

State of Minnesota
County of Ramsey

Statement of Need and Reasonableness

In the matter of the Proposed Adoption of Rules of the State Board of Education Relating to 5 MCAR § 1.0667-1.0672.

Statutory Authority to Adopt the Proposed Rules

Minnesota Statute, § 124.15, Subdivision 2a (1980), charges the State Board of Education with the responsibility of promulgating rules relating to local school board assurances of compliance with state and federal law prohibiting discrimination and which specify the information required to be submitted in support of the assurances.

Minnesota Statute § 363.03 (1980) prohibits discrimination in educational programs and activities on grounds of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, or disability.

The express statutory authority to adopt these proposed rules is Minnesota Statute, Section 126.21, Subd. 5 (1980), which directs the State Board of Education, after consultation with the Commissioner of Human Rights, to promulgate rules to prevent discrimination in elementary and secondary school athletic programs operated by educational institutions.

In preparing for the implementation of this act and the preparation of these proposed rules, the Department of Education, Division of Special Services, Equal Educational Opportunities Section, has sought advice and input from the Department of Human Rights, school officials in Minnesota public schools, Minnesota State High School League, other educational professional organizations and concerned citizen groups.

The Need for These Particular Rules

Three basic issues can be cited as the underlying need for the proposed rules.

- (1) The 1980 Legislature has directed the State Board of Education to promulgate rules to extend athletic opportunities for females and to assure that athletic programs offered by educational institutions for elementary and secondary students are nondiscriminatory on the basis of sex.
- (2) There is a need to provide definitions and standards so that both the educational institutions and the beneficiaries of the athletic program can determine program equity for each sex using the same criteria.
- (3) There is a need to provide the State of Minnesota, Department of Education, with a set of criteria by which it can determine public and nonpublic schools' compliance with the Act.

5 MCAR § 1.0667 - Athletic Programs, Authority

5 MCAR § 1.0667 is deemed necessary to alert the education community that the rule applies to both public and private, elementary and secondary school athletic programs. It also sets forth the statutory authority for the board to promulgate the rules. The statute and rules are made applicable to private educational institutions through Minn. Stat. § 363.01, Subd. 20 (1980). Despite its location in the education code, it is clear that Section 126.21 is integrally related to and part of the Human Rights Act, Minn. Stat., Ch. 363 (1980).

5 MCAR § 1.0668 Definitions

5 MCAR § 1.0668 A is deemed necessary because it specifies and clarifies and because the statutory language is not clear whether intramural athletic activities are included in the term "athletic program". Therefore, it is necessary to clarify and provide educational institutions a common meaning for the term "Athletic Program". The reasonableness of this definition is supported by the Department of Education's position that the intramural program is an important component of the athletic program because it provides students an opportunity to develop athletic skills and competencies needed to perform in competitive sports, and therefore must be included in the definition of the "athletic program". Further the Department believes that, as financial resources become more scarce, interscholastic sports will diminish causing the intramural program to take on more importance since it is less costly. Therefore, students of both sexes should be provided equal opportunity to participate in the intramural athletic program. These rules will provide that opportunity.

5 MCAR § 1.0668 B through F is deemed necessary to provide educational institutions and citizens a common, working definition for the following terms and words:

- B. "Interscholastic Athletic Program"
- C. Intramural Athletic Program
- D. Participate
- E & F. Participation rate for a particular sex in both the Interscholastic and Intramural Athletic Program.

The reasonableness of these definitions is based upon their reliance upon common usage.

5 MCAR § 1.0669 - Separation by Teams

5 MCAR § 1.0669 (A) is deemed necessary to inform educational institutions that in order to provide equal opportunity for students to participate in the athletic program offered in the 7th grade and above it is permissible to offer some sports that are limited to one sex, and in the sixth grade and below it is permissible to offer some sports limited to one sex when a demonstrated interest indicates a desire to participate on such a team. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (B) is deemed necessary to provide educational institutions conditions under which they may provide separate or substantially separate teams in the same sport. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (C) is deemed necessary to provide educational institutions conditions under which students shall be permitted to try out and participate on any team in any sport. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (D) is deemed necessary to provide educational institutions conditions under which students may not be permitted to try out or participate on particular teams. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 3 (1980). Duplication of this legislative standard is crucial to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0669 (E) is deemed necessary to provide educational institutions conditions under which separate teams must be provided for students. Its reasonableness is based upon Minn. Stat. § 126.21, Subd. 4. Duplication of the legislative requirement is essential to a comprehension of the rule's meaning and effect.

5 MCAR § 1.0670 - Duties of School Districts, Penalty for Failure to Comply

5 MCAR § 1.0670 (A) is deemed necessary to provide educational institutions criteria to be used to determine whether or not equal opportunity is being provided for members of each sex to participate in both their intramural and interscholastic athletic programs. Its reasonableness is based upon Minn. Stat. Section 126.21, Subd. 2 (1980). A reiteration and expansion of the legislative criteria is crucial to the implementation of the provisions and intent of the act. Medical services have been added because certain sports require medical services. Therefore, it seems reasonable to require that if medical services are provided to one sex they should be provided the other.

5 MCAR § 1.0670 (B) is deemed necessary to provide institutions criteria to be used to determine whether or not members of teams are being treated in a substantially equal manner when two teams in the same sport are offered by the institutions. Its reasonableness is based upon Minn. Stat. Section 126.21, Subd. 3(3) and Title IX. (Regulations implementing education amendments of 1972, Prohibiting Sex discrimination in Education, Section 86.41(C).) It seems reasonable to use comparable criteria in these rules as are set forth in Title IX in order that school may comply with both without being in conflict with either.

5 MCAR § 1.0670 (C) is necessary to inform local boards that the penalty for non-compliance with this Chapter is the reduction of state aids pursuant to Minnesota Statute 124.15, and that by statute the Human Rights Department has jurisdiction. See Minn. Stat. § 363.02, Subd. 3(b) (1980).

5 MCAR § 1.0671 - Compliance Reports and Submission of Data.

5 MCAR 1.0671 is necessary to set forth the date that each school district or educational institution must submit an elementary and secondary athletic program report and to specify the information that must be contained in the report. Its reasonableness is based upon Minn. Stat. 124.15, Subd. 2a (1975). Presently all the data specified is being collected for the "interscholastic athletic programs".

5 MCAR § 1.0672 (A and B) Duties of the Commissioner of Education.

5 MCAR § 1.0672 is necessary to provide direction to the Commissioner of Education in fulfilling the requirements of Minnesota Statute 124.15, Subd. 2a. This section also recognizes the role of the Commissioner of Human Rights in this area.