

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#489. Dept of Education

RULES REVIEW CHECKLIST

DATE RULES RECEIVED ~~12/4~~ 11/30 Temporary Rule —

Resubmitted and Received ~~12~~

DUE DATE ~~12/28~~ 12/20

a. Returned to Agency w/o filing w/Secy of State _____
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓ O.K under old rules
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓ when (illegible)
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting ✓ (signature, issue)
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable _____
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable n/a
17. Petition by Public, where applicable n/a.

Rules as Adopted

Chapter Thirty-One: Rules Relating to Equality of Educational Opportunity and School Desegregation

EDU 621 Definitions. For the purposes of EDU 620-639, the following words and phrases shall have the meaning ascribed to them:

A. No change.

B. No change.

C. Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the student population of the entire district, for the grade levels served by that school building, by more than 15 percent.

EDU 625 Contents of plan: approval or rejection

A. The 15 percentage points requirement of EDU 621 C., shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.

Notwithstanding the 15 percentage points standard, the commissioner shall, if the local board can justify an educational reason for a variance to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the standard except the variance may not cause any school building to exceed 50 percent minority enrollment.

An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the state board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

Rules as Adopted

Chapter Thirty-Four: Community Services

EDU 682 Limitation on aids and levies.

A. No change.

B. General purpose community education funds shall not be used for adult vocational training.

C. No change.

EDU 687 Annual report.

Each year on or before August 15, each district having a community service levy shall report to the department of education on forms authorized by the commissioner.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC 19 1978
Joan Anderson Growe
Secretary of State

1:30 p.m.

APPROVED AS TO FORM AND LEGALITY

DEC. 19 1978 DEC 19 1978 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hindeslien

SPECIAL ASSISTANT ATTORNEY GENERAL

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Assistant Attorney General Michael J. Bradley, do hereby declare that I have examined the proposed rules EDU 620-639 dealing with Desegregation and EDU 682 and 687 dealing with Community Services and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Michael J. Bradley
Assistant Attorney General

Dated: 11-30-78

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : FILE

DATE: 12/15/78

FROM : JOANNE E. HINDERAKER
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Letter from Jeanne Cummings Questioning the Legality of Board of Education Rules Relating to School Desegregation.

This file was received on 11/30/78 by this office, but was incorrectly logged in with a receipt date of 12/4/78. On 12/7/78 I had a telephone conversation with Ms. Cummings during which I informed her that she could direct her comments to this office on or before 12/13/78 to comply with the 10 day provision of Attorney General Rule 305. On 12/12/78 I discovered the error in the file receipt date. Ms. Cummings provided this office with written comments on 12/13/78.

Because Ms. Cummings was misinformed as to the deadline for her comments, I have reviewed and considered them as if they were in fact received by this office within the correct 10 day period.

JEH/bw

RECEIVED
DEC 13 19
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

1420 West Minnehaha Parkway
Minneapolis,Minnesota 55409

December 12,1978

Ms. Joan Hinderacher
Attorney General's Office
G-25 Administration Building
50 Sherburne Avenue
St. Paul,Minnesota 55155

Dear Ms. Hinderacher:

In response to Education Commissioner Casmey's letter informing me that citizens may question the legality of the proposed rules of the State Board of Education governing the standard for determining school segregation, I am submitting the following three comments:

1. The State B oard claims they have "express statutory authority to adopt the proposed rules. In the first instance, Minnesota Stat.S 127.08 (1976) provides in part:

> No district shall classify its pupils with reference to race,color,social position or nationality, not separate its pupils into different schools or departments upon any such grounds.*

Yet, the State Board's key provision, the standard for determining school segregation, continues to be defined only in the form of a racial ratio which requires school districts to classify pupils by race; to wit:

> EDU 621 C. Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district for the grade levels served by that school building by more than 15%.
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> EDU 623 B. Each local board shall submit a report showing the number of students enrolled which belong to each race for each of the schools under its jurisdiction. The information required to be submitted may be based upon sight count or any other method determined by the local board to be accurate.

It would seem this direct contradiction to the statute requires further legal and logical investigation on the part of the reviewing authorities. (Refer to Memorandum of Special School District 1 submitted August 10,1978 regardking Points and Authorities concerned with the Validity of Proposed Amendment of EDU 621 (c) and EDU 625 (A) by Duane Krohnke,Attorney,Pages 9-32)

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*Page 1. State Department of Education Statement of Need and Reasonableness (in the matter of the proposed amendment of Rules of the State Board of Education in relation to EDU 621 (C) and EDU 625 (A).)July 14,1978.

2. In both written and spoken testimony, the State Board's staff cites Dr. James Coleman's research findings as a major part of their educational rationale for using a prescribed racial percentage as the key criterion for the regulation.

> The Senate Select Committee on Equal Educational Opportunity noted in its report, Chapter 7, P.101, that the counting of minority and non-minority group children in our schools has become the principal measurement of progress in school desegregation, and that these measurements imply that some fixed proportion of minority to non-minority group students defines the schools in a geographic area as "segregated" or "desegregated."....
>
> These attempts at defining "segregation" grew out of research findings which suggest that academic performance for minority students is better when they attend integrated schools with predominately white middle-class students. Dr. James Coleman and others have found that when children from educationally disadvantaged homes attend schools with predominately middle-class, educationally advantaged student bodies, educational disadvantages resulting from home environments are reduced..*

Yet Coleman, in a September 18, 1978 interview reported in the Washington Post, repudiated his support for the interpretation of the research findings used by the State Board of Education.

> ...it is not the case that school desegregation as it has been carried out in American schools (mandatory busing and racial balance programs) generally brings achievement benefits to disadvantaged (black) children....
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> ...thus what once appeared to be fact is now known to be fiction.**

This interview was not reported until after the hearing had closed but is so germane as to be in the category of new fact and should be part of the record. I sent the enclosed letter to the State Board as well as copies of the enclosed interview.

3. I call your attention to section (e) on page 29 of the Special School District Memorandum submitted by Krohnke. The reference at the top of the page is to EDU 620-630; the correct citation should be EDU 660-663.) The same comment is appropriate for the reference on page 30 to EDU 620-630.

Thank you for your courtesy to me over the phone in explaining your legal role and in giving me information as to what would be acceptable information or comments to submit to your office by December 13, 1978.

Sincerely,

Jeanne J. Cummings (Mrs. John E.)

---

*Ibid, Page 5

** Interview, Dr. James S. Coleman, Washington Post, September 18, 1978 by Lawrence Feinberg.

1420 West Minnehaha Parkway
Minneapolis, Minnesota 55409

October 11, 1978

Minnesota State Board of Education

Dear Minnesota State Board Member:

On October 16, 1978 you will be asked to act on proposed modifications of the Equality of Educational Opportunity and School Desegregation Regulations. I have been told by Dr. Waddick that each Board member now has received a complete copy of the public testimony.

Because the State Hearing Examiner's Report included my name as one of the public supporting the modifications, but without further explanation, I felt it necessary to make my position clear.

The essence of my testimony was that the State Board and its staff have not yet come to grips with the real problems of desegregation as they relate to education in Minnesota.

Although I support the proposal as a start, because it offers a minor measure of flexibility, I question whether the expense of the public hearing was even warranted because of the very narrowness of the proposed revision. Since basic premises were left unexamined, I fail to see how the proposal contributes anything of substantive value.

The staff research and "expert" testimony used to support the educational rationale for the regulation's key element, a prescribed racial ratio, is outdated. The research sources and results cited by the State Board staff have been contested, in some cases, refuted, by highly respected scholars. Because, in both written and spoken testimony, the State Board's staff cites James S. Coleman's research as a major part of their educational rationale for using a prescribed racial ratio as the key criterion of the regulation, I am sending each of you a copy of the September 18, 1978 Washington Post interview with Dr. Coleman.

The most hopeful ingredients in your current efforts are your apparent willingness to reexamine the the regulation and your awareness of the possible inappropriateness of its key criteria and its lack of effectiveness in helping to achieve your own stated educational goals.

The most important action you take at the meeting will not be your decision on this minor revision, but rather whether you decide to make a more searching examination of policy alternatives based on more complete, current and objective research. I think policymakers now have a pressing responsibility to ask the vexing questions in assessing the way this public policy is being implemented throughout the country and state and its effect on children's education, their families, community stability and human understanding. I feel this is particularly important when parents are responding as decent law-abiding citizens to coercive efforts with their children.

I urge you to ask your staff to do more "homework" and to come back to you with several alternate ways to basically change the regulation to meet your own goals.

Sincerely,

Jeanne J. Cumming (Mrs. John E.)

Coleman Now Discounts Advantages of School Desegregation

COLEMAN, From A1

educational research ever conducted, involving tests and surveys of about 600,000 students and 60,000 teachers in 4,000 schools around the country.

Its most widely noted conclusions were that the social class composition of a school had more impact on student achievement than either resources or teaching methods, and that lower-class black children scored somewhat higher on standardized tests in schools with a middle-class white majority than they did in schools where all the children were poor and black.

Coleman stressed that the achievement gain occurred not because of skin color but because of the middle-class background and "educational resources" that many white children bring from home.

After his report, Coleman expressed his views widely, not only in scholarly articles but also in testimony before congressional committee and in school desegregation cases in courts.

Among these was Julius Hobson's suit against the Washington school system. Coleman testified in Hobson's behalf and was cited by U.S. Judge J. Skelly Wright to support the court's finding that "Negro students' educational achievement improves when they transfer into white or integrated educational institutions."

Coleman said he now believes that this view is "incorrect . . . wishful thinking."

In the interview, Coleman said the difference between his conclusions a decade ago and the results of desegregation since then reflects two main factors—a difference in the way desegregation has been carried out, and the availability of new research.

When he collected his data in 1965, Coleman said, nearly all the black children attending integrated school in the South were well-motivated volunteers under "open enrollment" plans. In the North almost all integration had occurred in neighborhood schools where blacks and whites lived nearby.

Since then, Coleman noted, many school districts have been desegregated through mandatory busing programs, ordered by courts or state agencies, that bring children together from wide areas.

"Much of it has been accompanied by the kinds of things that don't foster achievement," Coleman said. "Often there's been some degree of turmoil and lower standards, with white teachers being afraid to apply the same standards to black students and therefore not teaching them as well."

Coleman said his 1966 report was based on data collected at one time, with conclusions drawn by comparing youngsters in schools with different proportions of black and white students.

Since then, he said, researchers have been able to follow children for several years after they switched to desegregated schools. Although Coleman has not been directly involved in any of this research, he said a review of over 100 desegregation studies in cities around the country—from Boston to Berkeley—shows "no overall gains."

"Some of the most carefully studied cases, such as in Pasadena and Riverside, Calif., "Coleman said, "show either no achievement effects or else losses."

In the South some gains by blacks have been reported by the National Assessment of Educational Progress, but Coleman said these occurred in both segregated and integrated classrooms. He said these gains probably are the result of "the broader impact of desegregation in the South . . . .It drew a lot of attention to schools that used to be the worst in the nation," rather than a direct result of blacks and whites being taught together.

Before going to the University of Chicago in 1973, Coleman taught at Johns Hopkins University in Baltimore. He took part in civil rights demonstrations there, and was arrested in one of them.

He said he still strongly opposes legal segregation and strongly favors integrated schools. But he said mandatory busing in many cities has been "counter-productive" because it has been folowed by an extensive loss of white students.

Coleman also rejects "the belief that an all-black school is inherently bad."

"That has a curiously racist flavor," Coleman said, "which I can't accept There have been, and there are, all-black schools that are excellent schools by any standard."

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Integration Benefits Discou

By Lawrence Feinberg
Washington Post Staff Writer

Sociologist James S. Coleman, whose massive study in the mid-1960s has been widely used to support school desegregation, now says it is a "mistaken belief" that black students learn better in integrated classrooms.

During the past decade, Coleman said, research throughout the country has shown that "it is not the case that school desegregation, as it has been carried out in American schools, generally brings achievement benefits to disadvantaged (black) children."

In some situations, Coleman said, desegregation has brought slight gains in black achievement, but in many others there has been no change or a slight loss.

Even though he had argued a decade ago that "integration would bring about achievement benefits," Coleman said, "It has not worked out this way in many of the school desegregation cases since that research. . . .

"Thus, what once appeared to be fact is now known to be fiction," Coleman said.

Coleman, a professor of sociology of the University of Chicago, presented his new conclusions in a paper in April. He repeated them in an interview this weekend.

"Desegregation has turned out to be much more complicated than any of us ever realized," Coleman said. "There appear to be beneficial effects for some black kids, those who are better students, and harmful effects for blacks who are poorer students. It all seems to balance out, which is quite the reverse of the implications of my own research" in the mid-1960s.

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See COLEMAN, A5, Col. 1



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See COLEMAN, A5, Col. 1



JAMI
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Lee: for your information. Changes made in red from proposed rule

Rules as Adopted

Chapter Thirty-One: Rules Relating to
Equality of Educational Opportunity
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A. No change.

B. General purpose community education funds shall not be used for adult vocational training.

C. No change.

EDU 687 Annual report.

Each year on or before August 15, each district having a community service levy shall report to the department of education on forms authorized by the commissioner.

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.



Sinclair Lewis (1885–1951) was a native of Sauk Centre, Minnesota. In 1930 he became the first American to win the Nobel Prize for literature.

Department of Education
Board of Education
Proposed Rules Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matters will be held in the State Office Building, Room 83, St. Paul, Minnesota on Friday, August 11, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted by mail to Mr. George Beck, Office of Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, (612) 296-8108, before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner.

A copy of the proposed rules EDU 621 C., EDU 625 A.; and rules EDU 682 and EDU 687 are attached hereto. EDU 621 C. as it is currently written states that a school is segregated when it contains more than 30 percent or more minority students. It is proposed that EDU 621 C. be amended to state that segregation occurs whenever the minority composition of a school exceeds the racial composition of the total district by more than 15 percent. This change will result in the rule applying to all school districts and will permit a flexible standard by which the individual demographic condition of each district may be considered. EDU 625 A. as it is currently written permits the Commissioner of Education to allow a school district to exceed the 30 percent limitation, but not to exceed 40 percent, if an educational reason would justify that additional latitude. It is proposed that EDU 625 A. be amended to allow a district to exceed the 15 percent limitation, but not to exceed 50 percent minority enrollment. The proposed increase from 40 to 50 percent is in recognition of demographic changes that are occurring in the state. One free copy may be obtained by writing to the Minnesota Department of Education, Equal Educational

Opportunities Section, 630 Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101.

The changes in EDU 682 merely remove language that indicates that community education is partly for adult vocational education. That language is deemed inconsistent with Minn. Stat. § 275.125, subd. 8 (1) (Supp. 1977), which lists the purposes of the community education levy and does not include adult vocational education programs. The change in EDU 687 merely offers school districts a longer period of time in which to report their community service levy to the Commissioner of Education. One free copy may be obtained by writing to the Minnesota Department of Education, Community Education Section, 680 Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

The board's authority to promulgate the proposed rules EDU 621 C. and 625 A. is contained in Minn. Stat. § 121.11, subds. 7 and 12; 124.14; 124.66 (1); and 127.08. The board's authority to promulgate EDU 682 and 687 is Minn. Stat. § 121.86. A statement of need and reasonableness explaining why the board believes the proposed rules are necessary and reasonable, and evidence outlining the testimony to be introduced, shall be filed with the Hearing Examiner's office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A (1976) requires each lobbyist to register with the Ehtical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month lobbying. The statute in question provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Howard B. Casmey, Secretary
Board of Education

June 5, 1978

Rules as Proposed

Chapter Thirty-One ~~Regulations~~ Rules Relating to Equality of Educational Opportunity and School Desegregation

EDU 682

EDU 621 Definitions. For the purposes of EDU 620-639, the following words and phrases shall have the meaning ascribed to them:

A. No change.

B. No change.

C. ~~Segregation occurs when a public school has a student body of 30 percent or more minority group students.~~ Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district by more than 15 percent.

EDU 625 Contents of plan: approval or rejection.

A. ~~The 30 percent requirement of EDU 621 C. shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.~~

~~Notwithstanding the 30 percent standard, the commissioner may, if the local board can justify an educational reason to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the 30 percent standard to not more than 40 percent.~~

The 15 percentage points requirement of EDU 621 C. shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.

Notwithstanding the 15 percentage points standard, the commissioner may, if the local board can justify an educational reason for the variance to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the standard except the variance may not cause any school building to exceed 50 percent minority enrollment.

Chapter Thirty-Four Community Services

EDU 682 Limitation on aids and levies.

A. No change.

B. General purpose community education funds shall not be used for adult vocational training. ~~An exception may be permitted when the advisory council, with local board of~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

EDU 682

~~education approval. deems that the vocational training has a special community significance in addition to individual benefit.~~

C. No change.

EDU 687 Annual report. Each year on or before ~~June 20~~ August 1, each district having a community service levy shall report to the Department of Education on forms authorized by the commissioner.

Department of Education Board of Education

Proposed Temporary Rules Governing Educational Aids for Pupils Attending Nonpublic Schools

Notice of Opportunity for Public Comment

The State Board of Education has proposed the following temporary rules and shall adopt such temporary rules pursuant to Laws of 1978, ch. 733, §§ 1-19. These rules will supersede the rules of the State Board of Education, EDU 740-744, Chapter Thirty-Seven Instructional Materials for Pupils Attending Nonpublic Schools.

All interested persons are hereby afforded the opportunity to submit data and views for 20 days after publication of this material in the *State Register* on the proposed temporary rules by writing to Gary Farland, Director of State Aids, or David Noenning, Specialist, Nonpublic Pupil Aid, Minnesota State Department of Education, 807 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

Any written material received by the agency shall become part of the hearing record in the final adoption of the temporary rules.

Temporary Rules as Proposed

Chapter Thirty-seven A Textbooks and Standardized Tests for Pupils Attending Nonpublic Schools

5 MCAR § 1.0745 Policy. In order to promote equal educational opportunity for every school child in Minnesota and to assure all Minnesota pupils and their parents freedom of choice in education, textbooks and standardized tests as provided by Minn. Stat. §§ 123.931-123.937 (1976 as amended) shall be made available to pupils in nonpublic schools.

5 MCAR § 1.0746 Definitions.

A. "Textbooks" means books, workbooks, or manuals, whether bound or in looseleaf form, which a pupil uses as a text or principal source of study in a particular class or program in the school he regularly attends and a copy of which is expected to be available for the individual use of each pupil in this class or program. The term includes only such textbooks as are available and of benefit to Minnesota public school pupils and which are secular, neutral and nonideological such that the material contained therein is not regarded as religious, spiritual, or sacred, and presents events, facts and theories that pertain to religion or religious doctrine in an impartial manner.

B. "Standardized tests" means tests and scoring services available from commercial publishing organizations and which are in use in the public schools of Minnesota to measure the progress of pupils in secular subjects.

5 MCAR § 1.0747 State administration.

A. The Department of Education shall administer funds allocated for the purchase of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

B. The Department of Education, in cooperation with the State Auditor's Office, shall establish proper accounting methods for fiscal control, fund accounting, and the maintenance of records for the acquisition of textbooks and standardized tests to be loaned or provided to nonpublic school pupils.

C. Computation of pupil allocation. On or before March 1 the Department of Education shall determine, from the most recent data available, the allocation available per pupil for textbooks and standardized tests to be used for the following school year. The allocation per pupil shall be determined by dividing the total expenditure for textbooks and standardized tests by all public school districts in the state by the average daily membership of pupils enrolled in the districts during the same fiscal year. Pupils in grades one through twelve are counted as one pupil each; kindergarten pupils are counted as one-half pupil each.

5 MCAR § 1.0748 Local administration.

A. Preliminary application. On or before April 1 the nonpublic school shall submit to the public school district or intermediary service area a preliminary application for participation in the textbooks and standardized tests aid pro-

See me on
attached.



SPECIAL SCHOOL DISTRICT NO. 1

MINNEAPOLIS PUBLIC SCHOOLS

AN EQUAL OPPORTUNITY EMPLOYER

807 NORTHEAST BROADWAY, MINNEAPOLIS, MINNESOTA 55413

Telephone 612/348-6084

RAYMOND G. ARVESON
Superintendent of Schools

December 6, 1978

Lee Sheehy, Esq.
Special Assistant Attorney General
G25-Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RECEIVED
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ADMINISTRATIVE AGENCIES

Re: In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date

Dear Mr. Sheehy:

Special School District No. 1 has been notified that the above-captioned rules were submitted on November 30, 1978, to the Attorney General's Office for review as to form and legality.

Pursuant to Rule ATTY GEN 305(c), Special School District No. 1 hereby advises the Attorney General that it wishes to contest the legality of the rules. The arguments in support of Special School District No. 1's position are set forth in the District's Memorandum of Points and Authorities Regarding the Validity of Proposed Amendments of EDU 621(D) and EDU 625(A), which was marked as Public Exhibit D at the hearing on August 11, 1978, before Hearing Examiner George A. Beck and thus made part of the record regarding the above-captioned rules. Special School District No. 1, therefore, requests the Attorney General's office to review Public Exhibit D in arriving at a conclusion as to form and legality of the above-captioned rules. (If Public Exhibit D is not part of the hearing record submitted to the Attorney General's office, please call the undersigned, and we will have a duplicate sent to you immediately.)

Special School District No. 1 disagrees with the comments on Public Exhibit D contained in the Department of Education's Response to Public Testimony (Board Exhibit 19) and with the conclusions as to statutory authority contained in the

Report of Hearing Examiner Beck, dated September 19, 1978. Special School District No. 1, however, does not wish to submit a further brief or to make an oral argument to the Attorney General's Office regarding these issues.

Respectfully submitted,

Raymond G. Arveson
Superintendent of Schools

RGA/e
cc: Commissioner Howard B. Casmey
Michael J. Bradley, Esq.
Duane W. Krohnke, Esq.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck, of the State Office of Hearing Examiners, at 9:00 a.m. on Friday, August 11, 1978, in Room 83 of the State Office Building, Capitol Complex, in the City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is a part of a rule hearing procedure held pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417, and Sec. 15.052, to determine whether the proposed rule amendments should be adopted and given the force of law. Copies of this Report are available for review from the State Department of Education and from the Office of Hearing Examiners.

Members of the agency panel appearing at the hearing in regard to the proposed amendments to Minn. Rule EDU 621 C. and EDU 625 A. included: Dr. Gregory J. Waddick, Assistant Commissioner, Division of Special Services, Minnesota Department of Education; Archie Holmes, Supervisor, Equal Educational Opportunities Section, State Department of Education; Howard B. Casmey, Commissioner of Education; Dr. Michael J. Stolee, Dean of the School of Education at the University of Wisconsin-Milwaukee. The agency panel in regard to the amendments to Minn. Rule EDU 682 B. and EDU 687 included: Lawrence Erie, Manager of Community Education for the State of Minnesota and Executive Secretary of the State Community School Advisory Council; Mark Linneman, State Advisory Council; and Donald K. Kramlinger, President-Elect, Minnesota Community Education Association. Also in attendance at the hearing were three members of the State Board of Education: Dorothea Chelgren; Dr. Erling Johnson; and Ruth Myers.

Seventeen public witnesses appeared and spoke at the hearing. The Department of Education submitted 19 exhibits. Eighteen written comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20 day period for written comment following the hearing.

Based upon the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On June 7, 1978, the Department of Education filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule amendments;
(b) An Order for Hearing;

(c) A proposed Notice of Hearing; and
(d) A statement of the number of persons expected to attend the hearing.

2. On July 10, 1978, a Notice of Hearing and a copy of the proposed rule amendments were published at 3 State Register 28.

3. On July 7, 1978, the Department of Education mailed the Notice of Hearing to all persons and associations who had registered their name with the Secretary of State for the purpose of receiving such notice.

4. On July 14, 1978, the Department of Education filed the following documents with the Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Notice of Hearing as it appeared in the State Register;
(d) The Affidavit of Mailing of the Secretary of State's list;
(e) The Affidavit of Receipt of the Secretary of State's list;
(f) The Secretary of State's list;
(g) The Certificate of Delivery of the Secretary of State's list;
(h) The Certificate of the Board's Authorizing Resolution; and
(i) A Statement of Need and Reasonableness for each of the propose rule amendments.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

5. The record remained open through August 31, 1978, for the receipt of written documents and statements.

Proposed Amendments of Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A.

6. The existing definition of segregation contained in EDU 621 C. provides that a public school is segregated when it has a student body of over 30% minority group students. The proposed amendment defines segregation as occurring in a school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district by more than 15%. A corresponding change to Minn. Rule EDU 625 A. allows the Commissioner to approve school desegregation plans that vary from the 15 percentage point standard if a local school board can justify an educational reason for such a variance, provided that no school building may exceed 50% minority enrollment. The existing rule permits a variance from the 30% standard to not more than 40%.

7. In documenting its statutory authority to adopt the two proposed rule amendments, the Board first cites its general rulemaking authority at Minn. Stat. Sec. 121.11, subd. 12, which states as follows:

> The state board shall have power from time to time to make and enforce such rules and regulations, consistent with this code, as may be appropriate for the administration and enforcement thereof.

According to Minn. Stat. Sec. 120.01, Chapters 120 to 127 are to be cited as the education code. The Board also cites as statutory authority Minn. Stat. Sec. 127.08, which reads in part as follows:

> 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 of all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. . . .

8. The State Board is given specific rulemaking authority to enact rules regarding the distribution of school aids by Minn. Stat. Sec. 124.14, subd. 1, which states:

> The state board shall supervise distribution of the school aids in accordance with law. It may make rules and regulations consistent with law for such distribution which will enable districts to perform efficiently the services required by law and further education in the state, including reasonable requirements for such reports and accounts to it as will assure accurate and lawful apportionment of aids. . . .

The Board notes that in connection with this rulemaking authority in regard to state aids, Minn. Stat. Sec. 124.66, provides in part:

> State aid shall be for the following purposes:
>
> 1. To assist in providing equal educational opportunities for all the school children of the state;
> . . . .

The Board also cites the general supervisory provision at Minn. Stat. Sec. 121.11, subd. 7, which states that:

> The state board of education shall exercise general supervision over public schools and public educational agencies in the state, classify and standardize public elementary and secondary schools, and prepare for them outlines and suggestive courses of study. The board shall establish rules relating to examinations, reports, acceptances of schools, courses of study, and other proceedings in connection with elementary and secondary schools applying for special state aid.

9. The Board suggested that legislative awareness of the existing rule was shown by an appropriation contained in Minn. Laws 1975, ch. 436, sec. 2, which appropriated $4 million for the construction, enlargement or modification of school buildings whenever the Commissioner of Education determined that these alterations are directly related to reducing or eliminating racial imbalance as part of a desegregation plan approved by the State Board. The Board states that the Legislature did not have to include a definition of racial imbalance since it was contained in Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A. See Exhibit 4, pp. 1-3.

10. In an extensive legal brief (Ex. D.), the Minneapolis School District challenges the statutory authority of the State Board to enact these proposed rule amendments. The Minneapolis School District suggests that Minn. Stat. Sec. 121.11, subd. 12, cannot be authority itself for the rules, and that the State Board must show another section of the education code which authorizes the rule amendments. (Ex. D, p. 7) Minneapolis School Board also suggests that Minn. Stat. Sec. 121.11, subd. 7, does not extend to rules governing de facto segregation. In regard to the improper classification statute, Minn. Stat. Sec. 127.08, the Minneapolis School Board states that the plain meaning of this statute is to prohibit de jure segregation and does not authorize a rule in regard to improper racial balance or de facto segregation. The Minneapolis Board suggests that the use of words like "classify", "separate" and "deny" indicates that the statute refers to an affirmative act on the part of the school district with reference to "race, color, social position or nationality". (Ex. 4, pp. 9-32) The Minneapolis School Board also suggests

that the statutes regarding state aid do not authorize a proposed rule amendment since the State Board has already enacted rules in this regard, and since the primary purpose of state aids is to establish minimum standards for all public schools and to assist districts with exceptionally high tax levies. (Ex. D, pp. 34-36)

11. In its written reply, the State Board suggests that although the judicially created distinction between de facto and de jure segregation had not yet been created when Minn. Stat. Sec. 127.08 was first enacted, yet legislatures need not foresee all cases to which a statute might apply and that de facto segregation is fairly within the purpose of the statute. The State Board suggests that the statute essentially regulates segregation and discrimination and that, read in pari materia with Minn. Stat. ch. 363, the State Human Rights Act, it is clear that the Legislature intended to regulate de facto segregation. (Ex. 19, pp. 7-14) The State Board also suggests that Minn. Stat. Sec. 124.66 authorizes the regulation of de facto segregation by allowing the Commissioner to withhold state aid. (Ex. 19, pp. 14-16) The State Board points out that generally legislative and administrative interpretations of statutory provisions are evidence of legislative intent. The rules proposed for amendment have been in effect since 1973. The Legislature has taken no action to revoke these rules and has, in fact, taken three actions in reliance upon the rules, namely, transportation aids related to desegregation, enactment of Minn. Stat. Sec. 124.15, subds. 2 and 2(a), which allows the withholding of state aids for a district violating any state discrimination law, and the appropriation of funding for construction costs resulting from desegregation. (Ex. 19, pp. 16-20)

12. It should first be noted that Chapter 15 does not explicitly state whether or not an agency must re-establish in a rule proceeding its statutory authority for an existing rule when it seeks to amend the rule which has been presumably validly adopted at some time in the past, at least where the amendment does not in effect create a new rule, but merely modifies the original rule. Minn. Stat. Sec. 15.052, subd. 3, requires the hearing examiner to make a report in which he is to take notice of the degree to which the agency has documented its statutory authority to take the proposed action. The definition of rule at Minn. Stat. Sec. 15.0411, subd. 3, includes also the amendment thereof. There is, of course, always the possibility that a person may attack the statutory authority for a rule by a petition to district court for a declaratory judgment pursuant to Minn. Stat. Sec. 15.0416 and Sec. 15.0417. It may well be that technically an agency is not required to re-establish its statutory authority in a rule amendment proceeding unless its rule amendment sufficiently alters the existing rule so as to require a new judgment to be made as to whether or not the resulting rule would exceed the agency's statutory authority. In the context of this rule proceeding, this would mean that the agency must show that it has authority to establish a more flexible formula, but would not have to show or re-establish its statutory authority to promulgate a rule dealing with de facto segregation. The remedy of a person seeking to challenge the latter authority would necessarily be a district court action.

13. It is, however, concluded that the agency has demonstrated its statutory authority to adopt the proposed rule amendments. It also appears that statutory authority exists for the existing rule. The case of Welsand v. State of Minnesota Railroad and Warehouse Commission, 25 Minn. 504, 88 N.W.2d 834 (1958), involved a statute which gave the Commission power and authority to make rules necessary to the enforcement of a set of statutes generally dealing with the regulation of contract carriers and irregular route common carriers. The Court stated that:

> In vesting regulatory power in an administrative agency, the legislature need not expressly delineate with particularity or exactness each and every phase of the power so conferred, but may, in order to give the administrative function reasonable flexibility, leave the exact scope of the rulemaking power to reasonable implication and this includes an implied power to formulate necessary classifications and definitions within the designated area of regulation. 88 N.W.2d at p. 838.

In this rule hearing proceeding, the agency has demonstrated its general rule making authority; indicated a specific statute dealing with classification of pupils by race, which it seeks to interpret through its rulemaking power; has shown authority in the area of equal educational opportunities in regard to state aid; and has shown legislative awareness and reliance upon the existing rule. This suffices to demonstrate the statutory authority.

14. The State Board stated that the amendment is necessary to accommodate the changing demographic makeup of certain school districts in the state which are approaching the 30% limit in the current rule. The Minneapolis School District is expected to reach 26% overall minority enrollment in the fall of 1979. (Tr. p. 11) The State Board pointed out that most states which regulate school segregation utilize a system based upon a percentage of minority students in individual schools compared to the overall percentage of the total school district. Illinois and Michigan have used a 15% figure, Rhode Island has used a 10% figure, and Iowa arrived at a 20% figure. (Tr. p. 12; Ex. 11) The Board noted that Judge Larson used a similar approach in regard to the Minneapolis Public Schools. (Tr. p. 11)

15. The Board's expert witness, Dr. Stolee, testified that 15% is a reasonable and workable figure, and that the Board's formula has the advantage of automatically adjusting to changes in district enrollment. (Tr. pp. 41, 45) Dr. Stolee noted that the flat percentage contained in the current rule permits a school district to place all minority students in one building if they desire to do so. (Tr. p. 43) The Board and Dr. Stolee believe that the formula suggested will provide greater stability for school districts and permit long range planning. (Tr. pp. 13, 45; Ex. 13) The Board also noted that a 50% maximum enrollment was necessary since the current 40% maximum has prevented minority students from attending "magnet" schools in their own neighborhood. (Tr. p. 14) Dr. Stolee did suggest that the 15% figure should be plus or minus so as to guarantee the integration of all buildings and prevent buildings from becoming racially identifiable. (Tr. p. 46) He also supported either omitting the 50% maximum or providing guidelines to clearly delineate what constitutes a valid educational reason. (Tr. p. 47)

16. General support for the proposed rule amendments was expressed by the St. Paul Urban League which commented that the amendments would permit flexibility and therefore minimize the amount of bussing of minority students and would allow minority students to attend special education programs in their own neighborhood. (Tr. p. 79; Ex. A) Also supporting the amendments was the Benjamin E. Mays Learning Center, which stated that the amendments would permit minority youth to attend their school (Ex. M); the Black Education Advisory Committee of the Duluth Public Schools (Ex. E); the Minneapolis Citizens Committee on Public Education (Ex. K; Tr. pp. 93-96); the St. Paul Board of Education (Ex. C, Tr. pp. 67-78); the Prosperity Heights Elementary School PTA (Tr. pp. 117-119); the Minnesota Federation of Teachers (Tr. p. 119); Jean Jones, a teacher (Tr. pp. 121-124); and Jeanne Cummings, a citizen (Tr. pp. 113-117). State Representatives Randy C. Kelly, Eugene T. Waldorf, and Senator John C. Chenoweth also submitted a statement supporting the proposed amendments (Ex. G). The Minnesota Alliance of Black School Educators supported the amendments, but requested a definition of "educational reasons" sufficient to obtain a variance. (Ex. O) The Committee for Integrated Education supported the first rule amendment if a floor of 15% was included as recommended by Dr. Stolee. The Committee opposed any variance as contained in the second rule amendment. (Exs. J, P; Tr. pp. 98-102)

17. The Minneapolis NAACP did not support the proposed amendments since they did not believe that they would aid desegregation. (Tr. pp. 81-84) The Duluth Branch of the NAACP was also concerned about allowing variances. (Ex. F) The Minneapolis Urban League also opposed changing the existing rule and was especially opposed to granting a variance of up to 50%. (Tr. pp. 102-113) The St. Paul Branch of the NAACP testified that they believe that further study was needed before any revision of the existing rule. (Ex. L) The Minnesota Education Association testified that the proposed rule amendments were a change of standards which might mean that desegregation goals would never be accomplished. The MEA suggested that adherence to the existing rule together with consistent application would in fact promote stability. The MEA also supported defining the educational reasons which justify a variance. (Ex. N; Tr. pp. 84-92) Citizen Arthur C. Hill also supported leaving the rules as they exist. (Tr. pp. 120-121)

18. The Minneapolis Public Schools stated that the proposed amendments constitute a real improvement over the existing rules but that the proposed revisions do not go far enough. (Ex. B, p. 2) The Minneapolis Schools suggested that the State Board cease attempting to regulate de facto segregation and adopt a rule which would prohibit de jure segregation only. The Minneapolis School Board suggested a rule which essentially restates Minn. Stat. Sec. 127.08. (Ex. B, p. 9; Ex. D, p. 32)

19. The State Board submitted in the hearing record material in support of the educational reasons for regulating de facto segregation. (Ex. 4, pp. 3-9) The data appears to satisfy the statutory criteria of showing need and reasonableness with an affirmative presentation of facts. Both the Minneapolis Public Schools (Ex. Q) and Grace Billings Bress (Ex. R) also submitted research and bibliographies of education research on school desegregation for the

consideration of the State Board which they believe is more current. It is, however, clear from a review of Chapter 15 that the State Board need not show again the need for regulation of de facto segregation since this was presumably properly done in a prior rule hearing proceeding. The State Board must only show the need for and reasonableness of its adjustment of the formula for measuring racial imbalance and in the adjustment of the allowable variance.

20. In response to the Minneapolis School District's concern that the proposed rule amendments do not differentiate based upon minority enrollment in elementary and secondary schools, the State Board recommended adding a phrase to the proposed EDU 621 C. so that the rule would read as follows:

> Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district, for the grade levels served by that school building, by more than 15%.

(Ex. 19, p. 2)

21. Several persons raised concerns over the definition of an "educational reason" and accordingly, the State Board recommended the addition of the following paragraph to Minn. Rule EDU 625 A.:

> An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the State Board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

(Ex. 19, p. 5)

22. So amended, the proposed amendments to the rules EDU 621 C. and EDU 625 A. have been demonstrated by an affirmative presentation of facts to be needed and reasonable. There was a wide range of opinion expressed as to the widsom of the proposed amendments. These comments should be considered by the Board in making its policy decision as to whether or not to adopt, withdraw, or further modify the proposed amendments. The evidence presented is sufficient to demonstrate that the amendments are not arbitrary or unneeded. The Board may also wish to consider clarifying the phrase "minority racial composition of the entire district" as was requested by the St. Paul Board of Education. If this phrase is intended to mean the percentage of minority students in the total public school enrollment of a school district, then perhaps it ought to more explicitly say so in order to avoid confusion. The State Board is advised that the chief hearing examiner will still have to make a judgment as to whether or not the proposed added paragraph to EDU 625 A. is or is not a substantial change. Additionally, the State Board has advised that the Attorney General may scrutinize EDU 625 A. to determine the legality of the use of the word "may" in the second paragraph instead of the word "shall".

23. The Minneapolis Public Schools questioned whether or not the State Board had complied with Minn. Stat. Sec. 15.0412, subd. 7, which requires the

Notice of Hearing to announce, if such is the case, that the estimated total cost of implementing the proposed rule for the next succeeding two years will cost local governmental agencies more than $100,000 in any one year. (Ex. D, p. 42) The State Board believes that the amendments will not cost school districts more than $100,000 in any one year and may, in fact, save school districts money. (Ex. 19, p. 21)

Proposed Amendment of Minn. Rule EDU 682 B.

24. In its amendment to Minn. Rule EDU 682 B., the State Board proposes to delete an exception to the general rule that community education funds shall not be used for adult vocational training. The language proposed for deletion permitted an exception where vocational training has a "special community significance". The Board suggested that the deletion was necessary since the language proposed for deletion is inconsistent with Minn. Stat. Sec. 275.125, subd. 8(1), which lists the purposes of the community education levy and expressly excludes adult vocational education programs. (Ex. 5) Mark Linneman, a member of the state community school advisory council and chairman of the legislative subcommittee of the state advisory council and Donald K. Kramlinger, president-elect of the Minnesota Community Education Association, both spoke in support of the proposed rule amendment. (Tr. pp. 128-129)

25. Senator Jerome Hughes, chairman of the state Senate Education Committee, spoke in opposition to the proposed repeal. Senator Hughes stated that he believed that this repeal would be contrary to the intent of the underlying legislation which he authored. He was particularly concerned that community education funds might no longer be available for adult vocational education programs having to do with "parenting" or other family education relating to child development. Senator Hughes believes that the current rule properly allows local school districts some discretion in the use of community education funds and he is unaware of any case in the state at present which is not within the intent of the law. (Tr. pp. 130-132, 135, 136-137)

26. Minn. Stat. Sec. 275.125, subd. 8(1) provides, in part, as follows:

> These levies shall be used for community services including summer school, nonvocational adult programs, recreational programs, and programs contemplated by sections 121.85 to 121.88.

27. In reply, the State Board indicated that the proposed repeal does not prevent community education programs from offering courses such as "life and parenting occupations" that are also offered through adult vocational education. The repeal would mean, however, that no program may receive both adult education categorical aids and community service levy funding. The State Board points out that there is no exception in the statute allowing the funding of adult vocational programs that have a "special community significance", and that therefore there can be no such exception in the rules of the State Board of Education. (Ex. 18, pp. 1-2)

28. It is concluded that the State Board has statutory authority to repeal the language in the existing rule and it is further concluded that the repeal is consistent with the governing statute in question. Accordingly,

since the State Board is repealing a rule inconsistent with the governing statute, it has demonstrated the need and reasonableness of the proposed change. It would appear that a revision of the statute would be necessary in order to permit the language of the existing rule.

Proposed Amendment of Minn. Rule EDU 687

29. This amendment as originally proposed changed the due date for the annual report submitted by each school district from the current June 20 to August 1. At the hearing, the Board suggested that the due date be amended to August 15 since if the annual report is to contain any budget information, then the reporting date has to conform to the UFARS reporting date. (Tr. p. 127) The Board stated that the need to change the date was to allow school districts to prepare the annual report based on the full fiscal year rather than the school year. Mr. Linneman and Mr. Kramlinger spoke in support of this change and of the date as amended to August 15. (Tr. pp. 128-129) There were no other comments on the proposed change. It is concluded that the Board has demonstrated the need and reasonableness of the proposed change.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the State Board of Education gave proper notice of the promulgation of the proposed rule amendments.

2. That the State Board of Education has statutory authority to take the action proposed, to wit, the promulgation of the proposed rule amendments.

3. That the State Board of Education has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Education has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the State Board of Education is not precluded from, and should not neglect to consider, further modification of the proposed rule amendments despite a finding of need and reasonableness by the Hearing Examiner, as long as the modification is not substantial, and provided that it is based upon evidence contained in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule amendments together with the amendments suggested by the State Board of Education be adopted.

Dated: September 19, 1978.

George A. Beck

GEORGE A. BECK
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The State Board of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

LIST OF EXHIBITS

Board Ex. 1	Notice of Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 2	Order for Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 3	Certificate of Board's Authorizing Resolution/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 4	Statement of Need and Reasonableness/July 14, 1978/ Howard B. Casmey, Commissioner of Education (Relating to EDU 621 C. and EDU 625 A.)
Board Ex. 5	Statement of Need and Reasonableness/July 14, 1978/ (Relating to EDU 682 and EDU 687)
Board Ex. 6	Amendments to Proposed Rules EDU 621 and EDU 625/June 7, 1978
Board Ex. 7	Amendments to Proposed Rules EDU 682 and EDU 687/June 7, 1978
Board Ex. 8	Statement of Number of Persons Expected to Attend and Cost/ June 7, 1978
Board Ex. 9	Publication in State Register/July 10, 1978/3 S.R. 28
Board Ex. 10	Laws Administered by the Pennsylvania Human Relations Commission/March, 1976
Board Ex. 11	Rules, Statutes and Policies of Other States and Cities
Board Ex. 12	Equal Educational Opportunity Policies, Guidelines, and Regulations for Minnesota Schools
Board Ex. 13	The Report of the Select Committee on Equal Educational Opportunity/U.S. Senate
Board Ex. 14	Certificate of Delivery of the Secretary of State's List/ June 30, 1978
Board Ex. 15	Affidavit of Receipt of the Secretary of State's List/ June 30, 1978
Board Ex. 16	Affidavit of Mailing of Secretary of State's List/July 7, 1978
Board Ex. 17	Secretary of State's List for Education
Board Ex. 18	Letter/Lawrence Erie, Manager, Community Education, State Department of Education/August 18, 1978
Board Ex. 19	Department of Education's Response to Public Testimony

Public Ex. A	Letter/Jeffrey Hasson, Member, Board of Directors, St. Paul Urban League; Chairperson of the League Education Committee/August 4, 1978
Public Ex. B	Statement/Raymond G. Arveson, Superintendent of Schools, Minneapolis Public Schools, on behalf of the Minneapolis Board of Education
Public Ex. C	Testimony/Emery Barrette, Chairman, St. Paul Board of Education/Prepared by George Young
Public Ex. D	Special School District No. 1's Memorandum of Points and Authorities Regarding the Validity of Proposed Amendment of EDU 621(D) and EDU 625(A)/August 10, 1978/ Duane W. Krohnke, Attorney
Public Ex. E	Letter/Odie Powell, Chairperson/Black Education Advisory Committee/August 9, 1978
Public Ex. F	Letter/Clarence Maddox, President-Duluth Branch/National Association for the Advancement of Colored People/ August 9, 1978
Public Ex. G	Statement of Support for the Proposed Changes to Chapter 31 of the Department of Education Rules Relating to Equality of Educational Opportunity and School Desegregation/ Representative E. Waldorf; Representative R. Kelly; and Senator John Chenoweth
Public Ex. H	Letter/Bill Aberman, President and Morton W. Ryweck, Director/ Jewish Community Relations Council, Anti-Defamation League of Minnesota and the Dakotas/August 11, 1978
Public Ex. I	Testimony/Minneapolis League of Women Voters
Public Ex. J	Statement/Committee for Integrated Education
Public Ex. K	Statement/Minneapolis Citizens Committee on Public Education
Public Ex. L	Testimony of St. Paul Branch NAACP to State Department of Education/Charles W. Breese, President, St. Paul Chapter NAACP
Public Ex. M	Letter/Benjamin E. Mays Learning Center, Inc./Dale Anderson, Board Chairman
Public Ex. N	Testimony/Minnesota Education Association
Public Ex. O	Statement/Dr. Richard Green, President/Minnesota Alliance of Black School Educators on behalf of the Executive Board
Public Ex. P	Letter/Committee for Integrated Education/Barbara Schwartz
Public Ex. Q	Statement/Raymond G. Arveson, Superintendent of Schools/ Minneapolis Public Schools, Special School District No. 1
Public Ex. R	Letter and Attachments/Grace Billings Bress/August 30, 1978

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Education
736 Capitol Square Bldg.

TO : Lee Sheehy
Special Ass't. Attorney General
G25 Administration Bldg.

DATE: 11-27-78

FROM : Lois Steinhaus
Education Statistics Section

PHONE: 6-4428

SUBJECT: Approval for rules governing the standard for determining school segregation and community services dealing specifically with the limitations on aids and levies and the annual reporting date. EDU 78-009-GB

Enclosed is the complete record of the hearing.

Also enclosed are four copies of the rules as adopted and four copies of the order for hearing. In addition are three copies each of the following:

1. Proposed rule (2)
2. Notice of hearing
3. Affidavit of receipt of secretary of state's list
4. Certificate of delivery secretary of state's list
5. Affidavit of mailing
6. Statement of need and reasonableness (2)
7. Findings and Order adopting rules
8. Certificate of board's authorizing resolution
   Certificate of board's adoption of rules resolution
9. One copy of the mailing list
10. One copy of transcript

For your convenience, a copy is enclosed indicating the changes made from the proposed rules to the adopted rules.

Please call me when this is ready to be returned, so that I can send some one to pick it up. Thank you.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing the rules relating to equality of educational opportunity and school desegregation; and community services dealing specifically with the limitations on aids and levies and the annual reporting date.

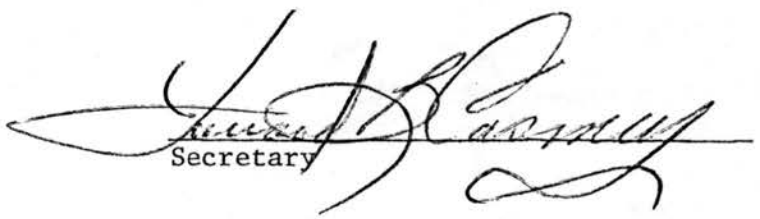
ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above - captioned rules be held in the State Office Building, Room 83, St. Paul, Minnesota on Friday, August 11, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

STATE OF MINNESOTA
BOARD OF EDUCATION



Secretary

Date: June 5, 1978

Department of Education

Board of Education

In the Matter of the Proposed Adoption
of Rules of the State Board of Education
Governing the Standard for Determining
School Segregation and Community Services
dealing specifically with the Limitations
on Aids and Levies and the Annual Report-
ing Date

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matters will be held in the State Office Building, Room 83, St. Paul, Minnesota on Friday, August 11, 1978, commencing at 9:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted by mail to Mr. George Beck, Office of Hearing Examiner, 1745 University Avenue, Room 300, St. Paul, Minnesota 55104, telephone (612) 296-8108, before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearing ends, or for a longer period not to exceed 20 calendar days if ordered by the Hearing Examiner.

A copy of the proposed rules EDU 621 C., EDU 625 A.; and rules EDU 682 and EDU 687 are attached hereto. EDU 621 C. as it is currently written states that a school is segregated when it contains more than 30 percent or more minority students. It is proposed that EDU 621 C. be amended to state that segregation occurs whenever the minority composition of a school exceeds the racial composition

of the total district by more than 15 percent. This change will result in the rule applying to all school districts and will permit a flexible standard by which the individual demographic condition of each district may be considered. EDU 625 A. as it is currently written permits the Commissioner of Education to allow a school district to exceed the 30 percent limitation, but not to exceed 40 percent, if an educational reason would justify that additional latitude. It is proposed that EDU 625 A. be amended to allow a district to exceed the 15 percent limitation, but not to exceed 50 percent minority enrollment. The proposed increase from 40 to 50 percent is in recognition of demographic changes that are occurring in the State. One free copy may be obtained by writing to the Minnesota Department of Education, Equal Educational Opportunities Section, 630 Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101. The changes in EDU 682 merely remove language that indicates that community education is partly for adult vocational education. That language is deemed inconsistent with Minn. Stat. § 275.125 subd. 8 (1) (Supp. 1977), which lists the purposes of the community education levy and does not include adult vocational education programs. The change in EDU 687 merely offers school districts a longer period of time in which to report their community service levy to the Commissioner of Education. One free copy may be obtained by writing to the Minnesota Department of Education, Community Education Section, 680 Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The Board's authority to promulgate the proposed rules EDU 621 C. and 625 A. is contained in Minn. Stat. §§ 121.11, subds. 7 and 12; 124.14; 124.66 (1); and 127.08. The Board's authority to promulgate EDU 682 and 687 is Minn. Stat. § 121.86. A statement of need and reasonableness explaining why the Board believes the proposed rules are necessary and reasonable, and evidence outlining the testimony to be introduced, shall be filed with the Hearing Examiner's office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A (1976), requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule-making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month lobbying. The statute in question provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

State of Minnesota

Board of Education

Howard B. Casmey, Secretary

June 5, 1978

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed amendments to rules of the State Board of Education Governing equality of educational opportunity and school desegregation.

STATEMENT OF NEED AND REASONABLENESS

The above captioned rule is 1) a proposed amendment to EDU 621 C. concerning the standard used to determine school segregation on the basis of race and 2) EDU 625 A. concerning the amount and conditions under which the education commissioner may allow variance from the standard.

The need to amend this rule and the reasonableness of these amendments are as follows.

Commissioner of Education

Date 7/14/78

Minnesota State Department of Education
Capitol Square ☐ 550 Cedar Street ☐ St. Paul, Minnesota 55101

State of Minnesota
County of Ramsey

In the Matter of the proposed amendment of Rules of the State Board of Education Relating to EDU 621 C. and EDU 625 A .

STATEMENT OF NEED AND REASONABLENESS

Statutory Authority to Adopt the Proposed Rules

The United States Supreme Court in Swann V. Charlotte-Mecklenberg Board of Education, 402 U.S. 1, (1971), stated that as a matter of constitutional law school districts were only required to desegregate their schools when de jure segregation existed. However, the court went on to state that school districts could be required to desegregate even in situations where only de facto segregation occurred, when school authorities, such as the State Board of Education, required the desegregation as a matter of educational policy. In so ruling, the court specifically stated:

> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school should have a prescribed ratio of Negro to White students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court.

Id. at 16. Therefore, the Department of Education is not constitutionally prohibited from regulating de facto segregation.

The authority of the State Board of Education however extends beyond the absence of a prohibition. There is, indeed, express statutory authority to adopt these proposed rules. In the first instance, Minnesota Stat. S 127.08 (1976) provides in part:

> 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 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.

It should be noted that section 127.08 does not set forth those instances in which a school district should be classified as segregated. Therefore,

the Legislature has left that determination to the State Board of Education. The State Board has authority to make that determination through its rules via Minn. Stat. S 121.11, subd. 12 (1976) which states:

> The State Board shall have power from time to time to make and enforce such rules and regulations, consistent with this code, as may be appropriate for the administration and enforcement thereof.

The reference to "this code" in section 121.11, subd. 12 is a reference to the definition of the education code contained in Minn. Stat. S 120.01 (1976) that states that the entire chapters 120 to 129 may be cited as the education code. Therefore, section 127.08 is a part of the education code.

A further grant of statutory rule making authority is contained within Minn. Stat. S 124.66 (1976) which provides in part:

> State aid shall be for the following purposes:
>
> (1) To assist in providing equal educational opportunities for all the school children of the state....

Authority for the State Board of Education to adopt rules regulating those instances in which school districts may receive state aids is found within Minn. Stat. S 124.14, subd. 1 (1976) which provides:

> The State Board shall supervise distribution of school aids in accordance with law. It may make rules and regulations consistent with law for such distribution which will enable districts to perform efficiently the services required by law and further education in the state....

The final statutory authority for the adoption of these rules is contained within Minn. Stat. S 121.11, subd. 7 which provides in part:

> The State Board of Education shall exercise general supervision over public schools and public educational agencies in the state, classify and standardize public elementary and secondary schools, and prepare for them outlines and suggestive courses of study. The Board shall establish rules relating to examinations, reports, acceptances of schools, courses of study, and other proceedings in connection with elementary and secondary schools applying for special state aid.

It should be noted that these rules and regulations have been in effect since 1973. That the Legislature is aware of the current rules is amply shown by an appropriation made in Minn. Laws 1975, ch. 436, S 2, which provided in part:

> The sum of $4,000,000 is appropriated from the Minnesota state building fund in the state treasury to the State Board of Education to be used to match local district funds used for the construction, enlargement, or modification of school buildings whenever the commissioner of education has determined that these alterations are directly related to reducing or eliminating racial imbalance, and are a part of a desegregation plan approved by the State Board of Education.

That $4,000,000 appropriation did not have to set forth the standards by which the Commissioner of Education would determine whether a school had a racial imbalance because the Legislature recognized that there were already in existence rules of the State Board of Education setting forth those standards. Furthermore, the reference to a desegregation plan is a reference to the requirements contained within the present EDU 624 requiring school districts that are racially imbalanced to submit a plan for desegregation to the Commissioner of Education. Therefore, the Legislature has directly sanctioned these rules.

Educational Reasons Supporting the Regulation of De Facto Segregation

It is the State Board's position that it is necessary and reasonable to have an educational policy favoring the requirement that students attend integrated schools with each school having a prescribed ratio of minority to white students reflecting the proportion for the district as a whole as set forth in the Swann decision. It believes that integrated education is the best possible way to prepare students to live and function in a pluralistic society.

It should be noted that the State Board of Education, in November of 1970, adapted a "Policy Statement of Educational Leadership Role for Department of Education and Board of Education in providing Equal Educational Opportunities." In which it stated that, "Racial prejudice, sex role stereotyping, and class separation, basic causes of educational inequities, are no less pronounced in our school systems than elsewhere in our society. No challenge is more urgent--than the necessity of assuring the fullest possible education for all students, regardless of their race, culture, sex or socio-economic level."---Schools must create an atmosphere for learning which is devoid of all prejudice, sex role stereotyping, discrimination and separation.

---The stability of our nation depends, in large measure, on the understanding and respect which is derived from a common educational experience among members of each race, sex, culture and/or socio-economic group" further, the State Board of Education in its policy statement in EDU 620 states in part that it "recognizes many causes for inequality in educational opportunity, among which is racial segregation. It agreed with the report of the Select Committee on Equal Educational Opportunities United States Senate, that if racial and socio-economic integration are combined with major efforts to strengthen curricula, improve teaching methods---and encourage the meaningful involvement of parents and community members, school integration can be the basis for impressive improvement in the educational achievement of minority group and low income students, and can immeasurably enrich the capacity of all students for life in a complex and Multiracial society." Further, it agrees that, "The key element in increasing academic performance of low income children, whether or not they are from minority groups, appear to be socio-economic integration...that wherever possible, students should be assigned, for purposes of desegregation, to stable schools containing a majority of educationally advantaged children in order to achieve the most hopeful kind of integration." (The report of the Select Committee on Equal Educational Opportunity United States Senate, pursuant to S. Res. 359 Feb. 19, 1970.)

During the development of its educational policy on school desegregation and equal educational opportunity, the State Board of Education relied heavily upon research findings relative to school desegregation and equal educational opportunity, the report of the Select Committee on equal educational opportunity, United States Senate 1972 and courts decisions relative to defacto segregation.

Studies in all parts of the United States have confirmed that racially indentifiable schools have harmful effects on the achievement, self-concepts, and attitudes of all children. Dr. Robert L. Green, a noted sociologist, at Michigan State University, found that, black children in segregated schools are denied the resources available to white children. Racial isolation is damaging to white children because it fosters a false sense of superiority based on racial differences. It is damaging to black children because it fosters alienation and feelings of inferiority which have negative impact on school achievement. Similarly, Dr. James Coleman, et al, in their study "Equality of Educational Opportunity" found that both minority and majority group children can profit academically when they attend multiracial schools.

The Select Committee on Equal Educational Opportunity United States Senate in its nearly three years of hearing, stated that, "The evidence taken as a whole strongly supports the value of integrated education, sensitively conducted, in improving academic achievement of disadvantaged children and in increasing mutual understanding among students from all backgrounds."

One of the dilemmas in the desegregation effort is defining what constitutes a segregated or desegregated school. The Senate Select Committee on Equal Educational Opportunity noted in its report Chap. 7, P101, that the counting of minority and non-minority group children in our schools has become the principal measurement of progress in school desegregation, and that these measurements imply that some fixed proportion of minority to non-minority-group students defines the schools in a geographic area as "segregated" or "desegregated." Clearly, a 100 per cent black school in a majority white school district is segregated in fact, if not in law. Or conversely a 100 percent white school in a majority black school district is a segregated school. Certainly also, a school that is "racially balanced" so that the percentage of each group of students is precisely the same as the percentage of each group in a given school district is "desegregated." Dr. Gary Orfield, Professor at Woodrow Wilson School of Public and International Affairs, Princeton University suggested to the Select Committee on Equal Educational Opportunity that "segregation" should be defined in terms of a variation between the proportion of minorities in a particular school and their proportion in the district.

His definition was: "A substantial variation between the proportion of racial minority pupils in a particular school and their proportion in the district in which such school is located shall establish a rebuttable presumption that such school is segregated." These attempts at defining "segregation" grew out of research findings which suggest that academic performance for minority students is better when they attend integrated schools with predominately white middle-class students. Dr. James Coleman and others have found that when children from educationally disadvantaged homes attend schools with predominately middle-class, educationally advantaged student bodies, educational disadvantages resulting from home environment are reduced, although not eliminated. Further, the Select Committee on Equal Educational Opportunity United States Senate stated in its report that, "It seems clear, from the available research that increased academic performance for disadvantaged children cannot be expected to flow from racial or ethnic desegregation alone. The key element...appears to be socio-economic integration. We believe that, wherever possible, students should be assigned, for purposes of desegregation, to stable schools containing a majority of educationally advantaged children, in order to achieve the most hopeful kind of integration. We are suggesting that newly integrated schools should not ordinarily contain a majority of disadvantaged students. Where both racial and socio-economic integration are achieved, integrated schools have the best chance to succeed, educationally and socially, for all their students." The Committee further states that, "It is not that minority-group children can only learn alongside non-minority children; it is that disadvantaged children tend to benefit from a stable, advantaged classroom environment."

Neither Department staff nor the Board of Education is suggesting that all minority students are educationally disadvantaged, but that a disproportionate number are from educationally disadvantaged homes. Therefore, we believe based on the evidence that the proposed amendment to EDU 621 C. and 625 A. are educationally sound, necessary and reasonable.

The Courts Have Uniformly Supported the Need to Desegregate De Facto Segregated Schools

While it is clear that the United States Constitution only prohibits de jure segregation--segregation that occurs as a result of positive actions taken by the state--it is also clear that state agencies have the authority to prohibit de facto segregation--segregation that occurs as a result of demographic conditions. Swann. In striking down de jure segregation, the United States Supreme Court in Brown VS Board of Education, 347 U.S. 483, 495 (1954), stated in part: "in the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal." While de facto segregation is not legally prohibited by the Constitution, it is just as inherently unequal as de jure segregation. De facto segregation has the same sociological, psychological, and educational impact as does de jure segregation. The courts have recognized that fact in a number of cases and have uniformly held that actions taken by school districts to eliminate de facto segregation are constitutionally permitted. See e.g., Offerman VS Nitkowski, 378 F.2d 22 (2d Cir. 1969); and Deal VS Cincinnati Bd. of Ed., 369 F.2d 55 (6th Cir.) cert. denied 389 U.S. 847 (1966).

In Jackson VS Pasadena City School District, 59 Cal. 2d 876, 31 Cal. Rptr. 606, 382 P.2d 878 (1963) the court held that the elimination of de facto segregation was constitutionally required. While that decision cannot stand in light of the Supreme Court's decision in Swann, the finding of the court in Jackson regarding the effect of de facto segregation is still valid.

> "So long as large numbers of Negroes live in segregated areas, school authorities will be confronted with difficult problems in providing Negro children with the kind of education they are entitled to have. Residential segregation is in itself an evil which tends to frustrate the youth in the area and to cause antisocial attitudes and behavior. * * * The harmful influence on the children will be reflected and intensified in the classroom if school attendance is determined on a geographic basis without corrective measures."

Id. at 881, 31 Cal. Rptr. at 609-610, 382 P.2d at 881-882. In making that finding, the court noted the California State Board of Education policy which stated:

> "It is the declared policy of the State Board of Education that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall exert all effort to avoid and eliminate segregation of children on account of race or color."

Another court case which sets forth the effects of de facto segregation is Springfield School Committee VS Barksdale, 348 F.2d 261 (1st Cir. 1965). In that case, the lower district court had found that de facto segregation was constitutionally prohibited. On appeal, the circuit court did not decide whether de facto segregation was constitutionally prohibited because it found that voluntary desegregation would occur without the necessity of a court order. However, it did endorse the findings of the district court relative to the impact of de facto segregation and stated that those findings were based upon ample evidence. The specific finding which it quoted was:

> "racially imbalanced schools are not conducive to learning, that is, to retention, performance, and the development of creativity. Racial concentration in his school communicates to the Negro child that he is different and is expected to be different from white children. Therefore, even if all schools are equal in physical plant, facilities, and ability in number of teachers, and even if academic achievement were at the same level at all schools, the opportunity of Negro children in racially concentrated schools to obtain equal educational opportunities is impaired."

Id. at 263

In at least two states the commissioners of education have exercised their inherent powers to prohibit de facto segregation. In Booker VS Board of Education, Plainfield, 45 N.J. 161, 212 A.2d 1 (1965), the Commissioner of Education for New Jersey found that as a matter of educational policy, de facto segregation was harmful. However, the Commissioner of Education limited his order to requiring the desegregation only of those schools which were "all or nearly all Negro." The court made an extensive analysis of the impact of de facto segregation on children and found that even absent a constitutional requirement to eliminate de facto segregation that the Commissioner of Education had authority to require desegregation of de facto segregated schools on educational grounds. The court, however, went further and ruled that the Commissioner of Education for New Jersey had abused his discretion by limiting the desegregation order to only schools of "all or nearly all Negro." The court compelled the Commissioner to adopt a standard utilizing the concept of "a reasonable plan achieving the greatest dispersal consistent with sound educational values and procedures." Id. at 186, 212 A.2d at 11. In Vetere VS Allen, 15 N.Y. 2d 259, 258 N.Y.S.2d 77, 206 N.E.2d 174, cert. denied, 382 U.S. 825 (1965), the court upheld the determination of the Commissioner of Education for New York that de facto segregation should be prohibited based upon sociological, psychological, and educational reasons.

Those state courts which have been faced with state acts prohibiting segregation in schools have uniformly interpreted those acts to prohibit de facto segregation. In Pennsylvania Human Rel. Com'n VS Chester Sch. Dist.,

427 Pa. 157, 233 A.2d 290 (1967), the court held that the Pennsylvania Human Relations Commission had authority to require desegregation of de facto segregated schools under a state act making it an

> "unlawful discriminatory practice to refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such a place of public accommodation."

In a subsequent case, Pennsylvania H. Rel Com'n VS Uniontown A Sch. Dist., 455 Pa. 52, 313 A.2d 156 (1973), the court upheld a determination of the Pennsylvania Human Relations Commission that a school was segregated that exceeded by more than 30 percent the total percentage of minorities within the school district. In Balsbaugh VS Rowland, 447 Pa. 423, 290 A.2d 85 (1972), the Pennsylvania Human Relations Commission had found that a significant racial imbalance existed in a local school district and ordered that steps be taken to correct that racial imbalance. The local school-board responded by requiring crosstown busing for approximately 28 percent of the students and established a policy that each school reflect within 10 percent the racial composition of the total public school population. The court in Balsbaugh upheld that local school district policy.

An additional state court decision holding that a state act reached de facto segregation was Tometz VS Board of Ed. Waukegan, 39 Ill.2d 593, 237 N.E.2d 498 (1968). The act which was interpreted by the court in Tometz provided in part:

> "As soon as practical, and from time to time thereafter, the board shall change or revise existing units or create new units in a manner which will take into consideration and prevention of segregation and the elimination of separation of children in public schools because of color, race, or nationality."

In Tometz, the court held that de facto segregation had a serious limiting influence on educational opportunity. The court in Tometz also noted that state laws or administrative policies directed toward the reduction and eventual elimination of de facto segregation of children in the schools have been approved by every high state court which has considered the issue.

The Racial Imbalance Act of Massachusetts declares all schools containing more than 50 percent minorities to be racially imbalanced and requires the correction of all such plans. That Act has been interpreted to regulate de facto segregation. The constitutionality of that Act was upheld in School Committee of Boston VS Board of Education, 352 Mass. 693, 227 N.E.2d 729 (1967), appeal dismissed, 389 U.S. 572 (1968).

Based upon the foregoing analysis, it appears that these proposed rules, which regulate de facto segregation, are supported by strong educational reasons. It further appears that a court would interpret the Minnesota Statutes, relied upon as authority for these proposed rules, to be broad enough to include the regulation of de facto segregation.

The Need For These Particular Rules

Four basic issues can be sited as the underlying need for the proposed amendments to the Rule.

(1) A need to accommodate the changing demographic make-up of certain school districts in which the percentage of minority students are presently approaching the (30) percent limit presently prescribed in EDU 621 C . For example, the Minneapolis School District minority pupil population is 24.4 percent and is expected to reach approximately 26 percent by fall of 1979. In Booker VS Special School District Number 1, Minneapolis, Judge Earl Larson noted that the court was mindful of the need for flexibility and had never regarded the percentage figure as rigid requirements. He further noted that the changing demographics of the district was a reasonable basis for changing the pupil distribution guidelines. As further support for these rules, we note that the court adopted a similar approach to this problem and used as guidelines for desegregation that minority enrollment in any school be no more than approximately 20 percent above the projected total minority pupil population of the district.

In researching the laws and rules of other states to determine if any were related to this subject, the staff of the Department found that most states that have standards regulating school segregation or racial isolation utilize a system based upon the percentage of minority students in individual schools compared to the overall percentage of the total district. The allowable divergence varies by states from 10 to 20 percent. For example, Illinois and Michigan indicate that a school district is in non-compliance when the minority pupil enrollment of an individual school varies more than 15 percent from the district percentage. Rhode Island allows 10 percent variance from the district percentage, and Iowa allows 20 percent variance from the district percentage.

Two states with aggressive records of enforcement, Pennsylvania and Massachusetts, also utilize standards based on the percentage of minority student enrollment when determining whether or not racial imbalance exist in a school district. These standards are as follows: a) Pennsylvania, 30 percent plus or minus the district-wide percentage of minority students, b) Massachusetts, 50 percent or more minority student enrollment in any school.

(2) A need to provide some stability in terms of student assignment to particular buildings. We agree with the Select Committee on Equal Educational Opportunity that, "Wherever possible, students should be assigned, for purposes of desegregation, to stable schools..." In our opinion, the proposed amendment will provide for greater stability than

the present standard, in that, the change in demographic make-up of some of the districts would not allow sufficient flexibility to provide school districts with the opportunity to establish long-range solutions to the need to desegregate. The rule as amended should provide the opportunity for long-range planning and therefore stable schools.

(3) EDU 621 C. This change is deemed necessary in order that the State Board's policy on school desegregation and Equality of Educational Opportunity may be applied uniformily on a state-wide basis. By amending the rule to operate based upon the ratio of minorities in a particular school as compared to the total minority population in the school district rather than from a fixed limit of 30 percent, all school districts in the state will be affected. In accordance with the principle of achieving the greatest dispersal consistent with sound educational values it is necessary that all districts be included in that goal. Further, the change is needed in order to implement the findings of research that suggest that in a pluralistic society, there can be no quality education where there is no desegregation. In addition, by establishing only a limitation such as the 30 percent, it would be possible for a district with a significant minority population to place all or nearly all of the minority children in one school and still be in compliance with the rule as it is presently written. This proposed amendment will eliminate that possibility.

(4) EDU 625 A. This change is necessary in order to provide local school districts more flexibility in fashioning a remedy to overcome racial segregation as defined in EDU 621 C. while simultaneously providing a meaningful limitation.

The 50 percent minority enrollment limit being proposed will provide opportunity for school districts to effect more desegregation through the use of "magnet" schools and at the same time provide more minority students an opportunity to attend such schools. Experience has shown that with the present 40 percent limitation on minority student enrollment, many minority students are denied opportunity to attend such schools which are usually located in their neighborhood. Further, the 50 percent limit is supported by research which suggests that low socioeconomic and educationally neglected students should not be the majority in the school if academic achievement is expected to improve.

STATE OF MINNESOTA

DEPARTMENT OF EDUCATION

In the Matter of: The proposed amendments of rules of the State Board of Education relating to EDU 620-639 equality of Educational Opportunity and School Desegregation.

I. Summary of Evidence

The evidence to be presented by the Department at the hearing will be that which is reviewed in detail in the "Statement of Need." Briefly that evidence includes:

A. Minnesota Statutes relating to:

(1) Improper classification of pupils,

(2) The Board's authority to promulgate administrative regulations,

(3) Education Code,

(4) The purposes of school aid,

(5) The Board's responsibility to distribute school aids,

(6) The State Board's responsibility for general supervision over educational agencies,

(7) Matching grants for school construction to reduce or eliminate racial imbalance as part of a desegregation plan approved by the State Board of Education.

B. Educational reasons supporting the regulation of De Facto segregation, and

C. Court cases supporting the need to desegregate de facto segregated schools.

In addition, individuals from the Department of Education and other witnesses will testify to need for and reasonableness of the proposed changes.

II. Citations
State Statutes

1. 127.08
2. 121.12
3. 120.01
4. 124.66
5. 124.14
6. 121.11
7. Minn. Laws 1975, ch. 436 Section 2

We may call one or more of the following expert witnesses to testify:

DEPARTMENT OF EDUCATION PERSONNEL:

Dr. Gregory J. Waddick, Assistant Commissioner, Division of Special Services will provide testimony on the development of this proposed amendment and the Statutory authority to adopt the proposed amendments.

Archie L. Holmes, Supervisor, Equal Educational Opportunities Section, Division of Special Services will provide testimony on the educational reasons supporting the regulation of De Facto Segregation and court cases supporting the need to desegregate De Facto Segregated schools.

EXPERT WITNESSES:

Dr. Michael S. Stolle, Dean of the School of Education at University of Wisconsin-Milwaukee, will provide testimony on where the concept of ratios originated as well as the benefits, justifiability, and stability of floating ratios in light of the 15 percent parameter. Additionally, Dr. Stolle will provide testimony regarding the disadvantages of a "hard" figure i.e. a 50 percent ratio in terms of de facto segregation.

Nathaniel Jones, The General Counselor for the NAACP, New York City, will provide testimony in support of the proposed rule changes.

COMMUNITY AND/OR PROFESSIONAL ORGANIZATION REPRESENTATIVES:

Ms. Ruth Werntz, Chairperson, League of Women Voters--Minneapolis, will provide affirmative testimony regarding the proposed rule changes. Additionally, she intends to support the league's position by citing local and state League of Women Voters position(s) on quality education which indicates a support of integration and desegregation rule changes.

James McDermott, representing the Minnesota Federation of Teachers, will provide testimony regarding the Federation's support of the proposed changes.

Dr. George Young, Superintendent of St. Paul Public Schools, will provide testimony in favor of the proposed changes by indicating that the previous 30 percent minority student definition of a desegregated school created many difficult problems in compliance, and by indicating that the proposed change will provide greater flexibility and relative ease of compliance. He intends to submit copies of St. Paul's student enrollment reviews and projections for 1970-1990 which indicate a significantly increasing minority student school population.

Morton Ryweck, Executive Director, Jewish Community Relations Center--Anti-Defamation League, will provide testimony supporting the proposed change.

Maxine Nathanson, Executive Director of the Minneapolis Citizens Committee on Public Education, will provide testimony in favor of school desegregation.

Reverend Dale Anderson, Board of Directors, Chairman of the Benjamin E. Mays Learning Center, Inc., will provide testimony supporting the proposed rule changes; and will address the issue of the negative effects of de facto segregation upon education.

STATEMENT OF NEED & REASONABLENESS

The needs and reasonableness of the proposed rule change for EDU 682 and EDU 687 are as follows:

EDU 682 - The need to repeal this rule is to remove the language that indicates that community education is partly for adult vocational education. This language is inconsistent with Minnesota Stat. Sec. 275.125 Subd. 8(1) (Supp. 1977) which lists the purposes of the Community Education levy and expressly excludes adult vocational education programs.

This repeal is reasonable because it will remove the distinction between what the statute allows and what the rule allows.

The Minnesota Community Education Association and the State Community School Advisory Council advocate and strongly support this change.

EDU 687 - The need to repeal this rule is to allow Community Education Districts to prepare their annual report based on the full fiscal year rather than the school year which ends the 1st week in June. Community Education programs operate for 12 months of the year and their budgets, goals and objectives are established from July 1 to June 30.

It is reasonable then to allow Community Education Directors to extend their completion of the annual report to August 1st rather than June 20 in order to supply data based upon a full-year of activities.

The Minnesota Community Education and the State Community School Advisory Council urge and support the repeal of this rule.

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing the standard for determining school segregation and community services dealing specifically with the limitations on aids and levies and the annual reporting date.

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

Lois Steinhaus, being duly sworn on oath deposes and says:

1) That She is an employee of the Department of Education of the State of Minnesota.

2) That on the 30 day of June, She went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3) That on the 30 day of June, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Lois Steinhaus

Subscribed and sworn to before me

this 5 day of July,

19 82

Luana Vadnais

Notary Public

Ramsey County, Minnesota

My Commission expires 6/16/84.

LUANA VADNAIS
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires June 16, 1984

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing the standard for determining school segregation and community services dealing specifically with the limitations on aids and levies and the annual reporting date.

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 9 (185 labels) sheets constitute the complete list of persons, associations, and other interested groups who as of 8 o'clock AM, this 30th day of June, 1978, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1975), that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

Joan Anderson Growe

By Cheri L. Mattson

STATE OF MINNESOTA
DEPARTMENT OF EDUCATION

IN THE MATTER OF: The proposed adoption of rules of the state board of education governing the standard for determining school segregation and community services dealing specifically with the limitations on aids and levies and the annual reporting date.

AFFIDAVIT OF MAILING

Harold Klickel, being first duly sworn, deposes and says:

That on the 7 day of July, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

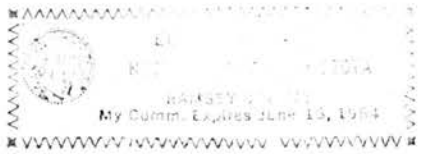
Harold E. Klickel

Subscribed and sworn to before me

this 7 day of July,

1978.

Ruara Sadnais



CERTIFICATE OF BOARD'S

ADOPTION OF RULES RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the Board of Education, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board of Education duly and properly called and held on the 16th day of October, 1978; that a quorum was present at said meeting; (that a majority of those present voted for the resolution); that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

Resolved that the rules relating to equality of educational opportunity and school desegregation and community services dealing specifically with the limitations or aids and levies and the annual reporting date be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 121.11, subds. 7 and 12; 124.14; 124.66 (1); and 127.08. The Board's authority to promulgate EDU 682 and 687 is Minnesota Statute 121.86.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 16th day of October, 1978.

Howard B. Casmey
Secretary

Member, State Board of Education

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Howard B. Casmey, do hereby certify that I am secretary of the state board of education, a board duly authorized under the laws of the State of Minnesota, and that the following is true, complete, and correct copy of a resolution adopted at a meeting of the state board of education duly and properly called and held on the 8th day of May, 1978; that a quorum was present at said meeting; and that a majority of those present voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the State Board of Education shall call a hearing for the purpose of informing the public concerning proposed rules of the Board governing the rules relating to equality of educational opportunity and school desegregation; and that the Commissioner or his Deputy is authorized to sign an order and notice of such hearing to be conducted under rules of the Board.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 8th day of May, 1978.

Secretary, ~~State~~ Board of Education

Member, State Board of Education

Rules as Adopted

Chapter Thirty-One: Rules Relating to Equality of Educational Opportunity and School Desegregation

EDU 621 Definitions. For the purposes of EDU 620-639, the following words and phrases shall have the meaning ascribed to them:

A. No change.

B. No change.

C. Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the student population of the entire district, for the grade levels served by that school building, by more than 15 percent.

EDU 625 Contents of plan: approval or rejection

A. The 15 percentage points requirement of EDU 621 C., shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.

Notwithstanding the 15 percentage points standard, the commissioner shall, if the local board can justify an educational reason for a variance to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the standard except the variance may not cause any school building to exceed 50 percent minority enrollment.

An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the state board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

Rules as Adopted

Chapter Thirty-Four: Community Services

EDU 682 Limitation on aids and levies.

A. No change.

B. General purpose community education funds shall not be used for adult vocational training.

C. No change.

EDU 687 Annual report.

Each year on or before August 15, each district having a community service levy shall report to the department of education on forms authorized by the commissioner.

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE GEORGE A. BECK
HEARING EXAMINER
OFFICE OF HEARING EXAMINER

In the matter of the proposed adoption of Rules of the State Board of Education Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date

FINDING OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing on August 11, 1978, at St. Paul, Minnesota, before George A. Beck, Hearing Examiner appointed by the Chief Hearing Examiner after proper notice required by Minnesota Statutes, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having reviewed all of the testimony, having considered all the evidence adduced, having considered the Report of the Hearing Examiner, and upon all of the testimony and proceedings herein, and applicable statutory standards or criteria, having withheld action on the proposed Rules for the required period of time after receipt of the Hearing Examiner's Findings and having confirmed the need for the above captioned rules, we find that the findings of fact of the Hearing Examiner accurately reflect the facts in the record.

NOW THEREFORE, BE IT RESOLVED that the State Board of Education hereby adopts and incorporates herein the Report of the Hearing Examiner dated September 19, 1978, relative to the above-entitled matters. The rules as adopted are as follows and reflect the recommendations of the Hearing Examiner.

It was suggested at the hearing that the proposed rule amendment EDU 621C should differentiate based upon minority enrollment in elementary and secondary schools and that the phrase "minority racial composition of the entire district" be further clarified. The changes in the rules as originally proposed as compared with the rules as adopted are as follows and reflect the recommendations of the Hearing Examiner.

EDU 621 Definitions. For the purposes of EDU 620-639, the following words and phrases shall have the meaning ascribed to them:

A. No change.

B. No change.

C. Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition <u>of the student population</u> of the entire district, <u>for the grade levels served by that school building</u>, by more than 15 percent.

With regard to the proposed amendment, EDU 625A, testimony by several persons raised concerns over the definition of an "educational reason" and the Hearing Examiner pointed out that the word "shall" should be inserted in the place of "may".

The Department of Education proposes to address the concern over the definition of an "educational reason" by amending EDU 625A by adding the following paragraph which recommendation was supported by the Hearing Examiner and is adopted by this Board.

EDU 625 Contents of Plan: approval or rejection.

A. The 15 percentage points requirement of EDU 621 C., shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.

Notwithstanding the 15 percentage points standard, the commissioner shall, if the local board can justify an educational reason for a variance to the State Board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the standard except the variance may not cause any school building to exceed 50 percent minority enrollment.

An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the State Board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

With regard to the proposed amendment to Rule EDU 682B the Hearing Examiner concurred with the State Board that it has the statutory authority to repeal the language in the existing rule and to adopt the amendment as proposed.

EDU 682 Limitation on Aids and Levies

A. No change.

B. General purpose community education funds shall not be used for adult vocational training.

C. No change.

With regard to the proposed amendment to the Rule EDU 687 the Hearing Examiner recommended that the State Board adopt the amendment as proposed.

EDU 687 Annual Report

Each year on or before ~~August 1~~ August 15 each district having a community service levy shall report to the Department of Education on forms authorized by the commissioner.

The State Board of Education finds all the above amendments reasonable and necessary.

THEREFORE, IT IS ORDERED that EDU 621C and 625A with amendments to the proposed amendments and the amendments to Rules identified as EDU 682 and 687 are adopted the 16th day of October, 1978, pursuant to authority vested in us by Minn. Stat. 121.11, subds. 7 and 12/ 124.14; 124.66 (1); and 127.08. The Board's authority to promulgate EDU 682 and 687 is Minn. Stat. 121.86.

STATE OF MINNESOTA
STATE BOARD OF EDUCATION

Henry G. Tweten, Member
State Board of Education

Chapter Thirty-One: ~~Regulations~~ Rules Relating to
Equality of Educational Opportunity
and School Desegregation

EDU 621 Definitions. For the purposes of EDU 620-639, the following words and phrases shall have the meaning ascribed to them:

A. No change.

B. No Change.

C. ~~Segregation occurs when a public school has a student body of 30 percent or more minority group students.~~ Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district by more than 15 percent.

EDU 625 Contents of plan: approval or rejection.

A. ~~The 30 percent requirement of EDU 621 C. shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.~~

~~Notwithstanding the 30 percent standard, the commissioner may, if the local board can justify an educational reason to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the 30 percent standard to not more than 40 percent.~~

The 15 percentage points requirement of EDU 621 C., shall be used as the standard for local school boards in the process of developing plans to remove racial segregation in the district.

Notwithstanding the 15 percentage points standard, the commissioner may, if the local board can justify an educational reason for a variance to the state board from the comprehensive school desegregation plan submitted, approve school desegregation plans that vary from the standard except the variance may not cause any school building to exceed 50 percent minority enrollment.

Rules as Proposed

Chapter Thirty-Four: Community Services

EDU 682 Limitation on aids and levies.

A. No change.

B. General purpose community education funds shall not be used for adult vocational training. ~~An exception may be permitted when the advisory council, with local board of education approval, deems that the vocational training has a special community significance in addition to individual benefit.~~

C. No change.

EDU 687 Annual report.

Each year on or before ~~June 20~~ August 1, each district having a community service levy shall report to the department of education on forms authorized by the commissioner.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck, of the State Office of Hearing Examiners, at 9:00 a.m. on Friday, August 11, 1978, in Room 83 of the State Office Building, Capitol Complex, in the City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is a part of a rule hearing procedure held pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417, and Sec. 15.052, to determine whether the proposed rule amendments should be adopted and given the force of law. Copies of this Report are available for review from the State Department of Education and from the Office of Hearing Examiners.

Members of the agency panel appearing at the hearing in regard to the proposed amendments to Minn. Rule EDU 621 C. and EDU 625 A. included: Dr. Gregory J. Waddick, Assistant Commissioner, Division of Special Services, Minnesota Department of Education; Archie Holmes, Supervisor, Equal Educational Opportunities Section, State Department of Education; Howard B. Casmey, Commissioner of Education; Dr. Michael J. Stolee, Dean of the School of Education at the University of Wisconsin-Milwaukee. The agency panel in regard to the amendments to Minn. Rule EDU 682 B. and EDU 687 included: Lawrence Erie, Manager of Community Education for the State of Minnesota and Executive Secretary of the State Community School Advisory Council; Mark Linneman, State Advisory Council; and Donald K. Kramlinger, President-Elect, Minnesota Community Education Association. Also in attendance at the hearing were three members of the State Board of Education: Dorothea Chelgren; Dr. Erling Johnson; and Ruth Myers.

Seventeen public witnesses appeared and spoke at the hearing. The Department of Education submitted 19 exhibits. Eighteen written comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20 day period for written comment following the hearing.

Based upon the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On June 7, 1978, the Department of Education filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule amendments;
(b) An Order for Hearing;

(c) A proposed Notice of Hearing; and
(d) A statement of the number of persons expected to attend the hearing.

2. On July 10, 1978, a Notice of Hearing and a copy of the proposed rule amendments were published at 3 State Register 28.

3. On July 7, 1978, the Department of Education mailed the Notice of Hearing to all persons and associations who had registered their name with the Secretary of State for the purpose of receiving such notice.

4. On July 14, 1978, the Department of Education filed the following documents with the Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Notice of Hearing as it appeared in the State Register;
(d) The Affidavit of Mailing of the Secretary of State's list;
(e) The Affidavit of Receipt of the Secretary of State's list;
(f) The Secretary of State's list;
(g) The Certificate of Delivery of the Secretary of State's list;
(h) The Certificate of the Board's Authorizing Resolution; and
(i) A Statement of Need and Reasonableness for each of the propose rule amendments.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

5. The record remained open through August 31, 1978, for the receipt of written documents and statements.

Proposed Amendments of Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A.

6. The existing definition of segregation contained in EDU 621 C. provides that a public school is segregated when it has a student body of over 30% minority group students. The proposed amendment defines segregation as occurring in a school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district by more than 15%. A corresponding change to Minn. Rule EDU 625 A. allows the Commissioner to approve school desegregation plans that vary from the 15 percentage point standard if a local school board can justify an educational reason for such a variance, provided that no school building may exceed 50% minority enrollment. The existing rule permits a variance from the 30% standard to not more than 40%.

7. In documenting its statutory authority to adopt the two proposed rule amendments, the Board first cites its general rulemaking authority at Minn. Stat. Sec. 121.11, subd. 12, which states as follows:

> The state board shall have power from time to time to make and enforce such rules and regulations, consistent with this code, as may be appropriate for the administration and enforcement thereof.

According to Minn. Stat. Sec. 120.01, Chapters 120 to 127 are to be cited as the education code. The Board also cites as statutory authority Minn. Stat. Sec. 127.08, which reads in part as follows:

> 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 of all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. . . .

8. The State Board is given specific rulemaking authority to enact rules regarding the distribution of school aids by Minn. Stat. Sec. 124.14, subd. 1, which states:

> The state board shall supervise distribution of the school aids in accordance with law. It may make rules and regulations consistent with law for such distribution which will enable districts to perform efficiently the services required by law and further education in the state, including reasonable requirements for such reports and accounts to it as will assure accurate and lawful apportionment of aids. . . .

The Board notes that in connection with this rulemaking authority in regard to state aids, Minn. Stat. Sec. 124.66, provides in part:

> State aid shall be for the following purposes:
>
> 1. To assist in providing equal educational opportunities for all the school children of the state;
> . . . .

The Board also cites the general supervisory provision at Minn. Stat. Sec. 121.11, subd. 7, which states that:

> The state board of education shall exercise general supervision over public schools and public educational agencies in the state, classify and standardize public elementary and secondary schools, and prepare for them outlines and suggestive courses of study. The board shall establish rules relating to examinations, reports, acceptances of schools, courses of study, and other proceedings in connection with elementary and secondary schools applying for special state aid.

9. The Board suggested that legislative awareness of the existing rule was shown by an appropriation contained in Minn. Laws 1975, ch. 436, sec. 2, which appropriated $4 million for the construction, enlargement or modification of school buildings whenever the Commissioner of Education determined that these alterations are directly related to reducing or eliminating racial imbalance as part of a desegregation plan approved by the State Board. The Board states that the Legislature did not have to include a definition of racial imbalance since it was contained in Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A. See Exhibit 4, pp. 1-3.

10. In an extensive legal brief (Ex. D.), the Minneapolis School District challenges the statutory authority of the State Board to enact these proposed rule amendments. The Minneapolis School District suggests that Minn. Stat. Sec. 121.11, subd. 12, cannot be authority itself for the rules, and that the State Board must show another section of the education code which authorizes the rule amendments. (Ex. D, p. 7) Minneapolis School Board also suggests that Minn. Stat. Sec. 121.11, subd. 7, does not extend to rules governing de facto segregation. In regard to the improper classification statute, Minn. Stat. Sec. 127.08, the Minneapolis School Board states that the plain meaning of this statute is to prohibit de jure segregation and does not authorize a rule in regard to improper racial balance or de facto segregation. The Minneapolis Board suggests that the use of words like "classify", "separate" and "deny" indicates that the statute refers to an affirmative act on the part of the school district with reference to "race, color, social position or nationality". (Ex. 4, pp. 9-32) The Minneapolis School Board also suggests

that the statutes regarding state aid do not authorize a proposed rule amendment since the State Board has already enacted rules in this regard, and since the primary purpose of state aids is to establish minimum standards for all public schools and to assist districts with exceptionally high tax levies. (Ex. D, pp. 34-36)

11. In its written reply, the State Board suggests that although the judicially created distinction between de facto and de jure segregation had not yet been created when Minn. Stat. Sec. 127.08 was first enacted, yet legislatures need not foresee all cases to which a statute might apply and that de facto segregation is fairly within the purpose of the statute. The State Board suggests that the statute essentially regulates segregation and discrimination and that, read in pari materia with Minn. Stat. ch. 363, the State Human Rights Act, it is clear that the Legislature intended to regulate de facto segregation. (Ex. 19, pp. 7-14) The State Board also suggests that Minn. Stat. Sec. 124.66 authorizes the regulation of de facto segregation by allowing the Commissioner to withhold state aid. (Ex. 19, pp. 14-16) The State Board points out that generally legislative and administrative interpretations of statutory provisions are evidence of legislative intent. The rules proposed for amendment have been in effect since 1973. The Legislature has taken no action to revoke these rules and has, in fact, taken three actions in reliance upon the rules, namely, transportation aids related to desegregation, enactment of Minn. Stat. Sec. 124.15, subds. 2 and 2(a), which allows the withholding of state aids for a district violating any state discrimination law, and the appropriation of funding for construction costs resulting from desegregation. (Ex. 19, pp. 16-20)

12. It should first be noted that Chapter 15 does not explicitly state whether or not an agency must re-establish in a rule proceeding its statutory authority for an existing rule when it seeks to amend the rule which has been presumably validly adopted at some time in the past, at least where the amendment does not in effect create a new rule, but merely modifies the original rule. Minn. Stat. Sec. 15.052, subd. 3, requires the hearing examiner to make a report in which he is to take notice of the degree to which the agency has documented its statutory authority to take the proposed action. The definition of rule at Minn. Stat. Sec. 15.0411, subd. 3, includes also the amendment thereof. There is, of course, always the possibility that a person may attack the statutory authority for a rule by a petition to district court for a declaratory judgment pursuant to Minn. Stat. Sec. 15.0416 and Sec. 15.0417. It may well be that technically an agency is not required to re-establish its statutory authority in a rule amendment proceeding unless its rule amendment sufficiently alters the existing rule so as to require a new judgment to be made as to whether or not the resulting rule would exceed the agency's statutory authority. In the context of this rule proceeding, this would mean that the agency must show that it has authority to establish a more flexible formula, but would not have to show or re-establish its statutory authority to promulgate a rule dealing with de facto segregation. The remedy of a person seeking to challenge the latter authority would necessarily be a district court action.

13. It is, however, concluded that the agency has demonstrated its statutory authority to adopt the proposed rule amendments. It also appears that statutory authority exists for the existing rule. The case of Welsand v. State of Minnesota Railroad and Warehouse Commission, 25 Minn. 504, 88 N.W.2d 834 (1958), involved a statute which gave the Commission power and authority to make rules necessary to the enforcement of a set of statutes generally dealing with the regulation of contract carriers and irregular route common carriers. The Court stated that:

> In vesting regulatory power in an administrative agency, the legislature need not expressly delineate with particularity or exactness each and every phase of the power so conferred, but may, in order to give the administrative function reasonable flexibility, leave the exact scope of the rulemaking power to reasonable implication and this includes an implied power to formulate necessary classifications and definitions within the designated area of regulation. 88 N.W.2d at p. 838.

In this rule hearing proceeding, the agency has demonstrated its general rule making authority; indicated a specific statute dealing with classification of pupils by race, which it seeks to interpret through its rulemaking power; has shown authority in the area of equal educational opportunities in regard to state aid; and has shown legislative awareness and reliance upon the existing rule. This suffices to demonstrate the statutory authority.

14. The State Board stated that the amendment is necessary to accommodate the changing demographic makeup of certain school districts in the state which are approaching the 30% limit in the current rule. The Minneapolis School District is expected to reach 26% overall minority enrollment in the fall of 1979. (Tr. p. 11) The State Board pointed out that most states which regulate school segregation utilize a system based upon a percentage of minority students in individual schools compared to the overall percentage of the total school district. Illinois and Michigan have used a 15% figure, Rhode Island has used a 10% figure, and Iowa arrived at a 20% figure. (Tr. p. 12; Ex. 11) The Board noted that Judge Larson used a similar approach in regard to the Minneapolis Public Schools. (Tr. p. 11)

15. The Board's expert witness, Dr. Stolee, testified that 15% is a reasonable and workable figure, and that the Board's formula has the advantage of automatically adjusting to changes in district enrollment. (Tr. pp. 41, 45) Dr. Stolee noted that the flat percentage contained in the current rule permits a school district to place all minority students in one building if they desire to do so. (Tr. p. 43) The Board and Dr. Stolee believe that the formula suggested will provide greater stability for school districts and permit long range planning. (Tr. pp. 13, 45; Ex. 13) The Board also noted that a 50% maximum enrollment was necessary since the current 40% maximum has prevented minority students from attending "magnet" schools in their own neighborhood. (Tr. p. 14) Dr. Stolee did suggest that the 15% figure should be plus or minus so as to guarantee the integration of all buildings and prevent buildings from becoming racially identifiable. (Tr. p. 46) He also supported either omitting the 50% maximum or providing guidelines to clearly delineate what constitutes a valid educational reason. (Tr. p. 47)

16. General support for the proposed rule amendments was expressed by the St. Paul Urban League which commented that the amendments would permit flexibility and therefore minimize the amount of bussing of minority students and would allow minority students to attend special education programs in their own neighborhood. (Tr. p. 79; Ex. A) Also supporting the amendments was the Benjamin E. Mays Learning Center, which stated that the amendments would permit minority youth to attend their school (Ex. M); the Black Education Advisory Committee of the Duluth Public Schools (Ex. E); the Minneapolis Citizens Committee on Public Education (Ex. K; Tr. pp. 93-96); the St. Paul Board of Education (Ex. C, Tr. pp. 67-78); the Prosperity Heights Elementary School PTA (Tr. pp. 117-119); the Minnesota Federation of Teachers (Tr. p. 119); Jean Jones, a teacher (Tr. pp. 121-124); and Jeanne Cummings, a citizen (Tr. pp. 113-117). State Representatives Randy C. Kelly, Eugene T. Waldorf, and Senator John C. Chenoweth also submitted a statement supporting the proposed amendments (Ex. G). The Minnesota Alliance of Black School Educators supported the amendments, but requested a definition of "educational reasons" sufficient to obtain a variance. (Ex. O) The Committee for Integrated Education supported the first rule amendment if a floor of 15% was included as recommended by Dr. Stolee. The Committee opposed any variance as contained in the second rule amendment. (Exs. J, P; Tr. pp. 98-102)

17. The Minneapolis NAACP did not support the proposed amendments since they did not believe that they would aid desegregation. (Tr. pp. 81-84) The Duluth Branch of the NAACP was also concerned about allowing variances. (Ex. F) The Minneapolis Urban League also opposed changing the existing rule and was especially opposed to granting a variance of up to 50%. (Tr. pp. 102-113) The St. Paul Branch of the NAACP testified that they believe that further study was needed before any revision of the existing rule. (Ex. L) The Minnesota Education Association testified that the proposed rule amendments were a change of standards which might mean that desegregation goals would never be accomplished. The MEA suggested that adherence to the existing rule together with consistent application would in fact promote stability. The MEA also supported defining the educational reasons which justify a variance. (Ex. N; Tr. pp. 84-92) Citizen Arthur C. Hill also supported leaving the rules as they exist. (Tr. pp. 120-121)

18. The Minneapolis Public Schools stated that the proposed amendments constitute a real improvement over the existing rules but that the proposed revisions do not go far enough. (Ex. B, p. 2) The Minneapolis Schools suggested that the State Board cease attempting to regulate de facto segregation and adopt a rule which would prohibit de jure segregation only. The Minneapolis School Board suggested a rule which essentially restates Minn. Stat. Sec. 127.08. (Ex. B, p. 9; Ex. D, p. 32)

19. The State Board submitted in the hearing record material in support of the educational reasons for regulating de facto segregation. (Ex. 4, pp. 3-9) The data appears to satisfy the statutory criteria of showing need and reasonableness with an affirmative presentation of facts. Both the Minneapolis Public Schools (Ex. Q) and Grace Billings Bress (Ex. R) also submitted research and bibliographies of education research on school desegregation for the

consideration of the State Board which they believe is more current. It is, however, clear from a review of Chapter 15 that the State Board need not show again the need for regulation of de facto segregation since this was presumably properly done in a prior rule hearing proceeding. The State Board must only show the need for and reasonableness of its adjustment of the formula for measuring racial imbalance and in the adjustment of the allowable variance.

20. In response to the Minneapolis School District's concern that the proposed rule amendments do not differentiate based upon minority enrollment in elementary and secondary schools, the State Board recommended adding a phrase to the proposed EDU 621 C. so that the rule would read as follows:

> Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district, for the grade levels served by that school building, by more than 15%.

(Ex. 19, p. 2)

21. Several persons raised concerns over the definition of an "educational reason" and accordingly, the State Board recommended the addition of the following paragraph to Minn. Rule EDU 625 A.:

> An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the State Board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

(Ex. 19, p. 5)

22. So amended, the proposed amendments to the rules EDU 621 C. and EDU 625 A. have been demonstrated by an affirmative presentation of facts to be needed and reasonable. There was a wide range of opinion expressed as to the widsom of the proposed amendments. These comments should be considered by the Board in making its policy decision as to whether or not to adopt, withdraw, or further modify the proposed amendments. The evidence presented is sufficient to demonstrate that the amendments are not arbitrary or unneeded. The Board may also wish to consider clarifying the phrase "minority racial composition of the entire district" as was requested by the St. Paul Board of Education. If this phrase is intended to mean the percentage of minority students in the total public school enrollment of a school district, then perhaps it ought to more explicitly say so in order to avoid confusion. The State Board is advised that the chief hearing examiner will still have to make a judgment as to whether or not the proposed added paragraph to EDU 625 A. is or is not a substantial change. Additionally, the State Board has advised that the Attorney General may scrutinize EDU 625 A. to determine the legality of the use of the word "may" in the second paragraph instead of the word "shall".

23. The Minneapolis Public Schools questioned whether or not the State Board had complied with Minn. Stat. Sec. 15.0412, subd. 7, which requires the

Notice of Hearing to announce, if such is the case, that the estimated total cost of implementing the proposed rule for the next succeeding two years will cost local governmental agencies more than $100,000 in any one year. (Ex. D, p. 42) The State Board believes that the amendments will not cost school districts more than $100,000 in any one year and may, in fact, save school districts money. (Ex. 19, p. 21)

Proposed Amendment of Minn. Rule EDU 682 B.

24. In its amendment to Minn. Rule EDU 682 B., the State Board proposes to delete an exception to the general rule that community education funds shall not be used for adult vocational training. The language proposed for deletion permitted an exception where vocational training has a "special community significance". The Board suggested that the deletion was necessary since the language proposed for deletion is inconsistent with Minn. Stat. Sec. 275.125, subd. 8(1), which lists the purposes of the community education levy and expressly excludes adult vocational education programs. (Ex. 5) Mark Linneman, a member of the state community school advisory council and chairman of the legislative subcommittee of the state advisory council and Donald K. Kramlinger, president-elect of the Minnesota Community Education Association, both spoke in support of the proposed rule amendment. (Tr. pp. 128-129)

25. Senator Jerome Hughes, chairman of the state Senate Education Committee, spoke in opposition to the proposed repeal. Senator Hughes stated that he believed that this repeal would be contrary to the intent of the underlying legislation which he authored. He was particularly concerned that community education funds might no longer be available for adult vocational education programs having to do with "parenting" or other family education relating to child development. Senator Hughes believes that the current rule properly allows local school districts some discretion in the use of community education funds and he is unaware of any case in the state at present which is not within the intent of the law. (Tr. pp. 130-132, 135, 136-137)

26. Minn. Stat. Sec. 275.125, subd. 8(1) provides, in part, as follows:

> These levies shall be used for community services including summer school, nonvocational adult programs, recreational programs, and programs contemplated by sections 121.85 to 121.88.

27. In reply, the State Board indicated that the proposed repeal does not prevent community education programs from offering courses such as "life and parenting occupations" that are also offered through adult vocational education. The repeal would mean, however, that no program may receive both adult education categorical aids and community service levy funding. The State Board points out that there is no exception in the statute allowing the funding of adult vocational programs that have a "special community significance", and that therefore there can be no such exception in the rules of the State Board of Education. (Ex. 18, pp. 1-2)

28. It is concluded that the State Board has statutory authority to repeal the language in the existing rule and it is further concluded that the repeal is consistent with the governing statute in question. Accordingly,

since the State Board is repealing a rule inconsistent with the governing statute, it has demonstrated the need and reasonableness of the proposed change. It would appear that a revision of the statute would be necessary in order to permit the language of the existing rule.

Proposed Amendment of Minn. Rule EDU 687

29. This amendment as originally proposed changed the due date for the annual report submitted by each school district from the current June 20 to August 1. At the hearing, the Board suggested that the due date be amended to August 15 since if the annual report is to contain any budget information, then the reporting date has to conform to the UFARS reporting date. (Tr. p. 127) The Board stated that the need to change the date was to allow school districts to prepare the annual report based on the full fiscal year rather than the school year. Mr. Linneman and Mr. Kramlinger spoke in support of this change and of the date as amended to August 15. (Tr. pp. 128-129) There were no other comments on the proposed change. It is concluded that the Board has demonstrated the need and reasonableness of the proposed change.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the State Board of Education gave proper notice of the promulgation of the proposed rule amendments.

2. That the State Board of Education has statutory authority to take the action proposed, to wit, the promulgation of the proposed rule amendments.

3. That the State Board of Education has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Education has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the State Board of Education is not precluded from, and should not neglect to consider, further modification of the proposed rule amendments despite a finding of need and reasonableness by the Hearing Examiner, as long as the modification is not substantial, and provided that it is based upon evidence contained in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule amendments together with the amendments suggested by the State Board of Education be adopted.

Dated: September 19, 1978.

GEORGE A. BECK
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The State Board of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

LIST OF EXHIBITS

Board Ex. 1	Notice of Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 2	Order for Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 3	Certificate of Board's Authorizing Resolution/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 4	Statement of Need and Reasonableness/July 14, 1978/ Howard B. Casmey, Commissioner of Education (Relating to EDU 621 C. and EDU 625 A.)
Board Ex. 5	Statement of Need and Reasonableness/July 14, 1978/ (Relating to EDU 682 and EDU 687)
Board Ex. 6	Amendments to Proposed Rules EDU 621 and EDU 625/June 7, 1978
Board Ex. 7	Amendments to Proposed Rules EDU 682 and EDU 687/June 7, 1978
Board Ex. 8	Statement of Number of Persons Expected to Attend and Cost/ June 7, 1978
Board Ex. 9	Publication in State Register/July 10, 1978/3 S.R. 28
Board Ex. 10	Laws Administered by the Pennsylvania Human Relations Commission/March, 1976
Board Ex. 11	Rules, Statutes and Policies of Other States and Cities
Board Ex. 12	Equal Educational Opportunity Policies, Guidelines, and Regulations for Minnesota Schools
Board Ex. 13	The Report of the Select Committee on Equal Educational Opportunity/U.S. Senate
Board Ex. 14	Certificate of Delivery of the Secretary of State's List/ June 30, 1978
Board Ex. 15	Affidavit of Receipt of the Secretary of State's List/ June 30, 1978
Board Ex. 16	Affidavit of Mailing of Secretary of State's List/July 7, 1978
Board Ex. 17	Secretary of State's List for Education
Board Ex. 18	Letter/Lawrence Erie, Manager, Community Education, State Department of Education/August 18, 1978
Board Ex. 19	Department of Education's Response to Public Testimony

Public Ex. A	Letter/Jeffrey Hasson, Member, Board of Directors, St. Paul Urban League; Chairperson of the League Education Committee/August 4, 1978
Public Ex. B	Statement/Raymond G. Arveson, Superintendent of Schools, Minneapolis Public Schools, on behalf of the Minneapolis Board of Education
Public Ex. C	Testimony/Emery Barrette, Chairman, St. Paul Board of Education/Prepared by George Young
Public Ex. D	Special School District No. 1's Memorandum of Points and Authorities Regarding the Validity of Proposed Amendment of EDU 621(D) and EDU 625(A)/August 10, 1978/ Duane W. Krohnke, Attorney
Public Ex. E	Letter/Odie Powell, Chairperson/Black Education Advisory Committee/August 9, 1978
Public Ex. F	Letter/Clarence Maddox, President-Duluth Branch/National Association for the Advancement of Colored People/ August 9, 1978
Public Ex. G	Statement of Support for the Proposed Changes to Chapter 31 of the Department of Education Rules Relating to Equality of Educational Opportunity and School Desegregation/ Representative E. Waldorf; Representative R. Kelly; and Senator John Chenoweth
Public Ex. H	Letter/Bill Aberman, President and Morton W. Ryweck, Director/ Jewish Community Relations Council, Anti-Defamation League of Minnesota and the Dakotas/August 11, 1978
Public Ex. I	Testimony/Minneapolis League of Women Voters
Public Ex. J	Statement/Committee for Integrated Education
Public Ex. K	Statement/Minneapolis Citizens Committee on Public Education
Public Ex. L	Testimony of St. Paul Branch NAACP to State Department of Education/Charles W. Breese, President, St. Paul Chapter NAACP
Public Ex. M	Letter/Benjamin E. Mays Learning Center, Inc./Dale Anderson, Board Chairman
Public Ex. N	Testimony/Minnesota Education Association
Public Ex. O	Statement/Dr. Richard Green, President/Minnesota Alliance of Black School Educators on behalf of the Executive Board
Public Ex. P	Letter/Committee for Integrated Education/Barbara Schwartz
Public Ex. Q	Statement/Raymond G. Arveson, Superintendent of Schools/ Minneapolis Public Schools, Special School District No. 1
Public Ex. R	Letter and Attachments/Grace Billings Bress/August 30, 1978

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

In the Matter of the Proposed Adoption of Rules of the State Board of Education Governing the Standard for Determining School Segregation and Community Services Dealing Specifically with the Limitations on Aids and Levies and the Annual Reporting Date.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner George A. Beck, of the State Office of Hearing Examiners, at 9:00 a.m. on Friday, August 11, 1978, in Room 83 of the State Office Building, Capitol Complex, in the City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is a part of a rule hearing procedure held pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417, and Sec. 15.052, to determine whether the proposed rule amendments should be adopted and given the force of law. Copies of this Report are available for review from the State Department of Education and from the Office of Hearing Examiners.

Members of the agency panel appearing at the hearing in regard to the proposed amendments to Minn. Rule EDU 621 C. and EDU 625 A. included: Dr. Gregory J. Waddick, Assistant Commissioner, Division of Special Services, Minnesota Department of Education; Archie Holmes, Supervisor, Equal Educational Opportunities Section, State Department of Education; Howard B. Casmey, Commissioner of Education; Dr. Michael J. Stolee, Dean of the School of Education at the University of Wisconsin-Milwaukee. The agency panel in regard to the amendments to Minn. Rule EDU 682 B. and EDU 687 included: Lawrence Erie, Manager of Community Education for the State of Minnesota and Executive Secretary of the State Community School Advisory Council; Mark Linneman, State Advisory Council; and Donald K. Kramlinger, President-Elect, Minnesota Community Education Association. Also in attendance at the hearing were three members of the State Board of Education: Dorothea Chelgren; Dr. Erling Johnson; and Ruth Myers.

Seventeen public witnesses appeared and spoke at the hearing. The Department of Education submitted 19 exhibits. Eighteen written comments were received from the public subsequent to the mailing of the Notice of Hearing through the end of the 20 day period for written comment following the hearing.

Based upon the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On June 7, 1978, the Department of Education filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule amendments;
(b) An Order for Hearing;

(c) A proposed Notice of Hearing; and
(d) A statement of the number of persons expected to attend the hearing.

2. On July 10, 1978, a Notice of Hearing and a copy of the proposed rule amendments were published at 3 State Register 28.

3. On July 7, 1978, the Department of Education mailed the Notice of Hearing to all persons and associations who had registered their name with the Secretary of State for the purpose of receiving such notice.

4. On July 14, 1978, the Department of Education filed the following documents with the Hearing Examiner:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Notice of Hearing as it appeared in the State Register;
(d) The Affidavit of Mailing of the Secretary of State's list;
(e) The Affidavit of Receipt of the Secretary of State's list;
(f) The Secretary of State's list;
(g) The Certificate of Delivery of the Secretary of State's list;
(h) The Certificate of the Board's Authorizing Resolution; and
(i) A Statement of Need and Reasonableness for each of the propose rule amendments.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

5. The record remained open through August 31, 1978, for the receipt of written documents and statements.

Proposed Amendments of Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A.

6. The existing definition of segregation contained in EDU 621 C. provides that a public school is segregated when it has a student body of over 30% minority group students. The proposed amendment defines segregation as occurring in a school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district by more than 15%. A corresponding change to Minn. Rule EDU 625 A. allows the Commissioner to approve school desegregation plans that vary from the 15 percentage point standard if a local school board can justify an educational reason for such a variance, provided that no school building may exceed 50% minority enrollment. The existing rule permits a variance from the 30% standard to not more than 40%.

7. In documenting its statutory authority to adopt the two proposed rule amendments, the Board first cites its general rulemaking authority at Minn. Stat. Sec. 121.11, subd. 12, which states as follows:

> The state board shall have power from time to time to make and enforce such rules and regulations, consistent with this code, as may be appropriate for the administration and enforcement thereof.

According to Minn. Stat. Sec. 120.01, Chapters 120 to 127 are to be cited as the education code. The Board also cites as statutory authority Minn. Stat. Sec. 127.08, which reads in part as follows:

> 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 of all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. . . .

8. The State Board is given specific rulemaking authority to enact rules regarding the distribution of school aids by Minn. Stat. Sec. 124.14, subd. 1, which states:

> The state board shall supervise distribution of the school aids in accordance with law. It may make rules and regulations consistent with law for such distribution which will enable districts to perform efficiently the services required by law and further education in the state, including reasonable requirements for such reports and accounts to it as will assure accurate and lawful apportionment of aids. . . .

The Board notes that in connection with this rulemaking authority in regard to state aids, Minn. Stat. Sec. 124.66, provides in part:

> State aid shall be for the following purposes:
>
> 1. To assist in providing equal educational opportunities for all the school children of the state;
> . . . .

The Board also cites the general supervisory provision at Minn. Stat. Sec. 121.11, subd. 7, which states that:

> The state board of education shall exercise general supervision over public schools and public educational agencies in the state, classify and standardize public elementary and secondary schools, and prepare for them outlines and suggestive courses of study. The board shall establish rules relating to examinations, reports, acceptances of schools, courses of study, and other proceedings in connection with elementary and secondary schools applying for special state aid.

9. The Board suggested that legislative awareness of the existing rule was shown by an appropriation contained in Minn. Laws 1975, ch. 436, sec. 2, which appropriated $4 million for the construction, enlargement or modification of school buildings whenever the Commissioner of Education determined that these alterations are directly related to reducing or eliminating racial imbalance as part of a desegregation plan approved by the State Board. The Board states that the Legislature did not have to include a definition of racial imbalance since it was contained in Minn. Rule EDU 621 C. and Minn. Rule EDU 625 A. See Exhibit 4, pp. 1-3.

10. In an extensive legal brief (Ex. D.), the Minneapolis School District challenges the statutory authority of the State Board to enact these proposed rule amendments. The Minneapolis School District suggests that Minn. Stat. Sec. 121.11, subd. 12, cannot be authority itself for the rules, and that the State Board must show another section of the education code which authorizes the rule amendments. (Ex. D, p. 7) Minneapolis School Board also suggests that Minn. Stat. Sec. 121.11, subd. 7, does not extend to rules governing de facto segregation. In regard to the improper classification statute, Minn. Stat. Sec. 127.08, the Minneapolis School Board states that the plain meaning of this statute is to prohibit de jure segregation and does not authorize a rule in regard to improper racial balance or de facto segregation. The Minneapolis Board suggests that the use of words like "classify", "separate" and "deny" indicates that the statute refers to an affirmative act on the part of the school district with reference to "race, color, social position or nationality". (Ex. 4, pp. 9-32) The Minneapolis School Board also suggests

that the statutes regarding state aid do not authorize a proposed rule amendment since the State Board has already enacted rules in this regard, and since the primary purpose of state aids is to establish minimum standards for all public schools and to assist districts with exceptionally high tax levies. (Ex. D, pp. 34-36)

11. In its written reply, the State Board suggests that although the judicially created distinction between de facto and de jure segregation had not yet been created when Minn. Stat. Sec. 127.08 was first enacted, yet legislatures need not foresee all cases to which a statute might apply and that de facto segregation is fairly within the purpose of the statute. The State Board suggests that the statute essentially regulates segregation and discrimination and that, read in pari materia with Minn. Stat. ch. 363, the State Human Rights Act, it is clear that the Legislature intended to regulate de facto segregation. (Ex. 19, pp. 7-14) The State Board also suggests that Minn. Stat. Sec. 124.66 authorizes the regulation of de facto segregation by allowing the Commissioner to withhold state aid. (Ex. 19, pp. 14-16) The State Board points out that generally legislative and administrative interpretations of statutory provisions are evidence of legislative intent. The rules proposed for amendment have been in effect since 1973. The Legislature has taken no action to revoke these rules and has, in fact, taken three actions in reliance upon the rules, namely, transportation aids related to desegregation, enactment of Minn. Stat. Sec. 124.15, subds. 2 and 2(a), which allows the withholding of state aids for a district violating any state discrimination law, and the appropriation of funding for construction costs resulting from desegregation. (Ex. 19, pp. 16-20)

12. It should first be noted that Chapter 15 does not explicitly state whether or not an agency must re-establish in a rule proceeding its statutory authority for an existing rule when it seeks to amend the rule which has been presumably validly adopted at some time in the past, at least where the amendment does not in effect create a new rule, but merely modifies the original rule. Minn. Stat. Sec. 15.052, subd. 3, requires the hearing examiner to make a report in which he is to take notice of the degree to which the agency has documented its statutory authority to take the proposed action. The definition of rule at Minn. Stat. Sec. 15.0411, subd. 3, includes also the amendment thereof. There is, of course, always the possibility that a person may attack the statutory authority for a rule by a petition to district court for a declaratory judgment pursuant to Minn. Stat. Sec. 15.0416 and Sec. 15.0417. It may well be that technically an agency is not required to re-establish its statutory authority in a rule amendment proceeding unless its rule amendment sufficiently alters the existing rule so as to require a new judgment to be made as to whether or not the resulting rule would exceed the agency's statutory authority. In the context of this rule proceeding, this would mean that the agency must show that it has authority to establish a more flexible formula, but would not have to show or re-establish its statutory authority to promulgate a rule dealing with de facto segregation. The remedy of a person seeking to challenge the latter authority would necessarily be a district court action.

13. It is, however, concluded that the agency has demonstrated its statutory authority to adopt the proposed rule amendments. It also appears that statutory authority exists for the existing rule. The case of Welsand v. State of Minnesota Railroad and Warehouse Commission, 25 Minn. 504, 88 N.W.2d 834 (1958), involved a statute which gave the Commission power and authority to make rules necessary to the enforcement of a set of statutes generally dealing with the regulation of contract carriers and irregular route common carriers. The Court stated that:

> In vesting regulatory power in an administrative agency, the legislature need not expressly delineate with particularity or exactness each and every phase of the power so conferred, but may, in order to give the administrative function reasonable flexibility, leave the exact scope of the rulemaking power to reasonable implication and this includes an implied power to formulate necessary classifications and definitions within the designated area of regulation. 88 N.W.2d at p. 838.

In this rule hearing proceeding, the agency has demonstrated its general rule making authority; indicated a specific statute dealing with classification of pupils by race, which it seeks to interpret through its rulemaking power; has shown authority in the area of equal educational opportunities in regard to state aid; and has shown legislative awareness and reliance upon the existing rule. This suffices to demonstrate the statutory authority.

14. The State Board stated that the amendment is necessary to accommodate the changing demographic makeup of certain school districts in the state which are approaching the 30% limit in the current rule. The Minneapolis School District is expected to reach 26% overall minority enrollment in the fall of 1979. (Tr. p. 11) The State Board pointed out that most states which regulate school segregation utilize a system based upon a percentage of minority students in individual schools compared to the overall percentage of the total school district. Illinois and Michigan have used a 15% figure, Rhode Island has used a 10% figure, and Iowa arrived at a 20% figure. (Tr. p. 12; Ex. 11) The Board noted that Judge Larson used a similar approach in regard to the Minneapolis Public Schools. (Tr. p. 11)

15. The Board's expert witness, Dr. Stolee, testified that 15% is a reasonable and workable figure, and that the Board's formula has the advantage of automatically adjusting to changes in district enrollment. (Tr. pp. 41, 45) Dr. Stolee noted that the flat percentage contained in the current rule permits a school district to place all minority students in one building if they desire to do so. (Tr. p. 43) The Board and Dr. Stolee believe that the formula suggested will provide greater stability for school districts and permit long range planning. (Tr. pp. 13, 45; Ex. 13) The Board also noted that a 50% maximum enrollment was necessary since the current 40% maximum has prevented minority students from attending "magnet" schools in their own neighborhood. (Tr. p. 14) Dr. Stolee did suggest that the 15% figure should be plus or minus so as to guarantee the integration of all buildings and prevent buildings from becoming racially identifiable. (Tr. p. 46) He also supported either omitting the 50% maximum or providing guidelines to clearly delineate what constitutes a valid educational reason. (Tr. p. 47)

16. General support for the proposed rule amendments was expressed by the St. Paul Urban League which commented that the amendments would permit flexibility and therefore minimize the amount of bussing of minority students and would allow minority students to attend special education programs in their own neighborhood. (Tr. p. 79; Ex. A) Also supporting the amendments was the Benjamin E. Mays Learning Center, which stated that the amendments would permit minority youth to attend their school (Ex. M); the Black Education Advisory Committee of the Duluth Public Schools (Ex. E); the Minneapolis Citizens Committee on Public Education (Ex. K; Tr. pp. 93-96); the St. Paul Board of Education (Ex. C, Tr. pp. 67-78); the Prosperity Heights Elementary School PTA (Tr. pp. 117-119); the Minnesota Federation of Teachers (Tr. p. 119); Jean Jones, a teacher (Tr. pp. 121-124); and Jeanne Cummings, a citizen (Tr. pp. 113-117). State Representatives Randy C. Kelly, Eugene T. Waldorf, and Senator John C. Chenoweth also submitted a statement supporting the proposed amendments (Ex. G). The Minnesota Alliance of Black School Educators supported the amendments, but requested a definition of "educational reasons" sufficient to obtain a variance. (Ex. O) The Committee for Integrated Education supported the first rule amendment if a floor of 15% was included as recommended by Dr. Stolee. The Committee opposed any variance as contained in the second rule amendment. (Exs. J, P; Tr. pp. 98-102)

17. The Minneapolis NAACP did not support the proposed amendments since they did not believe that they would aid desegregation. (Tr. pp. 81-84) The Duluth Branch of the NAACP was also concerned about allowing variances. (Ex. F) The Minneapolis Urban League also opposed changing the existing rule and was especially opposed to granting a variance of up to 50%. (Tr. pp. 102-113) The St. Paul Branch of the NAACP testified that they believe that further study was needed before any revision of the existing rule. (Ex. L) The Minnesota Education Association testified that the proposed rule amendments were a change of standards which might mean that desegregation goals would never be accomplished. The MEA suggested that adherence to the existing rule together with consistent application would in fact promote stability. The MEA also supported defining the educational reasons which justify a variance. (Ex. N; Tr. pp. 84-92) Citizen Arthur C. Hill also supported leaving the rules as they exist. (Tr. pp. 120-121)

18. The Minneapolis Public Schools stated that the proposed amendments constitute a real improvement over the existing rules but that the proposed revisions do not go far enough. (Ex. B, p. 2) The Minneapolis Schools suggested that the State Board cease attempting to regulate de facto segregation and adopt a rule which would prohibit de jure segregation only. The Minneapolis School Board suggested a rule which essentially restates Minn. Stat. Sec. 127.08. (Ex. B, p. 9; Ex. D, p. 32)

19. The State Board submitted in the hearing record material in support of the educational reasons for regulating de facto segregation. (Ex. 4, pp. 3-9) The data appears to satisfy the statutory criteria of showing need and reasonableness with an affirmative presentation of facts. Both the Minneapolis Public Schools (Ex. Q) and Grace Billings Bress (Ex. R) also submitted research and bibliographies of education research on school desegregation for the

consideration of the State Board which they believe is more current. It is, however, clear from a review of Chapter 15 that the State Board need not show again the need for regulation of de facto segregation since this was presumably properly done in a prior rule hearing proceeding. The State Board must only show the need for and reasonableness of its adjustment of the formula for measuring racial imbalance and in the adjustment of the allowable variance.

20. In response to the Minneapolis School District's concern that the proposed rule amendments do not differentiate based upon minority enrollment in elementary and secondary schools, the State Board recommended adding a phrase to the proposed EDU 621 C. so that the rule would read as follows:

> Segregation occurs in a public school district when the minority composition of the pupils in any school building exceeds the minority racial composition of the entire district, for the grade levels served by that school building, by more than 15%.

(Ex. 19, p. 2)

21. Several persons raised concerns over the definition of an "educational reason" and accordingly, the State Board recommended the addition of the following paragraph to Minn. Rule EDU 625 A.:

> An educational reason shall include the effect on bicultural and bilingual programs, making magnet schools available to minorities, effectiveness of school pairing programs, and other educational programs that should result in a better education for the children involved. In determining whether the educational reason put forth by the district justifies the variance, the State Board shall determine whether other alternatives are educationally and economically available to the district such that the variance is not needed.

(Ex. 19, p. 5)

22. So amended, the proposed amendments to the rules EDU 621 C. and EDU 625 A. have been demonstrated by an affirmative presentation of facts to be needed and reasonable. There was a wide range of opinion expressed as to the widsom of the proposed amendments. These comments should be considered by the Board in making its policy decision as to whether or not to adopt, withdraw, or further modify the proposed amendments. The evidence presented is sufficient to demonstrate that the amendments are not arbitrary or unneeded. The Board may also wish to consider clarifying the phrase "minority racial composition of the entire district" as was requested by the St. Paul Board of Education. If this phrase is intended to mean the percentage of minority students in the total public school enrollment of a school district, then perhaps it ought to more explicitly say so in order to avoid confusion. The State Board is advised that the chief hearing examiner will still have to make a judgment as to whether or not the proposed added paragraph to EDU 625 A. is or is not a substantial change. Additionally, the State Board has advised that the Attorney General may scrutinize EDU 625 A. to determine the legality of the use of the word "may" in the second paragraph instead of the word "shall".

23. The Minneapolis Public Schools questioned whether or not the State Board had complied with Minn. Stat. Sec. 15.0412, subd. 7, which requires the

Notice of Hearing to announce, if such is the case, that the estimated total cost of implementing the proposed rule for the next succeeding two years will cost local governmental agencies more than $100,000 in any one year. (Ex. D, p. 42) The State Board believes that the amendments will not cost school districts more than $100,000 in any one year and may, in fact, save school districts money. (Ex. 19, p. 21)

Proposed Amendment of Minn. Rule EDU 682 B.

24. In its amendment to Minn. Rule EDU 682 B., the State Board proposes to delete an exception to the general rule that community education funds shall not be used for adult vocational training. The language proposed for deletion permitted an exception where vocational training has a "special community significance". The Board suggested that the deletion was necessary since the language proposed for deletion is inconsistent with Minn. Stat. Sec. 275.125, subd. 8(1), which lists the purposes of the community education levy and expressly excludes adult vocational education programs. (Ex. 5) Mark Linneman, a member of the state community school advisory council and chairman of the legislative subcommittee of the state advisory council and Donald K. Kramlinger, president-elect of the Minnesota Community Education Association, both spoke in support of the proposed rule amendment. (Tr. pp. 128-129)

25. Senator Jerome Hughes, chairman of the state Senate Education Committee, spoke in opposition to the proposed repeal. Senator Hughes stated that he believed that this repeal would be contrary to the intent of the underlying legislation which he authored. He was particularly concerned that community education funds might no longer be available for adult vocational education programs having to do with "parenting" or other family education relating to child development. Senator Hughes believes that the current rule properly allows local school districts some discretion in the use of community education funds and he is unaware of any case in the state at present which is not within the intent of the law. (Tr. pp. 130-132, 135, 136-137)

26. Minn. Stat. Sec. 275.125, subd. 8(1) provides, in part, as follows:

> These levies shall be used for community services including summer school, nonvocational adult programs, recreational programs, and programs contemplated by sections 121.85 to 121.88.

27. In reply, the State Board indicated that the proposed repeal does not prevent community education programs from offering courses such as "life and parenting occupations" that are also offered through adult vocational education. The repeal would mean, however, that no program may receive both adult education categorical aids and community service levy funding. The State Board points out that there is no exception in the statute allowing the funding of adult vocational programs that have a "special community significance", and that therefore there can be no such exception in the rules of the State Board of Education. (Ex. 18, pp. 1-2)

28. It is concluded that the State Board has statutory authority to repeal the language in the existing rule and it is further concluded that the repeal is consistent with the governing statute in question. Accordingly,

since the State Board is repealing a rule inconsistent with the governing statute, it has demonstrated the need and reasonableness of the proposed change. It would appear that a revision of the statute would be necessary in order to permit the language of the existing rule.

Proposed Amendment of Minn. Rule EDU 687

29. This amendment as originally proposed changed the due date for the annual report submitted by each school district from the current June 20 to August 1. At the hearing, the Board suggested that the due date be amended to August 15 since if the annual report is to contain any budget information, then the reporting date has to conform to the UFARS reporting date. (Tr. p. 127) The Board stated that the need to change the date was to allow school districts to prepare the annual report based on the full fiscal year rather than the school year. Mr. Linneman and Mr. Kramlinger spoke in support of this change and of the date as amended to August 15. (Tr. pp. 128-129) There were no other comments on the proposed change. It is concluded that the Board has demonstrated the need and reasonableness of the proposed change.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the State Board of Education gave proper notice of the promulgation of the proposed rule amendments.

2. That the State Board of Education has statutory authority to take the action proposed, to wit, the promulgation of the proposed rule amendments.

3. That the State Board of Education has fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the State Board of Education has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the State Board of Education is not precluded from, and should not neglect to consider, further modification of the proposed rule amendments despite a finding of need and reasonableness by the Hearing Examiner, as long as the modification is not substantial, and provided that it is based upon evidence contained in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is recommended that the proposed rule amendments together with the amendments suggested by the State Board of Education be adopted.

Dated: September 19, 1978.

George A. Beck

GEORGE A. BECK
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The State Board of Education shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

LIST OF EXHIBITS

Board Ex. 1	Notice of Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 2	Order for Hearing/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 3	Certificate of Board's Authorizing Resolution/June 5, 1978/Howard B. Casmey, Secretary, Board of Education
Board Ex. 4	Statement of Need and Reasonableness/July 14, 1978/ Howard B. Casmey, Commissioner of Education (Relating to EDU 621 C. and EDU 625 A.)
Board Ex. 5	Statement of Need and Reasonableness/July 14, 1978/ (Relating to EDU 682 and EDU 687)
Board Ex. 6	Amendments to Proposed Rules EDU 621 and EDU 625/June 7, 1978
Board Ex. 7	Amendments to Proposed Rules EDU 682 and EDU 687/June 7, 1978
Board Ex. 8	Statement of Number of Persons Expected to Attend and Cost/ June 7, 1978
Board Ex. 9	Publication in State Register/July 10, 1978/3 S.R. 28
Board Ex. 10	Laws Administered by the Pennsylvania Human Relations Commission/March, 1976
Board Ex. 11	Rules, Statutes and Policies of Other States and Cities
Board Ex. 12	Equal Educational Opportunity Policies, Guidelines, and Regulations for Minnesota Schools
Board Ex. 13	The Report of the Select Committee on Equal Educational Opportunity/U.S. Senate
Board Ex. 14	Certificate of Delivery of the Secretary of State's List/ June 30, 1978
Board Ex. 15	Affidavit of Receipt of the Secretary of State's List/ June 30, 1978
Board Ex. 16	Affidavit of Mailing of Secretary of State's List/July 7, 1978
Board Ex. 17	Secretary of State's List for Education
Board Ex. 18	Letter/Lawrence Erie, Manager, Community Education, State Department of Education/August 18, 1978
Board Ex. 19	Department of Education's Response to Public Testimony

Public Ex. A	Letter/Jeffrey Hasson, Member, Board of Directors, St. Paul Urban League; Chairperson of the League Education Committee/August 4, 1978
Public Ex. B	Statement/Raymond G. Arveson, Superintendent of Schools, Minneapolis Public Schools, on behalf of the Minneapolis Board of Education
Public Ex. C	Testimony/Emery Barrette, Chairman, St. Paul Board of Education/Prepared by George Young
Public Ex. D	Special School District No. 1's Memorandum of Points and Authorities Regarding the Validity of Proposed Amendment of EDU 621(D) and EDU 625(A)/August 10, 1978/ Duane W. Krohnke, Attorney
Public Ex. E	Letter/Odie Powell, Chairperson/Black Education Advisory Committee/August 9, 1978
Public Ex. F	Letter/Clarence Maddox, President-Duluth Branch/National Association for the Advancement of Colored People/ August 9, 1978
Public Ex. G	Statement of Support for the Proposed Changes to Chapter 31 of the Department of Education Rules Relating to Equality of Educational Opportunity and School Desegregation/ Representative E. Waldorf; Representative R. Kelly; and Senator John Chenoweth
Public Ex. H	Letter/Bill Aberman, President and Morton W. Ryweck, Director/ Jewish Community Relations Council, Anti-Defamation League of Minnesota and the Dakotas/August 11, 1978
Public Ex. I	Testimony/Minneapolis League of Women Voters
Public Ex. J	Statement/Committee for Integrated Education
Public Ex. K	Statement/Minneapolis Citizens Committee on Public Education
Public Ex. L	Testimony of St. Paul Branch NAACP to State Department of Education/Charles W. Breese, President, St. Paul Chapter NAACP
Public Ex. M	Letter/Benjamin E. Mays Learning Center, Inc./Dale Anderson, Board Chairman
Public Ex. N	Testimony/Minnesota Education Association
Public Ex. O	Statement/Dr. Richard Green, President/Minnesota Alliance of Black School Educators on behalf of the Executive Board
Public Ex. P	Letter/Committee for Integrated Education/Barbara Schwartz
Public Ex. Q	Statement/Raymond G. Arveson, Superintendent of Schools/ Minneapolis Public Schools, Special School District No. 1
Public Ex. R	Letter and Attachments/Grace Billings Bress/August 30, 1978

EDU-78-009-GB

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF EDUCATION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE STATE BOARD OF EDUCATION GOVERNING THE STANDARDS FOR DETERMINING SCHOOL SEGREGATION AND COMMUNITY SERVICES DEALING SPECIFICALLY WITH THE LIMITATIONS ON AIDS AND LEVIES AND THE ANNUAL REPORTING DATE.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 11, 1978, before George A. Beck, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Education on September 19, 1978; and

WHEREAS, the Department of Education has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Education has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department of Education has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Education has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 27th day of November, 1978.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner