

June 6, 2022

Professional Educator Licensing and Standards Board
c/o Michelle Hersh Vaught, Rulemaking Specialist
Electronically submitted: PELSB.rules@state.mn.us

Administrative Law Judge James R. Mortenson
Electronically submitted: <https://minnesotaoah.granicusideas.com/discussions>

PELSB Members and Administrative Law Judge Mortenson,

FAIR was founded in early 2021 as a nonpartisan organization dedicated to advancing civil rights and liberties for all Americans, and promoting a common culture based on fairness, understanding and humanity. The Twin Cities chapter of FAIR (FAIR TC) welcomes the opportunity to comment on the Professional Educator Licensing and Standards Board's (PELSB) proposed changes to Minnesota's pedagogical standards for effective teaching in public E-12 schools.

FAIR Twin Cities' comments are limited to the changes proposed to the Standards of Effective Practice (*Minnesota Rules*, 8710.2000). The PELSB defines these standards as "...the essential knowledge and skills a teacher needs to be effective in the classroom". FAIR Twin Cities appreciates the importance of these standards in preparing and credentialing public school teachers and laying the foundation for the academic and life success of public school students. For that reason, we raise the following concerns.

FAIR Twin Cities objects to two overarching features of the PELSB's proposed changes to Minnesota teacher training:

- 1) the rejection of a common culture—a shared academic culture of excellence and achievement—through its proposed adoption of culturally-relevant pedagogy (CRP); and
- 2) the rejection of fairness, understanding and humanity by proposing to treat students as flattened group identities and group cultures rather than unique, individual learners.

Impediments to a common culture

Schools, like all institutions, require a shared common culture to produce intended results. This common culture does not require uniformity from all, but does require that those involved share goals, rules of conduct and a hierarchy of authority. While these requirements do, of course, restrict the full scope of each student's choices and actions, they are necessary for the creation and maintenance of a stable, ordered learning environment.

The culturally-relevant pedagogy (CRP) framework that the PELSB has laced throughout the newly proposed teaching standards undermines the possibility of productive schooling. CRP instead prescribes the segregation of students by group or cultural identity (commonly race or gender, but also many others throughout the proposed rule) and the subsequent incessant recognition and affirmation of such segregation. CRP prioritizes this approach over the need to foster a common, shared academic culture, thus stunting the ability of teachers to set priorities and pace, establish habits for learning, set common

expectations for all learners and evaluate student performance. This core error is a detriment to all learners.

Impediments to principles of fairness, understanding and humanity

The PELSB asserts through its Statement of Need and Reasonableness (SONAR) that full adoption of culturally-relevant pedagogy (CRP) is necessary to address the needs of racially and ethnically diverse learners and to recruit a racially diverse teaching workforce.

FAIR Twin Cities rejects this justification of need and reasonableness and emphatically asserts that

- 1) teachers of all races can effectively teach, reach and build relationships with students of any race in a shared academic culture; and
- 2) students of all races can learn, develop and achieve in a shared academic culture.

We fully share the legitimate concerns that many have expressed regarding issues that plague Minnesota public schools. These issues include performance disparities across races, low recruitment of capable teaching candidates in preferred racial categories, the rising disengagement of boys in school, beleaguered teachers, and pandemic lagging students. None of these will be mitigated, though, through infusion of CRP and its requisite race essentialism, charged vocabulary, relativity, and reduction of human interactions to daily power struggles between oppressing and oppressed people.

On the contrary, an academic environment that treats students equally regardless of immutable characteristics will free students and teachers to face these challenges together. Teachers should encourage each student to examine varying points of view rather than to reflexively conform to views attributed to that student's groups or cultures. This approach will effectively forge the mutuality that is so clearly sought in the PELSB's SONAR. Fostering a public school system designed to give every kid the freedom to grow into the precious unique human they are capable of becoming is what will restore a civil civic culture that unites us.

Our list of specific concerns is attached. We do not support the finalization of the R4615 proposed rule changes to Minnesota's teacher standards and are unpersuaded by the PELSB's statement of need and reasonableness that this is either necessary or prudent. In each of the comments below we seek remedy by edit, review, reanalysis, rescinding by the PELSB, disallowance through the administrative law review process or refusal to sign and approve by the Governor.

Sincerely,



Jeff Campbell
Chapter Leader
FAIR Twin Cities

FAIR Twin Cities' Comments on Proposed Final Rule (R4615)

Replacement of State of Minnesota Teaching Standards

Standards of Effective Teaching (*Minnesota Rules*, 8710.2000)

<https://mn.gov/pelsb/board/rulemaking/licensing-academic-standards/>

June 6, 2022

1. Misleading minimization of the magnitude of changes to the Standards of Effective Practice

Over the proposed rule's three year evolution the published rule drafts, SONAR and exhibits consistently refer to these changes as merely an update ("update", "update", "improve and update"). The single accurate identification of the scope of changes found in these exhibits is in the PELSB's recent explanation of resulting costs in the SONAR as comparatively minimal for this "overhaul" of the Standards of Effective Practice.

We do not doubt that the PELSB encountered demands to incorporate these trending ideas during its three year process. However, as the administrative guardian of our public schools' teacher preparation, PELSB has overstepped its administrative charge to implement legislative statute by including such recommendations into the proposed rule. We further note that the PELSB's SONAR response regarding public input does not summarize public and stakeholder opposition or disagreement to the proposed rule while it highlights unspecified complimentary voices of agreement.

Standards in the current rule adequately address diversity and cultural difference with 18 of 125 plainly written standards devoted to "Diverse Learners". Administrative updates of *Minnesota Rules*, 8710.2000 should neither introduce narrow ideological assertions regarding identities, intersectionality, equity, etc., nor coerce new teachers to adopt them. Introducing these trending, controversial philosophies through this administrative process is a government breach of the public's trust. We ask that the extensive changes to *Minnesota Rules*, 8710.2000 be rejected in favor of the current standards. We further ask that, if the PELSB still seeks these dramatic changes to teacher training, it propose such changes to the Legislature for debate, sunshine and decision-making.

2. Proposed rule differs from original notice of hearing

The effects and changes proposed in the final rule draft are substantially different from what was originally proposed in the State Register on September 23, 2019. The notice for the teaching standards portion of the rule reads:

"...update the standards of effective practice for all teachers seeking their initial license to align with national standards, high-leverage practices, and changing demographics of Minnesota students, including but not limited to racially and ethnically diverse students, multilingual students, students who have experienced trauma, and students with dyslexia (8710.2000)."

The notice's use of "national standards" and "high-leverage practices" cannot reasonably be interpreted to include the opinions of activist educator organizations or advocates of narrow schools of pedagogy. Excluding culturally-relevant pedagogy and the extent of supplantation of current standards from the original notice of hearing is an impermissible omission by the PELSB. Similarly, the notice's "changing demographics of Minnesota students, including but not limited to racially and ethnically diverse students,

multilingual students, students who have experienced trauma, and students with dyslexia” cannot reasonably be interpreted to necessitate the magnitude of changes (both deletion of established, specific elements and insertion of new contested content) in the final proposed rule (R4615, draft 4).

All of the listed groups of students have been and are currently being served by Minnesota teachers belying need to replace the 125 established standards that reliably serve *all* groups educated in E-12 schools. To propose replacing the established standards with the dramatic changes presented in the final proposed rule, (R4615, draft 4) was not a foreseeable effect to any reasonable affected party. Furthermore, parents and students are acutely affected by the magnitude of these changes and are not included in the Persons Affected listed in the original State Register notice. These differences are violations of Minnesota Statutes, sec. 14.05, subd. 2 and are not a logical outgrowth of the notice of hearing and subsequent comments. We ask that the extensive proposed changes to *Minnesota Rules*, 8710.2000 be disallowed in favor of the current standards.

3. Unwarranted and Untimely Rewrite

In 2016 the Minnesota Legislative Auditor reviewed Minnesota teacher licensing processes and found that “constantly changing and poorly defined licensure laws made the licensing requirements difficult to understand”. The Auditor recommended that the Legislature “restructure the teacher licensure system to ensure consistency and transparency”. In response, a structural change was made to bring stability to the licensing process with the creation of the PELSB in 2017. The Auditor’s report cited frequent changes to requirements in its summary of causes of teacher shortages as well, “There are serious concerns about teacher shortages in Minnesota. While there are many causes for the teacher shortage, legislators and others have identified teacher licensure as a contributing factor. Minnesota’s complex and frequently changing licensure requirements further complicate finding appropriately licensed teachers.”

The PELSB’s choice to rewrite functioning, familiar and established teaching standards in *Minnesota Rules*, 8710.2000 during the pandemic in the face of falling enrollment, learning losses and pandemic fatigue, does not foster consistency or transparency. We ask that the decision to rewrite the Standards of Effective Practice using this rule be reversed or overruled by higher authorities to alleviate pressure on school operations and reassure the public of the PELSB’s good stewardship of the public education system.

4. Disproportionate emphasis on single, narrow factor of “race and identity”

The proposed rule cites “cultur*”, “rac*” or “identity” in 29 of the 71 new standards. Privileging this one factor for feature in nearly half of the standards meant to define the entirety of teaching competencies is a gross misjudgment of the administrative entity. Further, these changes are not mere passing references or updates of vocabulary, but deliberate adoption of contested concepts that undermine the foundations of the institution of public education. The novel proposed content thwarts operational imperatives like the prioritization of academic content, deference to systemic rules, making judgments about a student’s behavior or the trustworthiness of sources and balancing differences within a common culture.

These four brand new standards are examples of the introduction of these destabilizing tenets across all grades, buildings and disciplines:

- **Standard 2D** *The teacher fosters an environment that ensures student identities such as race/ethnicity, national origin, language, sex and gender, gender identity, sexual orientation, physical/development/emotional ability, socioeconomic class, and religious beliefs are historically and socially contextualized, affirmed, and incorporated into a learning environment where students are empowered to learn and contribute as their whole selves.*

- **Standard 4E** *The teacher plans how to achieve each student’s learning goals by choosing anti-racist, culturally-relevant, and responsive instructional strategies, accommodations, and resources to differentiate instruction for individuals and groups of learners.*
- **Standard 4F** *The teacher features, highlights and uses resources written and developed by traditionally marginalized voices that offer diverse perspectives on race, culture, language, gender, sexual identity, ability, religion, nationality, migrant/refugee status, socioeconomic status, housing status and other identities traditionally silences or omitted from curriculum.*
- **Standard 4H** *The teacher creates opportunities for students to learn about power, privilege, intersectionality, and systemic oppression in the context of various communities and empowers learners to be agents of social change to promote equity.*

These four new proposed requirements and the seven new requirements contained in the newly proposed “**Standard 8: Racial consciousness and reflection**” are representative of the new tenets the PELSB includes to remake Minnesota public education. We reject incorporation of these corrosive tenets as the new foundations of teaching in Minnesota; the changes far exceed the scope of the legislative authority granted to the PELSB. The proper focus for the Standards for Effective Practice is to identify what competencies best meet the priority of student learning, not affirmation of student identity or the furthering of activism. We ask that the decision to rewrite the Standards of Effective Practice using this rule be reversed or overruled by higher authorities to preserve the conditions necessary for serious growth and learning by students of all characteristics.

5. Out of scope redefinition of broadly shared societal norms

A cornerstone of the philosophical thought from which culturally-relevant pedagogy (CRP) grows is that all knowledge is constructed rather than learned or discovered. This school of thought and CRP eschew objectivity, the process of scientific discovery and the durability of any reality. Instead, it treats knowledge as contingent on who is saying it, the speaker’s claimed identities at the time and, most importantly, the power the speaker has with the audience. This is not the belief by which real people, in Minnesota or elsewhere, live.

PELSB’s proposed rule replaces the fundamental understanding that things are knowable and teachable with the belief that humans construct knowledge making it infinitely malleable and a constant battlefield for reconstruction of even basic, everyday facts and practices. The following comparison illustrates that “how students internalize knowledge” is replaced with “how students construct knowledge”:

SEP 2(A) *The teacher must understand how students internalize knowledge, acquire skills, and develop thinking behaviors, and know how to use instructional strategies that promote student learning.*

Proposed Standard 1(C) *The teacher understands how students construct knowledge and acquire skills.*

This proposed change is far outside of the scope of the PELSB’s delegated authority. Far from aspiring to public transparency, this is an administrative act of activism no matter how pedantically correct the rulemaking process is judged to be. It is an abuse of public position and it should be remedied. The supermajorities of Minnesotans that differ by party, circumstance of birth and every other identity covered in the proposed rule reject a worldview that denies the acquisition of factual knowledge, disavows their agency to define themselves as an individual separate from their groups and withholds from their children guidance to understand—rather than rewrite—the vast depths of human knowledge.

This example of CRP’s intent and ability to destabilize fundamental aspects of the education system Minnesotans have devised to train our children and reproduce healthy, high functioning communities is

the heart of these proposed rule changes to new teachers' Standards of Effective Practice. We believe it should be sufficient justification for authorities in the public domain to rescind, disallow or veto them in total. We ask that that be done.

6. Insufficient definition of terms

The PELSB is clear in the SONAR that it is adopting culturally-relevant pedagogy. One of the signatures of this school of thought is the interrogation of language. This process is intended to result in elastic, unstable definitions of terms. Once a term is interrogated it can be used for self-serving or subjective ends to encompass a speaker's new narrow and specific meaning or the common, pedestrian meaning. This intentional word play and capturing of language leads to both intended and unintended confusion, disagreement and litigation.

Good governance demands that terms with loose or varied meanings be excluded from Statute or Rule. This proposed rule introduces the following loose, recognizable-but-captured terms to *Minnesota Rules*, 8010.2000:

race, culture, language, gender, identity, sexual identity, social identity, power, privilege, intersectionality, systemic oppression, equity, agents of social change, diverse cultural ways of knowing, diverse students, cultural ways of knowing, missing narratives, social and emotional competencies, oppressive systems, intersecting, racism, equitable outcomes, culturally affirming, racial formation, processes of racialization, intersectionality, white supremacy, ethnocentrism, eurocentrism, pedagogical equity, social struggles, cultural content, 'intersection of race and ethnicity', cultural frame, micro and macro aggressions, culturally responsive strategies, structural inequities, historically marginalized, educational equity, normative school knowledge, emotional ability, implicit bias, 'anti-racist, culturally-relevant, and responsive instructional strategies'

Should the proposed rule proceed to final signature by the Governor, we seek both reduction of CRP's idiosyncratic jargon and definition for the terms that are retained in order to delimit their meaning, minimize confusion in schools, minimize inevitable litigation and restore public trust in the government's use of plain language to express itself.

7. Loss of clarity

Good governance requires that standards for professional credentialing be plain, clear, measurable and as objective as possible. While the PELSB cites the reduction in number of standards from 125 to 71, we note that many of the clear and specific standards have been eliminated in favor of collapsing them into broader categories that are more vague and more subjective. For example, the current standard SEP 8(M) is concrete compared to the proposed genericized replacement, Standard 3D:

SEP 8(M) *The teacher must responsibly communicate student progress based on appropriate indicators to students, parents or guardians, and other colleagues.*

Standard 3D *The teacher understands the positive impact of effective descriptive feedback for learners, engages students in understanding and identifying quality work, and uses a variety of strategies for communicating this feedback.*

There are other instances of this trend. We appreciate that brevity is oftentimes a virtue and have no opinion on the optimal number of standards; however, the injection of more generality, concept and subjectivity into a process that is expected to define standards that are clear and concrete and able to be demonstrated is a concern.

Should the proposed rule proceed, we ask that the PELSB or its overseeing authorities sharpen the newly proposed standards, whatever their number, for the promotion of common understanding amongst professionals, parents and PELSB and in service to transparency and public trust.

8. Loss of comprehensiveness with insertion of CRP language

We object to the insertion of CRP language throughout the proposed rule on its merits, but we also note that the way these clauses, adjectives and qualifiers have been inserted throughout the proposed rule sometimes compromises the more comprehensive previous meaning. For example the current standard regarding a teacher's knowledge of assessment tools and methods in SEP 8(D) is clear, assessable and concrete. It reads:

SEP 8(D) *"The teacher must understand measurement theory and assessment-related issues, including validity, reliability, bias, and scoring concerns."*

The proposed replacement of this standard adopts the CRP term "bias" and eliminates the important breadth of other elements related to a teacher's competencies in assessments. It reads:

Standard 3C *"The teacher understands bias in assessment, evaluates standardized and teacher-created assessments for bias, and designs and modifies assessments that minimize sources of bias."*

Other examples of this concerning phenomenon can be seen in comparing proposed **Standard 2A** to its predecessors in which case the adoption of CRP language in defining the ends of a learning environment as to "represent the needs of all students" changes the original meaning that frames a welcoming learning environment as a means to "purposeful learning in the classroom". Proposed **Standard 4E** changes even the national InTASC standard, narrowing InTASC's "instructional strategies, accommodations, resources, and materials" with "anti-racist, culturally-relevant and responsive." (This is not an exhaustive list.)

The PELSB's enthusiasm for CRP is self-evident from its SONAR responses and drafted language. We are concerned that its passion for rooting CRP in teacher training and public schools, however, has overwhelmed its duty for precision in drafting and communication of clear intent. Should the proposed rule move forward we ask that the 29 cites where "cultur*", "rac*" or "identity" have been inserted be reviewed by a disinterested party to ensure that, whether a narrowing was intended or inadvertent, that the resulting text properly conveys PELSB's position.

9. Restoration of the Controversial Definition of Cultural Competency Training

The PELSB has included in this proposed rule its open-ended definition of cultural competency training which was discouraged by the administrative law judge overseeing the rulemaking for R-04534. In the R-04534 rulemaking process, the PELSB adopted the administrative law judge's remedy to use the 18 discrete standards in the Diverse Learners standard rather than this proposed definition. In this proposed rule, the PELSB is deleting the Diverse Learners standard so is re-proposing the contested definition here.

The statutory definition of cultural competence in Minnesota Statute Sec. 120B.30 subd. 1 (q) is delimited. It reads: "For purposes of statewide accountability, "cultural competence," "cultural competency," or "culturally competent" means the ability of families and educators to interact effectively with people of different cultures, native languages, and socioeconomic backgrounds." The PELSB's proposed definition is much broader. In addition, the CRP language that is added throughout the newly proposed standards include varying lists and modifiers of personal characteristics that and assigns them as "identities" or "cultures" which are then incorporated by reference when using the terms elsewhere. There is inconsistent use of these terms in both the proposed rule and in the PELSB's responses in the SONAR.

We support the expectation that teachers “interact effectively with people of different cultures, native languages, and socioeconomic backgrounds”. However, the interplay of the proposed definition of “cultural competency training”, the statutory definition and the newly proposed vocabulary scattered throughout the final proposed rule (R4615, draft 4) make this unwieldy.

Should the rule proceed, we ask that, in the interest of clarity, mutual understanding and good governance, the three domains be better analyzed for interplay and a more delimited definition be proposed that ensures that Minnesotans reading the plain language of the rule can properly interpret the reach of the definition.

10. Devolution of authority to private entities

In documenting its work to meet the Regulatory Performance-based Criteria in the SONAR, the PELSB responded: “...the proposed rules streamline or remove barriers...This is especially seen in the Board’s proposed changes to the Standards of Effective Practice, which reduces the total number of standards and would allow teacher preparation providers even more flexibility to infuse their programs with the components they deem essential, while still ensuring the foundational knowledge and skills remain the underpinning of all programs.”

The resulting proposed rule reduces the total number of standards but maximizes space for the new culturally-relevant standards (29 of the proposed 71 standards contain the words “cultur*”, “identity” or “rac*”) and genericizes the other 42. This has the effect of delegating decision-making authority for the omitted content to the 35 preparation institutions. While we disagree with the PELSB’s current administrative actions, we still support retention of oversight of teacher preparation within the public sphere so that it is subject to public process and scrutiny rather than delegated to private partners. We ask that the proposed rule be reviewed for granting of undue discretion.

11. Incomplete Assessment of Teacher Supply and Demand

Minnesota Statute Sec. 122A.09 subd. 9 requires that the PELSB assess teacher supply and demand when undertaking rulemaking. The PELSB responds in the SONAR: “Reducing, streamlining, and updating the standards for new teachers should have a direct impact on increasing the number of teachers into the profession. Standards more aligned to current student needs, cultural relevance, and the necessary knowledge and skills to be an effective [sic] should all help teachers enter the profession, complete training for the profession, and receive the preparation to be able to stay in the profession.”

We are not persuaded by the PELSB’s argument. However, we also find its response incomplete. Lacing the 71 new standards with the vocabulary and tenets of an ideology devoted to group-identity and the social construction of knowledge will undoubtedly drive more current teachers out of the profession and certainly dissuade many capable young adults (of all races) from taking up the profession. This would be a devastating consequence for Minnesotans, for students, for the teaching profession and for the goal of a common culture based on fairness, understanding and humanity.

We also note that the Legislative Auditor cited constantly changing licensing rules as a cause of dampened teacher recruitment in the summary of his 2016 Legislative Audit report.

We ask that these alienation effects on teacher recruitment be estimated and documented.

12. Insufficient assessment of classes of persons affected

The SONAR Regulatory Criteria 1 requires that the agency document “classes of persons who probably will be affected by the rule, including classes that will bear the cost of the proposed rule and classes that will benefit”. The PELSB responded, “Once implemented, teacher candidates will benefit from a more cohesive and updated set of standards. E-12 public school students will benefit from teachers prepared under standards aligned to current student needs, such as trauma-informed standards and standards addressing issues of systemic racism.”

We find the PELSB’s response insufficient. The magnitude of proposed rule changes will have wide-ranging effects and for far more groups than those pedantically acknowledged in the PELSB’s SONAR response. Parents, students, faith organizations, school leadership, school boards are just some of the classes of persons that go unmentioned. We ask that the PELSB be required to provide a more thorough response and that it be directed to address groups positively affected and negatively affected. Given the incongruity evident in the original response between the magnitude of effect and the PELSB’ accounting of those few affected, we ask that development of a revised response be guided by a neutral third party.

13. Insufficient assessment of costs of proposed rule

The SONAR Regulatory Criteria 2 requires that the agency document costs to the agency or other agencies and SONAR regulatory criteria 5 requires the same for other affected parties. PELSB reports only the cost of panel member “mileage and/or small stipends” for agency costs and minimal costs to teacher preparation providers.

The proposed changes will almost certainly provoke litigation grounded in first amendment claims, religious freedom claims, equal protection claims, and claims under employment law. These costs will be borne by the State, school districts, and Minnesota public school families. These costs are foreseeable. We seek a more serious search for and documentation of the likely legal costs.

14. Erroneous characterization of “least intrusive method”

The SONAR Regulatory Criteria 3 requires a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. PELSB responded, “PELSB worked with an expansive stakeholder base to ensure the proposed standards were aligned with student needs while limiting the impact on teacher preparation providers and candidates. This translated into many standards being directly aligned to national standards and a reduction in standards from 125 to closer to 70. The Board is not aware of less costly methods or less intrusive methods for overhauling the state’s pedagogical standards.”

The PELSB’s claim of efficiency by reduction in number of standards ignores the significant loss of specificity in the standards as well as the significant change in underlying philosophy with adoption of culturally-relevant pedagogy’s contested terminology and claims. The loss of specificity is not necessary for the incorporation of “national standards” or “high-leverage practices” into the current, established standards. And the adoption of this fashionable ideology is not necessary to serve the needs of “racially and ethnically diverse students, multilingual students, students who have experienced trauma, and students with dyslexia” (those listed in the original rule notice) whose needs are already addressed in the 18 current Diverse Learners standards.

Given the magnitude of these rule changes and the current and ensuing controversies, the claim that the board was not aware of a less intrusive method is not credible. We ask that a more complete response be required.

15. Erroneous assessment of retaining current Standards of Effective Practice

The SONAR Regulatory Criteria 6 requires the agency to document the probable costs or consequences of not adopting the proposed rule. PELSB's responded that students, families and future teachers would be negatively impacted without the incorporation of culturally-relevant pedagogy.

FAIR TC holds the opposite view. The current Standards of Effective Practice have 18 specific competencies in its "Standard 3, Diverse Learners" standard that concisely and comprehensively address the needs of the student groups listed in the original notice of rule.