.

Regulatory Analysis in the SONAR

- 34. The Administrative Procedure Act requires an agency adopting rules to consider seven factors in its Statement of Need and Reasonableness. The first factor requires:
 - (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.

The proposed rule amendments will affect all new teachers and they will be held to the standards set forth in the proposed rules into their courses. Higher education institutions (HEI) that prepare teachers will also be affected. They will be required to embed the standards set forth in the proposed rules into their courses. Teachers already serving students with Autism Spectrum Disorder will be required to earn one of two licenses that will allow them to continue serving these students. Teachers who wish to add a licensure field or an endorsement will be held to the standards set forth in the proposed rules. Minnesota school districts will continue to be required to hire teachers with the appropriate licenses. Minnesota students will be served by teachers who have met the standards set forth in the proposed rules.³²

³¹ Minn. Stat. § 122A.09, subd. 4. (a).

³² SONAR, Ex. CC at 3.

Already licensed teachers, Minnesota school districts, and higher education institutions will bear the costs of the proposed rules. Teachers already serving students with ASD may require additional coursework or participation in additional professional development opportunities resulting in additional costs. Districts may wish to provide additional professional development for their teachers who are required to earn a license to serve students with ASD. HEI will likely incur costs associated with embedding and implementing changes required by the proposed rules.³³

New teacher candidates, already licensed teachers, Minnesota school districts, and Minnesota students will benefit from the proposed rules. New teachers will be better prepared to serve their students. Already licensed teachers who wish to expand the scope of their work in special education will benefit from the updated and strengthened standards. School districts will benefit by the better-prepared teachers they hire to serve Minnesota students. Minnesota students will benefit by being served by teachers who have met the standards set forth in the rules.³⁴

(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.

The BOT will incur minimal costs associated with licensure tests that will need to be reviewed and aligned as needed with the new standards. The testing vendor, contracted by the BOT, will incur the vast majority of these costs pursuant to contractual agreement.

There are no anticipated costs to other agencies or an effect on state revenues.

(3) The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods available to the BOT other than proposing licensing changes through its rule-making authority.³⁵

(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.

The BOT relied heavily on diverse stakeholder involvement throughout the Stakeholders evaluated data, considered multiple options, and made process. recommendations. The proposed rule is the result of their recommendations.³⁶

³³ *Id.* at 3-4. ³⁴ *Id.* at 3-4.

³⁵ *Id.* at 4.

³⁶ *Id.* at 5.

- a. to conduct a comprehensive review of Minnesota's licensure structure for serving students with exceptionalities, including both disabilities and gifts, and
- b. to make recommendations to the BOT regarding the preparation of special education teachers and for all teachers serving students with exceptionalities.
- 5. In Phase I, participants addressed the policy question of whether Minnesota's current licensure standards and structure are appropriate, or whether different standards should be considered.
- 6. In the fourth quarter of 2008, representatives from stakeholder organizations analyzed the following data:
 - Student data and trends, including special education child count data;
 - Licensure data and trends, including the use of special permissions;
 - Promising practices in special education from emerging research;
 and
 - Licensure models from other states and data from national special education professional organizations.
- 7. The Phase I working group recommended "[t]o revise Minnesota's licensure structure to better serve special education students by preparing teachers in a hybrid model of disability-specific and cross-categorical system." 9
- 8. The Phase II work groups were comprised of teachers and higher education faculty members from teacher preparation programs, invited to participate because of their knowledge and experience specific to each of the special education licensure fields. Twelve Phase II work groups were established to flesh out the work of Phase I and develop draft rule language specific to each of the proposed licensure rules. Also in Phase II, the BOT convened a series of focus groups to solicit input from stakeholders. When the Phase II work groups completed their tasks of revising and proposing new licensure standards, Phase I participants were reconvened to review Phase II recommendations and develop final recommendations for the BOT (Phase III).¹⁰
- 9. In Phase III, the work group reviewed the Phase II recommendations in the context of:
 - Student impact;
 - Local impact, including size of district, capacity for various programs and settings;

¹⁰ *Id*.

⁹ *Id.* at 2.

- Capacity in higher education to offer programs, recruit candidates, sustain programs, and
- Transition planning and impact on current teaching force.

It was the intent of the Phase III work group to produce a clear and cohesive special education licensure structure. 11

10. In August, 2009, the BOT received a report containing the final recommendations from the Phase III work group. The BOT established a Technical Writing Team (TWT) charged with the technical responsibility of writing draft rules. In June 2010, the TWT presented their final rule drafts. After review of the draft rules, the BOT commenced the instant formal rulemaking process.

Rulemaking Legal Standards

- 11. Under Minn. Stat. § 14.14, subd. 2, and Minn. Rule 1400.2100, a determination must be made in a rulemaking proceeding as to whether the agency has established the need for and reasonableness of the proposed rule by an affirmative presentation of facts. In support of a rule, an agency may rely upon legislative facts, namely general facts concerning questions of law, policy, and discretion, or it may simply rely upon interpretation of a statute, or stated policy preferences. The Board prepared a Statement of Need and Reasonableness (SONAR) in support of the proposed rules. At the hearing, the Board primarily relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed rule. The SONAR was supplemented by comments made by Board representatives at the public hearing and in written post-hearing submissions.
- 12. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule. Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case. A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.
- 13. The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken." An

¹¹ *Id*.

¹² Mammenga v. Department of Human Services, 442 N.W.2d 786 (Minn. 1989); Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984).

¹³ In re Hanson, 275 N.W.2d 790 (Minn. 1978); Hurley v. Chaffee, 231 Minn. 362, 367, 43 N.W.2d 281, 284 (1950).

¹⁴ Greenhill v. Bailey, 519 F.2d 5, 19 (8th Cir. 1975).

¹⁵ Mammenga, 442 N.W.2d at 789-90; Broen Memorial Home v. Department of Human Services, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).

¹⁶ Manufactured Housing Institute, 347 N.W.2d at 244.

agency is entitled to make choices between possible approaches as long as the choice made is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the agency. The question is rather whether the choice made by the agency is one that a rational person could have made.¹⁷

14. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether the Agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule. ¹⁸

Procedural Requirements of Chapter 14

- 15. On October 22, 2010, the Board mailed copies of a Request for Comments Regarding Possible Amendments to and Establishment of Rules Governing Licensure Rules for Special Education Teachers to the Chairs, Vice Chairs, and members of the Senate and House Education Committees.¹⁹
- 16. On October 25, 2010, the Board published a Request for Comments on the proposed rules. The Request for Comments was published in the State Register at 35 S.R. 665.²⁰
- 17. By letter dated August 2, 2011, the Board asked the Commissioner of Minnesota Management and Budget (MMB) to evaluate the fiscal impact and benefit of the proposed rules on local units of government.²¹
- 18. By letter dated August 2, 2011, the Board requested that the Office of Administrative Hearings schedule a hearing on the proposed rules and assign an Administrative Law Judge. Along with the letter, the Agency filed a proposed Dual Notice, a copy of the proposed rules, and a draft of the SONAR. The Board also noted that its Additional Notice Plan was approved by Administrative Law Judge Beverly Jones Heydinger on October 14, 2010.²²
- 19. Administrative Law Judge Manuel J. Cervantes was assigned to the rule hearing. In a letter dated August 8, 2011, Judge Cervantes approved the Board's Dual Notice.²³
- 20. By letter dated August 8, 2011, MMB replied to the Board's request for evaluation and concluded that it believed that the proposed rule would have little fiscal

¹⁷ Federal Security Administrator v. Quaker Oats Co., 318 U.S. 218, 233 (1943).

¹⁸ Minn. R. 1400.2100.

¹⁹ Ex. I.

²⁰ Ex. H.

²¹ Ex. S; Minn. Stat. § 14.131.

²² Ex. T.

²³ Ex. V.

impact on local units of government.²⁴ Specifically, MMB found that the primary stakeholders financially affected by the rule changes are higher education institutions and currently licensed teachers.²⁵

- 21. On August 15, 2011, a copy of the Dual Notice and proposed rules was published in the State Register at 36 S.R. 113.26
- On August 16, 2011, the Board mailed via U.S. mail or electronic mail a copy of the Dual Notice and proposed rules to all persons identified in the Additional Notice Plan.²⁷
- 23. On August 19, 2011, the Board electronically mailed a copy of the SONAR to the Legislative Reference Library.²⁸
- 24. From August 16 through August 29, 2011, the Board mailed via U.S. mail or electronic mail a copy of the Dual Notice and the proposed rules to all interested parties on its rulemaking mailing list.²⁹
- 25. On the day of the hearing, the Board placed the following documents in the record:

Exhibit A	Board of Teaching Authorizing Resolution	August 6, 2010
Exhibit B	Minutes from August 6 Board of Teaching Meeting	August 6, 2010
Exhibit C	Preliminary Proposal Form	September 27, 2010
Exhibit D	Tracking Number Assigned by Governor's Office	September 30, 2010
Exhibit E	Request for Approval of Additional Notice Plan	October 1, 2010
Exhibit F	Approval of Additional Notice Plan, Judge Heydinger	October 14, 2010
Exhibit G	Request for Comment	October 18, 2010
Exhibit H	Publication of Request for Comments in State Register	October 25, 2010
Exhibit I	Certificates of Mailing of Request for Comments	
	Legislative Chairs and Vice-Chairs	October 22, 2010
	BOT Rulemaking List	October 22, 2010
	BOT Mailing List	October 22, 2010

²⁴ Ex. W.

²⁵ Id.

²⁶ Ex. Y.

²⁷ Ex. Z.

²⁸ Ex. BB.

²⁹ Ex. Z.

Exhibit J	Certificates of Mailing of Request for Comments	
	Teacher Education Deans and Chairs Mailing List	October 25, 2010
	BOT Rulemaking List	October 25, 2010
Exhibit K	Certificates of Mailing of Request for Comments	
	MDE Superintendent Mailing	October 29, 2010
	Additional Notice Plan	October 25-26, 2010
Exhibit I	Comments Received during Comment Period	
Exhibit M	Revised Rule Drafts	
Exhibit N	Board of Teaching Action to revise rule drafts	December 10, 2010
Exhibit O	Proposed Rule with Revisor's Approval	May 3, 2011
Exhibit P	Exemption Request from State Register Rule Printing	August 1, 2011
Exhibit Q	Proposed Rule and SONAR Form	August 1, 2011
Exhibit R	Draft SONAR	August 1, 2011
Exhibit S	Request for review by the MMB	August 2, 2011
Exhibit T	Request for Approval of Notice of Hearing	August 2, 2011
Exhibit U	Approval of Exemption from State Register Printing	August 4, 2011
Exhibit V	Approval of Notice of Hearing, Judge Cervantes	August 8, 2011
Exhibit W	MMB Evaluation	August 8, 2011
Exhibit X	Notice of Hearing	August 9, 2011
Exhibit Y	Publication of Notice of Hearing in State Register	August 15, 2011
Exhibit Z	Certificates of mailing Notice of Hearing	
	Additional Notice Plan Stakeholders	August 16, 2011
	Participants in the Special Education initiative	
	Representatives from the MN Department of Education	on
	Individuals who requested information or commented	in the fall
	BOT Standards and Rules Committee	
	Teacher Education Deans and Chairs	
	Request for distribution through MDE to:	August 16, 2011

Special Education Directors

Special Education Advisory Panel

Special Education Institution of Higher Education

Regional Low-Incidence Facilitators

	MDE Superintendent Mailing	August 19, 2011
	Legislative Chairs, Vice-Chairs, and Minority Leads	August 29, 2011
	BOT Rulemaking List (electronic)	August 29, 2011
	BOT Rulemaking List (US mail)	August 29, 2011
Exhibit AA	Stripped Copies of Rules from the Revisor's Office	August 18, 2011
Exhibit BB	Certificate of SONAR sent to the Legislative Library	August 19, 2011
Exhibit CC	Final SONAR	August 15, 2011
Exhibit DD	BOT Witness List	September 19, 2011
Exhibit EE	Executive Director Testimony	September 19, 2011
Exhibit FF	Summary of BOT Public Meetings and	
	Stakeholder Outreach	September 19, 2011

26. On the day of the hearing, the Administrative Law Judge received the following documents and were made part of the record:

Exhibit GG	Proposed Licensure Application Supports for ASD Licensure submitted by Erin Doan
Exhibit HH	Written Hearing Testimony of Marsha Baer, Coordinator, Autism Society of Minnesota
Exhibit II	[No exhibit.]
Exhibit JJ	Written Hearing Testimony of Dr. Teri Wallace, Chair, Department of Special Education, Mankato State University
Exhibit KK	Kim Kang, The ARC Minnesota
Exhibit LL	Written Hearing Testimony of Scott Hare, Past President of Minnesota Administrators for Special Education
Exhibit MM	Letter dated September 19, 2011 from Mary Clarkson, Director of Special Education, Sarah Kriewall, Director of Employee Services, and Dennis Carlson, Superintendent of Schools, Anoka-Hennepin School District
Exhibit NN	Written Hearing Testimony of Lori Lorenz

Exhibit OO Letter dated September 19, 2011 from Stephanie A. Corby, Executive Director,

Burnsville-Eagan-Savage School District

Exhibit PP Letter dated September 19, 2011 from Susan Thomson

Exhibit QQ Written Hearing Testimony of Marla Olson and Peggi Page

Exhibit RR Cultivating Bilingualism ASL and English Pamphlet, Deaf Bilingual Coalition

27. The Board's responses and written public comments received after the hearing were read and considered and were also placed in the record.³⁰

28. The Administrative Law Judge finds that the Board has met all the procedural requirements under applicable law and rule.

Additional Notice

- 29. Minnesota Statutes §§ 14.131 and 14.23, require that the SONAR contain a description of the Agency's efforts to provide additional notice to persons who may be affected by the proposed rules. The Agency submitted an additional notice plan to the Office of Administrative Hearings, which reviewed and approved it by letter dated October 14, 2010. In addition to notifying those persons on the Agency's rulemaking mailing list for these proposed rules, the Agency represented that it would mail or electronically mail the Dual Notice to:
 - Participants in the Board of Teaching's Special Education initiative:
 - o Phase I and III stakeholder group (see Appendix A)
 - o Phase II working groups (see Appendix B)
 - o Technical Writing Team (see Appendix C)
 - Special Education Directors listsery
 - Special Education Advisory Panel
 - Special Education IRE (Institutions of Higher Education) Group
 - Minnesota Department of Education
 - Alice Seagren, Commissioner
 - o Karen Klinzing, Deputy Commissioner
 - o John Melick, Educator Licensing Director
 - o Eric Kloos and Joan Breslin-Larson, Supervisors, Special Education Policy Division and Special Education Policy staff members
 - Chairs and Vice-Chairs of the Education Committees of the Minnesota Senate and Minnesota House of Representatives
 - Individuals who have requested information on the Special Education Rulemaking initiative
 - Individuals and groups on the Board of Teaching's Rulemaking List

³⁰ See Office of Administrative Hearings website at: http://mn.gov/oah/administrative-law/comments/.

- All superintendents and charter school directors via the MDE Superintendent weekly email
- Deans and Chairs of all approved Minnesota teacher preparation programs
- Board of Teaching Standards & Rules Committee (BOT standing advisory committee)
- 30. The Administrative Law Judge finds that the Board fulfilled its additional notice requirement.

Statutory Authorization

- 31. Minn. Stat. § 122A.09 states, "[t]he Board of Teaching may adopt rules subject to the provisions of chapter 14 to implement sections 122A.05 to 122A.09, 122A.16, 122A.17, 122A.18, 122A.20, 122A.21, and 122A.23."
- 32. Minn. Stat. § 122A.09 gives the Board broad authority to license public school teachers and design teacher preparation programs, specifically, "[t]he Board must adopt rules to license public school teachers and interns..."³¹
- 33. The Administrative Law Judge finds that the Board has the statutory authority to adopt the proposed rules. The issue of whether the proposed rules are consistent with the governing statutes is addressed in the part-by-part analysis below.

Regulatory Analysis in the SONAR

- 34. The Administrative Procedure Act requires an agency adopting rules to consider seven factors in its Statement of Need and Reasonableness. The first factor requires:
 - (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.

The proposed rule amendments will affect all new teachers and they will be held to the standards set forth in the proposed rules into their courses. Higher education institutions (HEI) that prepare teachers will also be affected. They will be required to embed the standards set forth in the proposed rules into their courses. Teachers already serving students with Autism Spectrum Disorder will be required to earn one of two licenses that will allow them to continue serving these students. Teachers who wish to add a licensure field or an endorsement will be held to the standards set forth in the proposed rules. Minnesota school districts will continue to be required to hire teachers with the appropriate licenses. Minnesota students will be served by teachers who have met the standards set forth in the proposed rules.³²

³¹ Minn. Stat. § 122A.09, subd. 4. (a).

³² SONAR, Ex. CC at 3.

Already licensed teachers, Minnesota school districts, and higher education institutions will bear the costs of the proposed rules. Teachers already serving students with ASD may require additional coursework or participation in additional professional development opportunities resulting in additional costs. Districts may wish to provide additional professional development for their teachers who are required to earn a license to serve students with ASD. HEI will likely incur costs associated with embedding and implementing changes required by the proposed rules.³³

New teacher candidates, already licensed teachers, Minnesota school districts, and Minnesota students will benefit from the proposed rules. New teachers will be better prepared to serve their students. Already licensed teachers who wish to expand the scope of their work in special education will benefit from the updated and strengthened standards. School districts will benefit by the better-prepared teachers they hire to serve Minnesota students. Minnesota students will benefit by being served by teachers who have met the standards set forth in the rules.³⁴

(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.

The BOT will incur minimal costs associated with licensure tests that will need to be reviewed and aligned as needed with the new standards. The testing vendor, contracted by the BOT, will incur the vast majority of these costs pursuant to contractual agreement.

There are no anticipated costs to other agencies or an effect on state revenues.

(3) The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

There are no less costly methods available to the BOT other than proposing licensing changes through its rule-making authority.³⁵

(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.

The BOT relied heavily on diverse stakeholder involvement throughout the Stakeholders evaluated data, considered multiple options, and made process. recommendations. The proposed rule is the result of their recommendations.³⁶

³³ *Id.* at 3-4. ³⁴ *Id.* at 3-4.

³⁵ *Id.* at 4.

³⁶ *Id.* at 5.

(5) The probable costs of complying with the proposed rules, 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.

As stated under Item (1) above, the proposed rules will affect new Minnesota teachers and currently licensed teachers, Minnesota school districts, some Minnesota higher education institutions, and Minnesota students.³⁷

(6) The probable costs or consequences of not adopting the proposed rule, including those costs borne by individual categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The quality of service that Minnesota teachers will be prepared to provide special education students will be jeopardized by not adopting the BOT proposed rules.

The BOT operates on the principle that current research and instructional practices be reflected in Minnesota's teacher preparation structure. The current licensure rules were adopted in 2001 and reflect the body of knowledge and instructional practice of the 1990s. The current rules are silent on the Autism Spectrum Disorder. Research and instructional practices have continued to grow and deepen. Currently, there is a wealth of information on ASD and it is imperative that Minnesota special education licensing requirements reflect the advances in this field in order to better serve these students.

Other special education fields have similarly advanced and special education teachers should be rooted in current research and understanding of instructional practice. The purpose of the ABS license is to prepare special education teachers in multiple disability areas. ABS-trained teachers will be prepared to play an important role in the identification of student needs, will be prepared to serve a student with multiple disabilities, and will be prepared to serve in a setting involving multiple students with differing disabilities. Minnesota will follow the lead of other states who have adopted this model.³⁸

(7) An assessment of any differences between the proposed rules and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

The BOT reports that the proposed rules do not conflict with federal regulations.39

³⁷ Id. ³⁸ Id.

³⁹ *Id.* at 6.

The Administrative Law Judge finds that the BOT has adequately considered the cost of its proposed amendments and it has adequately considered the other factors in the regulatory analysis required by Minn. Stat. § 14.131.

Performance-Based Rules

- The Administrative Procedure Act⁴⁰ also requires an agency to describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems. 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.⁴¹
- 36. The BOT states that the proposed rules emphasize superior achievement in meeting its Board goals by proposing special education standards that will ensure that teachers licensed in Minnesota are better prepared to meet the needs of Minnesota students. 42 Teachers have flexibility and voluntarily choose to pursue teaching in the field of special education.⁴³
- The Administrative Law Judge finds that the BOT has met the 37. requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

Consultation with the Commissioner of Finance

- Under Minn. Stat. § 14.131, an agency is also required to "consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."
- The BOT consulted with MMB. By letter dated August 8, 2011, MMB 39. replied to the Board's request for evaluation and concluded that it believed that the proposed rule would have little fiscal impact on local units of government.⁴⁴
- The Administrative Law Judge finds that the BOT has met the requirements set forth in Minn. Stat. § 14.131.

Compliance Costs to Small Businesses and Cities

Under Minn. Stat. § 14.127, state agencies must "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."45

⁴⁰ Minn. Stat. § 14.131. ⁴¹ Minn. Stat. § 14.002.

⁴² *Id.* at 6.

Balmer Testimony (Test.).
44 Ex. W; SONAR at 7.

⁴⁵ Minn. Stat. § 14.127, subd. 1.

Although this determination is not required to be included in the SONAR, 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. 46

- 42. In the SONAR, the BOT states that it has determined that the cost of complying with the proposed rule amendments in the first year after the rules take effect will not exceed \$25,000 for any one small business or small city. Small businesses and small cities will have no costs associated with the proposed rules because the BOT has no regulatory authority on businesses or cities.
- The Administrative Law Judge concludes that the BOT has met the requirements set forth in Minn. Stat. § 14.127 for determining whether the cost of complying with the proposed rules in the first year after the rules take effect, will exceed \$25,000 for any small business or small city. The ALJ approves that determination.

Adoption or Amendment of Local Ordinances

- 44. Under Minn. Stat. § 14.128, an 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. 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.47
- The BOT concludes that the proposed rules do not necessitate local government action because the proposed rules contain no provisions that would affect the law or regulations of a town, home rule charter, or statutory city.⁴⁸
- The Administrative Law Judge finds that the BOT has made the determination required by Minn. Stat. § 14.128, and approves that determination.
- 47. Minn. Stat. § 14.111 imposes an additional requirement calling for notification to the Commissioner of Agriculture when rules are proposed that affect farming operations. In addition, where proposed rules affect framing operations, Minn. Stat. § 14.14, subd. 1b. requires that at least one public hearing be conducted in an agricultural area of the state.
- The proposed rules do not impose restrictions on or have a direct impact 48. on farming operations. Accordingly, the Administrative Law Judge concludes that the BOT was not required to notify the Commissioner of Agriculture of these proceedings.

Analysis of the Proposed Rules General

14

⁴⁶ Minn. Stat. § 14.127, subd. 2. ⁴⁷ Minn. Stat. § 14.128, subd. 1.

⁴⁸ *Id.* at 7.

- 49. This Report is limited to discussion of the portions of the proposed rules that received significant comment or otherwise required close examination. Many sections of the proposed rules were not opposed by any member of the public and were adequately supported by the SONAR. Accordingly, this Report will not address each comment or rule part.
- 50. When rules are adequately supported by the SONAR or the agency's oral or written comments, a detailed discussion of the proposed rules is unnecessary.
- 51. The Administrative Law Judge finds that the BOT has demonstrated the need for and reasonableness of all rule provisions not specifically discussed in this Report by an affirmative presentation of facts. Further, the Administrative Law Judge finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of the rules.

Discussion of Proposed Rules Part by Part Analysis

Part 8710.5000 CORE SKILLS FOR TEACHERS OF SPECIAL EDUCATION.

- 52. The BOT proposes to rewrite subpart 2.A., which describes the foundational knowledge required of a special education teacher. In subpart 2. A., the BOT repeals the current six standards, replacing them with twelve standards. Repeal of one standard drew opposition.
 - 53. Additions appear in bold and deletions are struck through.
 - 54. The Board proposes the deletion of Subp. 2.A. (2), of the current rule:

Subpart 2. Core skill areas.

A. Foundational knowledge: A teacher of special education understands the foundations of special education, including information about students served by special education. The teacher must demonstrate knowledge of the:

* *

- (2) roles and organizational structures of general and special education and the part they play in providing total services to all students;
- 55. The Minnesota Governor's Council on Developmental Disabilities raised a concern with the elimination of this item. The Council indicates that under IDEA, the

most appropriate and the "least restrictive" place for children with disabilities to learn is alongside their peers without disabilities.⁴⁹

- 56. The Council fears that this deletion diminishes the dual role of a general and special education, and specifically, "the benefits that all students gain when they are educated together, the quality of the education that students with disabilities receive will not only be compromised but a dual system at great cost will be allowed to persist." The Council strongly disagrees with segregated classroom environments for students with disabilities. The Council also takes issue with any emphasis in the proposed rules on placement alternatives over the regular classroom. See Minn. R. 8710.5400, subp. 3.B. (8) and 8710.5850, subp. 3.B. (8).
- 57. The Council recommends retaining the deleted language. A review of the twelve new standards in proposed Rule 8710.5000, subpart 2. does not include the retention of the same or similar language. The ALJ agrees that emphasis on the dual role of general and special education is appropriate. While the ALJ does not find the absence of this language to be a defect, given the significance of the "least restrictive" principle at issue, the retention of the deleted language should be reconsidered.
- 58. The ALJ concludes that retaining the repealed language of Minn. R. 8510.5000, subp. 2.A. (2) would not constitute an impermissible substantial change.
 - 59. Two of the new standards in Subpart 2 also elicited comments.
 - 60. The BOT proposes the addition of Subp. 2.A. (9):

Subpart 2. Core skill areas.

A. Foundational knowledge: A teacher of special education understands the foundations of special education, including information about students served by special education. The teacher must demonstrate knowledge of the:

* * *

- (9) medical terminology and educational implications of medical conditions, including the provision of medication and specialized health care in the educational settings;....
- 61. A public member indicated that one could misconstrue this language as requiring teachers to provide medications to students.⁵¹

⁵¹ Written Comment Minnesota State Senator Carla Nelson on behalf of a few special educator constituents in her senate district. (Sen. Nelson).

⁴⁹ Written Comment of Colleen Wieck, Executive Director, on behalf of the MN Governor's Council on Developmental Disabilities (Wieck Comment).

- 62. The BOT explained that this standard is knowledge-based, not skill based: it requires a teacher to understand how student's medications or health care may impact behavior and affect. It does not mean that teachers are providing medications or health care directly, but simply that they have this understanding within the educational setting. ⁵²
- 63. The ALJ concurs that this interpretation is reasonable. No change is necessary to Subp. 2.A. (9). However, to be clearer, the BOT could replace "the provision of" with "the effect of." Such a modification may enhance the meaning and would not constitute an impermissible substantial change.
- 64. Subpart 2.C. addresses the Core Skills of "Instructional design, teaching, and ongoing evaluation." It repeals eight items and replaces them with eleven new ones.
 - 65. Proposed Subpart 2.C. (2), includes the following:
 - C. Instructional design, teaching, and ongoing evaluation: A teacher of special education understands how to provide and evaluate specially designed instruction to meet the unique needs of students in special education through individualized educational plans. The teacher must be able to:

* * *

- (2) lead individual education plan teams through statewide assessment options and make appropriate decisions for a learner's participation within the statewide assessment system;....
- 66. A public member indicated that one could misconstrue this language as granting the teacher rather than the team the individual education plan decision-making authority.⁵³
- 67. In its Memorandum, the BOT agreed to the technical change of substituting the word "to" for the word "and":
 - (2) lead individual education plan teams through statewide assessment options and to make appropriate decisions for a learner's participation within the statewide assessment system.
- 68. The ALJ concurs that this change clarifies any ambiguity and it does not constitute an impermissible substantial change.

⁵² BOT Addendum to October 10 Memorandum regarding Proposed Special Education Rules (Addendum).

³ Sen. Nelson.

most appropriate and the "least restrictive" place for children with disabilities to learn is alongside their peers without disabilities.⁴⁹

- 56. The Council fears that this deletion diminishes the dual role of a general and special education, and specifically, "the benefits that all students gain when they are educated together, the quality of the education that students with disabilities receive will not only be compromised but a dual system at great cost will be allowed to persist." The Council strongly disagrees with segregated classroom environments for students with disabilities. The Council also takes issue with any emphasis in the proposed rules on placement alternatives over the regular classroom. See Minn. R. 8710.5400, subp. 3.B. (8) and 8710.5850, subp. 3.B. (8).
- 57. The Council recommends retaining the deleted language. A review of the twelve new standards in proposed Rule 8710.5000, subpart 2. does not include the retention of the same or similar language. The ALJ agrees that emphasis on the dual role of general and special education is appropriate. While the ALJ does not find the absence of this language to be a defect, given the significance of the "least restrictive" principle at issue, the retention of the deleted language should be reconsidered.
- 58. The ALJ concludes that retaining the repealed language of Minn. R. 8510.5000, subp. 2.A. (2) would not constitute an impermissible substantial change.
 - 59. Two of the new standards in Subpart 2 also elicited comments.
 - 60. The BOT proposes the addition of Subp. 2.A. (9):

Subpart 2. Core skill areas.

A. Foundational knowledge: A teacher of special education understands the foundations of special education, including information about students served by special education. The teacher must demonstrate knowledge of the:

* * *

- (9) medical terminology and educational implications of medical conditions, including the provision of medication and specialized health care in the educational settings;....
- 61. A public member indicated that one could misconstrue this language as requiring teachers to provide medications to students.⁵¹

⁵¹ Written Comment Minnesota State Senator Carla Nelson on behalf of a few special educator constituents in her senate district. (Sen. Nelson).

⁴⁹ Written Comment of Colleen Wieck, Executive Director, on behalf of the MN Governor's Council on Developmental Disabilities (Wieck Comment).

- 62. The BOT explained that this standard is knowledge-based, not skill based: it requires a teacher to understand how student's medications or health care may impact behavior and affect. It does not mean that teachers are providing medications or health care directly, but simply that they have this understanding within the educational setting. ⁵²
- 63. The ALJ concurs that this interpretation is reasonable. No change is necessary to Subp. 2.A. (9). However, to be clearer, the BOT could replace "the provision of" with "the effect of." Such a modification may enhance the meaning and would not constitute an impermissible substantial change.
- 64. Subpart 2.C. addresses the Core Skills of "Instructional design, teaching, and ongoing evaluation." It repeals eight items and replaces them with eleven new ones.
 - 65. Proposed Subpart 2.C. (2), includes the following:
 - C. Instructional design, teaching, and ongoing evaluation: A teacher of special education understands how to provide and evaluate specially designed instruction to meet the unique needs of students in special education through individualized educational plans. The teacher must be able to:

* * *

- (2) lead individual education plan teams through statewide assessment options and make appropriate decisions for a learner's participation within the statewide assessment system;....
- 66. A public member indicated that one could misconstrue this language as granting the teacher rather than the team the individual education plan decision-making authority.⁵³
- 67. In its Memorandum, the BOT agreed to the technical change of substituting the word "to" for the word "and":
 - (2) lead individual education plan teams through statewide assessment options and to make appropriate decisions for a learner's participation within the statewide assessment system.
- 68. The ALJ concurs that this change clarifies any ambiguity and it does not constitute an impermissible substantial change.

⁵² BOT Addendum to October 10 Memorandum regarding Proposed Special Education Rules (Addendum).

³ Sen. Nelson.

69. The ALJ finds the BOT's proposed changes to part 8710.5000 are needed and reasonable. The Board has the authority and has offered a rational explanation for each one.

Part 8710.5050 TEACHERS OF SPECIAL EDUCATION: ACADEMIC AND BEHAVIORAL STRATEGIST.

- 70. This part is proposed as a new addition to the current rules. The BOT proposes five new subparts. The proposed rule part is consistent with the language and form of the other proposed parts.
- 71. Currently, a special education teacher candidate pursues a license in a single disability category, i.e., DD, EBD, or LD. One goal of the ABS license is to train and prepare teachers to serve students with more than one disability. Upon graduation, a teacher holding an ABS license would be able to serve mild to moderately disabled students in the categories of ASD, DD, EBD, and LD.
- 72. At the present time, many teachers are required to seek variances from the BOT because the students they serve are not only from their licensed area but from multiple disability categories. The ABS license would qualify the licensee to serve disabled students immediately, without variance. The school district would benefit because it has hired a qualified teacher to instruct across categories of disabled students. The students would benefit from this teacher's specialized qualifications to meet their needs.⁵⁴
- 73. In addition, subpart 4 requires a teacher to have advanced training in one of the four specified licensure fields, i.e., ASD, DD, EBD, or LD. This license has been referred to as an "anchor" license. The anchor license would require additional teacher preparation, 2-4 courses, but would qualify the teacher holding the ABS license to teach the full spectrum, from mild to severe, in at least one of the above-designated disability areas. The anchor license would require additional teacher preparation, 2-4 courses, but would qualify the teacher holding the ABS license to teach the full spectrum, from mild to severe, in at least one of the above-designated disability areas.
- 74. ABS licensed teachers will have the benefit of broad preparation with a depth of expertise and understanding in one disability area. The Board believes that "not only will they be able to serve students in profound new ways but again they will also be able to provide relief for their school districts who have difficulty finding licensed teachers in each of the disabilities areas." 57
- 75. Many comments in opposition to the anchor requirement came from school districts, some teachers, and teacher representatives who voiced concerns that the requirement would be too cumbersome for teachers and school districts and would exacerbate the special education teacher shortage, especially in rural areas.⁵⁸

⁵⁴ Ex. JJ, Balmer Test.

⁵⁵ Balmer Test.

⁵⁶ *Id*.

⁵⁷ *Id*.

⁵⁸ See, i.e., Written Comment of Todd Travis.

69. The ALJ finds the BOT's proposed changes to part 8710.5000 are needed and reasonable. The Board has the authority and has offered a rational explanation for each one.

Part 8710.5050 TEACHERS OF SPECIAL EDUCATION: ACADEMIC AND BEHAVIORAL STRATEGIST.

- 70. This part is proposed as a new addition to the current rules. The BOT proposes five new subparts. The proposed rule part is consistent with the language and form of the other proposed parts.
- 71. Currently, a special education teacher candidate pursues a license in a single disability category, i.e., DD, EBD, or LD. One goal of the ABS license is to train and prepare teachers to serve students with more than one disability. Upon graduation, a teacher holding an ABS license would be able to serve mild to moderately disabled students in the categories of ASD, DD, EBD, and LD.
- 72. At the present time, many teachers are required to seek variances from the BOT because the students they serve are not only from their licensed area but from multiple disability categories. The ABS license would qualify the licensee to serve disabled students immediately, without variance. The school district would benefit because it has hired a qualified teacher to instruct across categories of disabled students. The students would benefit from this teacher's specialized qualifications to meet their needs.⁵⁴
- 73. In addition, subpart 4 requires a teacher to have advanced training in one of the four specified licensure fields, i.e., ASD, DD, EBD, or LD. This license has been referred to as an "anchor" license. The anchor license would require additional teacher preparation, 2-4 courses, but would qualify the teacher holding the ABS license to teach the full spectrum, from mild to severe, in at least one of the above-designated disability areas. The anchor license would require additional teacher preparation, 2-4 courses, but would qualify the teacher holding the ABS license to teach the full spectrum, from mild to severe, in at least one of the above-designated disability areas.
- 74. ABS licensed teachers will have the benefit of broad preparation with a depth of expertise and understanding in one disability area. The Board believes that "not only will they be able to serve students in profound new ways but again they will also be able to provide relief for their school districts who have difficulty finding licensed teachers in each of the disabilities areas." 57
- 75. Many comments in opposition to the anchor requirement came from school districts, some teachers, and teacher representatives who voiced concerns that the requirement would be too cumbersome for teachers and school districts and would exacerbate the special education teacher shortage, especially in rural areas.⁵⁸

⁵⁴ Ex. JJ, Balmer Test.

⁵⁵ Balmer Test.

⁵⁶ *Id*.

⁵⁷ *Id*.

⁵⁸ See, i.e., Written Comment of Todd Travis.

- 76. Todd Travis, Executive Director, Midwest Special Education Cooperative, thought the ABS license is a step in the right direction, permitting teachers to serve students based on their individual needs. But opposed the idea of requiring teachers to return to school to obtain another license. He believes this imposes a barrier and would make the shortage of special education teachers grow. ⁵⁹
- 77. In response, the BOT asserted that the ABS will not contribute to a teacher shortage. It is a commonly understood practice for school districts to require or prefer candidates with multiple licenses. Teachers seeking employment in special education understand the value of holding multiple licenses.⁶⁰
- 78. Minnesota's existing educational system and cultural values provide incentives for teachers to continue taking courses that lead to additional licenses and generally, higher compensation. ⁶¹
- 79. The requirements of the ABS license do not unduly burden the teacher or the school district, but is a continuation of the expectation of teachers and districts currently. The BOT points out that the ABS, including the in depth anchor license, would not require the equivalent of two full licensure programs.⁶²
- 80. The BOT also clarified the requirements for new and current teachers. In its Memorandum, the BOT noted that there are a number of ways a teacher can satisfy the ABS requirements that do not necessarily require returning to school for an additional license. The BOT indicated that through the proposed rules it seeks "to enact appropriate flexibility through the ABS license and at the same time maintain the integrity of [the] system by establishing the ABS license and the ABS 'anchor' requirement."
- 81. The Board proposes the following language that defines the scope of this rule:
 - Subpart 1. **Scope of Practice.** A teacher of special education: academic and behavioral strategist is authorized to provide evaluation and specially designed instruction to eligible children and youth with disabilities from kindergarten through age 21 who have a range of mild to moderate needs in the areas of academic, behavior, social emotional, communication, and functional performance. These students come from the primary disability areas of autism spectrum disorders (ASD), developmental cognitive disability (DCD), emotional or behavioral disorders (EBD), other health disorders (OHD), and specific learning disabilities (SLD). This teacher is not prepared to serve needs beyond those that are moderate in these disability areas. (Emphasis added.)

⁵⁹ *Id*.

⁶⁰ BOT Memorandum.

⁶¹ *Id*.

⁶² *Id*.

⁶³ *Id*.

- 82. One public member raised a concern that the highlighted language limits the availability of special education for children with needs greater than moderate.⁶⁴
- 83. The BOT explained that the cited language provides the scope of practice for teachers with the ABS license. This language does limit the work of these teachers to serving students with mild to moderate needs. Students with needs beyond moderate will continue to be served by teachers holding one of the full disability-specific licenses. As such, BOT felt no need to make any additional changes to this subpart. 65
 - 84. The ALJ agrees that no further change to this subpart is necessary.
- 85. The ALJ finds the BOT's proposed part including Subpart 1, is needed and reasonable.

PART 8710.5200 TEACHERS OF SPECIAL EDUCATION: DEAF OR HARD OF HEARING.

- 86. The BOT accepted some of the technical change recommendations made by the Kyllo⁶⁶ written comments.⁶⁷
 - 87. Part 8710.5200, Subp. 2.E.:

Subpart 2. **License requirements.** A candidate for licensure to teach, from birth through age 21, infants, children, and youth who are deaf or hard of hearing shall:

*

- E. demonstrate proficiency in American Sign Language communication fluency commensurate with an Intermediate-Plus level of American Sign Language proficiency on the Sign Language Proficiency Interview (SLPI) or a comparable American Sign Language evaluation jointly approved by the Board of Teaching and Commissioner of Education in consultation with the Minnesota Association of Deaf Citizens and the Commission of deaf, DeafBlind, and Hard of Hearing Minnesotans, in accordance with Minnesota Statutes, section 122A.28, Subdivision 1.
- 88. Part 8710.5200, subp. 3.B. (4):
- B. Communication systems. A teacher of special education: deaf or hard of hearing demonstrates knowledge of

⁶⁴ Sen. Nelson.

⁶⁵ Addendum.

⁶⁶ Written Comment of Kitri Larson Kyllo wrote on behalf a handful of special education administrators and herself.

⁶⁷ See BOT Memorandum.

communication systems used by infants, children, and youth who are deaf, hard of hearing, deaf-blind, and those with additional disabilities coexisting with hearing loss. The teacher must demonstrate knowledge of:

* *

- 89. (4) understand theories of linguistics, including linguistics of American Sign Language and English.
 - 90. Part 8710.5200, Subp. 3.E. (4):
 - E. Collaboration and communication. A teacher of special education: deaf or hard of hearing cultivates and maintains positive, collaborative relationships with students, families, other professionals, and the community to support student development and educational progress. The teacher must be able to:

* *

- (4) identify sources of unique services, networks, agencies, and organizations for individuals who are deaf or hard of hearing, deaf-blind, those with additional disabilities coexisting with hearing loss, and those from diverse cultural and language backgrounds;....
- 91. At the hearing⁶⁸ and in the Kyllo comments, a change was proposed to Part 8710.5200, subp. 3.F.:
 - F. Clinical experiences. A teacher of special education: deaf or hard of hearing shall apply the standards of effective practice in teaching infants, children, and youth who are deaf or hard of hearing through a variety of early and ongoing clinical experiences with birth through preschool, primary (kindergarten through grade 4), and or secondary (grades 5 through 12, including transition programs) settings across a range of service delivery models.
- 92. The recommendation was made because the commenters do not believe it is practical that new teachers seeking the license would get clinical experience in all age groups and in all service delivery models. The BOT agreed to revisit the issue but did not include a reference to it in its post-hearing submissions.
 - 93. The ALJ recommends that this issue be reconsidered.

21

 $^{^{68}}$ Transcript at 61, Comments at hearing by Joyce Daugaard, Minnesota Commission of Deaf/ DeafBlind and Hard of Hearing.

- 94. The BOT may wish to incorporate this change if it does not expect teachers to gain experience in each age group. The modification would not constitute an impermissible substantial change.
- 95. The ALJ finds the BOT's proposed changes to part 8710.5200 are needed and reasonable.

PART 8710.5250 TEACHERS OF SPECIAL EDUCATION: ORAL/AURAL DEAF EDUCATION.

- 96. There were numerous comments objecting to the possible elimination of Part 8710.5250, Oral/Aural Deaf Education License, apparently in response to a comment from administrators of programs who train teachers of the deaf or hard of hearing and serve students who are deaf or hard of hearing.⁶⁹ This group recommended the elimination of Minn. R. 5250 through legislation.
- 97. While there are proposed changes to Part 8710.5250, there has been no serious objection to them.
- 98. The BOT has not proposed repealing Part 8710.5250 in this proceeding. Any potential legislation is beyond the scope of this administrative rule-making process.
- 99. The ALJ finds the BOT's proposed changes to part 8710.5250 are needed and reasonable.

Part 8710.5400 TEACHERS OF SPECIAL EDUCATION: DEVELOPMENTAL DISABILITIES.

- 100. The BOT proposes a redraft of Part 8710.5400 so that the language is consistent with the other parts of the proposed rules and to provide clarity.
- 101. The BOT accepted some of the technical change recommendations made in the public comments. They include:
 - 102. Part 8710.5400, subp. 3.B. (2):

Subpart 3. Subject matter standard.

B. Referral evaluation, planning, and programming. A teacher of special education: developmental disabilities understands and applies principles of prevention and intervening early procedures for referral, assessment, evaluation, individualized planning, programming, and placement specific to teaching students with developmental disabilities. The teacher must be able to:

-

⁶⁹ Kyllo Written Comment.

* *

(2) select, administer, and interpret assessments for students with developmental disabilities, accounting for the technical adequacy, ethical concerns, expressive and receptive communication needs, **use of necessary assistive technologies**, and communicate the results to the students, families, educators, and other professionals.

103. Part 8710.5400, subp. 3.C. (2):

C. Instructional design, teaching, and ongoing evaluation. A teacher of special education: developmental disabilities understands how to use individualized education programs plans to design, implement, monitor and adjust instruction for students with developmental disabilities. The teacher must be able to:

* *

(2) apply evidence-based instructional strategies and practices, including functional community-based instruction, task analysis, multisensory, and concrete or manipulative techniques, to promote facilitate acquisition of academic and functional skills in the least restrictive environment;

104. Part 8710.5400, subp. 3.D. (11):

D. Collaboration and communication. A teacher of special education: developmental disabilities cultivates and maintains positive, collaborative relationships with students, families, other professionals, and the community to support student development and educational progress. The teacher must be able to:

* *

- (11) promote peer acceptance, social participation, and achievement by training, coaching, supporting, structuring, and modeling evidence-based strategies for developmental disabilities to peers, parents, paraprofessionals, and other school staff.
- 105. The ALJ finds the BOT's proposed changes to part 8710.5400 are needed, reasonable, and would not constitute an impermissible substantial change.

Part 8710.5850 TEACHERS OF SPECIAL EDUCATION: AUTISM SPECTRUM DISORDERS.

- 106. This part is proposed as a new addition to the current rules. The current special education rules do not contain ASD teacher standards and no specialized training in ASD is currently required. The proposed rule part is consistent with the language and form of the other proposed parts.
- 107. The BOT recognizes that it has placed an "inappropriate and undue burden" on school districts by not having a license specific to ASD, forcing them to find other ways to equip teachers with the knowledge and skills these students require. The purpose of the proposed ASD license is to rectify this. 70
- 108. The BOT felt that the needs of ASD students are unique and defined and that it's the Board's "obligation to ensure that all teachers serving them have a depth of understanding and competency that a licensure requirement provides."⁷¹
- 109. There were many comments, both written and at the hearing, expressing concerns about the proposed ASD special education rules. The following exemplify these concerns.

There is no Need for the New ASD Licensing Requirements.

- 110. Melissa Schaller, President, Minnesota Administrators for Special Education, is not in favor of an ASD specialty license. Instead, she advocated for less rather than more licenses. She stated,
 - "[A] streamlined approach to licensure would...have the potential to address shortage areas in Minnesota.... The emphasis should be on serving individuals regardless of disability label in a manner that will meet their needs efficiently and effectively.... Individuals and districts have invested significant time and effort to ensure expertise is honed for the role of Autism consultant.... A specific license will promote a delegation of responsibility rather than a broad and responsive approach to serving students.... Licensure for Autism Spectrum Disorders will exclude or create an undue burden to become licensed for many of our related service personnel that have served as leaders within the disability field."⁷²
- 111. The Minnesota Occupational Therapy Association took a similar position.⁷³

⁷⁰ Balmer Test.

⁷² Hearing Comments of Melissa Schaller, President, on behalf of the Minnesota Administrators of

⁷³ Written comment of Linda Buxell, President, Minnesota Occupational Therapy Association.

112. The BOT asserts that the current special education licensure rules make no mention of ASD. It is undisputed that in the past decade, the number of children diagnosed with ASD has increased dramatically and sustained growth to this student population is anticipated. Likewise, the need for professionals who are trained in this specialized area has significantly increased as well. Research has shown that the instruction of students with ASD require specialized knowledge and skills. It is the responsibility of the BOT to establish standards for teachers who deliver specialized services to ASD students. Failure to take steps to meet this demand will result in continuing deleterious effects to Minnesota students.

There is no Evidence that ASD Students' Needs are not Being Met under the Current Rules.

- 113. The hearing record and written comments are replete with examples of ASD children whose needs were not being met in terms of diagnosis, application of appropriate strategies to address their behavior, or curriculum modification in order to achieve academic success.⁷⁷
- 114. Dawn Steigauf, a parent of an ASD student, commented at the hearing that while many of the strategies used with ASD students are effective with students suffering from other disabilities, the same cannot be said of strategies specific to other disabilities. She stated,

This is especially true of the behavior strategies used by many EBD teachers. When these strategies are used with students with ASD they are usually ineffective and often cause the behavior to escalate...I once had an educator tell me that the EBD strategies were so ineffective for students with ASD that she could tell which kids had been given the wrong educational diagnosis by how they responded when placed in an EBD program."

- 115. Many special education teachers submitted written comments indicating support for the proposed ASD licensing requirements because their prior training was inadequate to meet the needs of their ASD students and they felt compelled to seek additional ASD training.⁷⁹
- 116. For example, Amy Turner, special education teacher at Valley Crossing Community School, wrote,

[o]ver 500 plus educators have returned to my university [St. Thomas] alone to get additional autism training. That is because many of them feel

⁷⁴ Marsha Baer, AUSM.

⁷⁵ BOT Memorandum of October 10, 2011 (BOT Memorandum).

[&]quot;Ex. HH.

Marsha Baer, AUSM, written comment of Dr. Barbara Luskin.

⁷⁸ Dawn Steigauf Hearing Comment.

⁷⁹ Written comment of Amy Turner.

unprepared with the current license preparation programs to meet the needs of the students they are required to serve in today's school who have ASD.⁸⁰

117. Under the current licensing structure, additional ASD training is not required and many teachers who work with ASD students need additional training.

Impact of the ASD License on Related Service Providers, Including Licensed School Psychologists, and Speech and Language Pathologists.

- 118. Melissa Schaller raised the concern that speech pathologists are often leaders in programming and serve students in the role of ASD specialist. Under the proposed ASD license, they would be required to become licensed teachers to continue to serve in that capacity.⁸¹
- 119. The proposed special education rules govern teacher standards and not standard for related service providers. Licensed school psychologists, and speech and language pathologists will continue to play a role in determining whether a student is eligible for special education services.⁸² Related service providers will continue to play an integral part in the design and delivery of services to students. An ASD license will not change the current system in terms of who is eligible to deliver services, including case management, which continues to be determined locally.⁸³
- 120. In addition to the roles described above, it appears to the ALJ that to the extent that a related service provider performs the role of an ASD special education teacher, the scope of services delivered by a related service provider will be dependent upon what ASD standards can be demonstrated by that provider.

Impact of the ASD License on Current Teachers.

- 121. Significant concerns were raised relative to how current teachers who have ASD-related training and extensive experience in working with ASD students will be given credit for this experience.
- 122. The BOT has outlined a process that will ensure that these teachers have an opportunity to demonstrate that they meet the ASD licensure competencies. Competency may be demonstrated by verification of completion of ASD certification programs, participation in other related professional development, and work experience with ASD students.⁸⁴
- 123. Teachers who do not hold an ASD certificate or other substantial training, will have up to three (3) years, or until January 1, 2015, to take training in the standards

⁸⁰ Id.

⁸¹ Hearing Comments of Melissa Schaller.

⁸² See Minnesota Department of Education rule, Minn. R. 3525.1325, subp. 3.

^{°3} Id.

⁸⁴ Ex. HH, Ex. GG and the hearing comments of Erin Doan.

that they cannot demonstrate. The BOT anticipates that many teachers will not need to take additional coursework to meet the standards 85

Impact of the ASD License on Special Education Teacher Shortages.

- 124. A number of comments raised concerns that the establishment of the ASD and ABS licenses will exacerbate special education teacher shortages and will place additional financial burdens on teachers and school districts.
- 125. While teacher shortages are a legitimate concern, the rationale behind these licenses was not to address teacher shortages but rather, in the case of the ASD, it was to add a new license and provide the necessary standards where none currently exist. And further, in the case of the ABS license, it was to provide a cohesive system by maintaining the current disability-specific licenses, and create the new license that will permit teachers to serve students with mild to moderate needs in the multiple disability areas of ASD, DD, EBD, LD, and OHD, providing flexibility to special education teachers and school districts in responding to their local student educational demands.86
- 126. Teachers who are already licensed in DD, EBD, and LD will not be required to obtain an ASD license, but some may choose to expand their license to an ABS license.87
- There may be additional tuition and other costs related to the required specialized education. But the BOT asserts that where there is a demonstrated need, additional costs of obtaining the training is not a sufficient reason for not requiring the training.
- There is a significant demand for ASD related training. Prior to 2007, there were only four such programs in Minnesota. Today there are nine colleges and universities in Minnesota that offer ASD certificate programs. The growth of these programs demonstrates that teachers recognize the value of this training in pursuing their teaching and professional goals and tends to negate the argument that the new requirements will exacerbate the special education teacher shortage.⁸⁸
- 129. The ALJ finds the BOT's proposed addition of part 8710.5850 is needed, reasonable, and a rational policy choice. Minn. Stat. § 122A.09 clearly supports the Board's ability to make rules regarding subject matter standards for teachers of Autism Spectrum Disorder education.

⁸⁵ *Id*.

⁸⁶ Sonar at 11-12.

⁸⁸ BOT Memorandum at 2.

- 130. The BOT has proposed to modify the original effective date of the proposed rules from September 1, 2012 to January 1, 2013.⁸⁹ The ALJ finds that this modification does not constitute an impermissible substantial change.
- 131. Also in this regard, the BOT may wish to extend the amount of time permitted to allow teachers who cannot demonstrate all standards to qualify for an ABS license time to take the additional training.⁹⁰ An extension of this nature would not constitute an impermissible substantial change.
- 132. The ALJ finds the BOT's proposed addition of part 8710.5850 is needed, and reasonable. Although the ASD license is controversial, potentially expensive, and may affect how services are delivered to ASD students, the BOT has demonstrated discretion based on need and reasonableness.

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

CONCLUSIONS

- 1. The Board of Teaching gave proper notice of the hearing in this matter.
- 2. The BOT has fulfilled the procedural requirements of Minn. Stat. § 14.14 and all other procedural requirements of law or rule.
- 3. The BOT has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, and 14.50 (i) and (ii).
- 4. The BOT has demonstrated the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2, and 14.50 (iii).
- 5. A Finding or Conclusion of need or reasonableness with regard to any particular rule part does not preclude, and should not discourage, the BOT from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon the facts appearing in this rulemaking record.

Based on the Conclusions, the Administrative Law Judge makes the following:

⁸⁹ Sonar, see proposed rules Minn. R. Part 8710.5000, subp. 4., Part 8710.5050, subp. 5., Part 8710.5100, subp. 5., Part 8710.5200, subp. 6., Part 8710.5250, subp. 5., Part 8710.5400, subp. 5., Part 8710.5500, subp. 5., Part 8710.5600, subp. 5., Part 8710.5850, subp. 5., and Part 8710.5850, subp. 5.

⁹⁰ See paragraph No. 122 above in reference to a three year window for current teachers to qualify with additional training.

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules, as modified, be adopted.

Dated: December 30, 2011

/s/ Manuel J. Cervantes
MANUEL J. CERVANTES
Administrative Law Judge

Transcript Prepared by the BOT.

NOTICE

The BOT must make this Report available for review by anyone who wishes to review it for at least five working days before the BOT takes any further action to adopt final rules or to modify or withdraw the proposed rules. If the BOT 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.

After adopting the final version of the rules, the Board must submit the final version to the Revisor of Statutes for a review as to its 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 the same and file them with the Secretary of State. When the final rules are filed with the Secretary of State, the Administrative Law Judge will notify the Board, and the Board will notify those persons who requested to be informed of their filing.

When the rule is filed with the Secretary of State by the Office of Administrative Hearings, the Agency must give notice to all persons who requested that they be informed of the filing.