



**IMPLEMENTATION
OF NO CHILD LEFT
BEHIND ACT**

January 2007

**Report
To the
Legislature**

**As required by
Minn. Statutes 2006
127A.095**

COMMISSIONER:

Alice Seagren

**IMPLEMENTATION
OF NO CHILD LEFT
BEHIND ACT**

FOR MORE INFORMATION CONTACT:

Jessie Montano

Minnesota Department of Education

T: (651) 582-8784

E-MAIL: jessie.montano@state.mn.us

January 2007

**Report
To the
Legislature**

**As required by
Minn. Statutes 2006
127A.095**

1500 Highway 36 West

Roseville, MN 55113-4266

TTY: (800) 627-3529 OR (651) 582-8201

Upon request, this report can be made available in alternative formats.

ESTIMATED COST OF PREPARING THIS REPORT

This report provides information that the Department of Education already collects as part of its normal business functions. The cost of information reported below is limited to the estimated cost of organizing the data, determining recommendations, and preparing this report document.

Special funding was not appropriated for the costs of preparing this report.

The estimated cost incurred by the Minnesota Department of Education in preparing this report is \$900.

During the 2006 Minnesota Legislative Session, language around the implementation of the No Child Left Behind Act was passed. Section 127A.095 Implementation of No Child Left Behind Act required the Minnesota Department of Education to continue implementing the No Child Left Behind Federal Act while seeking flexibility, through waivers, from the U.S. Department of Education in nine different areas. This report provides information around the action the department has taken with respect to the nine areas identified in the statute and recommendations regarding continued participation in the NCLB Act. This report is submitted to the house of representatives and senate committees having jurisdiction over kindergarten through grade 12 education policy and finance.

Overview

The No Child Left Behind Act (NCLB) is the most recent reauthorization of the Elementary and Secondary Education Act (ESEA). The act provides \$25.3 billion (FY06) in grants to states and local educational agencies and, in return, requires every recipient state to develop and implement a statewide network of academic standards, assessments aligned to those academic standards and a complementary accountability system. The accountability system developed by a state holds its public school districts and school sites accountable for increasing the proportion of students who are proficient on the statewide assessments.

NCLB was signed into law in January 2002. To assist in the implementation of the law, the Minnesota Department of Education established a stakeholder committee. This committee was instrumental in the development of Minnesota's initial accountability plan. The committee continues to exist and to provide the department with recommendations on the various components of the state's assessments and accountability systems. Membership includes: administrators, teachers, assessment directors, parents, legislators and educational organizations.

Minnesota's initial accountability plan was submitted in January 2003. Flexibility that was included and approved in this plan included:

- the use of an index system that allows students who are nearly proficient to contribute to the proficiency rate of their schools and districts;
- the use of a confidence interval that provides a favorable "margin of error" when small and diverse student populations are being measured; and
- the use of multiple grade averaging of test scores so that test-based measurements are made robust by the use of numerous data points.

The Minnesota Department of Education continues to work with the U.S. Department of Education to develop an accountability system that is valid and reliable and meets the federal requirements.

One of the unique elements of the NCLB accountability models is their focus on disaggregated data. NCLB requires that state accountability systems report test participation and proficiency results in the various demographic subgroups:

All Students;
American Indian;
Asian/Pacific Islander;
Hispanic;
Black;
White;
Limited English Proficient;
Special Education; and
Free/Reduced Price Lunch

While disaggregated data moves the focus off schools and district's average student achievement, it sheds light on student groups whose needs might otherwise be neglected. Advocates for Limited English Proficient, Special Education and other non-majority populations strongly support this aspect of NCLB.

Language contained in 127A.095 required the Minnesota Department of Education to seek waivers in the following nine areas:

(1) allow the state to develop a plan for determining adequate yearly progress that uses multiple measures of student achievement that include value-added measurement of student achievement in addition to standardized test results to evaluate school and student performance

In 2005, the Minnesota Legislature directed the Commissioner of Education to implement a value-added component to its statewide summative assessment system (M.S. 120B.362). The intent of the legislation was to “estimate school and school district effects on students' academic achievement over time.”

In order to implement a value-added measurement, Minnesota must have multiple years of measurement. In 2006, all new assessments were administered which measured new state academic standards passed by the Legislature in 2003. Therefore, 2006 became the baseline year against which any growth or value-added component would be measured.

The summative assessments in math and reading (Minnesota Comprehensive Assessments-Series II; MCA-IIs) have now been designed with a vertical linking design (the first step in providing a growth scale). A growth score will now be available in Year 2 of the assessment (the first step in providing a value-added component). Prior to the MCA-IIs, there was no attempt to establish a construct link between adjacent grades.

In conjunction with the Assessment and Accountability Stakeholder Committee, the Department is beginning to investigate value-added models that will fulfill the statute requirements. However, Minnesota has three important tasks to complete prior to implementing this value-added component:

- 1) confirm that Minnesota's current student database is able to act as a reliable, longitudinal repository for student scores over time;
- 2) establish policy that will serve to fulfill the requirements of the statute and allow for valid inferences of variables based on that policy; and
- 3) use Year 2 data (if not more) to model one or more value-added formulae to meet the policy goals of Minnesota stakeholders and determine the model of best fit from those reviews.

To provide as reliable information as possible, the department would intend to use as much data as possible (several years of student scores) to make appropriate inferences about what factors have added value to student achievement. However, the decision to do so would ultimately be dependent upon the policy decisions that are made e.g., teacher vs. school vs. district.

The U.S. Department of Education has begun to approve NCLB accountability plans (North Carolina and Tennessee) that include growth-based accountability models.

Currently, the U.S. Office of Education does not approve value-added models to be used in state's NCLB accountability plans. While many factors found in a value added model can also be found in a growth-based accountability model, it is important to note that a key factor which differentiates the two models is that a growth-based model sets expectations for annual achievement based upon meeting grade-level proficiency and not on student backgrounds or school characteristics.

It should be noted that NCLB already provides for the use of multiple measures of student achievement. These multiple measures include:

- graduation rates for secondary students (defined as the percentage of students who graduate from secondary school with a regular diploma in the standard number of years);
- at least one other academic indicator determined by the state for all public elementary schools. Minnesota chose to use attendance rates; and
- additional indicators may include other academic indicators such as achievement on additional state or locally administered assessments, decreases in grade-to-grade retention rates and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.

States that have chosen to use additional indicators must ensure that these indicators are valid and reliable, are consistent with relevant, nationally recognized professional and technical standards, if any, and may not be used to reduce the number of schools that would otherwise be subject to school improvement, correction action or restructuring. These additional indicators may be used to identify additional schools for school improvement.

Recommendation: The commissioner recommends that the Assessment and Accountability Stakeholder Committee, which includes committee chairs from the various education committees, continue the work required to define a value-added and/or growth-based accountability model. Part of this work includes a symposium on Value Added that is being hosted by the MDE on February 23, 2007.

(2) exclude from sanctions a school that is classified as not having made adequate yearly progress due solely to different subgroups testing below proficient levels for at least two consecutive years;

In July of 2004, Minnesota submitted a letter to the U.S. Department of Education requesting that our accountability plan be amended so that a school is "identified" for improvement only when the same subgroup of students within that school has failed to make AYP in a given area (math, reading, attendance or graduation) two years in a row.

Research on school reform focuses on the need for "system" change. Therefore, Minnesota maintained that schools identified for improvement due to a different subgroup each year have a difficult time determining whether the problem is due to an

anomaly, is a function of the definition, or whether it is truly a problem that can be traced to academic achievement and systemic change.

This request to amend Minnesota's Accountability Plan was denied based on the fact that this identification procedure was not consistent with NCLB statute and regulations. While subjects (reading and mathematics) are treated independently-e.g., separate starting points and annual measurable objectives, subgroups are not treated differently in the statute and thus the statute does not support similar flexibility to identify schools in need of improvement on the basis of "same subgroup" performance for two consecutive years.

Recommendation: No Child Left Behind is scheduled for reauthorization in 2008. The commissioner recommends that this be an area where changes to the statute be included to allow for same subgroup for two consecutive years.

(3) allow the state to average three years of data for the purposes of identifying a school for improvement;

No Child Left Behind, Section 1111 (b) (2) (J) provides that:

(J) UNIFORM AVERAGING PROCEDURE- For the purpose of determining whether schools are making adequate yearly progress, the State may establish a uniform procedure for averaging data which includes one or more of the following:
(i) The State may average data from the school year for which the determination is made with data from one or two school years immediately preceding that school year.

Minnesota has included this provision in its calculation of AYP. If the school does not make AYP in any of the subgroups, data will be averaged across two years to determine AYP status; if the school still does not make AYP, data will be averaged across three years.

Recommendation: Since this is already included in calculation of AYP, no recommendation is needed.

(4) allow the state to use No Child Left Behind Act money to provide supplemental education services only in the academic subject area that causes a school to miss adequate yearly progress;

The NCLB Supplemental Educational Services Non-Regulatory Guidance provides that: "...LEA may focus services on the lowest-achieving eligible students in the subject area that caused the school to be identify" when the district has insufficient funds to provide supplemental services to all eligible low-income students.

Recommendation: Since this is already allowed in the Non-Regulatory Guidance issued by the U.S. Department of Education, no recommendation is needed from the commissioner.

(5) exclude from sanctions schools that have not made adequate yearly progress due solely to a subgroup of students with disabilities not testing at a proficient level;

Section 1001 of the No Child Left Behind Act says “The purpose of NCLB is to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging State academic achievement standards and state academic assessments. Therefore the law explicitly provides that Special Education students must be considered for accountability purposes.”

To assist states in the inclusion of special education students, the U.S. Department of Education promulgated federal regulation. The first of these regulations was issued on December 9, 2003, and allowed states to use alternate assessments for those students with the most significant cognitive disabilities for the purpose of calculating AYP. In other words, a student’s IEP team determines which students are not capable of taking the statewide assessments and would therefore need to take the alternate assessment. For purposes of the AYP calculation however, the secretary proposed that the number of proficient and advanced scores included in the AYP calculation cannot exceed 1% of all students in the grades assessed at the state and the LEA levels.

Minnesota has historically emphasized the inclusion of special education populations in its testing. Prior to the passage of NCLB, Minnesota developed an alternate assessment for special education students based on requirements in IDEA 1997. This is the assessment that Minnesota has been using for those special education students with the most significant cognitive disabilities. During a recent review of our assessment system, the secretary informed the department that our current alternate assessments did not meet the technical aspects required of all statewide assessments used for accountability purposes. Therefore, a priority of the Research and Assessment Division is the development of alternate assessments that meet the technical aspects.

The NCLB law provides that special education students must be measured in the All student category, a racial or ethnic category and as a discrete population. The IDEA 2004 reauthorization includes the following language. “All children with disabilities are included in all general state and district wide assessment programs including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965 with appropriate accommodation and alternate assessments where necessary and as indicated in their respective individualized education programs”. (Section 612(a)(16)(A)) Given the requirements contained in both federal laws regarding the inclusion of special education students in statewide assessment systems, the U.S. Department of Education will not waive the full inclusion of students with disabilities in AYP determinations.

In a notice of proposed rule making (NPRM) released on December 15, 2005, the secretary proposed further regulations which give states further flexibility with respect to accountability for special education students. These proposed regulations would provide for the potential use of a new alternate assessment for special education students who are neither able to be proficient in the general education curriculum nor a member of the

most significantly cognitively disabled student group. Once refined and implemented, the option will allow the proficiency of students with disabilities using this assessment to be used for AYP calculations. This would allow Minnesota to include an additional 2% of the total student population; thereby, increasing the percent of proficiency scores used for AYP calculations from 1% to 3%.

Minnesota's priority is currently on the development of alternate assessments for students with the most significant cognitive disabilities. Therefore, neither human nor financial resources are available to assign towards the 2% assessment.

Minnesota will continue to provide additional flexibility by allowing districts with unique populations and situations to exceed the federal 1% cap on proficient alternative assessments used for AYP determinations whenever possible. This has been done through a waiver process.

Recommendation: The commissioner recommends that we continue to use the flexibility given to the state through the waiver process. This opportunity allows each school and district to request a waiver of the 1% cap. The commissioner further recommends that the state continue to develop alternate assessments for students with the most significant cognitive disabilities; and as time and resources permit, work towards additional alternate assessment as future federal guidance allows. We believe that an increasing emphasis on use of the appropriate assessments for a given student will be fair and equitable to those special education students not able to take the statewide assessments.

(6) identify a school as not making adequate yearly progress only after the school has missed the adequate yearly progress targets in the same subject and subgroup for two consecutive years;

In July of 2004, Minnesota submitted a letter to the U.S. Department of Education requesting that our accountability plan be amended so that a school is "identified" for improvement only when the same subgroup of students within that school has failed to make AYP in a given area (math, reading, attendance or graduation) two years in a row.

The ability to treat each subject matter differently currently exists in NCLB. Schools and districts must miss AYP for two consecutive years in the same subject. However the request to amend Minnesota's Accountability Plan to allow for same subgroup was denied based on the fact that this identification procedure was not consistent with NCLB statute and regulations. As previously stated, subjects (reading and mathematics) are treated independently-e.g., separate starting points and annual measurable objectives, subgroups are not treated differently in the statute and thus the statute does not support similar flexibility to identify schools in need of improvement on the basis of "same subgroup" performance for two consecutive years.

Recommendation: Since NCLB already treats the subject areas independently, no further action is needed. However, the commissioner recommends that during the

reauthorization of NCLB in 2008, that language be suggested that would include the treatment of subgroups separately.

(7) limit the score of a student within multiple subgroups to the smallest subgroup in which that student is included when calculating adequate yearly progress;

This is not an amendment that has been submitted by the MDE for approval. However, upon close examination of the impact this amendment, particularly when combined with number five above, the MDE has serious concerns.

Example: Consider a typical school in greater Minnesota.
The largest measured subgroups are “All” and “White.”
The special education subgroup will almost always be the largest subgroup. The ethnic and ELL subgroups will almost always be smaller.

In this scenario a non-proficient white special education student will likely be reported in the special education category since the special education subgroup is smaller than the white subgroup. However, a black special education student will be reported in the black subgroup since it is the smallest of the subgroups. This combined with number five could be deemed as discrimination since the special education category is not likely to cause the school to have consequences and the non-proficient black special education student, which is counted in the black subgroup is likely to cause the school to have consequences. This scenario could also raise questions regarding equal treatment.

Recommendation: Given the demographics of Minnesota, the commissioner recommends that this be an area that is not pursued or that a different way of limiting the number of subgroups in which students are counted be examined. The combination of the two areas (5 & 7) could be seen as discrimination towards some of the subgroups.

(8) determine when to hold schools accountable for including a student with limited English proficiency in adequate yearly progress calculations; and

Since the passage of NCLB, the U.S. Department of Education has issued guidance letters or regulations that give state greater flexibility. These policy changes have increased the amount of flexibility states have to determine when to hold schools accountable for LEP students.

The most recent example of this flexibility is the secretary’s September 13, 2006, Final Regulations. These Final Regulations would allow states to exempt “recently arrived Limited English Proficient LEP students” from one administration of the state’s reading/language arts assessment. The regulations define a recently arrived LEP student as a student who has attended schools in the United States (not including Puerto Rico) for less than 12 months.

These regulations further allow states to exclude the scores of recently arrived LEP students on the reading/language arts assessment (if taken) in decisions regarding proficiency in the calculation of adequate yearly progress (AYP), even if the student has

been enrolled for a full academic year as defined by the state. However, these students could be counted as participants toward meeting the 95 percent participation requirement for AYP determinations in reading/language arts if they take an English language proficiency test. In addition, these regulations also do not require states to include the scores of recently arrived LEP students on the mathematics assessment in AYP decisions.

Prior to these regulations, Minnesota was allowed to include “former LEP” students within the AYP LEP subgroup for up to two years after they no longer meet the state's definition for limited English proficiency. This option served as a response to the complaint that schools do not receive credit for the good work they have done helping LEP students attain full proficiency. This flexibility is also included in the final regulations.

Recommendation: The commissioner recommends that the department continue to work on the alignment of the Test of Emerging Academic English (TEAE) and language for consideration during reauthorization so that LEP students can take TEAE test in place of the MCAII until such time as these students have acquired enough English skills to enable them to show proficiency in the state’s reading and mathematic academic standards.

(9) use a fully computer-adaptive test for purposes of compliance with the No Child Left Behind Act.

The Minnesota Department of Education (MDE) Research and Assessment Division has established a five-year plan for state academic testing that includes the goal of moving all testing to an online or computerized format by 2009. Obviously, moving towards achievement of this goal has significant impact on the school districts and charter schools in our state.

In order to engage school districts in a dialogue on these issues, MDE created the Online by 09 Advisory Committee. The Committee met in December 2005 through February 2006 to discuss the issues Minnesota faces in moving to computerized testing in terms of technology, logistics and communication. What follows is a summary of the findings associated with moving to an online testing environment, identification of the potential benefits of online testing, and the committee’s recommendations for strategies to successfully move the online testing initiative forward.

The statewide tests included in the five-year plan to be moved to a computerized format include:

- MCA Series II (reading, mathematics, and science)
- Minnesota Writes!
- Test of Emerging Academic English (TEAE)
- Test of Emerging Academic English: Listening and Speaking (TEAELS)

- Test of Emerging Academic English for Mathematics (TEAEM)
- Diploma Test Retakes of the Graduation Required Assessments for Diploma (GRAD) and Basic Skills Tests (BSTs).

ONLINE BY 09 ADVISORY COMMITTEE FINDINGS AND RECOMMENDATIONS

The MDE has laid out a rigorous plan for moving to online testing by 2009. The Online by 09 Advisory Committee generally recognizes the benefits of the plan and supports the overall goals of the MDE in this initiative; however, there are concerns regarding the readiness of Minnesota schools to meet these goals. If the Online by 09 initiative is implemented without the state assuming responsibility for a fair share of the cost of additional infrastructure needs to achieve online testing, the Online by 09 will become an unfunded mandate for school districts. Committee members also have concerns regarding the appropriateness of moving some tests to an online format, particularly those tests that contain constructed response items. That said, the findings of the Online by 09 Advisory Committee are:

Findings

1. All school districts in the state do not currently have the computers, networks and servers needed to accomplish the goal of moving to online testing by 2009.
2. Individual school buildings, particularly elementary schools, do not currently have the technical support staff resources needed to implement online testing.
3. Potential benefits of faster access to test score data are minimized in tests that include items that require hand scoring, such as constructed response items.
4. Online assessment will require an ongoing commitment of resources by the state to support school districts.
5. Scheduling students into labs for testing presents significant challenges for schools because labs are already committed for instruction. Taking time away from labs for testing impacts schools' ability to meet instructional goals.
6. The inability of school districts to be ready for an online testing environment by 2009 and other technological advances such as online learning is a direct result of the generally unstable, inconsistent nature of funding for school district technology at the federal, state and local levels.

Recommendations: The commissioner supports the recommendations made by the advisory committee and suggests that the department implement these recommendations.

1. **Identify what additional technology and telecommunications capacity is needed by school districts to achieve the goals of Online by 09.** The Online by 09 Advisory Committee recommends that MDE seek funding during the 2006 legislative session for a third party, neutral auditing or research firm to review the current capacity of school districts to implement online testing as outlined in the MDE's five-year plan. This includes assessing the technology hardware and software needs of school districts, scheduling demands for statewide testing, costs for additional infrastructure and support and other logistical items. At the same time, they

recommend a continuation of activities in the computer delivered test development and field testing.

2. **Reassess the value of moving all tests to a computerized delivery mechanism and develop a detailed work plan.** Because some tests include constructed responses that minimize the potential benefit of fast test results, MDE needs to reassess the methodology for moving all tests to an online format by 2009. Preliminary results from the multiple choice sections of statewide tests such as the MCA-IIs would not provide full scale scores until hand scoring could be completed. It is important to understand any limiting factors that may surround an individual test, such as the length of time needed to score constructed response items and the need for rigorous quality control checks for high stakes test. Realistic expectations of benefits are critical to the success of the initiative.
3. **Define standards and expectations for school district technology infrastructure.** MDE should define standards and expectations for school district technology infrastructure capacity for an integrated technology environment that includes capacity for online testing. This includes:
 - Standards for computer-to-student ratios for school districts
 - Standards for the number of labs and classroom computers
 - Standards for replacement cycles for technology equipment
 - A per-student index for the amount of revenue a district should spend on technology for instruction and assessment
 - Statewide expectations for staff development expenditures related to technology use and integration that are a percentage of the state required staff development set-aside
4. **Define roles and responsibilities for funding and resources.** The state needs to define roles and responsibilities between the state and school districts in terms of funding and support of technology infrastructure for learning.
5. **Provide a stable, consistent funding mechanism for school district technology.** School districts should be provided with a continuous, stable funding stream from the state to support local efforts in meeting state accountability and technology requirements.
6. **Increase communication to stakeholders on the online assessment initiative.** Effective communication with all stakeholders is extremely important at this stage, particularly regarding MDE's rationale and process for moving tests to computer delivery, plus demonstration that MDE has a realistic understanding of potential costs and benefits. At a minimum, school districts also need to know where online assessment is headed so that they can begin planning for what needs to be in place in their schools. To that end, minimum hardware specifications, bulk purchasing information on computers and headsets and a five-year plan have been developed and distributed.

7. **Start small and build on successes.** Set up test sites for the science field test to work out the inevitable bugs. Try online field testing in a few districts to start—perhaps with one urban, one suburban and one rural, before going statewide. In Spring 2006, MDE is field testing the science test in 32 districts statewide.
8. **Develop delivery model templates for different sized school districts.** Develop a series of delivery model templates that address the technical and logistical requirements for different sized districts; i.e., a district of 0-200 students, 200-1,000 students, and so on.
9. **Continue forward momentum, including the current test development and field test schedule.** Piloting of online testing, including the scheduled field testing of the science test, should continue.
10. **Continue engaging school districts and charter schools in the planning process.** Bringing school districts to the table in terms of planning and opportunities to provide input will improve buy-in on the online initiative. The success of the initiative depends on school districts understanding the process and doing their best to make it work.

OTHER CONSIDERATIONS

While the Online by 09 Advisory Committee clearly has some concerns about Minnesota schools' readiness and capacity for moving to a statewide computerized testing strategy, they do see *potential* benefits to moving at least some statewide tests to computer-delivery. Some of the potential benefits include:

1. Online testing as an initiative provides motivation to both the state and school districts to upgrade computer infrastructure and increase network capacity in schools, which could be used for instructional purposes for the majority of the year.
2. Upgrades to school district technology infrastructure and networks would provide more equitable access to computers for students and teachers in schools and across districts.
3. Another major potential benefit is faster return of results to stakeholders for the benefit of Minnesota students. State tests that are scored completely by machine will generate scores relatively quickly, with turnaround times less than 24 hours on preliminary, student-level results.
4. Using technology to deliver statewide testing may improve the testing experience for many students. There is a potential for increases in student motivation and achievement because students will be testing in a 21st century environment using tools they use for the everyday learning process.