TRUE NORTH LEGAL

July 15, 2025

Commissioner Willie Jett
Minnesota Department of Education
Submitted electronically via Minnesota Department of Education website

Re: Comment on 2025 K-12 Academic Standards in Health – Draft 2

Commissioner Jett,

True North Legal, a Minnesota public-interest law firm dedicated to defending family, life, and religious freedom, submits this Comment with respect to the Minnesota Department of Education's 2025 Minnesota K-12 Academic Standards in Health – Draft 2. The draft health standards include detailed benchmarks for each elementary-school grade as well as benchmarks for middle and high school. This Comment focuses on the draft standards and benchmarks under the sexual-health strand, which suffer from numerous legal deficiencies and, if adopted, would violate the First Amendment right of parents to direct the religious upbringing of their children.

First, many of the benchmarks included in the draft sexual-health standards violate statutory requirements. Minnesota Statute, Section 120B.021, subdivision 2(b)(1), provides that "[a]cademic standards must be clear, concise, objective, measurable, and grade-level appropriate[.]" "Benchmark" is statutorily defined as "specific knowledge or skill[s] that a student must master to complete part of an academic standard." Minn. Stat. § 120B.018, subdiv. 3. Because benchmarks are the means of implementing the academic standards to which they relate, it follows that the benchmarks must also conform to the statutory requirement to be clear, concise, objective, and grade-level appropriate. The draft sexual-health standards, however, are rife with benchmarks that violate this requirement. The following are a few examples.

Benchmark 0.4.1.01 is a benchmark for a Kindergarten sexual-health standard. The benchmark requires students to "us[e] medically accurate terms for body parts, including genitals." Kindergarten students are generally five or six years old. Practically, this means that very young children will be required to discuss sensitive topics, like their genitals, with an adult authority figure who could be of the opposite sex, and peers, some of whom will be the opposite sex. Additionally, how and when parents and guardians choose to address these

topics with their children varies based on individual family values and beliefs. The instruction required by the benchmark will undoubtedly interfere with those crucial parental choices. In light of these considerations, the benchmark is clearly inappropriate for five- and six-year-old students and thus cannot be adopted without violating Section 120B.021.

Benchmark 3.4.1.02 is a sexual-health benchmark for third grade and states as follows: "Describe internal and external reproductive body parts using medically accurate terms in a gender-neutral way." The benchmark for third-grade students applies to children who are on average eight or nine years old. In addition to being grade-level inappropriate for the same reasons as Benchmark 0.4.1.01, this benchmark also violates the statutory requirement that academic standards be "clear, concise, objective, [and] measurable…." Minn. Stat. § 120B.021, subdiv. 2(b)(1). Indeed, because the anatomy of the human reproductive system is inherently different based on whether a person is male or female, it is impossible to "describe reproductive body parts using medically accurate terms in a gender-neutral way." Accordingly, the standard is not clear, objective, or measurable. Adopting it would thus violate Minnesota law.

Another third-grade benchmark is similarly deficient. Benchmark 3.4.1.06 requires students to "[e]xplain the difference between sex assigned at birth and gender identity and expression." This benchmark is likewise clearly not appropriate for students in third grade, and it also violates the statutory requirement that standards be clear, objective, and measurable. Minn. Stat. § 120B.021, subdiv. 2(b)(1). The terms "sex assigned at birth" and "gender identity and expression" are ideologically loaded phrases that do not have clear meanings. This benchmark is not an objective, measurable learning. It is the opposite—it is indoctrination in gender ideology. Adopting it would thus violate Minnesota law.

The following are additional examples of benchmarks that violate Section 120B.021, subdivision 2(b)(1) for similar reasons as those identified above:

> Kindergarten – Benchmark 0.6.1.01 – "Identify correct anatomical terms for the private parts of their bodies."
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> Third Grade – Benchmark 3.4.1.05 – "Define gender identity and expression."
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> Third Grade – Benchmark 3.4.1.07 – "Explain how puberty and development can vary greatly and be normal."

> Fifth Grade – Benchmark 5.4.1.04 – "Define sexual orientation including sense of identity, attractions and related behaviors."
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> Fifth Grade – Benchmark 5.4.1.05 – "Describe the differences between sexual orientation, and gender identity and expression."
>
> Fifth Grade – Benchmark 5.4.4.01 – "Explain how to be empathetic and compassionate toward others who are at a different stage of puberty from oneself, and who have a different gender identity and expression, or sexual orientation from oneself."

Each of these benchmarks lacks the requisite grade-level appropriateness. In addition, most of these benchmarks are not clear, objective, or measurable because they incorporate and require the teaching of ideological concepts—over which there is widespread disagreement—as if they are objective facts. Section 120B.021 forbids this departure from objectivity.

Second, adopting the sexual-health benchmarks in their current form would constitute a usurpation of legislative authority, violating the separation of powers. The Minnesota Constitution provides that the "powers of government shall be divided into three distinct departments: legislative, executive and judicial." Minn. Const., art. III, § 1. It further provides that "[n]o person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution." *Id.*

Consequently, "[p]urely legislative power cannot be delegated" to an executive-branch agency. *Mid-City Hotel Assocs. v. Hennepin Cnty. Bd. of Comm'rs*, 516 N.W.2d 574, 576 (Minn. Ct. App. 1994). "Pure legislative power, which can never be delegated, is the authority to make a complete law—complete as to the time it shall take effect and as to whom it shall apply—and to determine the expediency of its enactment." *Lee v. Delmont*, 36 N.W.2d 530, 538 (Minn. 1949). Delegation of authority to an executive-branch agency is permissible only if the statute contains a "reasonably clear policy or standard to guide and control" the agency's discretion—when reasonably clear policies or standards cabin and lead the discretion of the agency, the delegation is not one of purely legislative power. *City of Richfield v. Local No. 1215, International Association of Fire Fighters*, 276 N.W.2d 42, 45 (Minn.

1979). For a delegation of authority to be permissible, the "underlying policy consideration is whether safeguards exist to protect against uncontrolled discretionary power." *West St. Paul Federation of Teachers v. Indep. Sch. Dist. No. 197, W. St. Paul*, 713 N.W.2d 366, 376 (Minn. Ct. App. 2006) (citing *Hubbard Broad., Inc. v. Metro. Sports Facilities Comm'n,* 381 N.W.2d 842, 847 (Minn. 1986)).

The statute that requires the Department of Education to promulgate benchmarks merely provides that the "commissioner must supplement required state academic standards with grade-level benchmarks[,]" Minn. Stat. 120B.023, subdiv. 1(a), which are defined as "specific knowledge or skill[s] that a student must master to complete part of an academic standard." Minn. Stat. § 120B.018, subdiv. 3. No policy or standard is provided to guide the commissioner's determination of the content of the benchmarks other than the general concept that the content should "supplement" each academic standard. But that general concept is not sufficiently substantive to constitute a "safeguard[] … protect[ing] against uncontrolled discretionary power." *West St. Paul Federation of Teachers.*, 713 N.W.2d at 376. Moreover, the academic standards under which each benchmark is promulgated cannot provide the requisite guidance capable of constraining agency discretion because the academic standards are drafted by the agency, not the legislature.

Finally, it is noteworthy that the benchmarks in the Department of Education's current draft would require teachers to instruct (and students to learn) ideological concepts concerning sex and gender as if they were objective facts, even though those concepts are hotly contested and hostile to the religious values of millions of Minnesotans. This fact further supports the conclusion that the benchmark statute lacks any reasonably clear policy or standard capable of protecting against uncontrolled discretionary power. Adopting the draft benchmarks would not constitute execution of the law; it would constitute an act of unbridled discretion and, in effect, substantive lawmaking.

Because no reasonably clear statutory policy or standard guides or controls the promulgation of benchmarks, Minnesota Statutes, Section 120B.023 impermissibly delegates purely legislative power to the education commissioner in violation of the separation of powers required by Article III, Section 1 of the Minnesota Constitution. The Department should refuse to adopt the draft health standards and benchmarks until such time as the legislature amends the law to remedy the nondelegation problem.

Third, if adopted in their current form, the health standards and benchmarks – in particular, the sexual-health standards and benchmarks – will impose an impermissible burden on the First Amendment right of parents to direct the religious upbringing of their children.

The Supreme Court has "long recognized the rights of parents to direct 'the religious upbringing' of their children." *Espinoza v. Mont. Dept. of Revenue*, 591 U.S. 464, 486 (quoting *Wisconsin v. Yoder*, 406 U. S. 205, 213–214 (1972)). As the Court recently recognized in *Mahmoud v. Taylor*, the Free Exercise Clause protects those rights against even "subtle forms of interference," No. 24-297, 2025 U.S. LEXIS 2500, at *38 (June 27, 2025), including public-school "'environment[s] hostile to'" parents' religious beliefs, where children "would face 'pressure to conform' to contrary viewpoints and lifestyles." *Id.* at *40 (quoting *Yoder,* 406 U.S. at 211, 218). Specifically, the Supreme Court held that "the [Montgomery County School] Board's introduction of 'LGBTQ+-inclusive' storybooks—combined with its decision to withhold notice to parents and to forbid opt outs—substantially interfere[d] with the religious development of their children and impose[d] the kind of burden on religious exercise that *Yoder* found unacceptable." *Mahmoud*, 2025 U.S. LEXIS 2500, at *41. The draft sexual-health standards and benchmarks, if adopted, would impose precisely the same kind of unacceptable burden on parents' rights to direct the religious upbringing of their children.

As the Court observed in *Mahmoud*, "[m]any Americans…believe that biological sex reflects divine creation, that sex and gender are inseparable, and that children should be encouraged to accept their sex and to live accordingly." *Id.* at *44–45. Like the storybooks at issue in *Mahmoud*, the sexual-health benchmarks discussed herein above send messages that "encourage children to adopt a contrary viewpoint." *Id.* at *45. For example, Benchmark 3.4.1.06 requires students to "[e]xplain the difference between sex assigned at birth and gender identity and expression." It requires educators to teach third grade students that a person's sex is not an innate characteristic reflecting divine creation, but instead is an attribute assigned at birth that may or may not reflect the person's conception of their own gender. This benchmark (and several other, similar benchmarks) "present as a settled matter a hotly contested view of sex and gender that sharply conflicts with the religious beliefs" that many Minnesota parents "wish to instill in their children." *Mahmoud*, 2025 U.S. LEXIS 2500 at *45.

The objective danger to the free exercise of religion presented by the sexual-health benchmarks, however, is even stronger than the danger presented by the storybooks in

Mahmoud. The Court in *Mahmoud* observed that the "objective danger" to free exercise was exacerbated by the fact that the books would be "presented to young children by authority figures in elementary classrooms" as a part of classroom instruction. *Id.* at *47. Here, the benchmarks are statutorily required to be taught in the classroom, and "students must achieve all benchmarks for an academic standard to satisfactorily complete that state standard." Minn. Stat. § 120B.023, subdiv. 1(a). Failure to demonstrate mastery of the benchmarks and standards can threaten a student's progression through school grades and even prevent a student from graduating from high school. *See* Minn. Stat. § 120B.018, subdiv. 3 ("'Benchmark' means specific knowledge or skill that a student must master to complete part of an academic standard by the end of the grade level or grade band); Minn. Stat. § 120B.02, subdiv. 2. The benchmarks thus impose a significant pressure to conform.

Moreover, because the proposed benchmarks require the instruction of gender ideology through a wide range of specific knowledge requirements across multiple grade levels, and because state statutes require the teaching and mastery of all benchmarks, Minnesota's statute allowing parents to review and opt-out of particular curricula does not alleviate the burden on religious exercise. Minn. Stat. § 120B.20. The mandatory and comprehensive nature and the breadth of the sexual-health benchmarks essentially swallows up any protection that the opt-out statute would otherwise afford.

Simply put, the benchmarks impose—on pain of failure to progress through school—values that are hostile to and contradict the religious beliefs that many parents wish to instill in their children. This is "precisely the kind of objective danger to the free exercise of religion that the First Amendment was designed to prevent." *Yoder*, 406 U.S. at 218.

For all the foregoing reasons, True North Legal strongly urges the Department not to adopt the proposed health standards and benchmarks.

Respectfully submitted,

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