

FILED

Case No. A21-1349

January 11, 2022

State of Minnesota

**OFFICE OF
APPELLATE COURTS**

In Supreme Court

Under the Rainbow Early Education Center

Relator/Appellant,

v.

County of Goodhue,

Respondent.

An appeal from the
Order & Judgment dated Sept. 15, 2021
in Case No. 25-CV-19-824
In the Minnesota Tax Court,
Tax Court Judge Wendy Tien.

**BRIEF OF
RELATOR/APPELLANT**

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Dated: January 11, 2022

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STATEMENT OF ISSUES

1. Does a pre-kindergarten, early-childhood education center qualify as an educational institution entitled to a property tax exemption under Minn. Stat. § 272.02 subd. 5 where that center has an active license through the Minnesota Department of Human Services (“DHS”) and maintains the highest possible, “Four-Star” rating through DHS’ “Parent Aware” early childhood education kindergarten preparedness rating system?

Trial Court answer: The Tax Court ruled in the negative on summary judgment.

Most Apposite Authority:

Minn. Stat. § 272.02.

2. In evaluating the entitlement of an educational institution to a property tax exemption, are the inquiries from *Nw. Preparatory* regarding the type of education provided to be applied as “essential elements” of an exemption claim?

Trial Court answer: The Tax Court held in the affirmative, using the inquiries from *Nw. Preparatory* as if they were essential elements to be satisfied rather than factors to be weighed.

Most Apposite Authority:

State v. Nw. Preparatory Sch., 249 Minn. 552, 83 N.W.2d 242 (1957).

Under the Rainbow Child Care Ctr., Inc. v. Cty. of Goodhue, 741 N.W.2d 880 (Minn. 2007).

Minn. Stat. § 272.02.

3. To be entitled to a property tax exemption, must an educational institution show “cooperation” or “coordination” with the local public school district?

Trial Court answer: The Tax Court held in the affirmative.

Most Apposite Authority:

None.

INTRODUCTION

This case requires this Court to determine whether an early-childhood education center (“ECE”) is entitled to a property tax exemption. In this case, the ECE is Under the Rainbow Early Childhood Education Center (“UTR”). UTR supervises toddlers, but also educates children 3-5 years old. See *Finholdt Aff.* ¶¶ 9-10 (May 4, 2021) (UTR has classrooms for toddlers and preschoolers). School-age children also attend UTR during non-school hours, but typically age out of UTR at 10-years old or before. *Id.*

UTR is undisputedly licensed by the Minnesota Department of Human Services (“DHS”). *Finholdt Aff.* ¶ 8, Ex. MF-2. That DHS license requires that UTR (or any ECE) maintain, *inter alia*, specific levels of personnel appropriately qualified to care for and instruct young children, and equipment for children’s intellectual development.

UTR also undisputedly has a “four-star” rating through DHS’ “Parent Aware” program. To get this rating, UTR must, *inter alia*, use pre-approved (or vetted) curriculum based on the “best practices” to ensure kindergarten readiness for its children.

Viewing these certifications and Respondent’s (the “County”) lack of any evidence disputing them, the Tax Court rightly concluded that UTR was an educational institution. But despite this holding and UTR’s bona

fides, the Tax Court refused to make a factual inference that UTR prepared children for integration into the greater school system.

High-quality, affordable child-care and early childhood education have never been more important. By providing a nurturing, educational environment for the children, it allows parents to educate themselves and enter the workforce. It develops children to succeed in grade school and beyond. Yet, in news story after news story it is reported that early child education facilities are expensive and simultaneously cannot pay staff enough to retain them.

It is against this backdrop that the Tax Court concluded that it could not infer that an ECE actually did the things needed to earn its ratings. The Tax Court concluded that, even though a four-star rated facility *must* use the best practices to prepare its children for kindergarten and grade school, it could not infer that UTR was actually doing so.

This is folly. Minnesota's DHS licensing regime and Parent Aware rating programs are specifically designed so parents can infer that the early-childhood education provider they choose will prepare their child for kindergarten and beyond. If a parent would be justified in inferring that a four-star facility will prepare their child for school, the Tax Court would be justified to make the same inference. The Tax Court thus improperly

denied UTR's motion for summary judgment seeking a property tax exemption under Minn. Stat. § 272.02 subd. 5.

Not only this, but the Tax Court found that, because it could not make these reasonable factual inferences, the taxing authority and cross-movant, the County, was entitled to summary judgment in its favor. The Tax Court reached this conclusion even though the County never provided any evidence that UTR was not preparing children for grade school or doing the things UTR's certifications required it to do. It was as if the Tax Court concluded (without so holding) that UTR could not prove its case under any circumstances and was not entitled to prove up the underlying facts supporting its certifications at trial (not that UTR should have had to do so where its certifications were unchallenged). To reach this holding, the Tax Court used 70-year-old inquiries regarding evaluating the education of trade schools and applied those inquiries as if they were essential elements of UTR's claim. But these inquiries, from *Nw. Preparatory*, were just a non-exhaustive list of guidance, a list that does not give adequate guidance regarding evaluating preschools in any event.

Even if UTR's unopposed and undisputed certifications were not enough to entitle UTR to summary judgment (although they should have been), they are certainly enough to raise a disputed fact or inference sufficient to entitle UTR to a trial. At a procedural stage where UTR is also

defending against summary judgment, all inferences must also be construed in UTR's favor opposing the County's motion. A certification that requires that an ECE use the best practices and curriculum to prepare children for grade school certainly raises at least a plausible inference that it does so.

This Court's jurisprudence on educational exemptions from property taxes is scant, outdated, and, as it pertains to pre-kindergarten education, nonexistent. The Court should take this opportunity to hold the inquiries in *Nw. Preparatory* are a non-exhaustive list of factors that guide a court's determination and are not "essential elements." It should further hold that any ECE that satisfies the most rigorous demands of the State agencies responsible for regulating their excellence and the intellectual development of their children is entitled to a property tax exemption as an educational institution, particularly where the taxing authority does not dispute the certifications or any of the facts underlying those certifications.¹ This holding would further the State's constitutional mandate to educate its children by ensuring the wider availability of pre-kindergarten institutions

¹ Although there may be litigation records where a bearer of these certifications is not entitled to a property tax exemption (e.g., where the taxing authority shows they are not in compliance with the certifications), this case is not one of them.

that prepare children for entry into the school system and thus increase their chances of success in that system.

STATEMENT OF THE FACTS

This is a case of a property classified as taxable but is exempt. Relator, Under the Rainbow Early Education Center (“UTR”), owns real property in the city of Red Wing, Goodhue County, Minnesota.

Michelle Finholdt is the founder and present Chairman of UTR. Finholdt Aff. ¶ 1. Finholdt established UTR in 1994. Finholdt Aff. ¶ 6. UTR is operated as a 501(c)(3) nonprofit under federal law. Finholdt Aff. ¶ 5. From 1994 until 2003, UTR was at the Red Wing Technical College (now known as Minnesota State College Southeast – Red Wing Campus). Finholdt Aff. ¶ 6. In 2003, UTR constructed its property at 555 Technology Drive in Red Wing (the “Educational Property”). Finholdt Aff. ¶ 7. The Educational Property is the subject of this lawsuit.

UTR initially built the Educational Property with 2 classrooms for infants, 1 classroom for toddlers, and 2 classrooms for preschool and school-aged children. Finholdt Aff. ¶ 10. The children are divided between these classrooms to be with children of a similar age and development. *Id.* In 2010, UTR expanded the Educational Property to add a large room

designed to simulate a kindergarten environment (the “Pre-K Room”).

Finholdt Aff. ¶ 11. The Pre-K Room is licensed and designed to hold up to 30 students. Finholdt Aff. ¶ 11.

The Pre-K Room features desks and all the typical features of a kindergarten classroom. Finholdt Aff. ¶ 12. Children ages 3-5 years (and school-age during non-school hours) use the Pre-K Room. Finholdt Aff. ¶ 12. The Pre-K Room also features a Hatch TeachSmart interactive whiteboard. Finholdt Aff. ¶ 13. The Hatch board features over 1,100 activities that are parallel to, or identical to, activities that Minnesota kindergartens use. Finholdt Aff. ¶ 13. The Kindergarten Room also doubles as a tornado shelter and was built to withstand 225-MPH winds. Finholdt Aff. ¶ 13.

In 2018, UTR added another room for toddlers. Finholdt Aff. ¶ 14. In addition to the interior space, the Educational Property also has four playgrounds where children of different ages exercise and socialize. Finholdt Aff. ¶ 15.

UTR is licensed by the Minnesota Department of Human Services (“DHS”) as a Child Care Center. Finholdt Aff. ¶¶ 7, 8, Ex. MF-2. DHS refers to the licensing requirements and regulations applicable to childcare

centers broadly as “Rule 3.”² Finholdt Aff. ¶ 16. Rule 3 dictates and regulates everything from teacher qualifications to naps and rest. Minn. Admin. R. 9503.005, *et seq.* For all of the following regulatory requirements, DHS recently inspected UTR and found its license to be “in compliance.” Finholdt Aff. ¶ 17; Vieths-Augustine Dep., Ex. 17.³

As UTR’s DHS license shows, UTR is licensed to supervise infants, toddlers, preschool, and school-age children. Finholdt Aff. ¶ 8, Ex. MF-2. Although UTR is licensed to supervise children up to twelve years-old, UTR’s children typically stop attending at a maximum of 10 years-old. Finholdt Aff. ¶ 9.

DHS segregates staff into the categories of “teacher,” “assistant teacher” and “aides.” Minn. Admin. R. 9503.0032, 9503.0033, 9503.0034. “Teachers,” under Rule 3, may be qualified by either education or experience. Minn. Admin. R. 9503.0032. As a teacher’s educational attainment goes up, her required experience goes down and vice-versa. *Id.* For example, a person with only a high-school diploma would require 4,160 hours (or two years working 40 hours a week for 52 weeks) as an

² Although DHS and Early Childhood Education Centers (“ECEs”) themselves refer to this regulation as “Rule 3,” it is technically Minnesota Administrative Rules, Chapter 9503.

³ The relevant excerpts from the Vieths-Augustine deposition and its exhibits are in the record as Simatic Aff., Ex. RS-1.

assistant teacher, plus 24 quarter credits of additional education to qualify as a teacher. *Id.* On the other hand, a person with a license from the Minnesota Department of Education (“MDE”) for prekindergarten/nursery, or a license from the MDE for elementary education with a kindergarten endorsement requires no additional education or experience to be qualified as a teacher.⁴

DHS specifies staff-to-child ratios that ECEs must maintain. Infants are a 1:4 ratio, toddlers are a 1:7 ratio, preschoolers are a 1:10 ratio, and school-aged children are a 1:15 ratio. Minn. Admin. R. 9503.0040. To satisfy these ratios, the first staff member must be a “teacher” as defined under Rule 3 (with some small exceptions). *Id.* UTR complies with these ratios for all children, thus necessarily also providing staff qualified by DHS. Finholdt Aff. ¶ 18.

Not only does Rule 3 require that qualified persons teach the children, but it also requires that an ECE (thus UTR) provide equipment and materials for the various children’s ages that includes “cognitive

⁴ Showing the specialized nature of early childhood education, even a person licensed by the MDE for elementary education requires additional experience and education to qualify as a teacher under Rule 3 if that person does not also have a “kindergarten” endorsement on their license. Minn. Admin. R. 9503.0032.

developmental equipment and materials,”⁵ “dramatic play equipment,”⁶ and “manipulative equipment.”⁷ Minn. Admin. R. 9503.0060. UTR maintains this equipment for all age groups. Finholdt Aff. ¶ 19.

Respecting the mandates of Rule 3, UTR provides instruction on unit topics (sometimes called “themes” in preschool education), music, art, large and small muscle development activities, and small group interaction activities designed to broaden and stimulate children. Children, from infancy, are taught basic Spanish and American Sign Language. See Finholdt Aff., Ex. MF-3.

UTR also uses concrete lesson plans for all age groups. Finholdt Aff. ¶ 20, Ex. MF-3. The lesson plans show what education UTR staff is giving to its children in any given week. *Id.*

UTR also triennially performs written evaluations of each student. Finholdt Aff. ¶ 21, Ex. MF-4. These evaluations are recorded using DHS

⁵ This is “equipment and materials designed to enhance components of intellectual development, such as problem solving abilities, observation skills, group skills, and symbol recognition.” Minn. Admin. R. 9503.0060.

⁶ This is “equipment, such as dress up clothes, large or miniature play sets, figures, and small and large building blocks that can be used to design a setting or space that stimulates the child's imagination and encourages role playing and the learning of practical life skills.” Minn. Admin. R. 9503.0060.

⁷ This is “equipment that is designed to enhance fine motor development and coordination, such as pegs and peg boards, puzzles, beads and strings, interlocking plastic forms, and carpentry materials.” Minn. Admin. R. 9503.0060.

“ECIP” forms (or “Early Childhood Indicator of Progress”). And biennially, UTR staff meets with the parents of all children in conference to discuss the evaluations and conference with the parents on their child’s intellectual, physical, social, and emotional development. Finholdt Aff. ¶ 22.

In addition to its DHS license, UTR has a “four-star” Parent Aware rating. Welch Aff. ¶ 18, Ex. A (Feb. 17, 2021). Parent Aware is an early childhood childcare and education rating, certification, and information service administered via DHS. Welch Aff. ¶ 2. Parent Aware is voluntary and helps early childhood educators improve and maintain best practices. It also benefits families by helping them find quality early care and education. Welch Aff. ¶ 6. The “mission” of Parent Aware (again, a DHS administered program) includes the following mission statements:

- “Children benefit from care and education that will prepare them for school and life.”
- “Quality early learning from trained and culturally competent professionals makes a difference for children.”
- “Children learn through relationships and playful interactions with their families, peers, providers, teachers, and environment.”
- “[We commit to] [h]elping care and education programs adopt best practices and serve children of all cultures, races, ethnicities, languages, beliefs, and abilities.”

- “[We commit to] [s]upporting practices that will lead to closing the achievement gap for young children.”
- “[We will] [p]romote the importance of high-quality inclusive care and education programs and practices to all Minnesotans.”⁸

Parent Aware rates ECE based on a star rating. Four stars is the highest rating. Welch Aff. ¶ 7. UTR maintains this highest rating. Welch Aff. ¶ 18, Ex. A. To even be eligible for a Parent Aware rating, a childcare center, like UTR, must use a pre-approved curriculum or submit its own curriculum, which is then subject to a rigorous review and approval process. 2d Welch Aff. ¶ 9 (May 17, 2021). To get a four-star rating, that curriculum must be one designed to ensure the children are as prepared as possible for kindergarten. 2d Welch Aff. ¶ 8. UTR uses a curriculum pre-approved by Parent Aware. 2d Welch Aff. ¶ 10. Although this is already a commitment to quality, there is more.

To receive any Star Rating, every Lead Provider, Program Director, Education Coordinator, and one Lead Teacher per classroom must have a current Individual Membership in Develop and a Career Lattice Step. Welch Aff. ¶ 8. An Individual Membership in Develop provides early

⁸ Simatic Aff. ¶ 5. All the foregoing quotations are on publicly available documents accessible on DHS’s Parent Aware website. Accessed on May 3, 2021. <https://www.parentaware.org/mission/>

childhood professionals a way to document educational achievements and professional development activities. This includes the Knowledge and Competency Framework (KCF) Learning Record, which lists training, coaching, consulting, mentoring, and coursework activities that have been approved through Achieve - The Minnesota Center for Professional Development. Welch Aff. ¶ 9. The Minnesota Career Lattice recognizes the hours of credit and non-credit-based training, degrees, and credentials of professionals in the field of early childhood education. Welch Aff. ¶ 10.

Families First Minnesota is a Child Care Aware of Minnesota agency (“FFM”). FFM administers the Parent Aware program in southern Minnesota, including in Goodhue County. Welch Aff. ¶ 3.⁹ To guide an ECE through the rating process, the ECE would submit to FFM a Quality Documentation Portfolio (“QDP”). Welch Aff. ¶ 11. Evidence for the QDP is divided into 5 categories: (1) Teaching and Relationships, (2) Relationships with Families, (3) Assessment and planning for each individual child, (4) Professionalism, and (5) Health and well-being. Welch Aff. ¶ 12.

⁹ Every state in the nation has a childcare quality rating and improvement system. For example, in Minnesota it is Parent Aware. In Wisconsin, it is YoungStars. Welch Aff. ¶ 4. States receive block grants from the federal government to implement and administer their childcare quality rating and improvement systems. Welch Aff. ¶ 5. FFM is the relevant agency implementing this program in Goodhue County.

For example, in evaluating the “Teaching and Relationships” metric, an FFM administrator and coach may work with the ECE to develop and document daily schedules and lesson plans and evaluate a curriculum. Welch Aff. ¶ 13. For another example, under “Professionalism,” the FFM coach would look at the ECE’s staff to ensure the teachers are adequately trained. Welch Aff. ¶ 13. The QDP “Full-rating pathway” provides a detailed account of elements underpinning each of these five categories including both standards and indicators. Welch Aff., Ex. A. The QDP outlines what submissions (i.e., evidence of compliance) an ECE should make to obtain various star ratings. Welch Aff., Ex. A.

The QDP also shows the criteria used to assign stars. Welch Aff., Ex. A. A DHS panel assigns a star-rating for each Parent Aware applicant. Welch Aff. ¶ 14. In addition to the factors stated in the QDP, to obtain a three- or four-star rating, a University of Minnesota Center for Early Education Development (“CEED”) observer must observe classes at the ECE. Welch Aff. ¶ 15.

An ECE must apply to “re-rate” (i.e., re-obtain a Parent Aware star rating) biannually. Welch Aff. ¶ 16. UTR has maintained a four-star rating since at least 2017 and possibly before. Welch Aff. ¶ 18. As of the date of summary judgment, UTR was currently in the process of re-rating and was aiming to re-rate at four stars again. Welch Aff. ¶ 19.

One of the school districts within Goodhue County, Red Wing, offers pre-kindergarten education at its Colvill facility. Vieths-Augustine Dep. 39:17-41:19. Colvill advertises its preschool as being the same “Four Star Parent Aware” as UTR. Simatic Aff., Ex. RS-2.

STATEMENT OF THE CASE

On February 7, 2019, UTR applied for an exemption to property taxation as an educational institution under Minn. Stat. § 272.02 subd. 5. Finholdt Aff. ¶¶ 2-3, Ex. MF-1; Vieths-Augustine Dep., Ex. 6. To apply for the exemption, UTR used the form created for such applications by the Minnesota Department of Revenue (“DOR”). Vieths-Augustine Dep. 16:5-16:21, Exs. 4, 6. UTR marked its sought exemption on the DOR form as an educational institution. Vieths-Augustine Dep. 21:7-21:18, Ex. 6.

On March 12, 2019, the County denied UTR’s requested exemption. Vieths-Augustine Dep. 21:23-22:10, Ex. 5. The County’s stated reason for the denial was that UTR did not comply with the “North Star Factors.” *Id.* The North Star Factors are so named because this Court set them forth in the seminal case of *North Star Research Foundation v. Cty. of Hennepin*, 236 N.W.2d 754 (Minn. 1975). *North Star* set forth the factors to determine

whether a non-profit was a “purely public charity,” a different type of property tax exemption.¹⁰

After receiving the County’s denial, UTR filed a petition for review in Tax Court on April 10, 2019. Although the County admittedly denied UTR’s application based on the wrong standard, the County maintains, to this day, that UTR does not qualify for an exemption as an educational institution under Minn. Stat. § 272.02. Vieths-Augustine Dep. 11:17-11:25.

The parties cross-moved for summary judgment on June 3, 2021. On September 15, 2021, the Tax Court, the Honorable Wendy Tien presiding, held that “there is no genuine dispute of material fact that Under the Rainbow functions as an educational institution...” Order at 22 (Sept. 15, 2021).¹¹ Nevertheless, the Tax Court denied UTR’s motion *and* granted the County’s motion for summary judgment.

The Tax Court held that UTR’s DHS license and four-star Parent Aware rating “does not constitute factual evidence that it coordinates, or cooperates, with the public school district to provide the educational

¹⁰ UTR did not apply for an exemption as a purely public charity. Vieths-Augustine Dep. 21:7-21:18, Ex. 6. Not only that, but a purely public charity application for exemption uses an entirely different form. Vieths-Augustine Dep. 19:16-19:23, 20:14-21:6, Ex. 7. It is undisputed that the *North Star* factors do not apply to the case at bar. Vieths-Augustine Dep. 22:5-22:20.

¹¹ We will cite to the Tax Court’s decision on summary judgment in the remainder of this document as “Order.”

services that otherwise would be provided by the public schools, thereby reducing the cost of the public education system.” Order at 23.

Similarly, the Tax Court held that, despite UTR using a DHS pre-approved curriculum, “Under the Rainbow provided no evidence that its curriculum was sufficient to give its students a general education (suitable for their age level) and could be readily assimilated into the public schools.” Order at 25. Once again, the Tax Court tied this supposed evidentiary failing to an assumed requirement to submit evidence that UTR coordinated with “Red Wing School District 256...” *Id.* at 25-26. The Tax Court also held that the foregoing areas of inquiry were to be applied as rigid “essential elements” of UTR’s claim, instead of factors to be weighed.

Ultimately, the Tax Court held, without explanation, that it “does not agree that either alleviation of public burden or ready assimilation into the public school curriculum is an appropriate factual inference to draw from DHS licensure and a Parent Aware four-star rating.” Order at 27.

As UTR will argue in further detail, a DHS license and a Parent Aware four-star rating *is* enough evidence to conclude that an ECE, that is undisputedly an educational institution, provides relevant study to youth and prepares children for success in later education (whether public or other, exempt, private institutions). Setting this argument aside, in addition to finding that UTR had not submitted sufficient evidence to carry its

burden on summary judgment, the Tax Court did not just deny UTR's motion. Instead, the Tax Court held that, because UTR had not established "essential elements" of its case, summary judgment was automatically warranted in the County's favor. This appeal follows.

ARGUMENT

I. Legal Standards.

A. Summary Judgment Standards.

This Court reviews the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law. *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). On summary judgment, a non-movant is entitled to have all reasonable inferences resolved to its benefit. *Montemayor*, 898 N.W.2d at 628. The foregoing standards also apply where, as here, the parties cross-move for summary judgment. *Home Mut. Ins. Co. v. Snyder*, 356 N.W.2d 780, 783 (Minn. Ct. App. 1984). When considering UTR's motion, the Court must view the evidence in the light most favorable to the County, and when considering the County's motion, the Court must view the evidence in the light most favorable to UTR. *Jorgensen v. Accts. Receivable Servs., LLC*, 250 F. Supp. 3d 351, 352 (D. Minn. 2017).

B. Tax Exemption Standards for Educational Institutions.

Minn. Stat. § 272.02 sets forth the types of real property exempted from taxation. As is relevant here, Section 272.02 subd. 5 provides as follows: “Subd. 5. Education institutions. All academies, colleges, and universities, and all seminaries of learning are exempt.”

i. This Court’s prior caselaw does not provide applicable guidance regarding whether a preschool or ECE is entitled to a tax exemption.

Although the exemption for educational institutions is codified in statute, it is just a restatement of the exemption’s constitutional origins. Minn. Const. Art. X § 10. And although there are other types of property exempted by this constitutional provision, the exemption for educational institutions (and churches) cannot be defined or limited by the Legislature. *Id.* Because the Legislature cannot define or limit educational institutions entitled to the exemption, whether UTR qualifies for its sought exemption requires this Court to interpret the will of the People via the Constitution.

When interpreting our Constitution, the plain language of the Constitution should not be “tampered with” to achieve a particular result, but that does not mean that this Court must ignore “social and economic changes which have occurred since its adoption...” *Minn. Pollution Control Agency v. Hatfield*, 294 Minn. 260, 263, 200 N.W.2d 572, 574 (1972). The social and economic issues surrounding education, particularly early

childhood education, are profoundly different now than when this Court previously set forth its guidance on property tax exemptions for education institutions.

This Court's governing law on tax exemptions for educational institutions comes from a different era, the 1950s. See e.g., *State v. Nw. Preparatory Sch.*, 249 Minn. 552, 83 N.W.2d 242 (1957); *Graphic Arts Educ. Found. v. State*, 240 Minn. 143, 59 N.W.2d 841 (1953); *State v. Nw. Vocational Inst.*, 232 Minn. 377, 45 N.W.2d 653 (1951). The foregoing case law was developed while evaluating the curricula of vocational schools, not preschools. In making these decisions, this Court was comparing the offerings of education for adults (or near adults) to the "broad objective" of "normal secondary public school." *Nw. Preparatory*, 249 Minn. at 555, 83 N.W.2d at 245. The comparisons the Court made in those cases are thus inapplicable to the evaluation of an ECE.

Moreover, in the 1950s, private preschools were nonexistent, inaccessible, or in their infancy. See Barbara Beatty, *Preschool Education in America* ix (1995) ("Private nursery schools for three- and four-year-olds started up in the early twentieth century...[T]here have never been enough preschools to meet the needs of needy children."). It is highly unlikely that this Court intended its guidance on vocational schools to apply to preschools at all. It is thus unclear that this Court's jurisprudence on the

entitlement of vocational schools to property tax exemptions in the 1950s is any type of guide to whether a preschool is entitled to a property tax exemption in 2019.

- ii. **If the Court’s prior guidance on educational institution exemptions applies to this case, the Court should apply it as factors to be considered, rather than elements to be satisfied.**

In its decision in this case, the Tax Court relied heavily on *Nw. Preparatory*. Although *Nw. Preparatory* offers little to no guidance on the evaluation of a preschool, the Tax Court’s application of *Nw. Preparatory* still deserves additional scrutiny.

The Tax Court interpreted *Nw. Preparatory* to mandate three “elements” of an educational institution exemption claim: (1) whether the institution is of an educational nature; (2) whether it provides a part of the educational training that would otherwise be borne by public institutions; (3) whether the training provided is readily assimilated into the public school system. Order at 13, 16-28.

The Tax Court drew these “elements” from the Tax Court’s own, prior interpretation of *Nw. Preparatory*, calling them “applicable standards.” Order at 13. The Tax Court then treated these “standards” as “elements essential to [UTR’s] case.” Order at 15. But the Tax Court’s application of

these inquiries as “essential elements” to a claim is erroneous and legally unsupported.

An essential “element” of a claim requires that the proponent of that claim satisfy that element, or the claim fails. On the other hand, a “factor” is not elemental and is an inquiry that guides a court’s discretion in its evaluation of the “totality of the circumstances.” *Cty. of Kaua’i v. Hanalei River Holdings Ltd.*, 139 Haw. 511, 521, 394 P.3d 741, 751 (2017).

Similarly, this Court developed a structure for property tax exemptions for institutions of purely public charity that is factor-based, and is far more comprehensive than its structure for educational institutions, listing six separate factors. *North Star Rsch. Inst. v. Hennepin Cty.*, 306 Minn. 1, 6, 236 N.W.2d 754, 756–57 (1975). Although the Court specifically set forth the so-called *North Star* factors for exempt charities, the Court later clarified that they were not elements to be satisfied, but were instead “intended to serve only as guidelines” and “not all factors must be satisfied to qualify for the exemption,” stressing that “each case must be decided on its own facts.” *Under the Rainbow Child Care Ctr., Inc.*

v. Cty. of Goodhue, 741 N.W.2d 880, 885–86 (Minn. 2007).¹²

Considering the fact-specific inquiry regarding the nature of education (and the evolving standards applicable to education), it is far more sensible to treat the inquiries in *Nw. Preparatory* as an inexhaustive list of possible factors to be considered, rather than elements to be met. *Nw. Preparatory* itself supports this reading, calling these inquiries “guiding principles.” *Nw. Preparatory*, 249 Minn. At 557, 83 N.W.2d at 246. The guiding inquiries should be flexible factors, not only because of the fact-specific and evolving nature of education, but also because the factors relevant to analyzing a preschool will be different than those relevant to analyzing a post-secondary trade school. The inquiries of *Nw. Preparatory* are only to provide guidance to the lower courts’ exercise of discretion; they are not elements of an exemption claim.

It is also sensible to apply the inquiries of *Nw. Preparatory* as factors guiding the totality of circumstances given the touchstone of *Nw. Preparatory*, i.e., the “the accomplishment of public purposes.” *Nw. Preparatory*, 249 Minn. at 557, 83 N.W.2d at 246. *Nw. Preparatory* was

¹² In fact, the Court’s holding in *Under the Rainbow* that two of these six factors *were* mandatory created such a stir that the Legislature passed a moratorium to prevent assessors from reclassifying charitable properties while the Legislature worked to pass new statutes for charitable and exempt properties. *Senior Care Forest Lake LLC v. Cty. of Washington*, No. 82-CV-09-2830, 2011 WL 197767, at *1 (Minn. Tax Jan. 14, 2011).

thus appropriately focused on ensuring the educational exemption was not construed to “favor[] particular persons or corporations at the expense of taxpayers generally.” *Id.*

Whether a particular strain or method of education serves the public as a whole or a small, interested piece of the public is best discerned on a case-by-case basis that considers the present composition of the economy, social need, and contemporary educational standards. Although a “school” that focused solely on training attendees to write computer code may have seemed a niche, vocational operation benefiting one industry in 1980, today it may look more like an educational institution (particularly where state universities conspicuously advertise coding “boot camps”). Whether an educational institution serves broader public purposes cannot be reduced to immutable “elements.”

A “totality of the circumstances” inquiry also makes sense in light of the atypical and undefined evidentiary burden in an educational exemption case. The typical burden to establish an exemption falls on the taxpayer, borne out of the legal maxim that “taxation is the rule and exemption is an exception in derogation of equal rights.” *Care Inst., Inc.-Roseville v. Cty. of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000) (quoting *Camping & Educ. Found. v. State*, 282 Minn. 245, 250, 164 N.W.2d 369, 372 (1969)). But in the case of educational institutions, their lack of taxation is *per se* not in

derogation of equal rights because it is specified as a constitutional policy for the benefit of the State as a whole. Minn. Const. Art. X § 10. This accords with this Court’s holding that while other bases for exemptions are strictly construed, the exemption for educational institutions is not. See *Nw. Preparatory*, 249 Minn. at 557, 83 N.W.2d at 246 (although petitioner may have burden of proof, standards for exemptions applied to educational institutions are not strictly construed). Since the burden on taxpayer for an educational exemption is not strict, the standards guiding the determination should not be strict “elements” either.

If this Court holds that the factors of *Nw. Preparatory* are either inapplicable or just factors to be considered in evaluating the totality of the circumstances, the Court must reverse the Tax Court. The Tax Court treated the *Nw. Preparatory* inquiries as “elements” and held that UTR could not satisfy them.¹³ If this Court holds that the *Nw. Preparatory* inquiries are factors to be considered to guide a lower court’s decision, then the Tax Court’s analysis was incorrect from the start, and it must be reversed.

¹³ This was erroneous not only because the *Nw. Preparatory* inquiries are not elements, but also because UTR satisfied them (entitling it to summary judgment) and because the County never negated them or showed they could not be satisfied (thus not entitling the County to summary judgment). Both of the latter errors will be discussed in subsequent sections.

iii. UTR did not have to “coordinate” with the local public school district to qualify for a property tax exemption as an educational institution.

In holding that UTR was not entitled to summary judgment, the Tax Court not only erroneously applied the inquiries of *Nw. Preparatory* as essential elements, but it also applied nonexistent legal standards to deny UTR’s motion. The Tax Court assumed, without legal basis, that UTR had to introduce factual evidence that it “coordinates, or cooperates, with the public school district to provide the educational services that otherwise would be provided by the public schools, thereby reducing the cost of the public education system.” Order at 23. *See also* Order at 24-25 (Tax Court tying the “similar curriculum” inquiry to testimony from local school agents).¹⁴

Neither “coordination” nor “cooperation” are evidentiary items to be satisfied in this type of claim. Neither is the blessing or testimony of local school district agents. None of these supposed evidentiary burdens are even stated in *Nw. Preparatory*. The legwork of showing a quality educational product for preschool is done via the preschool’s cooperation

¹⁴ The Tax Court suggests that it did not resolve this question on summary judgment. Order at 28 n. 88. But the Tax Court tied UTR’s failure of “essential elements” explicitly to this “coordination,” meaning the Tax Court *did* resolve this question against UTR, even if it was implicitly. In any event, this will be an issue on remand that the Court should resolve.

with the *State* (among other things), not the local district. The State is the regulating agency for both UTR's license and its Parent Aware rating.

If "coordination" or "cooperation" were actual evidentiary hurdles to overcome, a local school district could thwart all private school tax exemptions simply by refusing to cooperate with, or testify for, the private school (something that would be entirely within the district's rights and prerogatives). In rural or non-metro school districts, which often must contend with school closures due to declining enrollment, the disincentive to cooperate with competing private schools would be strong. The Court cannot apply coordination or cooperation with a local school district as a factor to an exemption. Doing so would frustrate the entire purpose of the constitutional exemption, which is to foster private education as an *alternative to* public education.

Because the Tax Court applied improper legal standards in evaluating summary judgment, it must also be reversed for this reason.

II. The Tax Court erred by denying UTR's motion for summary judgment.

The Tax Court erred by applying the *Nw. Preparatory* inquiries as elements, rather than guiding factors. It also erred by tying these inquiries to a supposed necessary cooperation with the local school district. For these reasons alone the Tax Court must be reversed. Setting aside the

latter erroneous legal standard of “cooperation,” the record in this case was sufficient to warrant summary judgment in UTR’s favor even if *Nw. Preparatory* has application, either as elements or factors.

A. Whether the Court considers the *Nw. Preparatory* inquiries as factors or elements, an educational institution automatically reduces the public burden when it provides education similar to or benefitting State-sponsored education and is therefore exempt from property taxation.

The Tax Court rightly found that UTR was an educational institution. But the Tax Court denied UTR’s motion based on two factors from *Nw. Preparatory*: (1) alleviation of public burden (Order at 22); and (2) a curriculum that is “capable of ready assimilation into the public schools” (Order at 24).

Notably (and further supporting the idea that the guidance of *Nw. Preparatory* is a “totality of the circumstances” or factors guidance), *Nw. Preparatory* does not speak of these two inquiries as separate. Instead, a close reading of *Nw. Preparatory* shows that the Court assumed that if an institution provided a curriculum capable of ready assimilation into the public schools, it would alleviate the public burden. In other words, since the State has an obligation to educate its citizens, private schools reduce

the burden on the State when they teach a curriculum similar to the one the State is obligated to provide.¹⁵

Under this reading, UTR was not obligated to show that, as a matter of economics, high-quality preschool produced an outcome that saved the public money. Instead, if UTR provided education similar to or capable of benefitting the public system, UTR would be assumed to be alleviating part of the State's educational obligation.

Moreover, "assimilation into" as used in *Nw. Preparatory* is too blunt of a concept to provide meaningful guidance in this case. The word "assimilation," as used in *Nw. Preparatory* was viewed in the context of educational "credit." *Nw. Preparatory*, 249 Minn. at 558–59, 83 N.W.2d at 246–47. For example, if a high school attendee at the Academy of Holy Angels (a private high school) transferred to Anoka High School (a public high school), the former would be a valid educational institution if the latter would (or should) credit the prior study of the student and place the student at an equivalent grade level. The "credit" concept is inapplicable to the preschool (or even grade school) context. So long as the curriculum is age

¹⁵ To the best of the undersigned's knowledge, this Court has never subsequently clarified either the meaning or application of the inquiries specified in *Nw. Preparatory*.

and educationally appropriate, “credit” or “assimilation” should not apply for younger students.

B. The record before the Tax Court contained evidence beyond UTR’s certifications supporting a finding that UTR was an exempt educational institution.

It is necessary to correct an inaccuracy the Tax Court propounded. The Tax Court wrote as if the only evidence in the record was UTR’s DHS license and four-star Parent Aware rating.¹⁶ Although both are in the record, there is much more undisputed evidence showing UTR was an educational institution entitled to an exemption.

As an initial matter, UTR produced evidence that the “Colvill Kids Preschool,” a preschool operated by the Red Wing School District (the local district where UTR is located), advertised the same “Four Star Parent Aware” rating as UTR. *Simatic Aff.* ¶ 5, Ex. RS-2. The Colvill Kids Preschool also advertised that its methods were “aligned to Kindergarten expectations...” *Id.* To get its rating, Colvill Kids Preschool had to offer a

¹⁶ As the Tax Court noted, UTR argued that its license and four-star rating should *per se* qualify it as an exempt educational institution. It should. But that argument does not mean the remainder of the record is irrelevant. In summary judgment, a trial court must consider the “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits” to determine if a party is entitled to judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

curriculum that was the same or similar to UTR. See 2d Welch Aff. ¶ 9 (any rated Parent Aware facility must use a curriculum pre-approved by DHS or subject to DHS review). This goes beyond UTR’s own certifications and shows that similar, public programs were rated the same and thus offered similar curriculum. This alone would satisfy *Nw. Preparatory*.

Beyond this evidence of a parallel educational offering, UTR submitted affidavits from the “coach” in charge of administering Parent Aware in Goodhue County. Welch Aff. ¶¶ 1-3. Welch testified as to multiple factors that UTR had to satisfy to get its four-star rating, including subfactors. Welch Aff. ¶¶ 12-13, Ex. A. These factors and subfactors included items like routines, lesson plans, learning environment, kindergarten transition plan, child observation, child assessment, professional ethics and more. *Id.*

Welch also testified that UTR was observed by the University of Minnesota’s Center for Early Childhood Development to get its rating. Welch testified that UTR “uses the methods and curriculum that are designed to ensure the children are the most prepared for kindergarten as possible.” 2d Welch Aff. ¶ 8. Welch testified that UTR uses the “Creative Curriculum” as its model, a curriculum that is both pre-approved by Parent

Aware (after a “rigorous” review process) and widely used in early childhood education. 2d Welch Aff. ¶¶ 9-10.¹⁷

UTR also provided evidence that UTR has classrooms for children of different development levels. Finholdt Aff. ¶ 10-11. UTR submitted evidence that its “Pre-K Room,” used by children 3-5 years old, has all the typical features of a kindergarten classroom and equipment providing activities parallel or identical to those used in Minnesota kindergartens. *Id.* ¶¶ 12-13. UTR also provided evidence that it has playgrounds for use of children of different ages for exercise and socialization. *Id.* ¶ 15.

In addition to UTR’s DHS license itself, UTR also testified that it complies with the regulations underlying that license for teacher-to-child ratios and equipment. *Id.* ¶¶ 18-19. UTR provided examples of lesson plans and child evaluations. *Id.* ¶¶ 20-21, Exs. MF-3, MF-4. UTR also conducts twice yearly parent-teacher conferences to discuss the intellectual, physical, social, and emotional development of its children. *Id.* ¶ 22.

Setting aside both of UTR’s certifications, it is a reasonable inference that an ECE prepares children for success in the public schools

¹⁷ Welch’s opinion would qualify as an expert in the field of early childhood education. In fact, Welch was offered as an expert. 2d Simatic Aff. ¶ 6 (May 25, 2021). In any event, Welch’s qualifications were not challenged by the County or the Tax Court.

and reduces a public burden where that ECE, like UTR: (1) uses a curriculum widely used in early childhood education; (2) has appropriate equipment for pre-kindergarten activities; (3) uses activities identical to Minnesota kindergartens; (4) has appropriate teacher-to-child ratios; (5) has playgrounds; and (6) conducts child evaluations. UTR's certifications just confirm what these other evidentiary sources suggest – UTR prepares children for kindergarten.

Beyond these factual sources, UTR also cited research and precedent that early-childhood education promotes educational success in later years. Pet'r's Mem. Supp. Mot. for Summ. J. at 11-13 (May 5, 2021). The Tax Court itself, over 20 years ago, stated that the benefit to later education from early-childhood education was a matter of "general recognition," writing:

[I]t has become generally recognized that early childhood development can be a significant factor in improving subsequent school performance, behavioral issues and later life accomplishments. By providing a structured learning environment at this early stage, KKEC is reducing the potential need for future and more costly intervention or remediation by the public school system.

Kid's Korner Educare Ctr., Inc. v. Cty. of Steele, No. C2-98-565-R, 1998 WL 898828, at *3 (Minn. Tax Dec. 23, 1998).

UTR also cited to a study done by researchers from Harvard University, the University of Wisconsin, the University of California-Irvine,

and New York University, which concluded that, on average, participation in early childhood education leads to statistically significant reductions in special education placement and grade retention and increases in high school graduation rates. Dana Charles McCoy, et al., *Impacts of Early Childhood Education on Medium- and Long-Term Educational Outcomes*, Educational Researcher Vol. 46, Issue 8 (2017). The authors went on to conclude that their results supported ECE's utility for reducing education-related expenditures and promoting child well-being. *Id.*

C. The record supports a factual inference that UTR prepares children for success in kindergarten and beyond.

Although it was apparently focused solely on UTR's certifications, with this entire record in mind, the Tax Court, inexplicably, held that it did "not agree that either alleviation of public burden or ready assimilation into the public school curriculum is an appropriate factual inference to draw from DHS licensure and a Parent Aware four-star rating." The Tax Court did not explain why it was an inappropriate inference.

In considering UTR's motion for summary judgment, the County is the non-movant. On summary judgment, a non-movant is entitled to have

all reasonable inferences resolved to its benefit.¹⁸ *Montemayor*, 898 N.W.2d at 628. Although construed for the benefit of the nonmovant, the inferences still must be reasonable. As our Court of Appeals has said, quoting the Fifth Circuit:

In passing on [a] motion for summary judgment, even where the underlying facts are undisputed, it is text book law that the court must indulge every reasonable inference from those facts in favor of the party opposing the motion. Insofar as any weighing of inferences from given facts is permissible, the task of the court is not to weigh these against each other but rather to cull the universe of possible inferences from the facts established by weighing each against the abstract standard of reasonableness, casting aside those which do not meet it and focusing solely on those which do. If a frog be found in the party punch bowl, the presence of a mischievous guest-but not the occurrence of spontaneous generation-may reasonably be inferred.

Rients v. Int'l Harvester Co., 346 N.W.2d 359, 361–62 (Minn. Ct. App. 1984) (quoting *American Tel. & Tel. Co. v. Delta Communications Corp.*, 590 F.2d 100 (5th Cir.1979)).

Given the record, it is unclear why the Tax Court could not make a reasonable inference that an ECE with the State's highest possible ratings and licensure did not use a curriculum capable of preparing its children for

¹⁸ In considering the County's cross-motion for summary judgment, the analysis is reversed. UTR is the non-movant and is entitled to have the evidence reviewed in the light most beneficial to UTR.

success in the public schools. After all, the entire reason the State has licensing and rating standards is so parents can make that very inference. See 2d Simatic Aff., Ex. RS-23 (a screenshot from the Parent Aware website stating that “Families use *Parent Aware Star Ratings* to find programs using research-based best practices that prepare children for school and life.”); *and see* 2d Simatic Aff. Ex. RS-23 (same screenshot with graphic noting that a four-star facility is “excelling at use of kindergarten-readiness best practices”). Is the Tax Court really saying that a Minnesota parent choosing a four-star Parent Aware facility is making an unreasonable inference that the facility will prepare its child for kindergarten? If a parent would be justified in making the reasonable inference that a licensed, four-star Parent Aware facility will prepare their child for kindergarten, then a court is similarly justified in making the same inference.

Furthermore, with the record as it is, the Tax Court’s refusal amounts to a different type of factual inference – that UTR’s is *not doing* the actions its certifications say that it is. In the absence of contrary evidence, it would be unreasonable to infer that a licensed, four-star facility is not preparing children to enter the public schools. With no evidence showing that UTR is *not* using curriculum specifically designed for kindergarten preparedness (when witnesses testified it is) and no evidence showing that UTR did not

do all the things its certifications require, the Tax Court is essentially making an unreasonable “spontaneously generated frog” inference.

Summary judgment is inappropriate where persons (or parents) might view the evidence presented and reach different conclusions. *Montemayor*, 898 N.W.2d at 628. But here, the evidence only points to one, reasonable conclusion. UTR prepares children for entry into kindergarten (and does so using curriculum similar to or identical to public preschools). The Tax Court should have granted summary judgment in UTR’s favor.

D. Even *Nw. Preparatory* shows that certifications are valid indicators of an exempt educational institution.

Beyond the logic supporting a reasonable factual inference, in *Nw. Preparatory*, this Court examined certain factors that may have supported the petitioner’s claim to an educational exemption, noting that:

Northwestern Preparatory School issues to its graduates no *diplomas* which may be used for admission to any publicly supported college, the University of Minnesota, or any *accredited* private college, nor does the school confer any *degrees*. It is not *accredited* by the North Central Association of Colleges and Secondary Schools, nor does it meet the *standards set for public high schools by the Minnesota Department of Education*.

Nw. Preparatory, 249 Minn. at 554–55, 83 N.W.2d at 244–45 [emphasis added].

All of the emphasized possible evidentiary sources are the same as UTR's license and rating. They are heuristics that the reader can use to reasonably conclude that the bearer has completed a course of preparation and/or adheres to particular standards. These potential evidentiary sources focused on accreditations or certifications, including from the University of Minnesota and the Minnesota Department of Education. Here, UTR has similar accreditations, from DHS, and also from an observation by, and approval of, the University of Minnesota, necessary to get UTR's license and four-star rating. If accreditations were valid sources of evidence to show a possible exemption in *Nw. Preparatory*, UTR's equivalent sources are valid to show its entitlement to an exemption too.

Because summary judgment is based on a review of undisputed facts applied to law, this Court should hold that the record was sufficient to grant summary judgment in UTR's favor and enter judgment against the County accordingly.

III. The record was insufficient to grant summary judgment against UTR.

Assuming the Court concludes that the record is insufficient to grant summary judgment in UTR's favor, it was certainly insufficient to grant summary judgment to the County. Summary judgment is a "blunt

instrument” that is “inappropriate when reasonable persons might draw different conclusions from the evidence presented.” *Montemayor*, 898 N.W.2d at 628. The County would only be entitled to summary judgment if UTR’s evidence “merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an *essential element* of the nonmoving party's case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997) [emphasis added]. That said, as the non-movant in this analysis, to avoid summary judgment, UTR only needed to produce evidence that would cause “reasonable persons ...[to] draw different conclusions from the evidence presented.” *DLH*, 566 N.W.2d at 69.

First, as discussed above, the *Nw. Preparatory* inquiries are not “essential elements” of UTR’s case. So, even assuming that UTR failed to present any evidence regarding the *Nw. Preparatory* inquiries (which is inaccurate), that would not entitle the County to summary judgment. Although UTR bears the burden of establishing an exemption (a low burden), the *Nw. Preparatory* inquiries are just guidance for the courts to consider on case-by-case basis. The Tax Court failed to make a “totality of circumstances” analysis to determine whether UTR qualified for the

exemption.¹⁹ The Court's holding regarding UTR's supposed failing of "essential elements" is thus legally erroneous and must be reversed. Moreover, if applying the *Nw. Preparatory* inquiries as factors, some factors undisputedly weighed in favor of UTR, thus precluding summary judgment for the County. For example, the Tax Court found that it was undisputed that UTR was an educational institution.

Second, as discussed in Section II, UTR *did* present evidence supporting a reasonable inference (in fact the only reasonable inference) that it provides quality, age-appropriate education that is designed to prepare children for kindergarten *and* that a similar public operation was certified at the same level thus using a similar curriculum. Even if this Court concludes that evidence was insufficient to grant summary judgment in UTR's favor, certainly it was enough to raise a "metaphysical doubt" that UTR could prevail at trial (even if the *Nw. Preparatory* inquiries *were* defined as "essential elements"). And it was certainly enough that a reasonable person could reach a conclusion different than the Tax Court, namely, that UTR prepared children for kindergarten and grade school.

¹⁹ Because the ultimate determination of whether UTR qualified for the exemption is a legal matter grounded in our constitution, this Court could weigh the totality of circumstances based on the undisputed facts.

Third, although the court on summary judgment does not “weigh” evidence, it does decide which possible inferences are reasonable and unreasonable. In considering these possible inferences, the Court must note that UTR’s evidence was entirely unopposed. The County did not put forth any probative evidence of its own even calling into doubt UTR’s evidence.

For example, if the County had produced an expert who testified that UTR’s curriculum was unrecognized pedagogy or quackery, UTR would have been required to produce some plausible evidence that its curriculum was acceptable.²⁰ In other words, UTR could not have rested on “mere averments” that its curriculum was appropriate for early childhood education.

For sake of comparison, in *Nw. Preparatory*, several “expert witnesses” testified that the school was just a “cramming agency providing concentrated brushup of work already covered in high school....” *Nw. Preparatory*, 249 Minn. At 555, 83 N.W.2d at 245. There was further expert testimony that the “course of instruction at Northwestern Preparatory School could not be integrated into the educational program of publicly

²⁰ Of course, UTR did produce that evidence here in the form of a DHS Parent Aware coach who testified that UTR’s curriculum was widely used in early childhood education.

supported schools, [and] that the work is not comparable to that given in accredited or publicly supported schools.” *Id.* Finally, “[e]xpert witnesses agreed that Northwestern Preparatory School does not offer a course of instruction [w]hich is a substitute for, or even a substantial part of, the general educational program of publicly supported schools.” *Id.*

Here, by contrast, the County offered no expert testimony, or any testimony whatsoever, that UTR did not satisfy any factor relevant to the evaluation of an educational institution or educational exemption. The County never even identified an expert witness (or even a lay witness) to discuss the inquiries in *Nw. Preparatory*. 2d Simatic Aff. ¶ 9, Ex. RS-20.

Not only did the County fail to produce any evidence undermining UTR’s case, but UTR explicitly asked for leave to produce supplementary expert testimony if the Court believed UTR had not put forth sufficient evidence to satisfy its evidentiary burdens. Tr. 14-15 (June 3, 2021) (Relator’s counsel stating, “I realize there isn’t an explicit roadmap for the Court on this as to what educational facility appropriately relieves a burden and which does not as it pertains to early childhood education. And I have reached out to the Minneapolis Federal Reserve who has recommended a researcher at the University of Minnesota that can address this specifically and put on the record that early childhood education promotes higher quality educational attainment later on down the road. And I’ve put

research to that effect already in my briefs. But if that is something that the Court is unsure of, I would request leave to call a supplementary expert beyond the expert I've already identified.”). By granting the County’s summary judgment motion, even without having any evidence negating UTR’s claim, the Tax Court denied UTR its requested opportunity to satisfy the extraordinarily high burden²¹ of presenting testimony from a researcher who is versed in early childhood education, has researched its efficacy, and has then translated that research and expertise into long-term economic benefits.

The record is insufficient to grant summary judgment to the County. The factors of *Nw. Preparatory* are just factors, not elements. Summary judgment cannot be granted to the County just because the Tax Court believed that UTR had insufficient evidence on matters that are not “essential elements” of its claim. Moreover, UTR did introduce evidence on those matters, whether they are factors or actually elements. It was enough evidence to raise a reasonable inference that UTR prepares

²¹ As noted before, if an educational institution has a satisfactory curriculum, it does not need to make a separate showing that it actually saves taxpayers money. Nevertheless, UTR identified a potential expert, Professor Judy Temple of the University of Minnesota, to testify to exactly that factor at trial, if need be.

children for school, and summary judgment for the County was thus inappropriate.

CONCLUSION

Our law should be clarified to hold that, like exempt charities (which are not as constitutionally protected as educational institutions), educational exemptions must be evaluated on a case-by-case basis with a list of possible factors. This analysis cannot be reduced to raw elements.

UTR introduced enough evidence to entitle it to summary judgment. This is particularly true since, in weighing the possible factors, the County introduced no evidence at all tending to disprove UTR's case. And even if the Court finds that UTR did not submit sufficient evidence to prevail on summary judgment, it was certainly enough evidence to avoid summary judgment against UTR.

Respectfully, UTR asks this Court for an order:

1. Reversing the Tax Court;
2. Holding that the inquiries in *Nw. Preparatory* are factors to be considered and not essential elements;
3. Entering summary judgment against the County; or, in the alternative,
4. Remanding to the Tax Court for a trial on the merits.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE, RULE 132.01

The undersigned certifies that this brief is approximately 9,573 words and is reproduced in 13-point font, Helvetica, using Microsoft Word.

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