



MN ASSOCIATION OF
CHARTER SCHOOLS

Unleashing education from convention

Minnesota's Desegregation/Integration Law and Charter Schools

There are many reasons, stretching back almost 30 years, to question whether the Minnesota Department of Education has the authority to legislate that charters comply with the state's desegregation rule. The proposal by the MN Department of Education to mandate that charter schools come under the state Desegregation & Integration Law raises a fundamental constitutional and public policy question as to whether an Executive branch agency has the authority through rulemaking to subject charter schools to comply with a law which the legislative branch has been, by statute and rule, exempted for almost two decades.

Before focusing on the history of the Desegregation/Integration law and rule, it's important to understand the law establishing Minnesota's chartered public schools.

MN Statutes 124D.10 subd. 7, which 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.

1. Nowhere in the charter school law 124D.10 or 124D.11 is the Desegregation/Integration law or rule cited as applying to charter schools.
2. Nowhere in the Desegregation/Integrations Program law, 124D.861 or 124D.862 are these laws made specifically applicable to a charter school.
3. Nowhere in the almost 20 year history of the Desegregation/Integration Program law, 124D.861 or 124D.862 did the legislature specifically make these laws and Revenue Program applicable to charter schools.

It is important to keep these facts in mind given the current MDE effort to insert charters into the Desegregation Rule. The view of Minnesota Association of Charter Schools, the Center for School Change, and the attorneys with whom we have consulted, is that the Minnesota Legislature has not given MDE the authority to do what it is trying to do.

Brief History of the Desegregation/Integration Law in MN:

May 1997 - the MN Legislature enacted enabling legislation for the MN Department of Education to create Rules by no later than 1999, to implement the new School District Integration Revenue Program enacted that year. The Revenue Program was a combination of state aid and local levies. It also contains a provision enabling the MN Department of Education to develop rules for Desegregation/Integration and Inclusive Education. There is **no mention of charter schools in the policy or funding provisions**, which would be required for charters to fall under its purview.

MN Statutes 124D.896 Desegregation/Integration and Inclusive Education.

- (a) *By January 10, 1999, the commissioner shall propose rules relating to desegregation/integration and inclusive education.*
- (b) *In adopting a rule relating to school desegregation/integration, the commissioner shall address the need for equal opportunities for all students and racial balance as defined by the commissioner.*

1999 - The Desegregation Rule Integration [MN Rule 3535.0100] was adopted. **The Rule specifically exempted charter schools** from the Rule in the definition of a school in Subp 8.

“School” means a site in a public school district serving any kindergarten through grade 12. For the purposes of parts 3535.0160 to 3535.0180 only, school does not mean:

- A. *charter schools under Minnesota Statutes, section 124D.10;*
- B. *area learning centers under Minnesota Statutes, section 123A.05;*
- C. *public alternative programs under Minnesota Statutes, section 126C.05, subdivision 15;*
- D. *contracted alternative programs under Minnesota Statutes, section 124D.69;*
- E. *school sites specifically designed to address limited English proficiency;*
- F. *school sites specifically designed to address the needs of students with an individualized education plan (IEP); and*
- G. *secure and non-secure treatment facilities licensed by the Department of Human Services or the Department of Corrections.*

November 2005 - the Office of Legislative Auditor issued a report “School District Integration Revenue”. In the report the Auditor called upon the legislature “to clarify the purpose of the Integration Revenue Program”, which was created in 1997. Nowhere in the Report is there any indication that charters are included in the Program, **nor any recommendation that charters should be included in the program.**

January 2011 - the Minnesota School Integration Council issued a report entitled “**Every Child, Every Day – Educational Equity through Integration**” which contained a series of recommendations in response to the 2005 Office of Legislative Auditor Report. The Council report states that the Council was “*convened with the knowledge and support of the MN Department of Education.*”

One of the recommendations it proposed was changing **the definition in 3535.0100 from “school” to “District”** but **maintaining the exemption for charter schools**, area learning centers, public alternative programs, contracted alternative programs, school sites specifically designed for limited English proficiency, IEP secure and nonsecure treatment facilities, and **adding sovereign nation schools** located on federally designated American Indian reservations.

May 2011 - the First Special Session of the Legislature required that the Commissioner of Education convene an Advisory Task Force to develop recommendations for repurposing integration revenue funds to create and sustain opportunities for students to achieve improved educational outcomes. Six members were appointed by the Commissioner, three by the Speaker of the House, and three by the Senate Subcommittee on Committees.

February 2012 - the aforementioned Advisory Task Force submitted its report and recommendation to the legislature. It recommended that the legislature **reexamine the current exemption of Area Learning Centers (ALC’s)** within the Rule. There was **no mention or recommendation regarding charter schools.** The Task Force included Representative Carlos Mariani (DFL) and Senator Pam Wolf (R).

In March 2012 - Representative Mariani introduced legislation to implement the Task Force's recommendations. H.F. 2840 – *“an act relating to education; implementing integration revenue replacement advisory task force recommendations; repurposing integration revenue ...”* - **there was no mention of charter schools in the legislation.**

May 2012 - the Omnibus Education bill updated the enabling legislation for the Department's Rulemaking authority on Desegregation/Integration by eliminating the requirement that it do so by 1999, and adding references to the Integration Laws 124D.861 and 124D.862. No new authority was given to the Department.

February 2013 - Representative Mariani introduces (H. F. 247) which is the same legislative proposal as the 2012 bill (H.F.2840). Again, there is **no mention of charter schools in the legislation.** The House Research Bill Summary dated February 19, 2013 makes no mention that the bill would include charter schools.

May 2013 - the Omnibus Education Bill includes the language from H.F. 247 implementing the task force recommendations. Again, **no reference to charters was present.** The legislation also required the Commissioner to “review Minnesota Rules, parts 3535.0100 to 3535.0180, for consistency with Minnesota Statutes sections 124D.861 and 124D.862, and make recommendations to the education committees of the legislature by February 15, 2014, for revising the rules or amending applicable statutes.” The Commissioner established a Work Group, which included Rep. Carlos Mariani as a member, and three other legislators as ex-officio members – Rep. Sondra Erickson, Senator Carla Nelson, and Senator Torres-Ray.

February 14, 2014 - the commissioner submitted the Recommendations of the Work Group to the legislature. **The only mention of charter schools is that there should be further study and consideration.**

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

- *Ethnocentric schools.*
- *Language immersion schools.*
- *Charter schools (currently excluded in rule).*
- *Online schools or programs (Issue: Students enrolled in an online school or program are included in a district's overall pupil count and funding)*
- *EL sites (currently excluded in rule)*
- *Special Education sites (currently excluded in rule).*
- *Care and treatment facilities (currently excluded in rule)*
- *Open enrollment impact on integration plan.*
- *The use of incentives to support pro-integrative establishment of attendance boundaries.*

Spring 2015 – the Commissioner proposes amendments to the rule to align the rule to the 2013 Statutes. The only issue from Recommendation 10 of the Work Group that is included for further study and consideration in the proposed rule are charter schools.

Final Comments

As noted in the beginning, this history is important given charter school law, MN Statutes 124D.10 subd. 7, which states:

A charter school is exempt from all statutes and rule 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.

1. Nowhere in the charter school law 124D.10 or 124D.11 is the Desegregation/Integration law or rule cited as applying to charter schools.
2. Nowhere in the Desegregation/Integrations Program law, 124D.861 or 124D.862 are these laws made specifically applicable to a charter school.
3. Nowhere in the almost 20 year history of the Desegregation/Integration Program law, 124D.861 or 124D.862 did the legislature specifically make these laws and Revenue Program applicable to charter schools.

The purpose of an administrative rule is to implement the public policy of the legislative branch; an executive branch agency does not have the power to create policy through rulemaking. The proposal of the MN Department of Education is to change the Desegregation/Integration Rule and therefore the statute upon which the Rule is based is policy making.

Which brings us back to the fundamental constitutional issue – **Does an executive branch agency have the authority through rulemaking to require a charter school to comply with a rule and the underlying law, which the legislative branch has never specifically applied to a charter school?**

We believe the answer is “no.”

Eugene Piccolo
Executive Director
MN Association of Charter Schools

Joe Nathan
Executive Director
Center for School Change

Wednesday, July 22, 2015