

**Integration Rule and Statute Alignment Work Group**

**Recommendations to the Commissioner**

**February 14, 2014**

## **Cost of Report Preparation**

The total cost for the Minnesota Department of Education (MDE) to prepare this report was approximately \$850. Most of these costs involved staff time preparing the written report. Incidental costs include paper, copying, and other office supplies.

Estimated costs are provided in accordance with Minnesota Statutes 2011, section 3.197, which requires that at the beginning of a report to the Legislature, the cost of preparing the report must be provided.

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## Integration Rule and Statute Alignment Work Group Recommendations

February 14, 2014

The following recommendations were given to the commissioner for consideration:

**Recommendation:** The legislature should enact session law that addresses the priority items listed below. In addition, the legislature should grant expedited rulemaking authority to the commissioner for priority issues, and general rulemaking authority to address remaining issues during the rulemaking process.

1. **Purpose Statement.** Because the current statute includes a purpose statement (Minn. Stat. § 124D.861 Subd. 1(a)), a similar statement is not needed in rule.

**Recommendation:** Delete purpose section from Rule 3535.0100 or replace the current rule purpose statement aligned to the statute, as well as the following: “Avoiding racial isolation and promoting diversity are legitimate activities for the state to pursue.”

2. **Student Classifications.** Clarify “protected class student” classifications.

**Recommendation:** Use the statutory designated classification and not those in rule.

- a. For the purpose of determining “eligible districts” and for determining funding, use the following NCLB designated classifications:
  - American Indian/Alaskan Native
  - Asian/Pacific Islander
  - Hispanic
  - Black

The term “protected class students” should include the foregoing classifications.

- b. For the purpose of plan development, implementation, reporting, and evaluation, use the following NCLB classifications referenced in statute:
  - American Indian/Alaskan Native
  - Asian/Pacific Islander
  - Hispanic
  - Black
  - Free and Reduced Priced Lunch (economic)

- c. **Recommendation:** Retain rule language about the dual status of American Indian students to acknowledge their dual status as protected students and members of sovereign nations (3535.0110 Subp. 2).

3. **“Eligible District”.** The definition of eligible district should be modified as follows:

**Recommendation:** “Eligible district” should be defined as:

- a. A district with an enrollment of 20 percent or more “protected class students”; or
- b. A district or districts that have an enrollment disparity of 20 percent or more “protected class students” compared to an adjacent district, provided the adjacent district participates in a cross-district plan; or

- c. A district with a school site that has an enrollment disparity of 20 percent or more “protected class students” compared to other school sites within the district; or
- d. A district submitting a voluntary plan to meet the intent of the statute.

*Note: Appropriate means for addressing eligibility of districts and schools with high numbers of enrolled American Indian students should be developed in consultation with the Tribal Nations Education Committee in recognition of the unique educational needs of American Indian students and their dual status as members of sovereign nations.*

- 4. **Intentional Discrimination.** The statute does not cover intentional discrimination, while the rule requires the commissioner to make a determination of intent. (Minn. R. 3535.0110 Subp. 9 and 3535.0130-0150)

The work group expressed concern about acts of intentional segregation. The following recommendations address this.

**Recommendations:**

- Eliminate current definition and process in rule pertaining to intentional discrimination.
- Utilize provisions of the Minnesota Human Rights statute and other relevant statutes to respond to acts of intentional discrimination and cross-reference either in statute or rule (Minn. Stat. § section 127A.41), which provides for the reduction in state aid if a district violates the Minnesota Human Rights Act or the Minnesota Constitution. (See Appendix C for these statutes)

- 5. **Collaboratives:** The rule requires all eligible districts adjacent to racially isolated districts to collaboratively develop cross-district integration plans. The new statute does not. This has raised the question of when cross-district planning for integration strategies should be required. Collaboration among districts should be meaningful and support the goals required in statute. The current rule only focuses on one of these required goals.

**Recommendations:**

- If a district has been identified as eligible (under the new criteria) because of a disparate percentage of enrolled protected class students when compared with one or more adjacent district, cross-district collaboration is voluntary for adjoining districts and at the discretion of the racially isolated district so long as one adjoining district participates.
- If a racially isolated district declines to participate in the achievement and integration program with an adjacent district, the adjacent district shall not be required to submit a plan or engage in cross-district integration planning and shall not receive funding.
- If a district qualifies under more than one definition of “eligible”, all the definitions apply.

- 6. **Plan Development and Implementation:** The process for developing and implementing the integration plan is identified in statute and may conflict with the rule because the rule is not as focused on achievement. Districts should follow

the plan development process that is aligned with the World's Best Workforce process in statute.

**Recommendation:** Those similar provisions in rule should be repealed so as to prevent confusion. Integration strategies to address isolated schools within a district must be specified in the district's plan. This should be clarified by amending statute or through the rulemaking process.

7. **Evaluation:** Integration and achievement goals within the integration plan should be part of the overall achievement goals within the district's World's Best Work Force plan and aligned with the MMR measures of closing the achievement gap, proficiency, and growth and graduation rates. However, more specific measures should be identified to evaluate integration activities listed in that plan and funded with achievement and integration revenue.

**Recommendation:** Evaluation provisions in rule should be repealed so as to prevent confusion.

**Recommendation:** The commissioner should develop specific evaluation criteria to be shared with districts that determine how progress toward achievement and integration goals is to be measured. This should be done through rulemaking.

8. **Community Input on plans.** This process is required and outlined in statute.

**Recommendation:** Rules related to this should be repealed.

**Recommendation:** District plans must include a provision describing the process for input by the local American Indian Parent Advisory Committee, if such a committee is in place. This requirement can be adopted in either rule or statute.

9. **Incentive funding/Use of integration funds guidelines.** Although broad areas for the acceptable uses of integration funds are specified in statute, criteria for the use of integration funding, including the use of incentive funding, may need clarification.

**Recommendation:** Criteria for the use of integration funds should be developed in rule consistent with statutory requirements. While it is in the public's best interest to have guidelines established in rule, districts shall operate under the commissioner's guidance until rulemaking is complete.

10. **Additional issues:** Additional issues were discussed by the work group but need further study and consideration. This should take place as part of any rulemaking process. Some of these issues include:

- Ethnocentric schools.
- Language immersion schools.
- Charter schools (currently excluded in rule).
- Online schools or programs (Issue: Students enrolled in an online school or program are included in a district's overall pupil count and funding).
- EL sites (currently excluded in rule).
- Special Education sites (currently excluded in rule).
- Care and treatment facilities (currently excluded in rule).

- Open enrollment impact on an integration plan.
- The use of incentives to support pro-integrative establishment of attendance boundaries.

## Appendix A

### 124D.896 DESEGREGATION/INTEGRATION AND INCLUSIVE EDUCATION RULES.

(a) By January 10, 1999, the commissioner shall propose rules relating to desegregation/integration and inclusive education.

(b) In adopting a rule related to school desegregation/integration, the commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the commissioner.

#### **History:**

Ex1959 c 71 art 2 s 11; 1965 c 718 s 1; 1969 c 9 s 23,24; 1969 c 288 s 1; 1973 c 492 s 14; 1975 c 162 s 6,7; 1976 c 271 s 21; 1977 c 347 s 19; 1977 c 447 art 7 s 4; 1982 c 424 s 130; 1982 c 548 art 4 s 4,23; 1983 c 258 s 22; 1984 c 640 s 32; 1985 c 248 s 70; 1987 c 178 s 5; 1987 c 398 art 7 s 5; 1989 c 329 art 7 s 2; art 8 s 1; art 9 s 4; 1990 c 375 s 3; 1991 c 265 art 9 s 13; 1993 c 224 art 12 s 2-6; art 14 s 4; 1994 c 647 art 7 s 1; art 8 s 1; 1Sp1995 c 3 art 7 s 1; art 16 s 13; 1996 c 412 art 7 s 1; 1997 c 1 s 1; 1997 c 162 art 2 s 11; 1998 c 397 art 4 s 1,51; art 11 s 3; 1998 c 398 art 5 s 6,7; art 6 s 38; 2000 c 254 s 35,50

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## Appendix C: Pertinent 2013 Minnesota Statutes

### 124D.855 SCHOOL SEGREGATION PROHIBITED.

The state, consistent with section [123B.30](#) and chapter 363A, does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools. Instead, the state's interest lies in offering children a diverse and nondiscriminatory educational experience.

#### History:

[1Sp2011 c 11 art 2 s 42](#)

### 123B.30 IMPROPER CLASSIFICATION OF PUPILS.

No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semiannual apportionment the share of such district and the county auditor shall thereupon exclude such district from the apportionment for such period.

#### History:

[Ex1959 c 71 art 8 s 8](#); [1986 c 444](#); [1998 c 397 art 6 s 124](#)

### 127A.42 REDUCTION OF AID FOR VIOLATION OF LAW.

#### Subdivision 1. State aids.

The amount of state aids to which a district is entitled shall be the amount computed according to statutes. The annual state aid certificate made by the commissioner to the commissioner of management and budget shall show the amount of any reductions made.

#### Subd. 2. Violations of law.

The commissioner may reduce or withhold the district's state aid for any school year whenever the board of the district authorizes or permits violations of law within the district by:

(1) employing a teacher who does not hold a valid teaching license or permit in a public school;

(2) noncompliance with a mandatory rule of general application promulgated by the commissioner in accordance with statute, unless special circumstances make enforcement inequitable, impose an extraordinary hardship on the district, or the rule is contrary to the district's best interests;

(3) the district's continued performance of a contract made for the rental of rooms or buildings for school purposes or for the rental of any facility owned or operated by or under the

direction of any private organization, if the contract has been disapproved, the time for review of the determination of disapproval has expired, and no proceeding for review is pending;

(4) any practice which is a violation of sections 1 and 2 of article 13 of the Constitution of the state of Minnesota;

(5) failure to reasonably provide for a resident pupil's school attendance under Minnesota Statutes;

(6) noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability, as defined in sections [363A.08](#) to [363A.19](#) and [363A.28, subdivision 10](#); or

(7) using funds contrary to the statutory purpose of the funds.

The reduction or withholding must be made in the amount and upon the procedure provided in this section, or, in the case of the violation stated in clause (1), upon the procedure provided in section [127A.43](#).

**Subd. 3. Assurance of compliance.**

(a) After consultation with the commissioner of human rights, the commissioner of education shall adopt rules in conformance with chapter 14. The rules must direct districts to file with the commissioner of education assurances of compliance with state and federal laws prohibiting discrimination. The assurances must be provided in a form and manner prescribed by the commissioner.

(b) If it appears that one or more violations of the Minnesota Human Rights Act are occurring in a district, the commissioner of human rights shall notify the commissioner of the violations, and the commissioner of education may then proceed pursuant to subdivision 4.

**Subd. 4. Notice to board.**

When it appears that a violation is occurring in a district, the commissioner shall notify the board of that district in writing. The notice must specify the violations, set a reasonable time within which the district must correct the specified violations, describe the correction required, and advise that if the correction is not made within the time allowed, special state aids to the district will be reduced or withheld. The time allowed for correction may be extended by the commissioner if there is reasonable ground therefor.

**Subd. 5. Dispute violations; hearing.**

The board to which such notice is given may, by a majority vote of the whole board, decide to dispute that the specified violation exists or that the time allowed is reasonable or the correction specified is correct, or that the commissioner may reduce or withhold aids. The board must give the commissioner written notice of the decision. If the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the commissioner shall notify the school board of its decision. If the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the board shall be entitled to a hearing by the commissioner under this subdivision and notwithstanding chapter 14. The commissioner must set a hearing time and place and the board of the district must be given notice by mail. The hearings must be designed to give a full and fair hearing and

permit interested parties an opportunity to produce evidence relating to the issues involved. A stenographic record must be made of all testimony given and other proceedings during the hearing. If practicable, rules governing admission of evidence in courts shall apply to the hearing. The final decision of the commissioner must be in writing and the controlling facts upon which the decision is made must be stated in sufficient detail to apprise the parties and the reviewing court of the basis and reason for the decision. The decision must be confined to whether any of the specified violations existed at the date of the commissioner's first notice, whether the violations were corrected within the time permitted, whether the violations require withholding or reduction of the state aids under this section, and in what amount.

**Subd. 6. Violation; aid reduction or withholding.**

The commissioner shall not reduce state aids payable to the district if the violation specified is corrected within the time permitted, or if the commissioner on being notified of the district board's decision to dispute decides the violation does not exist, or if the commissioner decides after hearing no violation specified in the commissioner's notice existed at the time of the notice, or that the violations were corrected within the time permitted. Otherwise state aids payable to the district for the year in which the violation occurred may be reduced or withheld as follows: The total amount of state aids to which the district may be entitled shall be reduced in the proportion that the period during which a specified violation continued, computed from the last day of the time permitted for correction, bears to the total number of days school is held in the district during the year in which a violation exists, multiplied by up to 60 percent of the basic revenue, as defined in section [126C.10, subdivision 2](#), of the district for that year.

**Subd. 7. Reduction in aids payable.**

Reductions in aid under this section and sections [127A.41](#) and [127A.43](#) must be from general education aid. If there is not sufficient general education aid remaining to be paid for the school year in which the violation occurred, the reduction shall be from other aids that are payable to the district for that year. If there is not a sufficient amount of state aids remaining payable to the district for the school year in which the violation occurred to permit the full amount of reduction required, that part of the required reduction not taken from that school year's aids will be taken from the state aids payable to the district for the next school year, and the reduction will be made from the various aids payable for the next year.

**Subd. 8.**

[Repealed, [1999 c 241 art 9 s 54](#)]

**Subd. 8a. Appeal.**

A final decision of the commissioner under this section may be appealed in accordance with section [480A.06, subdivision 3](#).

**Subd. 9. Notice to district.**

Any notice given to the board of a district will be deemed given when a copy thereof is mailed, registered, to the superintendent of the district, if there is a superintendent, and to the clerk of the board of the district. If it is shown that neither the superintendent nor the clerk in fact received such notice in the ordinary course of mail, then the time for correction will be accordingly extended by the commissioner so that a reasonable time will be allowed from actual receipt of notice for correction. If notice is sent by the commissioner with respect to a violation

which is continued by the district in a succeeding year, no separate notice for that violation for the succeeding year will be required. Proceedings initiated by such notice shall include any continuing violation notwithstanding that a part thereof occurs in a year different from the year in which it started. The commissioner may require reasonable proof of the time that a violation ceased for the determination of the amount of aids to be reduced or withheld. Costs and disbursements of the review by the Court of Appeals, exclusive of those incurred in the administrative proceedings, may be taxed against the losing party and in the event taxed against the state must be paid from the appropriations made to the department for the payment of state aids.