



**IMPLEMENTATION
OF NO CHILD LEFT
BEHIND ACT**

January 2008

**Report
To the
Legislature**

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

COMMISSIONER:

Alice Seagren

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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.

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Introduction

During the 2006 Minnesota Legislative Session, language regarding 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 regarding 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 \$23.5 billion (FY07) 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 representatives from 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.

The 2008 language contained in 127A.095 required the Minnesota Department of Education to seek waivers in the following eight areas:

(1) participate in the growth model pilot program

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 value-added or growth component would be measured.

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

In conjunction with the Assessment and Accountability Stakeholder Committee, the department continues to investigate different growth and value-added models that will fulfill the statute requirements and the federal No Child Left Behind core principles for growth models in Adequate Yearly Progress (AYP). However, Minnesota has three important tasks to complete prior to implementing this value-added component:

- confirm that Minnesota's current student database is able to act as a reliable, longitudinal repository for student scores over time;
- establish policy that will serve to fulfill the requirements of the statute and allow for valid inferences of variables based on that policy; and
- 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.

The United States Department of Education (USDE) has approved NCLB growth models for nine states. 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 an estimate of school and school district effects on students' academic achievement over time.

In December 2007, the secretary reopened the AYP Growth Model Pilot Program. Applications are due February 1, 2008. While previous opportunities were available, this is the first application Minnesota is submitting because this is the first year we have consecutive, comparable years of data 3-8, 10 and 11.

Recommendation: The commissioner recommends that the Assessment and Accountability Stakeholder Committee, which includes committee chairs from the various education committees, review the proposed AYP growth model application that the Minnesota Department of Education has been working on constructing with District Assessment Coordinators and the Minnesota Assessment Group for the AYP growth model. This plan will be submitted on February 1, 2008.

(2) 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 USDE 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, student Individual Education Plan 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 one percent of all students in the grades assessed at the state and the district 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 Individuals with Disabilities Education Act (IDEA) of 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 was the development of an alternate assessment, the Minnesota Test of Academic Skills (MTAS), to meet the technical aspects.

The Minnesota Test of Academic Skills (MTAS) is Minnesota's alternate assessment for students with significant cognitive disabilities based on alternate achievement standards. The MTAS is part of the statewide assessment program and measures the extent to which students with significant cognitive disabilities are making progress in the general curriculum. The MTAS in reading and mathematics was administered for the first time in

spring 2007. Beginning in 2007-08, the MTAS will also be administered in science.

In order to meet federal NCLB requirements, the MTAS has been aligned with the academic content standards established for all students (i.e., Minnesota Academic Standards). Alternate assessments based on functional skills or skills that are taught at an earlier grade level may not be used for AYP calculations.

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 USDE will not waive the full inclusion of students with disabilities in AYP determinations.

In a notice of proposed rule making 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 modified alternate assessment for special education students who are not able to access the general education assessment but are not significantly cognitively disabled. Once refined and implemented, the option will allow the students with disabilities to access the general curriculum based on modified standards using the modified assessment and for use in the AYP calculations. This would allow Minnesota to include an additional two percent of the total student population; thereby, increasing the percent of proficiency scores used for AYP calculations from one percent to three percent.

In October 2007, Minnesota was awarded a competitive General Supervision Enhancement grant from USDE as part of a consortium with the states of Ohio and Oregon and the American Institute for Research in Washington DC. The one million dollar competitive award is to begin development of the modified assessment for implementation in 2010-11.

Minnesota has also used and will continue to provide additional flexibility to districts with unique populations and situations to exceed the federal one percent cap on proficiency on the alternative assessments used for AYP determinations whenever possible. This continues to be been done through a waiver process.

In addition, Minnesota also received flexibility to implement the mathematical adjustment for schools that did not meet AYP solely because the Students With Disabilities subgroup did not meet their proficiency targets in reading and/or math. The mathematical adjustment increases the proportion proficient by a statewide calculated amount and then is added to the actual proportion proficient to determine if the target has been met. This flexibility was granted as a short term bridge until the modified assessment can be implemented.

Recommendation: The commissioner recommends that we continue to use the waiver flexibility for the one percent cap on alternate assessment proficiency. The commissioner further recommends that the state continue to develop the modified assessment for students with disabilities. 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.

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

The USDE does not offer waivers for the same subgroup not making AYP two consecutive years; schools do not make AYP if they miss their targets in the current year. However, Minnesota does take advantage of the uniform averaging provision which allows multi-year averaging over two and three years. If a school does not meet its target in the current year for 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 to see if the school meets the target

Essentially, the school has to miss its targets over two and three years because of averaging to be identified as not meeting the target.

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.

Recommendation: The commissioner believes that Minnesota has been granted all the flexibility offered by USDE via the averaging procedure.

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

Since the passage of NCLB, the U.S. Department of Education has issued guidance letters or regulations that give states greater flexibility. These policy changes have increased the amount of flexibility states have to determine when to hold schools accountable for English Language Learners (ELL) 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 ELL students" from one administration of the state's reading/language arts assessment. The

regulations define a recently arrived ELL 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 ELL students on the reading/language arts assessment (if taken) in decisions regarding proficiency in the calculation of 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 ELL students on the mathematics assessment in AYP decisions.

Minnesota has also been allowed to include "former ELL" 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 ELL students attain full proficiency. This flexibility is also included in the final regulations.

Minnesota also has The Mathematics Test for English Language Learners (MTELL) which is a computer-delivered mathematics test in grades 3-8 and 11 with simplified English that reduces the confounding effects of language on mathematics performance. ELL students may listen to test items as well as read them. Pictures and diagrams help students understand the language in the test items. The MTELL assesses the same grade level academic standards as the MCA-IIIs.

Recommendation: The commissioner recommends that the department continue to use the MTELL for ELL students for purposes of determining math proficiency for AYP. During NCLB reauthorization, recommend that ELL students can take an alternate reading content assessment in place of the MCA-II until such time as these students have acquired enough English skills to enable them to be assessed on the state's general education assessments.

(5) allow a district not making adequate yearly progress to offer supplemental educational services as an option before offering school choice;

In the 2005-06 school year, Secretary Spellings began a pilot program to study whether it was to families' advantage to be able to access SES one year earlier than the law currently allows – i.e., to make SES available to students attending Title I schools in their first year of improvement. In that year, the secretary granted four districts in Virginia the flexibility to offer SES to students one year early in exchange for the districts and the state meeting a set of conditions to ensure quality SES implementation. The response to this flexibility was positive, with the state, districts, and families receptive to obtaining earlier access to SES. As a result, the secretary extended the pilot in the 2006-07 school year by adding districts in Alaska, Delaware, Indiana, and North Carolina. Additionally, the USDE's reauthorization proposal for NCLB, proposed that for all districts, SES be offered to students from low-income families who attend any Title I school in school improvement status from the first year forward.

In keeping with this spirit of flexibility around SES, the secretary again extended the pilot for the 2007-08 school. The positive results USDE saw in the pilot districts to date are evidence that offering states and districts this flexibility, in return for the states and districts meeting certain conditions of quality SES implementation, is an effective policy approach to helping students and providing families with quality choices.

To be eligible for this pilot program, a state must meet the four criteria described below:

1. Timely notification of AYP results. A state must have made AYP determinations, on which Title I schools in improvement were expected to act, before the start of the school year for years 2004-05, 2005-06, and 2006-07.
2. State SES evaluation in progress. A state currently must have underway its evaluation of SES providers. More specifically, a state must have developed an evaluation of the extent to which its SES providers are contributing to student achievement and must have at least begun the process of collecting data for the evaluation.
3. State assessment system with "Full Approval," "Full Approval with Recommendations," or "Approval Expected." A state must have its assessment systems reviewed by the department and rated in one of these top three categories.
4. Waiver conditions. A state must provide assurances that it can meet the conditions for participation outlined in the pilot agreement, including that the state can meet the waiver requirements of ESEA, as specified in section 9401. A complete list of conditions for participation is included in the appendix.

Minnesota did not meet criteria one and three to be eligible for this flexibility.

Recommendation: The commissioner will apply for the flexibility once Minnesota meets all four eligibility criteria.

(6) allow a district not making adequate yearly progress to also be the supplemental educational services provider;

The Supplemental Educational Services *Non-Regulatory Guidance* issued on June 13, 2005 explicitly states that a district identified as in need of improvement may not be a supplemental educational service provider. If a district is in need of improvement or corrective action, the district may not be a supplemental educational service provider. However, schools within such an identified district that are not identified for improvement, corrective action or restructuring may apply to be approved providers.

The only exception occurs in the situation discussed in which a district must provide supplemental educational services to disabled or limited English proficient students because no approved providers are available to do so. In these cases, the district must provide those services (either directly or through a contractor) even if it has been identified as in need of improvement. If the cause of a district's identification for improvement status was the performance of its disabled or limited English proficient students on assessments, then it would be preferable for a district to serve those

students through a contractor rather than by directly serving them. (See the Federal Register notice of December 2, 2002, page 71,758 for more information.)

As a result of this explicit direction from USDE, Minnesota has not requested a waiver.

Recommendation: The commissioner recommends that Minnesota does not request a waiver as it has been explicitly prohibited by USDE.

(7) allow the state to maintain a subgroup size to 40 for the purposes of calculating adequate yearly progress for subgroups of students with limited English proficiency and subgroups of students with disabilities; and

Beginning in 2002-03, Minnesota's original accountability plan had a subgroup size of 40 for students with disabilities. In 2005, Minnesota requested, and was granted, the flexibility to use a minimum group size of 40 for the limited English proficient subgroup.

In 2007, Minnesota was required by USDE to reestablish a uniform cell size of 20. Minnesota decreased the group size necessary for the group to be included in proficiency calculations to 20 students for its students with disabilities and limited English proficient subgroups to be uniform with all other subgroups. Beginning with the 2007 AYP calculation, Minnesota uses a uniform group size for all student groups as required by NCLB.

Recommendation: The commissioner will apply for the non-uniform cell sizes flexibility if it becomes available in the future.

(8) create flexibility to enable the state to define and identify highly qualified teachers.

In response to NCLB, Minnesota created the Minnesota State Plan for Highly Qualified (HQ) teachers in 2004.

Minnesota did not request flexibility because it was determined at the time the plan was drafted that current policies and rules met the HQ definitions. Minnesota had recognized core areas require demonstration of content knowledge as evidenced by the current licensure rules. In order to apply for a teaching license Minnesota candidates must hold a bachelor's degree, have earned an academic major in the licensure field, and must pass appropriate state licensure tests. Minnesota revised the Plan in 2006 to reflect flexibility that the federal guidelines gave to rural districts and teachers new to special education.

Minnesota has an approved high objective and uniform state system of evaluation (HOUSSE) for existing teachers licensed prior to 2001 under the old licensure rules. This provides flexibility for these teachers to meet HQ requirements using a point process based on work experience, academic preparation and other approved indicators. A teacher must reach 100 points using the HOUSSE application.

Recommendation: The commissioner recommends that Minnesota continues to implement HOUSSE which provides the flexibility for teachers to meet HQ requirements based on Minnesota’s criteria that meet federal guidelines. Currently, 98 percent of Minnesota teachers meet the highly qualified requirements under No Child Left Behind.