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## **Re: Comments on rule draft RD4369 (Pertinent to rulemaking number R-04534)**

Through rulemaking, administrative bodies are authorized to provide clarity around areas where law remains ambiguous. Rulemaking must follow specific guidelines, and the resulting rules must be consistent with both statute and legislative intent. Rules are bound by statute and cannot exceed or conflict with the laws that authorize them. We believe that many provisions in Rule Draft 4369 exceed, conflict, or do not comply with state law. Our comments below highlight provisions that create additional or conflicting requirements.

In the event an educator can be qualified for a license in law, but not by the rules, PELSB would be in clear violation of law. In many instances within this rule draft, that is the case. We also provide recommendations to address our concerns. We look forward to continuing to work with PELSB as you create rules that are student-centered, clear for educators and school leaders, and consistent with the letter and intent of law.

### **8710.0310 DEFINITIONS AND GENERAL RULES FOR TEACHING LICENSES**

**Definition of “professional license from another state” exceeds statute.** In Subp. 1. H. (Lines 2.7 - 2.11) of RD4369, the definition of “Professional license from another state” requires that a teaching license from another state be a license that a) “can be renewed indefinitely” and b) “allows the individual to be the teacher of record based on completion of a teacher preparation program from another state.” Statute, however, neither requires teachers from other states complete a teacher preparation program nor licenses from other states be able to be renewed indefinitely. RD4369 includes requirements that go far beyond statute and would add a significant, unlawful hurdles for Minnesota teacher licensure candidates trained and experienced in other states.

- **Recommendation:** PELSB should define a teaching license from another state as a license that allows the educator to be classified as the teacher of record—based on Minnesota’s definition—in that state.

### **8710.0311 TIER 1 LICENSE**

**CTE qualifications exceed statute.** In Subp. 2. A. (c) (Lines 5.13-5.14), RD4369 requires any professional certification for career and technical education educators come from a “[board]-approved certifying organization.” However, statute allows hiring districts to determine whether a certification is qualified. The rules should not establish limitations on qualifying professional certifications that go beyond statute.

- **Recommendation:** PELSB should not put additional restrictions on the type of CTE certifications which would be allowed under law.

**Posting period exceeds statute.** The requirement in Subp. 2. B. (1) (Lines 5.16 - 5.17) that a hiring district must show “the position was posted for at least 15 days” before approval for a Tier 1 license *exceeds* state statute. The statute (122A.181) simply requires that districts post the position, not that it be posted for a specific length of time. In practice, the proposed 15-day requirement poses a significant barrier for school districts attempting to fill teaching positions with qualified Tier 1 candidates.

- **Recommendation:** Instead of creating rigid requirements, PELSB should require hiring districts to post positions for a period that they determine sufficient to recruit potentially qualified higher-tier candidates.

**Mentorship program requirement conflicts with statute.** Subp. 2. C. (1) requires that a district seeking to hire or renew a Tier 1, Tier 2, or licensure via portfolio teacher must affirm that the applicant “will participate in a mentorship program aligned to board-adopted criteria” (Line 6.7) or that the applicant has “completed mentorship aligned to board-adopted criteria” (Lines 7.21, 9.1, 10.15, 13.15, and 14.7 for example). These provisions *would* be acceptable *if* statute *required* districts and charter schools have a teacher mentorship program. However, Minnesota statute 122A.70 Subd. 1, simply *encourages* school districts to develop such programs. This rule, therefore, would prevent schools that do not have a teacher mentorship program from hiring—or retaining—Tier 1, Tier 2, and licensure via portfolio teachers.

- **Recommendation:** PELSB should require applicants and hiring districts for initial and renewal applications for Tier 1, Tier 2, and licensure via portfolio to affirm that the applicants will participate in a mentorship program *if the district has such a program*.

**Posting period exceeds statute.** In Subp. 4. A. (Lines 7.1 - 7.3), the proposed rules specify that “to renew a Tier 1 license for the first time... the hiring district must show that the position was posted for at least 60 days” and that “if an application accepts the position but later turns it down, the hiring district must repost the position for 15 days.” Statute (122A.181), on the other hand, states that districts must post the position, but statute does not specify for how long. In practice, the proposed 60-day requirement poses a significant barrier for schools seeking to fill open teaching positions with qualified Tier 1 candidates.

- **Recommendation:** PELSB should align with statute by requiring hiring districts to post the position, without exceeding statute by defining the length of time that a position must be posted.

**Subjective “acceptable” teacher definition does not comply with statute.** Minnesota statute 122A.181 Subd. 1. 3. (ii) specifies that districts must post a position prior to hiring a Tier 1 teacher, and may hire a teacher on a Tier 1 license if unable to hire “an *acceptable* teacher with a Tier 2, 3, or 4 license.” RD4369 provides the board “sole discretion” to arbitrarily deny a school from hiring an otherwise qualified candidate on a Tier 1 license without any standard definition in rule about what constitutes “acceptable.”

- **Recommendation:** If PELSB thinks it appropriate to define “acceptable” in rule, it must create an objective standard of what is acceptable. The definition would have to be consistently implemented and must not depend on the discretion of board members.

## 8710.0312 TIER 2 LICENSE

**“Field-specific methods training” and “teacher of record” requirements exceed statute.** Subp. 2. B. (3) (b) and (c) (Lines 12.17 - 12.20) of RD4369 state that an applicant for a Tier 2 license must “show completion of two of the following: ... field-specific methods in a state-approved teacher preparation program aligned to the assignment; ... [and] at least two years of experience teaching as the teacher of record aligned to the assignment.” However, Minnesota statute 122A.182 simply states that a candidate must “complete two of the following: field-specific methods of training, including coursework; [and] at least two years of teaching experience in a similar content area in any state, as determined by the board.” Therefore, the requirement that field-specific methods training be from “a state-approved teacher preparation program” goes beyond the requirements in statute. Similarly, the requirement that a candidate’s two years of experience be as the “teacher of record” exceeds requirements in statute.

- **Recommendation:** PELSB should define field-specific methods and not mandate that this requirement only be met by completing a teacher preparation program. PELSB should also allow candidates to show their teaching experience without mandating that they were previously the “teacher of record.”

## 8710.0313 TIER 3 LICENSE

**Teaching experience requirement exceeds statute.** Subp. 2. C. (1) (Lines 16.19 - 16.23) of RD4369, the provision that an applicant’s two years of field-experience teaching be “as the teacher of record” is not required in statute. Minnesota statute 122A.183 Subd. 2 (2) states that an applicant must have “two years of teaching experience,” but does not put restrictions on the types of licenses or permissions educators must have as they gained their teaching experience. In practice, adding this unlawful hurdle would make it difficult for experienced educators from other states to obtain their licenses, which they deserve under statute.

- **Recommendation:** PELSB should strike the words “as teacher of record” in line 16.23 of RD4369.

**Tier 3 renewal for experienced educators conflicts with statute.** Subp. 3. (Lines 17.11 - 18.4) prevents experienced educators from renewing their licenses. Minnesota statute 122A.183 Subd. 2 (5) provides that one of the five valid and equivalent preparation pathways to qualify for a Tier 3 license is “three years of teaching experience under a Tier 2 license and evidence of summative teacher evaluations that did not result in placing or keeping the teacher on an improvement process.” The proposed rules set apart this particular pathway and place additional renewal requirements on teachers who legally obtain a Tier 3 license through their good teaching experience. Specifically, the requirement in the rules that the teacher must “demonstrate to the board that the standards of effective practice under part 8710.2000 have been met” (lines 17.20-17.21) essentially invalidates the qualifications laid out in statute as the basis for the license. The board does not have the authority to set this pathway apart from the others in Minnesota Statute 122A.183 Subd. 2 by minimizing it when compared to other pathways to licensure currently in statute. In practice, this provision could result in a situation where a teacher candidate would receive a Tier 3 license authorized by statute, and could teach for three years, but would somehow be denied a renewal due to rule.

- **Recommendation:** PELSB should refrain from making licensure renewal requirements more onerous than initial licensure requirements, or that conflict with or seek to invalidate state statute.

## 8710.0330 TEACHER LICENSURE VIA PORTFOLIO APPLICATION

**Portfolio restrictions exceeds statute.** Subp. 1 (Lines 27.6 - 27.13) in RD4369 states that only “an applicant who has not completed teacher preparation” may apply for a license by submitting a pedagogy and content portfolio. However, Minnesota statute 122A.18 Subd. 10 includes no language on who can apply for licensure via portfolio.

- **Recommendation:** PELSB should not prohibit applicants who have completed a teacher preparation program from applying for licensure via portfolio.

**Portfolio restrictions exceeds statute.** Subp. 1 (Lines 27.6 - 27.13) in RD4369 restricts the licensure via portfolio process to applicants seeking an “initial Tier 3 license.” However, Minnesota statute 122A.18 Subd. 10 does not restrict licensure via portfolio to any one tier.

- **Recommendation:** PELSB should align with law and allow licensure via portfolio for any tier sought.

**Additional portfolio application requirements exceed statute.** The significant and onerous “application requirements” laid out in Subp. 3 A, B, C, D, E, and F (Lines 29.8 - 31.13) far exceed statute. Minnesota statute 122A.18 Subd. 10 requires the board adopt rules establishing a *process* for an eligible candidate to obtain a teacher license. It does not, however, authorize the board to create additional requirements for application eligibility. In practice, the draft rules, which include requirements that many candidates could only obtain with the very teaching license they seek to acquire through the licensure via portfolio process, could make the portfolio option difficult to pursue for aspiring educators.

- **Recommendation:** PELSB should eliminate onerous application requirements as part of the portfolio application process.

## ABOUT EDALLIES

EdAllies is a statewide education advocacy nonprofit which partners with schools, families, and communities to ensure that every young Minnesotan has access to a rigorous and engaging education. We advance policies that put underserved students first, remove barriers facing successful schools and programs, and foster an inclusive conversation about what’s possible for students. For more information, visit [www.edalliesmn.org](http://www.edalliesmn.org).

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