



MN ASSOCIATION OF
CHARTER SCHOOLS

Unleashing education from convention

The Proposed Changes to the Desegregation/Integration Rule

– A Charter School Perspective –

March 25, 2015

In February, 2015 the MN Department of Education proposed possible changes to Minnesota Rule (3535) to implement the revised Achievement and Integration Program (MN Statutes 124D.861) enacted in 2013 by the MN Legislature.

The proposed Rule would remove the exemption that charter schools, as schools of choice, are not required to be under the requirements of the Desegregation and Integration Program. This exemption has been in existence since the origins of charter schools.

The Proposed Rule Raises Questions on Three Levels:

- 1] On the **Policy Level**, the proposed Rule raises the question of whether the legislature's intent was to abandon the principle of parental choice for parents who choose to enroll their children in public charter schools and declare that parental choice is an act of segregation.
- 2] On the **Legal Authority Level**, the proposed Rule raises the question of whether the MN Department of Education has authority to change state policy without the authority or direction of the MN Legislature.
- 3] On the **Practical Level**, the proposed Rule raises a series of questions, since the law the proposed rule is based upon did not anticipate charter schools coming under the Program or the subsequent proposed Rule.

State Policy Level

Since the beginning of the chartering movement in 1991, Minnesota charter schools have been exempt from the Desegregation Program on the basis of being schools of choice. Charter schools were exempted on the basis that they were not "*racially identifiable schools as a result of segregation*", nor "*racially isolated school districts*" given the definition of segregation.

According to the current MN Rule 3535.0110 Subd. 9 and 9(a) - "*Segregation*" means the intentional act or acts by a school district that has the discriminatory purpose of causing a student to attend or not attend particular programs or schools within the district on the basis of the student's race and that causes a concentration of protected students at a particular school. It is not segregation for a concentration of protected students or white students to exist within schools or school districts:

- (1) if the concentration is not the result of intentional acts motivated by a discriminatory purpose;
- (2) if the concentration occurs at schools providing equitable educational opportunities based on the factors identified in part [3535.0130](#), subpart 2; and
- (3) if the concentration of protected students has occurred as the result of choices by parents, students, or both.

Further, the Desegregation Rule was modified 1998 to state that one of the purposes of the Rule is to “recognize that providing parents a choice regarding where their children should attend school is an important component of Minnesota’s education policy”.

The proposed changes to the Rule put forth by MDE would not only remove the exemption from charter schools, **it would equate parental choice with the intentional act or acts** of a school district to being discriminatory action, and that if there is a concentration of protected students as a result of parental choice that it would be considered segregation.

If the state is going to make these fundamental and significant changes in public policy, those policies should be decided by elected representatives, the legislature, and not by the action of a state department through rulemaking authority.

Legal Authority Level

MN Statute 124D. 10, Subd. 7 (Minnesota’s Charter School Law) states, “A charter school is exempt from all statutes and rules applicable to a school, school board, or school district unless a statute or rule is made specifically applicable to a charter school or is included in this section.”

First, there is no reference in the Charter School Statute stating that charter schools are subject to the statute or rule that defines the Achievement (Desegregation) and Integration Program.

Second, there is nothing in the Desegregation and Integration Program Statute which states that the legislature included, or intended to include, charter schools in the Desegregation and Integration Program, or the funding of that program.

A simple examination of the revenue formula for the Program makes it clear that the legislature has no intent to include charter schools. The revenue formula includes both aid and levy components, and given that charter schools do not have levy authority, there is no evidence that the legislature intended to include charter schools. Further, the fact that there is no legislative language stating that charter schools are even eligible for the aid portion of the revenue is another clear indication that there was no legislative intent to include charter schools.

There is also **no** directive to the MN Department of Education in the legislation that it was the intent of the legislature that charter schools were to be included in the new rule to implement the Desegregation and Integration Program.

Finally, the MN Department of Education has argued at the legislature and in the courts that charter schools are not eligible for particular funding programs based on the original intent of the law, so one must question what legal authority the MN Department of Education has to include charter schools under the proposed Desegregation and Integration Rule, given there is no record of any original legislative intent to include charter schools in the Desegregation and Integration Program.

Practical Level

There are a number of questions on a practical level that are raised by how the proposed change to the Rule is drafted, including:

- Why do schools that have a diverse population of protected class students have to implement an achievement and integration plan, while schools with an enrollment of over 80% Caucasian students are not required to have a plan, given that those schools are not integrated?

- While American Indian students, as members of sovereign nations retain their dual status, what does that mean in terms of the percentage of “protected class” students of a charter school?
- What is the rationale for the 20% difference in the enrollment of the charter school and another school site?
- What if the nearest “public school site” is the other “site” of the charter school, or another charter school in terms of being required to develop an Achievement and Integration Plan?
- What is different in the goals between the state’s accountability system as defined in the school’s World’s Best Workforce Plan, the requirements for Federal Title program plans, and the Achievement and Integration Program Plan?
- What is meant by a school “increasing racial and economic integration” goals when a school is based on parental choice?
- What is meant by a school “increasing racial and economic integration” goals in dealing with the requirement of a charter school lottery?
- What is meant by a school “increasing racial and economic integration” goals when a program is based on a language or cultural immersion?
- What is the rationale for comparing the percentage of “protected class” students in a charter school with the nearest public school site, given that charter schools draw students from multiple districts and do not have geographic boundaries?
- What is the rationale for comparing an online school that serves students statewide with the nearest brick & mortar school in terms of the percentage of “protected class” students?
- What is the rationale for the language in the law reducing the academic disparities among all students and specific categories of students, but yet *excluding* the student categories of gender, disability and English learners, when black males, English learners and disabled students are some of the groups with the biggest disparities? (MN Statutes 124D.861 Subd. 2)
- What funding would be provided to charter schools, given that MN Statutes 124D.862 does not include charter schools in the definition of districts that receive revenue?
- What will be the procedure for charter schools to qualify for Incentive Revenue under MN Statutes 124D.862?
- What will the state do to provide charter schools with the levy portion of Achievement and Integration Revenue, given that charter schools cannot levy and the law requires a 30% levy?
- Why would charter schools not be allowed to form a collaborative, or be part of a collaborative to develop and implement cross-district programs and activities? (3535.0020 Subp. 2)
- What technical assistance would be provided to charters to implement the Rule, as at least 80% of all charter schools could be required to comply with the Desegregation and Integration Rule, given that charter schools serve a much greater percentage of “protected class” students than the statewide average of protected class students, as a result of parental choice?

NOTE: This document is a compilation of the discussions that took place at the two Charter School Forums: Crafting a Response to the Proposed Rule Relating to School Desegregation and Integration conducted by the MN Association of Charter Schools on March 16th and March 19th, 2015.