



November 5, 2015

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Department of Education Governing  
Achievement and Integration; Revisor's ID Number 4309

Dear Librarian:

The Minnesota Department of Education intends to adopt rules governing Achievement and Integration. We plan to publish a Notice of Hearing in the November 9, 2015 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at (651) 582-8583.

Cordially,

A handwritten signature in black ink that reads "Kerstin Forsythe Hahn". The signature is written in a cursive style.

Kerstin Forsythe Hahn, J.D.  
Rulemaking Coordinator  
Minnesota Department of Education

Enclosure: Statement of Need and Reasonableness



Minnesota Department of Education

STATEMENT OF NEED AND REASONABLENESS

Proposed Rules Governing Achievement and Integration for Minnesota

Minnesota Rules, Chapter 3535; Revisor's ID Number RD 4309

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## **Minnesota Department of Education**

### **STATEMENT OF NEED AND REASONABLENESS (SONAR)**

#### **Proposed Amendment to Rules Governing School Integration, Minnesota Rules, Chapter 3535; Revisor's ID Number RD4309**

### **INTRODUCTION**

Minnesota demographics have changed significantly over time, increasing the population of protected students attending public schools in the state. This changing population has led to the need for Minnesota to address the disparities in achievement impacting its protected students. In 2013, the legislature redesigned the state integration program to be an achievement and integration program. In doing so, the legislature required that districts develop a plan to address the academic achievement gaps that exist between protected students and their white peers. The current integration rule does not account for this new requirement and does not align with recently adopted achievement and integration statutes. This misalignment has led to challenges for schools in the implementation of the state achievement and integration statutes and integration rules. These challenges limit the potential effectiveness of district achievement and integration plans and also reduce the positive impact these plans and funds can have on protected student achievement outcomes. The purpose of this rulemaking was to propose updated rules that align with the existing achievement and integration statutes to ensure that the state integration rule is facilitating the intent of the legislature to focus on both the achievement and integration of protected students, thereby improving the educational outcomes of all Minnesota students.

### **Scope of the SONAR**

This SONAR provides a brief historical review of the development of the current integration rule and the rationale for changes proposed by the department for a new achievement and integration rule necessary to facilitate the implementation of the achievement and integration statutes enacted in 2013, Minnesota Statutes, sections 124D.861 and 124D.862.<sup>1</sup> The 1999 State of Minnesota Department of Children, Families and Learning SONAR In the Matter of the Proposed Rules Relating to Desegregation (1999 Desegregation Rules SONAR) included an extensive justification for the public policy supporting integration as such policy had not been incorporated into state statute at that time. The department's role in the current integration rulemaking proceeding is to propose rules that align with the current achievement and integration statutes and add clarity for implementation. The appropriate place for the development of integration policy is in the legislative process. Because integration policy was adopted as part of the recently passed state achievement and integration statutes, the department has not included an extensive justification for the public policies related to integration in this SONAR. What follows is a brief history of the legislative changes and how

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<sup>1</sup> Minn. Stat. §§ [124D.861](#) (2015) and [124D.862](#) (2015).

integration policy was developed in Minnesota since the adoption of the current integration rules in 1999 and references to the 1999 Desegregation Rules SONAR will be used to provide context.

## Overview of the Development of the 1999 Integration Rules

Rulemaking authority on education topics was previously held by the Minnesota State Board of Education (the State Board). The State Board began addressing integration as a matter of public policy as early as 1973 when it adopted the first state rules relating to desegregation. These early rules addressed comparisons between schools within a district of “minority” student enrollment. At that time, differences of minority student enrollment between schools were not to exceed 15 percent. Significant changes in the demographics of student populations in urban Minnesota districts between the 1980s to the 1990s set the stage for continued discussions and the need for further policy development in this area.<sup>2</sup>

During the 1990s, the need for policy beyond the urban core became more and more apparent as changes in student demographics began impacting other metropolitan and out state schools. The subsequent discussions were led by the State Board who conducted a series of hearings and meetings with stakeholders to gather public input. In 1993<sup>3</sup> and 1994, the legislature passed authority for the Board to propose new desegregation rules. The 1994 legislation modified the 1993 statutory authority slightly, including the term “integration” and clarifying the scope of the State Board’s rulemaking authority.<sup>4</sup> The existing Department of Children, Families and Learning (DCFL), currently called the Minnesota Department of Education, proposed some potential rule language as well. The State Board made revisions and approved a preliminary draft which became the basis for the current integration rule. The State Board had general rulemaking authority and substantial leeway in establishing rules in the area of desegregation and integration.<sup>5</sup> Policy for schools on this topic had not been set out in state statute at that time. In 1998 the State Board was abolished and rulemaking authority was transferred to the commissioner of the DCFL. A newly drafted integration rule was finalized and the rulemaking

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<sup>2</sup> State of Minnesota Department of Children, Families, and Learning, Statement of Need and Reasonableness In the Matter of the Proposed Rules Relating to Desegregation: Minnesota Rules, Chapter 3535 (1999), p. 2. Available online at the Revisor Rule Status Webpage under Revisor ID number R-02791.

<sup>3</sup> [Minn. Stat. § 121.11, subd. 7d \(1993\)](#). See also [1993 Minn. Laws, Ch. 224, Art. 12, Sec. 5](#).

The session law stated, “Sec. 5. Minnesota Statutes 1992, section 121.11, is amended by adding a subdivision to read: Subd. 7d. [DESEGREGATION, INCLUSIVE EDUCATION, AND LICENSURE RULES.] The state board may make rules relating to desegregation, inclusive education, and licensure of school personnel not licensed by the board of teaching.”

<sup>4</sup> [1994 Minn. Laws, Ch. 647, Art. 8, Sec. 1](#). Minn. Stat. § 121.11 was amended to reference integration and desegregation. The session law stated, “Section 1. Minnesota Statutes 1993 Supplement, section 121.11, subdivision 7d, is amended to read: Subd. 7d. ~~[DESEGREGATION]~~ DESEGREGATION/INTEGRATION, INCLUSIVE EDUCATION, AND LICENSURE RULES. (a) The state board may make rules relating to ~~desegregation~~ desegregation/integration, inclusive education, and licensure of school personnel not licensed by the board of teaching. (b) In adopting a rule related to school desegregation/integration, the state board shall address the need for equal educational opportunities for all students and racial balance as defined by the state board. An office of desegregation/integration was also created in statute at this time.”

<sup>5</sup> [Minn. Stat. § 121.11 \(1997\)](#).

process was completed by the DCFL following the transfer of rulemaking authority from the State Board to the DCFL by the legislature.<sup>6</sup>

The integration rules developed in 1999 have been in place and remained unchanged for over 15 years. When the current integration rules were created, significant case law existed around the concepts of “segregation” and achieving “racial balance.” Many courts tackled the issue of segregation from the 1950s through the 1970s and in many cases the courts developed and imposed remedies.<sup>7</sup> Reflected in these court decisions were a variety of solutions formulated to counter student assignment policies; many focused on moving students to meet racial quotas. The 1999 Desegregation Rules SONAR discusses the pros and cons of the educational benefit of these remedies. It also discusses issues created for children and families by the movement of students between schools to achieve racial balance, including siblings attending different schools, transporting students out of their neighborhood, and shifting and changing attendance boundaries. Later federal and U.S. Supreme Court decisions also raised serious questions about these practices.<sup>8</sup> The 1999 Desegregation Rules SONAR also includes extensive policy and justification around the importance of desegregation. For more information on policy justification, please consult the 1999 Desegregation Rules SONAR available on the Rule Status Website on the Minnesota Revisor of Statutes webpage. As stated above, because integration policy was recently incorporated into state statute in 2013, this SONAR will not address these issues further.

## **Factors Impacting Integration in Minnesota Following the Development of the 1999 Integration Rules**

Since the adoption of the current integration rule in 1999, Minnesota has continued to experience changes in student demographics.<sup>9</sup> Although the total enrollment of students in the state has stayed relatively stable, the percentage of protected students has nearly doubled in the last 15 years. The percentage of protected students rose from 15.20 percent in the 1998-1999 school year to 29.5 percent in the 2014-2015 school year and is expected to continue to increase.<sup>10</sup> Several other factors have also influenced integration policy in the state, including

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<sup>6</sup> [1998 Minn. Laws, Ch. 398, Art. 5, Sec. 7](#). Minn. Stat. § 121.11 was renumbered as 124D.896 and authority was transferred from the State Board to the Commissioner of Education. A timeframe was also added to the statutory authority at this time. The session law stated, “Minnesota Statutes 1996, section 121.11, subdivision 7d, is amended to read: Subd. 7d. [DESEGREGATION/INTEGRATION, INCLUSIVE EDUCATION, AND LICENSURE RULES.] (a) ~~The state board may~~ By January 10, 1999, the commissioner shall make rules relating to desegregation/integration, ~~and~~ inclusive education, ~~and licensure of school personnel not licensed by the board of teaching.~~

(b) In adopting a rule related to school desegregation/integration, the ~~state board~~ commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the ~~state board commissioner.~~ This authority remained in statute until 2014. See also *supra* note 2, pp. 3-4, the 1999 Desegregation Rules SONAR. The Department of Children Families and Learning was renamed to the Department of Education in 2003. See [2003 Minn. Laws, Ch. 130, Sec. 1](#).

<sup>7</sup> These court decisions are well-documented in the 1999 Desegregation Rules SONAR. See *supra* note 2, pp. 4-9, the 1999 Desegregation Rules SONAR.

<sup>8</sup> *Id.* at pp. 12-20.

<sup>9</sup> Minnesota Department of Education 1999-2015 Statewide Protected Student Enrollment. See Appendix A.

<sup>10</sup> *Id.* In 1998-1999 enrollment of kindergarten and first grade protected students was around 18%. In 2014-2015 the percentage of protected students has risen to approximately 33%, nearly doubling and reflecting the steady increase in the number of protected students that will continue to enter the Minnesota public school system. *Id.*

both state and federal education policy initiatives that have created structural changes within the education system. At the state level, Minnesota enacted significant reform legislation just prior to the adoption of the current rule creating more choice and options for parents. This included open enrollment, post-secondary options, alternative learning year programs and charter schools to name a few.<sup>11</sup> For example, with the development of open enrollment, parents are no longer required to send their child to a neighborhood school within attendance boundaries established by a school board. Since the implementation of these changes were in the early stages at the time the current rule was adopted in 1999, the long-term impact was unknown.

The evolution of the “standards” movement with the establishment of No Child Left Behind and the related testing requirements also created new ways for parents and state officials to assess school performance. Academic standards and graduation requirements were established at the state level.<sup>12</sup> This created a data-driven focus on the “achievement gap” for protected students. Minnesota has historically had one of the largest achievement gaps in the nation.<sup>13</sup> For example, in 2013 for NAEP Mathematics in Grades 4 and 8, for White and Hispanic students, Minnesota ranked 45<sup>th</sup> out of 49 states and 40<sup>th</sup> out of 48 states, respectively.<sup>14</sup> Minnesota also has one of the lowest graduation rates for American Indian students.<sup>15</sup> In 2012-2013 Minnesota’s graduation rate for American Indian students was only 49 percent, significantly lower than the national average of 69.7 percent.<sup>16</sup> New NAEP data is expected to be released in

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<sup>11</sup> See for example Minn. Stat. § 124D.03 regarding open enrollment; Minn. Stat. § 124D.68 regarding alternative learning programs; and Minn. Stat. Ch. 124E regarding charter schools (Minnesota Statutes on charter schools were formerly found in Chapter 124D of Minnesota Statutes and were renumbered to Chapter 124E in 2015).

<sup>12</sup> 2003 Minn. Laws. Ch. 129, Art. 1, Secs. 1-6. In 2003 the Minnesota Legislature repealed the Profile of Learning amending Minnesota Statutes section 120B.02 and adopted statutes that set forth state academic standards and graduation requirements, including Minnesota Statutes sections 120B.021: Academic Standards; 120B.022: Elective Standards; 120B.023: Benchmarks; and 120B.024: Graduation Requirements; Course Credits.

<sup>13</sup> See generally 2013 National Assessment of Education Progress (NAEP) data, Appendix B. For example, 2013 National Assessment of Education Progress (NAEP) Data for Reading and Mathematics in Grades 4 and 8 for White and Black students and White and Hispanic Students. This data consistently shows Minnesota’s achievement gap is among the largest in the nation and greater than the nations’ achievement gap. Only states that have reportable numbers are included in NAEP data, which results in less than 50 states reporting. This data is also known as the Nation’s Report Card. The NAEP search tool which provides achievement gap information for all states with reportable data is available at <http://nces.ed.gov/nationsreportcard/statecomparisons/>.

<sup>14</sup> 2013 NAEP Mathematics in Grades 4 for White and Hispanic Students and Grades 8 for White and Hispanic Students. This data reports Minnesota as ranking 34<sup>th</sup> out of 49 states and 43<sup>rd</sup> out of 48 states, respectively. See Appendix B.

<sup>15</sup> The U.S. Department of Education released new data in March of 2015 that includes Minnesota’s 2013 graduation rates for minority students. See Public High School 4-Year Adjusted Cohort Graduation Rate By Race/Ethnicity and Selected Demographics for the United States, the 50 States and the District of Columbia: School Year 2012-2013, U.S. Department of Education’s National Center for Education Statistics, available at [http://nces.ed.gov/ccd/tables/xls/ACGR\\_RE\\_and\\_characteristics\\_2012-13.xlsx/](http://nces.ed.gov/ccd/tables/xls/ACGR_RE_and_characteristics_2012-13.xlsx/). See also Achievement Gap Narrows as High School Graduation Rates for Minority Students Improve Faster than Rest of Nation, U.S. Department of Education, Table 2, March 16, 2015, available at <http://www.ed.gov/news/press-releases/achievement-gap-narrows-high-school-graduation-rates-minority-students-improve-faster-rest-nation>. (click on “New Data” in the article to obtain the relevant excel Tables). See also Appendix B.

<sup>16</sup> *Id.* Only one state with reportable data had a graduation rate lower than Minnesota for American Indian Students. Wyoming reported a graduation rate of 41% for American Indian Students. South Dakota reported a similar graduation rate to Minnesota of 49% for American Indian Students. See also 2013 NAEP Reading in Grades 4 for White and Black Students and Grades 8 for White and Black Students. 2013 NAEP Reading in Grades 4 and 8 for White and Black Students reports Minnesota as ranking 20<sup>th</sup> out of 47 states and 38<sup>th</sup> out of 44 states, respectively. For NAEP Math in Grades 4 and 8 for White and Black students Minnesota ranked 34<sup>th</sup> out of 46 states and 42<sup>nd</sup> out of 45 states, respectively. See Appendix B.



2015 and this data will provide Minnesota with additional information about its progress related to the achievement gap.

Additionally, the advent of technology and the use of online learning programs and social media created borderless education opportunities. With the explosion of digital technology, significant social interactions beyond the classroom, the schoolhouse and district borders was streamlined and geographic proximity became less important for integration efforts. These options created new ways for Minnesota to begin to address the growing achievement gap between Minnesota's protected students and their white peers.

## **Legislative Changes Impacting Minnesota's Integration Statutes After the Development of the 1999 Integration Rules: Shifting Towards Achievement**

Statutory changes and review by the Office of the Legislative Auditor since the development of the 1999 integration rules also put a greater emphasis on achievement and added the requirement for districts participating in integration programs to use integration revenue to close academic achievement gaps.<sup>17</sup>

### **2005 Office of the Legislative Auditor Report**

In April of 2005, the Office of the Legislative Auditor (OLA) was directed to evaluate the state Integration Revenue program. A key OLA finding was that the legislation did not articulate a clear purpose or explicit outcomes for the program. This lack of clarity combined with a lack of accountability measures resulted in what the report determined to be "questionable uses of revenue" and inadequate assessment of the program's impact.

OLA's key recommendations included clarifying the purpose of the program in legislation, increasing the authority of the department to evaluate programs, approve budgets, and withhold revenue if districts failed to meet evaluation requirements.

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<sup>17</sup> [2000 Minn. Laws, Ch. 489, Art. 2, Sec. 6](#) and [2009 Minn. Laws, Ch. 96, Art. 2, Secs. 52-54](#). The 2000 statutory amendments added language requiring that integration revenue be used to "create or enhance learning opportunities which are designed to provide opportunities for students to have increased interracial contacts through classroom experiences, initiatives, and other educationally related programs." Additional language related to the use of revenue for these programs was also added. The 2009 amendment added language requiring that revenue be used specifically to improve "educational opportunities and outcomes designed to close the academic achievement gap between white students and protected students as defined in Minnesota Rules, part 3535.0110, Subpart 4....". This amendment also added language requiring specific integration plan goals to be based on best practices and to "(4) provide for implementing innovative and practical strategies and programs such as magnet schools, transportation, research-based programs to improve the performance of protected students with lower measured achievement on state or local assessments, staff development for teachers in cultural competency, formative assessments, and increased numbers of teachers of color that enable the district to achieve annual progress in realizing the goals in its plans; and (5) establish valid reliable longitudinal measures for the district to use in demonstrating to the commissioner the amount of progress is has achieved in realizing the goals in its plan." See also revisions to the former desegregation statute, Minnesota Statutes, section 124D.86, since 1999. For example, in 2000 Minn. Stat. § 124D.896 is amended with a minor language change. The phrase "make rules" is changed to "propose rules." [2000 Minn. Laws, Ch. 254, Sec. 35](#).

The findings of this report were considered by the Integration Revenue Taskforce (see below) that made recommendations for the legislation that ultimately replaced Minnesota Statutes, section 124D.86, which was in place when the OLA conducted its 2005 evaluation.

## 2011 Integration Revenue Taskforce

The previous integration revenue statute, Minnesota Statutes, section 124D.86, was modified several times between 1999 and 2012, but the integration rules were not modified during this time frame.<sup>18</sup> During the 2011 special session the Minnesota legislature repealed Minnesota Statutes, section 124D.86, effective for fiscal year 2014.<sup>19</sup> The legislature also established an “Integration Revenue Replacement Advisory Task Force” (Integration Revenue Taskforce) during the 2011 special session.<sup>20</sup> The Integration Revenue Taskforce was charged with developing recommendations for repurposing integration revenue. In addition, the 2011 special session legislature also adopted new language that prohibited school segregation under Minnesota Statutes, section 124D.855.<sup>21</sup>

The Integration Revenue Taskforce was comprised of 12 members, with six appointed by the commissioner and three each appointed by the House and Senate. The group began meeting in November of 2011 and met through February of 2012.<sup>22</sup> The task force thoroughly discussed the implication of the policy surrounding integration and its impact on students in Minnesota. It heard testimony from numerous experts, reviewed many documents including research, court decisions and opinions, studied data on student populations, reviewed past implementation of achievement and integration plans and had in-depth discussions about the purpose and direction of the program. Much of the group’s discussion focused on integration policy and what needed to be done to benefit students. The task force then developed a legislative report with several recommendations and presented its report as required to the legislature on February 15, 2012.<sup>23</sup> Recommendations from the task force were reviewed and considered through the legislative hearing process with presentations made by task force members. The recommendations from the task force report became the basis for the adoption of the new “Achievement and Integration for Minnesota” statutes that became law in 2013.<sup>24</sup>

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<sup>18</sup> See generally the legislative history for [Minn. Stat. § 124D.86 \(2012\)](#).

<sup>19</sup> 2011 Minn. Laws., Ch. 11, Art. 2, Sec. 51.

<sup>20</sup> 2011 Minn. Laws. Ch. 11, Art. 2, Sec. 49.

<sup>21</sup> 2011 Minn. Laws. Ch. 11, Art. 2, Sec. 42. See also [Minn. Stat. § 124D.855](#). This statute states “the state, consistent with section 123B.30 and chapter 363A, does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools. Instead, the state’s interest lies in offering children a diverse and nondiscriminatory educational experience.”

<sup>22</sup> All materials from the Integration Revenue task force, including agendas, materials, expert documents, meeting minutes, etc., are available on the department’s Integration Revenue taskforce webpage here: <http://education.state.mn.us/MDE/Welcome/AdvBCT/IntegRevReplaceTaskForce/index.html>.

<sup>23</sup> The Integration Revenue Legislative Report is available on the Minnesota Legislative Library website here: <http://www.leg.state.mn.us/edocs/edocs.aspx?oclcnumber=779472313>. This report is also attached as Appendix C.

<sup>24</sup> 2013 Minn. Laws, Ch. 116, Art. 3, Sec. 29. See also Minn. Stat. §§ 124D.861 and 124D.862.

## 2013 Achievement and Integration Statutes

The Minnesota Legislature enacted two new achievement and integration statutes in 2013.<sup>25</sup> Unlike the previous integration legislation that related primarily to the use of revenue<sup>26</sup>, the new achievement and integration statutes are divided into two sections. The first, Minnesota Statutes, section 124D.861, established the policy components for integration, including the requirements for achievement and integration plans and processes for adoption of plans by eligible districts.<sup>27</sup> The second part, Minnesota Statutes, section 124D.862, established a new integration funding formula and criteria for the use of funds.<sup>28</sup> Prior to the 2013 legislation that created these two distinct statutes, integration policy was primarily established within current Minnesota Rules, Chapter 3535, and was not set out in statute.

Several of the OLA recommendations from the 2005 report (see above) are reflected in the new achievement and integration legislation, including a revised funding formula and statement of purpose. This legislation also established criteria for the following aspects of the integration revenue program: allowable uses of achievement and integration revenue and the commissioner's authority to review district plans, evaluate plan results and use revenue in consultation with the affected district to implement improvement plans. These additions were recommended by the OLA in order to increase program oversight and accountability.

The new achievement and integration policy and revenue statutes differ significantly from the previous integration statute and as a result alignment issues between the new achievement integration statutes and the current integration rules became apparent. Minnesota schools were faced with implementing achievement and integration programs governed by statutes passed in 2013 paired with an integration rule that was adopted in 1999. The misalignment between the current integration rule and recently adopted achievement and integration statutes make this implementation challenging for school districts. To remedy this misalignment, the commissioner was directed by the 2013 Legislature to review the current integration rules "for consistency" with the new achievement and integration statutes and to make "recommendations for conforming changes" by the following year "for revising the rules or amending applicable statutes" to better align the rule with the new statute.<sup>29</sup> These recommendations were used as a basis for the department's proposed rule and are discussed more in depth in the sections that follow.

### Statute and Rule Alignment Work Group and Establishing Rulemaking Authority

Following the Legislature's directive, the commissioner established a working group to review both the new integration policy and revenue statutes and the current integration rules and to assist her in developing legislative recommendations. The integration statute and rule alignment

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<sup>25</sup> *Id.*

<sup>26</sup> The previous Minnesota legislation that related to integration was found in [Minn. Stat. § 124D.86](#) and was primarily focused on revenue. This statute was repealed in 2011.

<sup>27</sup> [2013 Minn. Laws, Ch. 116, Art. 3, Sec. 29; Minn. Stat. § 124D.861](#) (2013).

<sup>28</sup> [2013 Minn. Laws, Ch. 116, Art. 3, Sec. 29; Minn. Stat. § 124D.862](#) (2013).

<sup>29</sup> [2013 Minn. Laws, Ch. 116, Art. 3, Sec. 32](#), Achievement and Integration; Recommendations for Conforming Changes. This section directs the education commissioner to "review Minnesota Rules, parts 3535.010 to 3535.0180, for consistency with Minnesota Statutes, sections 124D.861 and 124D.862, and make recommendations to the education committees of the legislature by February 15, 2014, for revising the rules or amending applicable statutes."

working group (Rule Alignment Working Group) met between November of 2013 and February of 2014. The group submitted its recommendations for alignment of the integration rules and statutes to the commissioner in January of 2014. The commissioner reviewed the group's work and in consultation with the committee chair finalized the recommendations which were submitted to the Legislature by February 15, 2014, as required by law.<sup>30</sup>

The existing statutory language providing the commissioner with rulemaking authority for rules relating to desegregation/integration and inclusive education in Minnesota Statutes, section 124D.896, was unclear. Thus, the commissioner sought to have the department's rulemaking authority clarified. Establishing clear authority for the commissioner to proceed with rulemaking on integration rules was also important due to the statutory limitation on the department's rulemaking authority set forth in Minnesota Statutes, section 127A.05, subd. 4.<sup>31</sup> Following submission of the Rule Alignment Working Group recommendations to the Legislature in 2014, the commissioner's statutory authority to proceed with rulemaking related to integration was clarified and updated by the 2014 Legislature.<sup>32</sup>

## **A Detailed Comparison of Minnesota's Old and New Achievement and Integration Statutes**

Prior to the enactment of the existing achievement and integration statutes, integration revenue in Minnesota was primarily governed by a series of statutes that were renumbered and repealed over time, including Minnesota Statutes, sections 124.312, 124.315, and most recently 124D.86.<sup>33</sup> When Minnesota Statutes, section 124.312, was passed in 1973, Minneapolis was under a court-ordered desegregation plan and St. Paul and Duluth had voluntarily developed plans that were initially reviewed and approved by the State Board of Education.<sup>34</sup> With the adoption of Minnesota Statutes, section 124.312, the St. Paul and Duluth school districts were added to the integration revenue statute and became eligible to receive integration revenue during the 1996 fiscal year and later.<sup>35</sup> Minnesota Statutes, section 124.315, provided integration revenue for these districts for the 1999 fiscal year and later. Minnesota Statutes, section 124.315, subd. 4, also provided the first integration funding for districts eligible under the current state integration rule at that time. This law also required eligible districts to develop and

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<sup>30</sup> *Id.* See Appendix F for the legislative report. All materials from the integration rule and statute alignment work group meetings, including the legislative report can be found on the department's [Integration Rule and Statute Alignment Work Group webpage](#) or the department's [Legislative Reports webpage](#), under the 2014 heading.

<sup>31</sup> Minn. Stat. § 127A.05, subd. 4. This statute provides that "the commissioner may adopt new rules or amend any current rules only under specific authority and consistent with the requirement of chapter 14."

<sup>32</sup> 2014 Minn. Laws, Ch. 272, Art. 3, Sec. 48. During the 2014 legislative session Minn. Stat. § 124D.896 was amended to clarify the department's specific rulemaking authority to propose integration rules that aligned with the new achievement and integration statutes. See also Minn. Stat. § 124D.896.

<sup>33</sup> Minnesota Statutes, section 124.312 was enacted in 1995 and repealed in 1998. Minnesota Statutes, section 124.315, was enacted in 1997 and also repealed in 1998.

<sup>34</sup> See *Booker v. Special School Dist. No. 1, Minneapolis*, Minn, 351 F.Supp. 799 (1972). 1995 Minn. Laws, Ch. 3, Art. 15, Sec. 4. Minnesota Statutes section 124.312 used the language the "learning gap."

<sup>35</sup> 1995 Minn. Laws, Ch. 3, Art. 15, Sec. 4. See also Minn. Stat. § 124.312, subd. 4 (1995), "targeted needs program revenue. See also Minn. Stat. §§ 124.313, 124.314, and 124.315 which were also enacted in 1996 and 1997, and all repealed in 1998 just prior to the enactment of Minnesota Statutes, section 124D.86. Minnesota Statutes, section 124.312, provided integration revenue for 1996 and later years and Minnesota Statutes, section 124.315, provided integration revenue for 1999 and later fiscal years.

implement a plan according to requirements set forth in the existing state integration rules.<sup>36</sup> At that time, other school districts were not required to implement plans either through the courts or by statute.

In 1998 Minnesota Statutes, section 124.312, was repealed<sup>37</sup> and section 124.315, was renumbered as 124D.86.<sup>38</sup> Minnesota Statutes, section 124D.86, titled “Integration Revenue” remained Minnesota’s main integration statute until 2011. This statute maintained integration funding for the Minneapolis, St. Paul and Duluth school districts, as well as other districts eligible under the existing state rules. When Minnesota Statutes, section 124D.86, was enacted, the State Board of Education had proposed new rules that had been published in the State Register, but had not yet been finalized. At the time, Minnesota Statutes, section 124D.86, subd. 4, read similar to its predecessor, Minnesota Statutes, section 124D.315, stating the following and referencing the updated integration rules that had recently been published in the state register:

“(4) for a district not listed in clause (1), (2), or (3) that is required to implement a plan according to the requirements of Minnesota Rules, parts 3535.0100 to 3535.0180, as proposed in 23 State Register 1344, December 7, 1998.”<sup>39</sup>

The three districts referenced in clauses (1), (2) and (3) are Duluth, Saint Paul and Minneapolis. This statute established the parameters for funding school districts required to submit an integration plan based on the current integration rule. Districts were also allowed to voluntarily participate in a plan and were funded accordingly.

Minnesota Statutes, section 124D.86, covered revenue-related requirements only and did not include language about integration policy. While this statute was in effect, policy provisions for integration programs were incorporated in the state rules, whereas the statute focused on integration funding and the integration budget approval process and included minimal language pertaining to integration plans.<sup>40</sup> This statute was modified several more times between 1999 and 2010, and was repealed in 2011, effective for revenue for the 2014 fiscal year.<sup>41</sup> The amendments to Minnesota Statutes, section 124D.86, added more details and requirements for the use of the revenue but these amendments never incorporated a specific integration policy section into the statute. Some important amendments that demonstrate Minnesota’s closer focus on the achievement gap include the initial inclusion of the phrase “achievement gap”<sup>42</sup> in

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<sup>36</sup> [Minn. Stat. § 124.315, subd. 3\(4\) \(1997\)](#). This provision states the following, “(4) for a district not listed in clause (1), (2), or (3)] that is required to implement a plan according to the requirements of Minnesota Rules, parts 3535.0200 to 3535.2200, the lesser of the actual cost of implementing the plan during the fiscal year or \$93 times the actual pupil units for the school year.” Clauses (1), (2), and (3) refer to the Duluth, St. Paul, and Minneapolis school districts.

<sup>37</sup> [1998 Minn. Laws, Ch. 397, Art. 2, Sec. 163](#).

<sup>38</sup> <https://www.revisor.mn.gov/statutes/?id=124&year=1998>. See also [Minn. Stat. 124D.86 \(1998\)](#).

<sup>39</sup> [Minn. Stat. § 124D.86, subd. 4 \(1999\)](#).

<sup>40</sup> For example, [Minn. Stat. § 124D.86, subd. 1b](#), about plan components clarifies that receipt of integration revenue is contingent upon a board approving a district’s plan. See [Minn. Stat. §124D.86 \(2010\)](#).

<sup>41</sup> [2011 Minn. Laws, Ch. 11, Art. 2, Sec. 51](#). See also [Minn. Stat. § 124D.86 \(2013\)](#).

<sup>42</sup>[2009 Minn. Laws, Ch. 96 Art. 1, Sec. 52-53](#). The term “achievement gap” was added in two places in 124D.86, in subdivision 1 talking about revenue and subdivision 1a, talking about budgets. The language was similar in both sections. For example, subdivision 1 was amended to read as follows: “Subdivision 1. Use of revenue. Districts must

124D.86 and the addition of a specific reference to the existing integration rule's definition of "protected students" <sup>43</sup> in 2009.

Prior to the enactment of the current achievement and integration statutes in 2013, Minnesota Statutes sections, 124D.861 and 124D.862, the department's statutory responsibility was to review and approve "budgets" that detailed the costs of implementing integration plans filed by districts under the rule.<sup>44</sup> Technically the department did not previously approve integration plans; however the current rule provides guidance and direction on specific types of programs and initiatives to be included in a district's plan.

Furthermore, the 2013 changes to state achievement and integration statutes added significant detail related to integration plan development and require specific goals in two areas:

*The plan must contain goals for:*

*(1) reducing the disparities in academic achievement among all students and specific categories of students under section 120B.35, subdivision 3, paragraph (b), excluding the student categories of gender, disability, and English learners; and*

*(2) increasing racial and economic integration in schools and districts.*

The current achievement and integration statutes also require alignment of achievement and integration plan goals with goals required under Minnesota Statutes, section 120B.11, that relate to the World's Best Workforce<sup>45</sup> with a joint public hearing on both.<sup>46</sup> Minnesota Statutes, section 120B.11, and the achievement and integration statutes, sections 124D.861 and 124D.862, were all adopted in the 2013 legislative session and cover all public school students in the state. The new statutes also establish alignment with other education requirements, such as with academic standards and English language proficiency.

Another change in the newly enacted achievement and integration statutes specifies that the commissioner has oversight to review the results of a district or charter school's integration and achievement plan. The department's proposed integration rule clarifies the commissioner's

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use integration revenue under this section must be used for programs established under a desegregation plan filed with the Department of Education according to Minnesota Rules, parts 3535.0100 to 3535.0180, or under court order. The revenue must be used to create or enhance learning opportunities which are designed to provide opportunities for students to have increased and sustained interracial contacts and improved educational opportunities and outcomes designed to close the academic achievement gap between white students and protected students as defined in Minnesota Rules, part 3535.0110, subpart 4, through classroom experiences, staff initiatives, and other educationally related programs, consistent with subdivision 1b.

<sup>43</sup> *Id.* The reference to "protected students as defined in Minnesota Rules, part 3535.0110, subpart 4" was also added to the statute in the same two sections where the term "achievement gap" was added". See *supra* note 42.

<sup>44</sup> Minn. Stat. § 124D.86 (2011).

<sup>45</sup> Minn. Stat. § 124D.861, subd. 3(a). This section states, "(a) To receive revenue under section 124D.862, the school board of an eligible district must incorporate school and district plan components under section 120B.11 into the district's comprehensive integration plan." See also [Minn. Stat. § 120B.11 \(2015\)](#).

<sup>46</sup> Minn. Stat. 124D.861, subd. 3(b). This section states, "(b) A school board must hold at least one formal annual hearing to publicly report its progress in realizing the goals identified in its plan. At the hearing, the board must provide the public with longitudinal data demonstrating district and school progress in reducing the disparities in student academic performance among the specified categories of students and in realizing racial and economic integration, consistent with the district plan and the measures in paragraph (a). At least 30 days before the formal hearing under this paragraph, the board must post its plan, its preliminary analysis, relevant student performance data, and other longitudinal data on the district's Web site. A district must hold one hearing to meet the hearing requirements of both this section and section 120B.11."

review process of a district or charter school's plan to support a district or charter school in meeting their plan goals. This oversight authority was previously found in the current integration rule and not in statute.

As stated above, the specificity of the new statutes creates misalignment with the current integration rule and requires changes to the rule. The state achievement and integration statutes now describe plan implementation, plan components, public engagement, and budget and progress reporting. These statutes are to be implemented with several other statutes, rather than in isolation or as a standalone program. It is the department's position that the purpose of the proposed integration rules is to provide additional clarity needed to implement the recently enacted achievement and integration statutes. It is not the intention or direction of the department's proposed rule to go beyond the parameters set forth in state statute or to legislate through rulemaking.

### **Achievement and Integration Rule Drafting Process and Working Group Basic Assumptions**

As stated earlier in this SONAR, the commissioner established a working group to review and align the new state achievement and integration statutes and the current integration rules. The recommendations from the working group submitted to the commissioner in January 2014 and the subsequent report submitted to the Legislature in February 2014 by the commissioner became the foundation for the department's proposed achievement and integration rule. Following the submission of this report to the Legislature, department staff used the working group's recommendations to craft the initial draft of the department's proposed achievement and integration rules.

When the working group reviewed the current integration rule and compared it to the newly enacted achievement and integration statutes, some basic assumptions were used as a foundation for forming its recommendations. These assumptions also formed the basis for the department's proposed achievement and integration rule. The working group also discussed current practices in the field and their effectiveness when crafting the department's proposed language. These discussions helped identify and form the framework for the proposed achievement and integration rules and guided the department's drafting of the proposed achievement and integration rules. The working group operated with the intention that the purpose of the proposed rule was to clarify the implementation of the new achievement and integration statutes. The group developed and utilized the following assumptions:

1. The department's proposed achievement and integration rules are to cover all Minnesota public school students.
2. The department's proposed achievement and integration rules will aid in implementation of the new achievement and integration statutes, Minnesota Statutes, sections 124D.861 and 124D.862, by providing guidance and additional clarity and do not legislate through the rulemaking process.

3. Current state statutes already exist that provide criteria for determining segregation, integration and discrimination.<sup>47</sup>
4. The working group decisions were informed by strategies that would get results for students, rather than counting and redistributing students.

Language in the proposed rule aligns with the new statutes and is based on the following assumptions:

1. The proposed rule language covers all Minnesota public school students in defined protected student categories. This resulted in the inclusion of:
  - American Indian students;
  - Charter school students;
  - Alternative Learning Center students; and
  - Contract alternative school students.

The only exception to the inclusion of the protected student categories included in the department's proposed rules are students assigned to care and treatment facilities under the supervision of other agencies in proposed Minn. R. 3535.0030, subp. 1, item C.

2. The proposed rule language adds clarity to state achievement and integration statutes related to:
  - What determines an "eligible district" required to submit an achievement and integration plan and receive revenue;
  - Defining a collaborative and its formation;
  - Distinguishing plan and goal requirements related to "economic" integration;
  - Achievement goals;
  - Incentive revenue uses; and
  - Commissioner evaluation process.
3. Current state and federal laws already exist that define discrimination:
  - Minnesota Human Rights Act, Chapter 363A;
  - Minnesota Statutes, Section 123B.30, Improper Classification of Pupils;
  - Minnesota Statutes, Section 124D.855, School Segregation Prohibited;
  - Minnesota Statutes, Section 127A.41, Reductions of Aid for Violation of Law (particularly subdivision 2, part (4) and (6)); and
  - Title IV of the Civil Rights Act of 1964.
4. The proposed rule language seeks to obtain results for students by supporting and clarifying the following:

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<sup>47</sup> See Appendix D: Minnesota State Statutes that Relate to Integration, Discrimination and Desegregation



- Policy and revenue contained in the new achievement and integration laws, Minnesota Statutes, sections 124D.861 and 124D.862;
- Alignment of proposed integration rules with Minnesota Statutes, section 120B.11, the World's Best Workforce; and
- Proposed achievement and integration rules are tied to Minnesota's graduation requirements and academic standards.

Using these assumptions as a foundation, drafts of the proposed academic and integration rules were reviewed by a smaller subcommittee of the original integration statute and rule alignment working group and feedback was provided. Drafts of the proposed achievement and integration rules were circulated amongst education groups, school district leaders, charter schools, charter school authorizers and their advocates and others. Feedback was also sought out by department staff from several specific interest groups in accordance with the department's Additional Notice Plan throughout the rulemaking process.

The initial draft of the proposed achievement and integration rules was posted on the department's integration rulemaking webpage and circulated according to the department's approved Additional Notice Plan following the publication of the Request for Comments. The department felt it was important to have a draft of the proposed rule ready for review when the Request for Comments was published to obtain early and helpful feedback from impacted communities. The department received over 60 comments on the initial proposed achievement and integration rule draft. Following the Request for Comments period, the department met with several specific interest groups that had submitted comments during the request for comments period to obtain additional feedback on the proposed rule and to ensure that the department understood the feedback received and understood external perspectives on the rule draft. The department met with groups including charter school representatives, the Saint Paul and Minneapolis NAACP, and representatives from the American Indian community. The comments the department received during the Request for Comments period also indicated that some misunderstandings existed related to parts of the proposed rule language and these smaller, targeted meetings helped the department facilitate important conversations with these interested groups to clarify their concerns and the department's intention with the proposed rule language.

The working group also identified additional issues for further study and consideration. These issues included the following:

- Ethnocentric schools/Language Immersion schools;
- Charter schools;
- Online programs. These schools are currently excluded from the department's definition of school, but these enrollment numbers are included in a district's overall pupil count for determining racially isolated districts;
- English learner sites;
- Special education students;

- Care and treatment facilities;
- How to serve students in a variety of education governance structures, such as cooperatives, intermediate districts, and education districts;
- Open enrollment guidelines that support pro-integrative enrollment that are aligned with a district's achievement and integration plan; and
- Incentives to support pro-integrative establishment of boundaries.

Public input during the initial review and comment period addressed some of these issues. After consideration of this input and the recommendations from the statute and rule alignment work group, the department relied upon the working group's assumptions outlined above as well as existing policy to determine the extent to which the proposed rule would address them. In order for the rule to cover all Minnesota students included in the protected student categories set forth in the proposed rule, the proposed rule does not exempt schools or programs from eligibility requirements with the sole exception of care and treatment facilities as stated above. Given the limited authority given to the department by the Legislature to create alignment between the new achievement and integration statutes and related rules, the department did not address open enrollment policy or school or district boundaries but anticipates additional public comment on these issues during future rulemaking comment periods.

## **ALTERNATIVE FORMAT**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Kerstin Forsythe Hahn at the Minnesota Department of Education, 1500 Highway 36 West, Roseville, MN 55113, phone: (651) 582-8583 or fax: (651) 582-8248.

## **STATUTORY AUTHORITY**

As stated earlier in this SONAR, the department's rulemaking authority to adopt rules in this area was clarified in statute by the 2014 Legislature.<sup>48</sup> The department's statutory authority to adopt the rules is set forth in Minnesota Statutes, section 124D.896, which provides:

### **124D.896 DESEGREGATION/INTEGRATION AND INCLUSIVE EDUCATION RULES.**

- (a) The commissioner shall propose rules relating to desegregation/integration and inclusive education, consistent with sections 124D.861 and 124D.862.

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<sup>48</sup> [2014 Minn. Laws, Ch. 272, Art. 3, Sec. 48](#). During the 2014 legislative session Minnesota Statutes, section 124D.896, was amended to clarify the department's specific rulemaking authority to propose integration rules that aligned with the new achievement and integration statutes. The session law included the following changes that clarified the department's rulemaking authority in this area: "124D.896 DESEGREGATION/INTEGRATION AND INCLUSIVE EDUCATION RULES. (a) ~~By January 10, 1999,~~ The commissioner shall propose rules relating to desegregation/integration and inclusive education, consistent with sections 124D.861 and 124D.862. (b) In adopting a rule related to school desegregation/integration, the commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the commissioner."

(b) In adopting a rule related to school desegregation/integration, the commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the commissioner.<sup>49</sup>

Under Minnesota Statutes, section 124D.896, the department has the necessary statutory authority to adopt the proposed rules.

## REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:”**

The proposed integration rule will affect Minnesota students, families, teachers, district staff, and educators. It will also impact communities since the achievement and integration plans are presented at public school board meetings which allow for input. The proposed rule will impact these communities positively as the current integration rule is in conflict with the state achievement and integration statutes, Minnesota Statutes, sections 124D.861 and 124D.862, passed in 2013. This conflict causes confusion and implementation challenges related to timelines and requirements for districts submitting an integration plan under the new statutes. The proposed achievement and integration rule will include all students within a public school setting, including charter schools, that fall within the protected student categories set forth in proposed Minn. R. 3535.0020, subp. 4. The current integration rule excluded certain education settings, including charter schools.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:”**

The probable costs to the agency of implementation and enforcement will be minimal because the department already has a division and program staff dedicated to managing achievement and integration plans submitted by districts across the state. Although there are likely no other costs for implementation and enforcement of the plans required in these specific statutes to any other state agency, if discrimination occurs, other agencies may need to aid in enforcement of current laws prohibiting discrimination. The recently passed statute sets aside 0.3 percent of achievement and integration revenue for department oversight and accountability activities required in Minnesota Statutes, section 124D.862.

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<sup>49</sup> Minn. Stat. § 124D.896 (2015).

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:”**

The purpose of the rule cannot be achieved through less costly methods. State achievement and integration law, Minnesota's statutes, section 124D.861, requires eligible districts to submit an achievement and integration plan to be eligible for achievement and integration funding. Furthermore, Minnesota statutes, section 124D.896, provides rulemaking authority for the department to craft applicable rules to assist and clarify implementation of the recently enacted achievement and integration laws. The Minnesota Legislature could choose to put the proposed integration and achievement rule language directly into state statute, but that was not the option chosen by the most recent Legislature. Instead, the Legislature clarified the department's rulemaking authority and directed the department to propose amended integration rules that aligned with the new state achievement and integration statutes.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:”**

The department considered reviewing other programs, such as teacher diversity and low-performing schools. However these programs did not fully address the policy set forth in the 2013 achievement and integration statutes and making changes to these programs would not comply with the direction the department received from the Legislature to align the current integration rule with the recently enacted achievement and integration statutes. The existing misalignment between the current integration rule and the achievement and integration statutes is causing confusion for districts required to submit integration plans. Because the department was directed by the Legislature through its rulemaking authority to propose integration rules that aligned with the new state achievement and integration statutes, the department chose to pursue that option.

**“(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:”**

The probable costs of complying with the proposed rule are not significantly greater than the costs borne by districts required to submit achievement and integration plans under the current rule. With the submission of budgets, district program and implementation costs are identified and revenue assigned under this program will be used to cover these costs. The revenue available to districts is identified in Minnesota Statutes, section 124D.862. Racially isolated districts are already required to submit an achievement and integration plan. The current

integration plan requirements found in state statutes are also now designed to reduce the number of submissions that districts must complete by encouraging districts to combine their plan submissions for academic achievement and integration goals and meeting the World's Best Workforce goals set out in Minnesota Statutes, section 120B.11. The current state statutes and the department's proposed rules also support districts holding one hearing or public meeting on these programs, rather than two separate hearings/public meetings. Thus, a district or affected party could experience a decrease in costs when complying with the proposed rule in combination with the new related state statutes.

**“(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals:”**

If the department did not act as directed by the Legislature to propose integration rules that aligned with the recently passed achievement and integration statutes, continued confusion would result in the education community related to the timelines for submission of achievement and integration plans and implementation of current and future achievement and integration plans. These consequences would result in racially isolated districts not meeting state law requirements for achievement and integration plan submission and would jeopardize districts receiving integration funding to support programs for protected students. An additional potential cost the department could incur would be related to litigation by protected students and their families for lack of support and services required under other state and federal laws, such as the Minnesota Human Rights Act and Title IV of the Civil Rights Act.

**“(7) an assessment of any differences between the proposed rule and current federal regulations and a specific analysis of the need for and reasonableness of each difference:”**

The proposed rule references the department's ability to enforce related statutes and federal regulatory provisions as the basis for determining discrimination. The department has made compliance with other applicable laws integral to the proposed rule, specifically, the references in the proposed rule to Minn. R. 3535.0010, subp. B.

**“(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule. . . . ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.”**

The primary objective of this rulemaking is to align Minnesota's integration rules with the new achievement and integration statutes passed in 2013. The current integration rules are in conflict with Minnesota Statutes, sections 124D.861 and 124D.862. The department researched other federal and state requirements related to the issues covered by the state achievement and integration statutes and chose to integrate them in the proposed rule as discussed above in

question #7. In addition, in carefully reviewing the new achievement and integration statutes, it appears the Legislature was attempting to make integration requirements work closely with other state requirements, such as those set out in Minnesota Statutes, sections 124D.861, subd. 2 and 120B.11.<sup>50</sup> This was likely done to prevent multiple and conflicting interpretations and to develop consistency around the policies set forth in related statutes.

## PERFORMANCE-BASED RULES

The newly developed legislation, Minnesota Statutes, sections 124D.861 and 124D.862, is titled “Achievement and Integration For Minnesota” and “Achievement and Integration Revenue,” respectively, to emphasize that both achievement and integration are important for the education of all students, particularly for protected students. These laws includes specific references to alignment with other state requirements, including incorporating requirements set out in Minnesota Statutes, section 120B.11, the World’s Best Workforce, and specific student categories identified under No Child Left Behind, Minnesota Statutes, section 120B.35, subd. 3. State statute specifically states that plans must contain goals to “reduc[e] the disparities in academic achievement among all students...”<sup>51</sup> The new achievement and integration statutes clearly outline the commissioner’s authority to work with districts’ achievement and integration programs. The department’s proposed rule clarifies the timelines related to the commissioner’s regulatory duties. The proposed rule also adds clarity about how to measure achievement by specifying that achievement goals must be related to academic growth or attainment.<sup>52</sup> Again, these achievement goals align with requirements set forth in the World’s Best Workforce found in Minnesota Statutes, section 120B.11.

## ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a February 6, 2015, letter by Administrative Law Judge Jeanne M. Cochran.

Our Notice Plan also includes giving notice required by statute and notice the department believed was necessary to broadly reach all impacted and affected individuals and communities. The department’s notice plan included the following notice actions:

- 1) Mailing/emailing to the department’s general official rulemaking mailing and emailing list under Minnesota Statutes, section 14.14, subd. 1a;
- 3) Posting on the department’s rulemaking website;
- 4) Mailing to a rule specific mailing list the department developed in consultation with achievement and integration program staff which includes individuals and entities that are

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<sup>50</sup> [Minn. Stat. § 124D.861, subd. 2](#) references numerous state statute requirements that district integration plans must also comply with. See also [Minn. Stat. § 120B.11](#). This statute sets forth World’s Best Workforce requirements, which are intended to work with Minnesota Statutes, sections 124D.861 and 124D.862.

<sup>51</sup> [Minn. Stat. § 124D.861, subd. 2 \(a\)](#).

<sup>52</sup> See the department’s proposed rule, Minn. R. 3535.0040.

specifically affected and/or impacted by the existing and proposed achievement and integration rule (see attached excel spreadsheet); and

5) Emailing the following department listserv groups: Superintendents listserv, Charter School listserv, School Improvement listserv<sup>53</sup>; and Integration E-Bulletin (the integration e-bulletin goes out to over 400 contacts).

6) Notifying the Minnesota Legislature under Minnesota Statutes, section 14.116.

7) Notifying all participants that served on integration and achievement-related taskforces and working groups.

The department's Additional Notice Plan did not include notifying the commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

The department believes our Additional Notice Plan complies with Minnesota Statutes, section 14.101, because our plan constitutes a good faith effort to seek information by a wide variety of methods designed to reach persons or classes of persons who might be significantly affected by the proposed rules. The department's Additional Notice Plan reaches specific interest groups, including parents, advocates, professionals, district staff, and individuals and entities interested in rulemaking in general.

## **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the department consulted with Minnesota Management and Budget (MMB). The department sent MMB copies of the documents that were sent to the Governor's Office for review and approval on the same day the department sent these documents to the Governor's office. The review by MMB was completed before the department published the Notice of Hearing. The documents submitted to MMB included: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the nearly final SONAR. The department will submit a copy of the cover correspondence and any response received from MMB to OAH at the hearing or with the documents it submits for ALJ review after the hearing.

MMB reviewed the department's proposed rules and this SONAR for any potential costs and benefits to local units of government. MMB determined that because the department's proposed rule changes eligibility criteria for a forecast program that is a mix of state and local revenue, that the department's proposed rule will have both state and local fiscal impacts. The MMB evaluation is summarized below.

The current rule defines eligibility for the Achievement and Integration Revenue program. Achievement and Integration Revenue supports districts in implementing a plan to raise

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<sup>53</sup> Following the approval of the Additional Notice Plan the department had further discussions with agency program staff and determined that the School Improvement Listserv was not an appropriate or necessary audience to send out integration rulemaking notifications and stopped using this ListServ as part of the rulemaking notification process.

achievement for protected student groups and integrate schools. This program is a combination of state aid (70%) and local levy (30%). A net increase in participation in this program will result in an increase to local levies and an increase in forecast state expenditures.

The department's proposed rule changes the eligibility criteria for the Achievement and Integration program in the following ways:

- Some districts that are currently compelled to participate in the program due to their proximity to eligible districts will not be required to participate under the proposed rule, but may do so voluntarily. An unknown number of districts would choose to leave the program and no longer receive Achievement and Integration Revenue. In those districts no longer participating, there would be a decrease in the local levy and a decrease in state aid coming into the district.
- Under the current rule, schools or districts that are deemed racially isolated due to a concentration of American Indian students are not eligible for the program. The department's proposed rule would make those schools and districts eligible for Achievement and Integration Revenue. This would increase the total number of participating districts from 45 to 85. In those districts local levies would increase and state aid payments would increase. A preliminary estimate by the Department of Education of the range of state and local costs shows local levies increasing by \$1.1 to \$2.4 million in FY 2018 and state aid increasing by \$2.8 to \$7 million in FY 2018.
- Charter schools are currently excluded from Achievement and Integration Revenue. Under the department's proposed rule if a charter school has 20% more students in a protected class than neighboring schools it is eligible to receive Achievement and Integration Revenue. The department estimates that approximately 100 charter schools will receive Achievement and Integration revenue if this rule is passed. These schools would receive an increase in state aid, but because they are charters they do not have levy authority. A preliminary estimate by the department indicates that state aid to charter schools would increase by \$6.9 million in 2018 and districts receiving that aid would be required to provide a local match of \$2.9 million. These represent the maximum amount of aid going to charter schools; however the payment to schools is capped at the total cost of implementing their Achievement and Integration plan. Because of this some schools will receive less than their maximum amount.

The MMB analysis also found that the department's proposed rule will increase local levies in some districts (between \$1.1 and \$2.4 million annually) as well as place new requirements on some local schools and districts that will carry a cost. Those new requirements will be offset by an increase in state aid going to newly eligible schools and districts, increasing forecast state expenditures (\$2.8- \$7 million annually). While some districts will leave the program, lowering the total amount of state aid, it is unclear how many of the districts that are now compelled to participate will opt out. This makes the net impact to state expenditures unknown.

In addition, charter schools that will be receiving aid as a result of this proposed rule change will need to identify a 30% local match (up to \$2.9 million annually) to the states 70% funding (up to \$6.9 million annually) of the schools calculated Achievement and Integration Revenue.



If the proposed rule does into effect the department will need to redesign some of their processes to meet the requirements of the proposed rule, as they have identified in their SONAR. Each year 0.3% of each district's initial Achievement and Integration revenue is available to the department for oversight of the program. It is likely that these adjustments can be accomplished using existing resources.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subd. 1, the department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The department has determined that they do not because the department's proposed rule applies to school districts and school districts do not fall under the statutory definition of "local government" as defined by statute as "a town, county or home rule charter or statutory city."

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The department has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages 18-21.

## **LIST OF WITNESSES**

When these rules go to a public hearing, the department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Dr. Anne Parks, supervisor of Equity and Innovation, department of Education, will testify about the implementation of the current achievement and integration statutes and the current challenges districts face using new statutes and old rules, including plan and budget submission and development and changes related to collaboratives.

2. Rose Hermodson, special assistant to the commissioner, department of Education, will testify about the development of the rule and the legislative task force and working group process.

3. Mr. Daron Korte, assistant commissioner, department of Education, will testify about the scope of the department's rulemaking authority and the department's intention to align the proposed rule and the current achievement and integration statutes.

4. Members that served on the integration statute and rule alignment working group and made recommendations for statutory changes and are involved with the current rulemaking proceeding, or members that were involved with the 1999 rulemaking proceeding may testify about their experience with developing both the current and proposed integration rules and their relevant expertise.

## **RULE-BY-RULE ANALYSIS**

The department considered whether it should draft an entirely new achievement and integration rule or amend the current integration rule because significant integration policy was now embedded in the newly enacted achievement and integration statutes, Minnesota Statutes, sections 124D.861 and 124D.862. Due to the incorporation of integration policy in state statute, the department decided to draft a new achievement and integration rule instead of amending the current rule. The current integration rule does not align with the achievement and integration statutes adopted in 2013. As a result, challenges exist for implementation, evaluation practices, definitions, timelines and processes at both the state and local level. For these reasons, the department decided to draft a new achievement and integration rule that aligned with the new achievement and integration statutes.

## **Proposed Permanent Rules Governing Achievement and Integration**

Throughout the department's proposed rule when references are made to an "eligible district" this term includes both a school district and a charter school, as defined in proposed Minn. R. 3535.0020, subp. 3. When referring to a "school district" throughout the rule the department most often used the phrase "district or charter school" to specify that the proposed rule language applies to both Minnesota public school districts and charter schools. This was done to clarify the application of the rule to all entities that serve public school students as stated in the guiding assumptions discussed above in this SONAR.

### **3535.0010 PURPOSE AND INTERACTION WITH OTHER LAW.**

**A. Parts 3535.0010 to 3535.0060 are intended to implement Minnesota Statutes, sections 124D.861 and 124D.862.**

**B. Parts 3535.0010 to 3535.0060 shall not be construed to limit the commissioner's, a district's, or a charter school's responsibilities and duties under Minnesota Statutes, sections 123B.30, 124D.855, and 127A.42, and chapter 363A, and Title IV of the Civil Rights Act of 1964.**

**C. American Indian students, who are members of sovereign nations, maintain their dual status under the provisions of parts 3535.0010 to 3535.0060.**

Part A of this subpart was added to the proposed rule to clarify that the department had specific rulemaking authority to amend the current integration rule to be consistent with the new achievement and integration statutes, Minnesota Statutes, sections 124D.861 and 124D.862. This language supports the department's position that the department does not have the legislative authority to draft rule language that goes beyond the scope of the new state achievement and integration statutes.

Part B was added to specify which laws were pertinent in helping the department determine discriminatory or segregating practices within public schools in Minnesota. The work group thoroughly reviewed these current statutes. It was decided that additional definitions (see part 3535.0020) and descriptions of what constitutes discriminatory practices or segregation within schools would not add clarity and might cause greater confusion as the department and districts move forward with implementation. The state achievement and integration statutes give the commissioner the authority to redirect revenue to implement an improvement plan if a district has not met its goals. Thus, the department and the work group decided that adequate authority already existed in these laws for the commissioner to review and prescribe corrective action to assure that Minnesota's public education system integrates students within schools and classrooms. It should also be noted that the commissioner of Human Rights has authority under Chapter 363A to address discriminatory practices that may occur because of actions by districts and public schools in Minnesota. All districts and charter schools are required to comply with Chapter 363A.<sup>54</sup> Federal law also addresses the issues related to integration and the rights of students in Title IV of the Civil Rights Act.<sup>55</sup>

Part C is included in the proposed rule because each sovereign nation has the right to determine its own members. This section is necessary to clarify that if an American Indian student is a member of a sovereign nation, that student maintains their dual status as an enrolled protected student under part 3535.0200, subp. 4, for an individual school or district that is implementing an achievement and integration plan. As stated in the 1999 Desegregation Rules SONAR, this language is important "to recognize that enrolled American Indian students are not only protected students but also members of political groups which are recognized as sovereign nations."<sup>56</sup>

### **3535.0020 DEFINITIONS.**

**Subpart 1. Scope. For purposes of parts 3535.0010 to 3535.0060, and for determining funding under Minnesota Statutes, section 124D.862, the terms defined in this part have the meanings given them.**

Subpart 1 was included because the department wanted to assure that the definitions used in Minnesota Statutes, section 124D.862, were consistently used in the proposed achievement and integration rule.

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<sup>54</sup> [Minn. Stat. § 124E.03, subd. 4\(b\) \(2014\).](#)

<sup>55</sup> See Appendix D: Minnesota State Statutes that Relate to Integration, Discrimination and Desegregation

<sup>56</sup> See *supra* note 2, p. 25, the 1999 Desegregation Rules SONAR.

**Subp. 2. Collaborative. "Collaborative" means:**

**A. A group of one or more districts adjacent to a district that qualifies under part 3535.0030, subpart 1, item A, that has voluntarily entered into an arrangement to develop and implement cross-district programs and activities that are aligned with part 3535.0040, item C;**

**B. A group of one or more charter schools that has voluntarily entered into an arrangement with a district that qualifies under 3535.0030, subpart 1, item A, to develop and implement programs and activities that are aligned with 3535.0040, item C; or**

**C. A group of one or more districts or charter schools that has voluntarily entered into an arrangement with a charter school that qualifies under part 3535.0030, subpart 1, item B, to develop and implement programs and activities that are aligned with part 3535.0040, item C.**

A definition of collaborative is necessary because the term collaborative is used in Minnesota Statutes, section 124D.861, but is not defined in the statute; thus the department defined it in the rule. This definition is also important because it clarifies how collaborative arrangements can be formed. In addition this definition clarifies the role of each member district or charter school as it participates in achievement and integration activities included in each collaborative member district or charter school's plan. This section is also necessary because it aligns collaborative arrangements more closely with requirements set forth in the recently enacted achievement and integration statutes.

The proposed rule language describes the three different voluntary collaborative arrangements that are allowable under the rule for eligible districts or charter schools. Section A allows for an eligible district with an adjacent district to enter into a collaborative. Section B allows for one or more charter schools to enter into a collaborative arrangement with an eligible district. Section C allows for one or more districts or charter schools to enter into a collaborative arrangement with an eligible charter school. The language in sections A-C also specifies that collaborative members must develop and implement programs and activities that align with the achievement and integration plan requirements set forth in proposed Minn. R. 3535.0040.

The collaborative arrangements included in the proposed rule are comprised of eligible districts or charter schools. A public hearing process is now required under both the achievement and integration statutes, section 124D.861, subd. 3(b), and the World's Best Workforce statute, Minnesota Statutes, section 120B.11. This hearing is intended to gather public input on district and charter school's achievement and integration plans and World's Best Workforce plans. Under the proposed rule, community input is gathered as part of the public hearing process unlike the current integration rule where public input was obtained through collaboration councils. This change helps resolve the misalignment issues between the existing achievement and integration statutes and the current integration rule.

This section is also important because it establishes that collaborative arrangements are now voluntary among member districts or charter schools. When districts or charter schools choose to join a collaborative arrangement, they may determine the specifics of their collaborative

arrangement including the fiscal, planning, and implementation responsibilities of each member district in accordance with Minnesota Statutes, sections 124D.861 and 124D.862.

**Subp. 3. Eligible district. "Eligible district" means a district or charter school required to submit a plan under part 3535.0030, subpart 1, or that is a member of a collaborative under part 3535.0020, subpart 2 and part 3535.0030, subpart 2.**

A definition of eligible district is necessary because Minnesota Statutes, section 124D.862, subd. 1, refers to eligible districts as those that are required by the rule to submit a plan. This section clearly identifies which districts must submit a plan.

State statute also indicates how an eligible district must use its revenue; however, this provision did not include specific criteria for an eligible district. Therefore, it was essential that the department define what constitutes an eligible district. Determining eligibility is fundamental to the implementation of the achievement and integration statutes. In other state laws, charter schools are sometimes considered districts. It is the department's intent to be clear that public school students enrolled in charter schools are covered by this rule and that charter schools are considered an eligible district if they are required to submit an achievement and integration plan under the proposed rule.

**Subp. 4. Enrollment of protected students. "Enrollment of protected students" means the sum of students in the district's or charter school's total enrollment identified in the following student categories:**

- A. American Indian/Alaskan Native;**
- B. Asian/Pacific Islander;**
- C. Hispanic; and**
- D. Black**

This definition is essential because it sets forth who is covered by the achievement and integration plans that eligible districts or charter schools are required to develop and submit. This definition clearly states the specific categories of students that are to be served by a school's achievement and integration plan that are referenced in Minnesota Statutes, section 124D.861, subd. 2. This statute specifically states that a plan must contain goals for these specific categories of students.

**Subp. 5. Protected student percentage. "Protected student percentage" equals a district's or a charter school's enrollment of protected students divided by the district's or the charter school's total enrollment.**

This definition is necessary because calculations using this definition will be used to determine who is an eligible district or charter school and who must develop an achievement and integration plan.

**Subp. 6. Total enrollment. "Total enrollment" means:**

**A. For a district, all students enrolled by the district plus resident students enrolled in an alternative learning center under Minnesota Statutes, section 123A.05, a**

**public alternative program under Minnesota Statutes, section 126C.05, subdivision 15, or a contracted alternative program under Minnesota Statutes, section 124D.69; or**

**B. For a charter school, all students enrolled.**

This definition is essential to clarify and determine the basis for the percentage for determining an eligible district.

### **3535.0030 ELIGIBLE DISTRICTS.**

**Subpart 1. Districts or charter schools required to submit plans.**

**A. A school district is required to submit a plan under Minnesota Statutes, section 124D.861, if:**

**(1) the district's protected student percentage equals or exceeds 20 percentage points; or**

**(2) a school site within the district with protected student enrollment that is 20 percentage points or more higher than the other school sites within the district serving the same grades.**

**B. A charter school must submit a plan under Minnesota Statutes, section 124D.861, if:**

**(1) the charter school's protected student percentage equals or exceeds 20 percentage points;**

**(2) the charter school has an enrollment of protected students that exceeds the enrollment of protected students of the nearest public school site serving the same but not necessarily all grade levels by 20 percentage points or more; or**

**(3) the charter school has an enrollment of protected students that is 20 percentage points or more lower than the enrollment of protected students of the nearest public school site serving the same grade levels.**

**C. Treatment facilities licensed by the Department of Human Services or the Department of Corrections are not considered schools or districts for the purposes of this part.**

To determine eligible programs, the current integration rule required a 20 percent disparity in enrollment of protected students in schools within a district or between neighboring districts. The work group recommended continuing to use the 20 percent factor to determine eligibility and require the development of an achievement and integration plan. The 20 percent figure was cited as a “commonly accepted benchmark” under the current rule and was based on federal case law.<sup>57</sup> This figure is both understood and accepted as current practice and supported by the work group. The 20 percent threshold also reflects the demographics of the districts

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<sup>57</sup> See *supra* note 2, p. 29, the 1999 Desegregation Rules SONAR.

currently required to implement an achievement and integration plan as racially isolated districts.

Under this section, additional districts will be required to submit an achievement and integration plan. Some of the newly eligible districts will qualify under proposed Minn. R. 3535.0030, subp. 1A(1), which does not rely upon a relative comparison of adjoining districts' enrollment data, but instead uses a district's percentage of enrolled protected students.

Some of the newly eligible districts will have a high percentage of American Indian students whom were previously excluded from enrollment counts when determining eligibility under the current integration rule.<sup>58</sup> Both Minn. R. 3535.0160, subp. 1B and 3535.0170, Sub. 1B of the current integration rule create an exemption for schools or districts with a high percentage of enrolled American Indian Students. The effect of this exemption is that districts and schools that have twenty percent or more enrolled protected students when compared with other schools or districts are not eligible to participate in the integration program if their enrolled protected students include more American Indian students than other protected student groups. This proposed rule section includes no such provision, specifying that American Indian student enrollment data be given special consideration when determining a school or district's eligibility.

Currently, 45 districts are required to participate in the integration program because they are considered racially isolated or have racially identifiable schools under the existing rule. By adding proposed Minn. R. 3535.0030, subp. 1A(1), and by not specifying how American Indian students are to be included in enrollment counts, 85 districts will be required to participate in the program.

Due to the longstanding achievement gap in Minnesota among protected students when compared with other student categories, interventions and supports for all protected students become essential. Plans to aid in closing that gap as well as programs and services to create equitable educational opportunities and reduce academic disparities for protected students is the focus of the achievement and integration statutes and the proposed rule. The work group looked at all classifications of students in all learning environments, including alternative learning centers, American Indian students, and students being served in charter schools. Providing the planning and resources to serve students of all racial and economic backgrounds is fundamental to providing a uniform and supportive education system in Minnesota. To assure success for protected students requires the implementation of programs and services to meet their specific needs. As of October 1, 2014, the state's portion of students who are non-white is 29.5 percent, a significant amount.<sup>59</sup>

This part of the rule is necessary because it establishes that charter schools and districts have the same responsibility for ensuring that all students are provided equitable educational opportunities and therefore uses the same threshold, 20 percent, for determining eligibility.

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<sup>58</sup> No district would have to drop from the program because they didn't have a district to collaborate with.

<sup>59</sup> According to the Minnesota Automated Reporting Student System (MARSS), the total enrollment in Minnesota public schools as of October 1, 2014 was 857,039. This included 252,574 minority students, giving a minority portion of 29.5%.

Thus, both districts and charter schools are eligible if their total enrollment includes 20 percent or more protected students, or if there is a 20 percent enrollment discrepancy of protected students when compared with at least one neighboring district boundary or in the case of charter schools, public school site attendance areas.

This proposed rule is designed to cover all protected students regardless of where they are served in the Minnesota public school system. The previous rule listed several exemptions, primarily tied to where students were being served. Section C of this subpart is necessary because the only exception within this proposed rule are students served in treatment facilities licensed and served by the Department of Human Services and the Department of Corrections due to the transitory nature of treatment facilities.

The department strongly believes that it is the state's responsibility to assure that all students are served equitably when reducing academic disparities and in realizing racial and economic integration regardless of the educational setting. When developing their achievement and integration plans, districts and schools are responsible for addressing the needs of students placed in alternative settings or those that have chosen to be educated at a charter school.

**Subp. 2. Collaborative option. A district or charter school may be part of a collaborative under the qualifications set forth in 3535.0020, subpart 2, items A-C. Participation in a collaborative arrangement is voluntary.**

The new achievement and integration statutes offer no description of a multi-district integration collaborative or its formation; thus additional clarification was needed in the rule about this option. This section of the proposed rule gives an eligible district or charter school the option of collaborating with a neighboring district, a charter school, or a group of district or charter schools that voluntarily agree to develop and implement achievement and integration activities together. The proposed rule includes a very clear statement that a collaborative arrangement is voluntary to assure that an eligible district or charter school understands that they have the option to enter into a collaborative arrangement but that participating in a collaborative is not required. The purpose of the collaborative is to enable adjacent districts or schools, a group of charter schools, or a group of districts or charter schools to work together to implement cross-district programs and activities that enroll and benefit students in all districts taking part in a collaborative that are required to develop and implement a plan under Minnesota Statutes, section 124D.861.

The eligible district may determine which districts or charter schools to work with. This enables the eligible district to choose partner districts that have the capacity and shared interest in providing activities which meet student needs. Collaborative member districts must agree on the cross-district activities which shall be included in their respective plans. Because funding formulas were changed by the new achievement and integration statutes, there may be less revenue available to some districts to support participation in a collaborative. Members of the rule work group acknowledged that implementing programs between districts can be complicated by scheduling conflicts, unequal levels of funding, or competing district objectives. Providing the option for districts or charter schools to willingly enter into a collaborative arrangement enables districts or charter schools to create greater opportunities for students in



all districts or charter schools involved in the collaborative while also recognizing possible limitations on entering into a collaborative arrangement.

Under the current rule, districts are required to establish councils comprised of community members that are representative of the diversity within each of the member districts. These Community Collaboration Councils<sup>60</sup> and Multidistrict Collaboration Councils<sup>61</sup> were to provide input on a district's integration plan. In practice, these collaborations became less about community involvement and evolved instead into a process by which district staff developed and implemented cross-district programs. Because districts are required to have a public hearing to gather community input on their district strategic plan under Minnesota Statutes, section 120B.11, the proposed rule does not specify that achievement and integration collaboratives include community members or seek community input on cross-district programs implemented by collaborative member districts.

The rule alignment working group also discussed the benefits and disadvantages some districts encountered with their integration collaboratives required under the current integration rule. For some, implementing cross-district achievement or integration activities with an adjacent district enabled them to provide student programming a district would not otherwise be able to provide on its own. Others identified a lack of meaningful cooperation between districts evidenced when districts planned for collaborative activities but were unable to implement them due to lack of participation by a collaborative member district. Giving districts the option to create an achievement and integration collaborative enables students to benefit from shared programming when such arrangements are feasible.

Further, Minnesota Statutes, section 124D.861, subd. 2(c), states that collaborations are one means for districts to create "efficiencies and eliminate duplicative programs and services," under a district's integration and achievement plan. This section of the proposed rule enables districts to utilize collaboratives for this purpose when efficiencies and benefits for students are likely to be realized. This section of the proposed achievement and integration rule is also intended to provide a qualifying or eligible district the option of choosing to work with other districts on cross-district activities based on that district's interest and ability to collaborate.

### **3535.0040 ACHIEVEMENT AND INTEGRATION PLAN REQUIREMENTS.**

**A. An eligible district or charter school is required to submit a plan under Minnesota Statutes, section 124D.861, and must implement its plan for the duration of the three-year plan period.**

**B. Consistent with Minnesota Statutes, section 124D.861, an eligible district or charter school shall include protected students and students eligible for free and reduced-price lunch in:**

**(1) plan development, including setting measureable achievement goals related to academic growth or attainment and setting measureable racial and**

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<sup>60</sup> [Minn. R. 3535.0160, subp. 2 \(2015\).](#)

<sup>61</sup> [Minn. R. 3535.0170, subp. 2 \(2015\).](#)

**economic integration goals that reflect increased opportunities and participation in programs and activities included in the plan;**

**(2) implementation;**

**(3) reporting; and**

**(4) evaluation.**

**C. Eligible districts or charter schools that are members of a collaborative shall include cross-district programs and activities in each eligible district or charter school's plan. These programs and activities shall align with each eligible district or charter school's achievement and integration goals and Minnesota Statutes, section 124D.861, and each eligible district or charter school's World's Best Workforce plan goals, under Minnesota Statutes, section 120B.11.**

**D. An eligible district with a parent committee required under Minnesota Statutes, section 124D.78, must consult with the parent committee in the development of the plan to address the economic integration and academic achievement issues of American Indian students.**

This section of the rule is important because it is intended to support Minnesota Statutes, section 124D.861, specifically, that an eligible district's plan is to promote racial and "economic integration" and academic achievement. Section A sets out the requirement that eligible districts or charter schools are required to submit a plan under Minnesota Statutes, section 124D.861, and that this plan must be implemented for a three year time period.

Section B outlines requirements set forth in Minnesota Statutes, section 124D.861, regarding eligible district achievement and integration plans. Plan components are outlined in statute and the references to statute in the proposed rule reiterate that the statutory requirements apply to eligible districts.

Section B has three important concepts important to the implementation of the statute: 1) although the categories of students that are used to establish whether a district or charter school is eligible are limited to the protected students as listed in the previous section of the department's proposed rule, Minn. R. 3535.0020, subp. 4, a district or charter school must also include the categories of students that are eligible for free and reduced-price lunch. This rule language clarifies that for purposes of plan development, implementation, reporting, and evaluation, a district or charter school must also include both protected students and students who qualify for free and reduced-price lunch. The inclusion of these students is intended to promote racial and "economic integration" as set forth in Minnesota Statutes, section 124D.861, subd. 1; 2) District and charter school plans must also include achievement goals as measured by growth or attainment and racial and economic integration goals as measured by increased opportunities and participation by students covered by district and charter school achievement and integration plans; and 3) Goals have to be consistent with activities specified in Minnesota Statutes, section 124D.861, which lays out allowable activities and uses of revenue that may be incorporated into eligible district or charter school plans.

This section of the rule also references economic requirements and clarifies that for purposes of this rule an eligible district's plan shall address the needs of students eligible for free and

reduced-price lunch. Section B also clarifies that an eligible district's achievement goals can relate to both academic growth or attainment. If a district is achieving its goals, the purpose of the district's plan would be to continue to meet these goals and achievement.

Section C sets forth specific requirements for collaborative member districts, stating what collaboratives must include in their plans and that these programs and activities must comply with state achievement and integration statutes. Section C also provides that a collaborative district plan must align with World's Best Workforce goals set out in Minnesota Statutes, section 120B.11. Minnesota Statutes, section 124D.861, clearly lays out the components of an integration plan and also clearly requires that an eligible district's integration plan be aligned with the World's Best Workforce requirements found in state law.

This section also clarifies that if an eligible district forms a collaborative, these statutory requirements apply to any collaborative activities included in a district's plan. Further, public hearing requirements in Minnesota Statutes, section 124D.861, subd. 3(b) (Achievement and Integration for Minnesota), are also required under both Minnesota Statutes, section 120B.11, (the World's Best Workforce), and for an eligible district's achievement and integration plan. Eligible districts must hold a single hearing to meet the requirements set forth in both Minnesota Statutes, sections 124D.861, subd. 3(b) and 120B.11. The proposed rule is designed to support the unitary nature of goal setting for both an eligible district's achievement and integration plan and the World's Best Workforce plan as it relates to a district's student population.<sup>62</sup> The intention is that a hearing that addresses both the requirements in Minnesota Statutes, sections 124D.861 and 120B.11, should be done in a public forum. Parents and district staff have a responsibility to attend the hearing and provide feedback on the eligible district's proposed plan prior to the district submitting the plan.

Section D is necessary because Minnesota statutes, section 124D.78, requires that a school board of a district where 10 or more American Indian students are enrolled establish an American Indian education parent advisory committee.<sup>63</sup> During the working group and rulemaking process, the department reached out to the Tribal Nations. The department was asked to work with Tribal Nations Education Committee (TNEC) members. This was done through a conference call with several representatives of the TNEC. A representative from the TNEC also served on the statute and rule alignment working group. This community thought it was important that parent committees be consulted in the development of achievement and integration plans. Following the request for comment period, the department also held meetings with interested American Indian community members as stated earlier in this SONAR, and as a result of these meetings the department clarified the language in this section to require that that the district developing the achievement and integration plan consult with the parent committee in the development of the plan. The department also clarified the language in this section in response to feedback received from the American Indian community that parents and students decide whether or not they participate in the activities the district includes in the plan by

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<sup>62</sup> These goals should complement and support each other if they are not one and the same.

<sup>63</sup> [Minn. Stat .124D.78, subd. 1 \(2015\).](#)

removing confusing language from this section that was originally included in the initial proposed rule draft.

### **3535.0050 INCENTIVE REVENUE CRITERIA.**

**Elementary or secondary programs for students included in an eligible district or charter school's plan qualify to be funded with incentive revenue under Minnesota Statutes, section 124D.862, if it provides:**

**A. courses for credit;**

**B. classes that meet Minnesota adopted academic standards at the elementary or middle school level; or**

**C. summer programs that support student achievement and reduce academic disparity.**

This section of the rule is to clarify acceptable uses of achievement and integration revenue set forth in Minnesota Statutes, section 124D.862, subd. 2. Utilization of incentive revenue by a district is voluntary. Proposed Minn. R. 3535.0050 provides that a district may use integration incentive revenue if a district's plan includes intra- or inter-district activities that meet the criteria set forth in the department's proposed rule. The current integration rule and previous integration statute included no separate funding formula for a similar purpose. The department's proposed rule establishes basic criteria aligned with the purpose of incentive revenue in Minnesota Statutes, section 124D.862, subd. 2, which is intended to fund programs that reduce racial and economic enrollment disparities. Qualifying programs are those that meet one of the three criteria listed above in this proposed rule section and are implemented as cross-district programs by districts participating in a collaborative arrangement or as intra-district programs by a district that is eligible under proposed 3535.0030, subp. 1A(2).<sup>64</sup>

These three criteria were included in the proposed rule because they relate directly to what is needed for a child to make academic progress, to graduate, and to make progress towards meeting academic growth and attainment. At the same time these criteria also provide a means for reducing racial and economic enrollment disparities between districts or between schools. By specifying that programs to be funded with incentive revenue enroll students for long-term programs such as classes or summer programs rather than short-term activities such as field trips, these criteria are designed to create effective and positive benefits for enrolling students to meet academic requirements. In this way districts are incentivized to develop programs that impact student achievement while also addressing racial and economic enrollment disparities. Lastly, these criteria also align with plan components in Minnesota Statutes, section 124D.861.

### **3535.0060 PLAN EVALUATION.**

**The commissioner, in evaluating the efficacy of eligible district or charter school plans, shall identify the goals set by the eligible district or charter school in both achievement and integration and determine if the eligible district or charter school has met its goals in**

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<sup>64</sup> This proposed rule section requires that a school that has twenty percent or more enrolled protected students when compared with other schools in the district.

**both achievement and integration by the end of its three-year plan. The commissioner shall commence the evaluation process prior to the third year of the plan. The commissioner may consult with the eligible district each year of the three-year plan in order to identify progress towards meeting the eligible district or charter school's achievement and integration goals. During the evaluation process, the commissioner may approve plan and budget adjustments to aid an eligible district or charter school in meeting its achievement and integration goals during the final year of the plan.**

This section is needed because the department wanted to clarify the timing of the commissioner's evaluation of eligible district and charter school achievement and integration plans. The commissioner's evaluation involves reviewing progress towards the goals set by individual districts and charter schools and included in a district or charter school's plan. The commissioner will evaluate each plan's effectiveness by determining the extent to which a district or charter school has made progress towards its goals in academic performance and racial and economic integration under Minnesota Statutes, section 124D.861. The commissioner also must review the goals the district or charter school has established under the World's Best Workforce, under Minnesota Statutes, section 120B.11. Annual reviews such as these provide districts and charter schools with additional checkpoints to review their progress towards reaching goals in their three-year achievement and integration plans.<sup>65</sup>

The proposed rule also attempts to clarify timelines related to the evaluation process so that a district or charter school can receive feedback before the final year of its three-year plan. In order to do this, the commissioner will ask districts and charter schools to submit annual progress reports. These reports will help districts and charter schools track the impact of their plan's activities and support continuous improvement efforts by establishing a cycle of implementation, evaluation, and adjustment of plan activities. This annual feedback on progress toward goals will enable the commissioner to provide additional support and assistance to districts and charter schools while also providing feedback as they develop their subsequent three-year plan.

The proposed rule allows the commissioner, through the evaluation process, to assist districts and charter schools in making plan adjustments to help them reach their goals by the end of the three-year plan cycle. This portion of the proposed rule works to bridge the gap between when a district must submit a new plan--March 15 of the third year of the current plan--and when the commissioner is required by law to submit her final evaluation of the district's plan and its ability to meet plan goals--August 1 following the third year of the plan). Furthermore, an evaluation process with an annual, formative assessment component such as this will also support district and charter school's efforts to report on progress toward plan goals at their annual public meeting/hearing required under Minnesota Statutes, section 124D.861 subd. 3 (b).<sup>66</sup>

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<sup>65</sup> Districts currently submit an annual report to the department for review by program staff. 2015 is the first year that districts will be submitting a report under the World's Best Workforce. This report and review can also be used as checkpoint for achievement and integration plans. Under the World's Best Workforce, Minnesota Statutes, section 120B.11, subd. 9, the Commissioner can also require a district to use a certain amount of its revenue to implement strategies and practices to improve a districts progress in realizing its goals under this program.

<sup>66</sup> Minn. Stat. § 124D.861, subd. 3(b).

State statute also provides that if a district has not met its goals, the commissioner has the authority to redirect revenue to implement an improvement plan if a district has not met its goals. This includes the commissioner's authority to develop a district improvement plan and timeline using up to 20 percent of a district's integration revenue, to implement the district's plan until the district's goals have been met.<sup>67</sup> The proposed rule language supports the commissioner's authority to establish an improvement plan for districts and charter schools not meeting their goals and clarifies the timeline within which this support will occur.

## CONCLUSION

Minnesota has a long history with the integration of its public schools and continues to face significant changes in the demographics of its student population. This changing population has required the state to address achievement gap disparities impacting Minnesota's protected student groups. Currently, public schools are wrestling with implementing new achievement and integration statutes while also operating under an outdated state integration rule. The misalignment between the new achievement and integration statutes and the current integration rule creates difficult challenges for districts required to develop, submit, and implement an achievement and integration plan and impacts the positive effects integration plans can have on Minnesota's students. The department was directed by the Legislature to align the recently enacted achievement and integration statutes and the current integration rule to enable districts to develop and implement achievement and integration plans that meet statutory requirements and benefits all Minnesota students, particularly protected students. The proposed achievement and integration rule will reconcile the inconsistencies found between the current statute and rule and will greatly improve the educational outcomes of all Minnesota students.

Based on the foregoing, the proposed rules are both needed and reasonable.

October 5, 2015



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Date

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Brenda Cassellius  
Commissioner, Department of Education

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<sup>67</sup> Minn. Stat. § 124D.862, subd. 8(c)(1)-(2).

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## Minnesota Session Laws

[1993 Minn. Laws, Ch. 224, Art. 12, Sec. 5.](#)

[1994 Minn. Laws, Ch. 647, Art. 8, Sec. 1.](#)

[1995 Minn. Laws, Ch. 3, Art. 15, Sec. 4.](#)

[1998 Minn. Laws, Ch. 397, Art. 2, Sec. 163.](#)

[1998 Minn. Laws, Ch. 398, Art. 5, Sec. 7.](#)

[2000 Minn. Laws, Ch. 254, Sec. 35.](#)

[2000 Minn. Laws, Ch. 489, Art. 2, Sec. 6](#)

[2003 Minn. Laws, Ch. 129, Art. 1, Secs. 1-6](#)

[2003 Minn. Laws, Ch. 130, Sec. 1.](#)

[2009 Minn. Laws, Ch. 96, Art. 2, Secs. 52-54.](#)

[2011 Minn. Laws, Ch. 11, Art. 2, Secs. 42, 49, and 51.](#)

[2013 Minn. Laws, Ch. 116, Art. 3, Secs. 29 and 32.](#)

[2014 Minn. Laws, Ch. 272, Art. 3, Sec. 48.](#)

## Minnesota State Statutes

[Minn. Stat. § 120B.11 \(2015\)](#)

[Minn. Stat. § 121.11, subd. 7d \(1993\)](#)

[Minn. Stat. § 121.11 \(1997\).](#)

[Minn. Stat. § 124.312, subd. 4 \(1995\)](#)

[Minn. Stat. § 124.315, subd. 3\(4\) \(1997\).](#)

[Minn. Stat. § 124D.855.](#)

[Minn. Stat. 124D.86 \(1998\).](#)

[Minn. Stat. § 124D.86, subd. 4 \(1999\).](#)

[Minn. Stat. §124D.86 \(2010\).](#)

[Minn. Stat. § 124D.86 \(2012\).](#)

[Minn. Stat. § 124D.86 \(2013\).](#)

[Minn. Stat. § 124D.861 \(2015\).](#)

[Minn. Stat. 124D.862 \(2015\)](#)

[Minn. Stat. 124D.896 \(1998\)](#)

[Minn. Stat. § 124D.896 \(2015\).](#)

[Minn. Stat. § 124D.03 \(2015\)](#)

[Minn. Stat. § 124D.68 \(2015\)](#)

[Minn. Stat. .124D.78, subd. 1 \(2015\).](#)

[Minn. Stat. Ch. 124E](#)

[Minn. Stat. § 124E.03, subd. 4\(b\) \(2014\).](#)

[Minn. Stat. § 127A.05, subd. 4.](#)

## **Minnesota Rules**

[Minn. R. 3535.0100-3535.0180 \(2015\)](#)



## List of Appendixes

**Appendix A:** Minnesota Department of Education 1999-2015 Statewide Protected Student Enrollment.

**Appendix B:** 2013 National Assessment of Education Progress Data

**Appendix C:** Integration Revenue Replacement Task Force Report Submitted to Legislature on February 15, 2012.

Taskforce materials related to the Integration Revenue Replacement online at:

<http://education.state.mn.us/MDE/Welcome/AdvBCT/IntegRevReplaceTaskForce/index.html>).

**Appendix D:** Minnesota State Statutes that Relate to Integration, Discrimination and Desegregation

- Minn. Stat. § 124D.861 Achievement and Integration for Minnesota
- Minn. Stat. § 124D.862 Achievement and Integration Revenue
- Minn. Stat. § 124D.896 Desegregation/Integration and Inclusive Education Rules
- Minn. Stat. § 124D.855 School Segregation Prohibited
- Minn. Stat. § 123B.30 Improper Classification of Pupils
- Minn. Stat. § 127A.42 Reduction of Aid for Violation of Law
- Minn. Stat. § 124D.892 Office of Desegregation/Integration
- Minn. Stat. § 124D.87 Interdistrict Desegregation or Integration Transportation Aid
- Minn. Stat. § 124D.03 Enrollment Options Program

**Appendix E:** Integration Rule and Statute Alignment Work Group, Recommendations to the Commissioner; Submitted to the Legislature on February 14, 2014.

All materials related to the Integration Rule and Statute Alignment Work Group report are available online here:

<http://education.state.mn.us/MDE/Welcome/AdvBCT/IntegrationRuleandStatuteAlignmentWorkGroup/index.htm>.



### 1999-2015 Statewide Protected Student Enrollment

School Year	Total Enrollment	Protected Student* Enrollment	Percentage Protected Students
1998-99	856,438	129,757	15.20%
1999-00	855,076	137,184	16.00%
2000-01	854,269	145,837	17.10%
2001-02	851,326	153,240	18.00%
2002-03	846,786	159,855	18.90%
2003-04	842,687	166,935	19.80%
2004-05	838,187	173,359	20.70%
2005-06	838,582	182,132	21.70%
2006-07	840,116	191,086	22.70%
2007-08	837,077	197,042	23.50%
2008-09	835,436	203,300	24.30%
2009-10	836,183	208,622	24.90%
2010-11	837,191	214,752	25.70%
2011-12	838,975	220,149	26.20%
2012-13	844,702	228,178	27.00%
2013-14	850,366	242,342	28.50%
2014-15	856,681	252,407	29.50%

#### Kindergarten Only Enrollment

School Year	Total Enrollment	Protected Student* Enrollment	Percentage Protected Students
1998-99	61,023	11,081	18.20%
2014-2015	64,437	21,242	33.00%

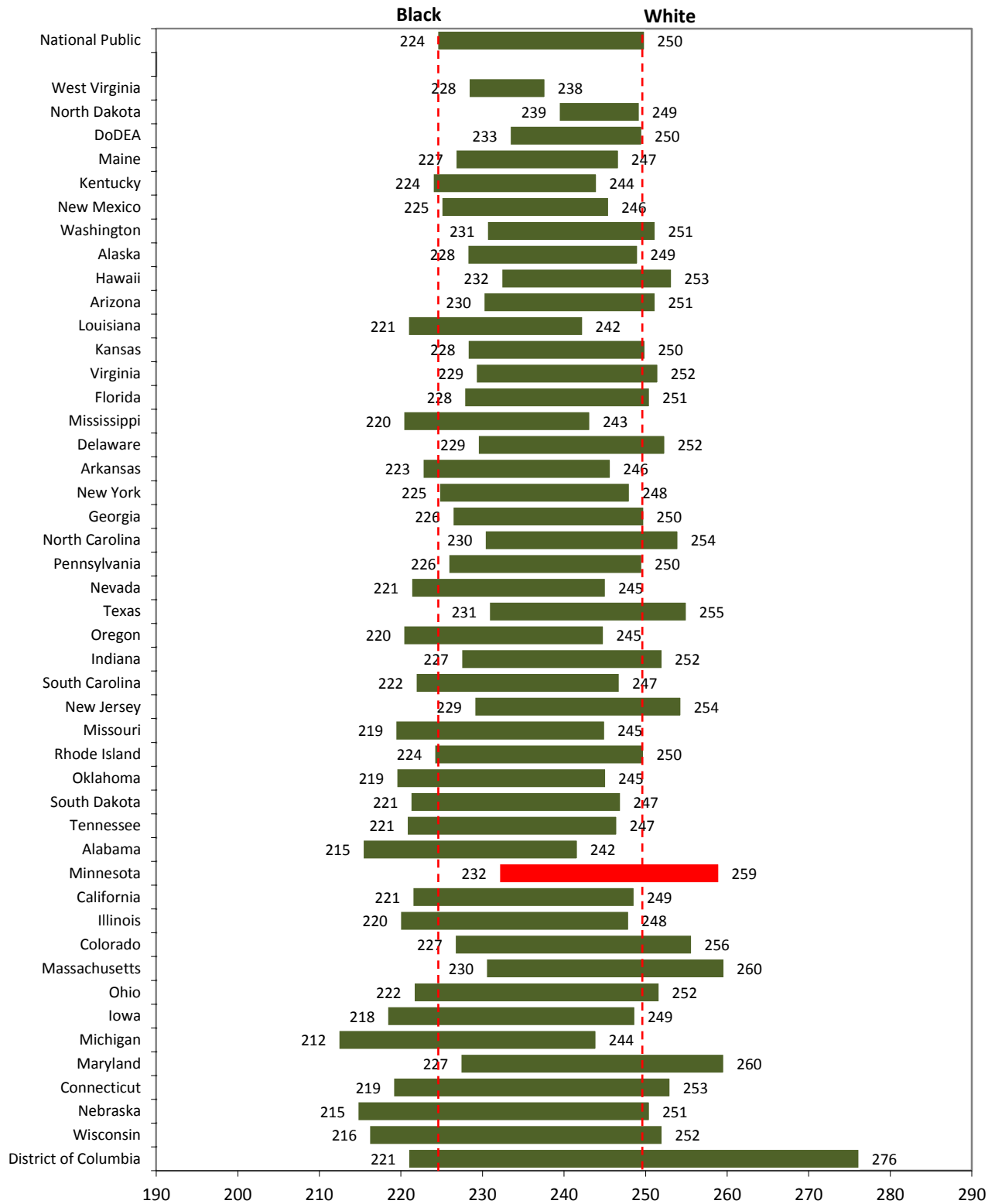
#### First Grade Only Enrollment

School Year	Total Enrollment	Protected Student* Enrollment	Percentage Protected Students
1998-99	62,039	11,401	18.40%
2014-2015	65,760	21,474	32.70%

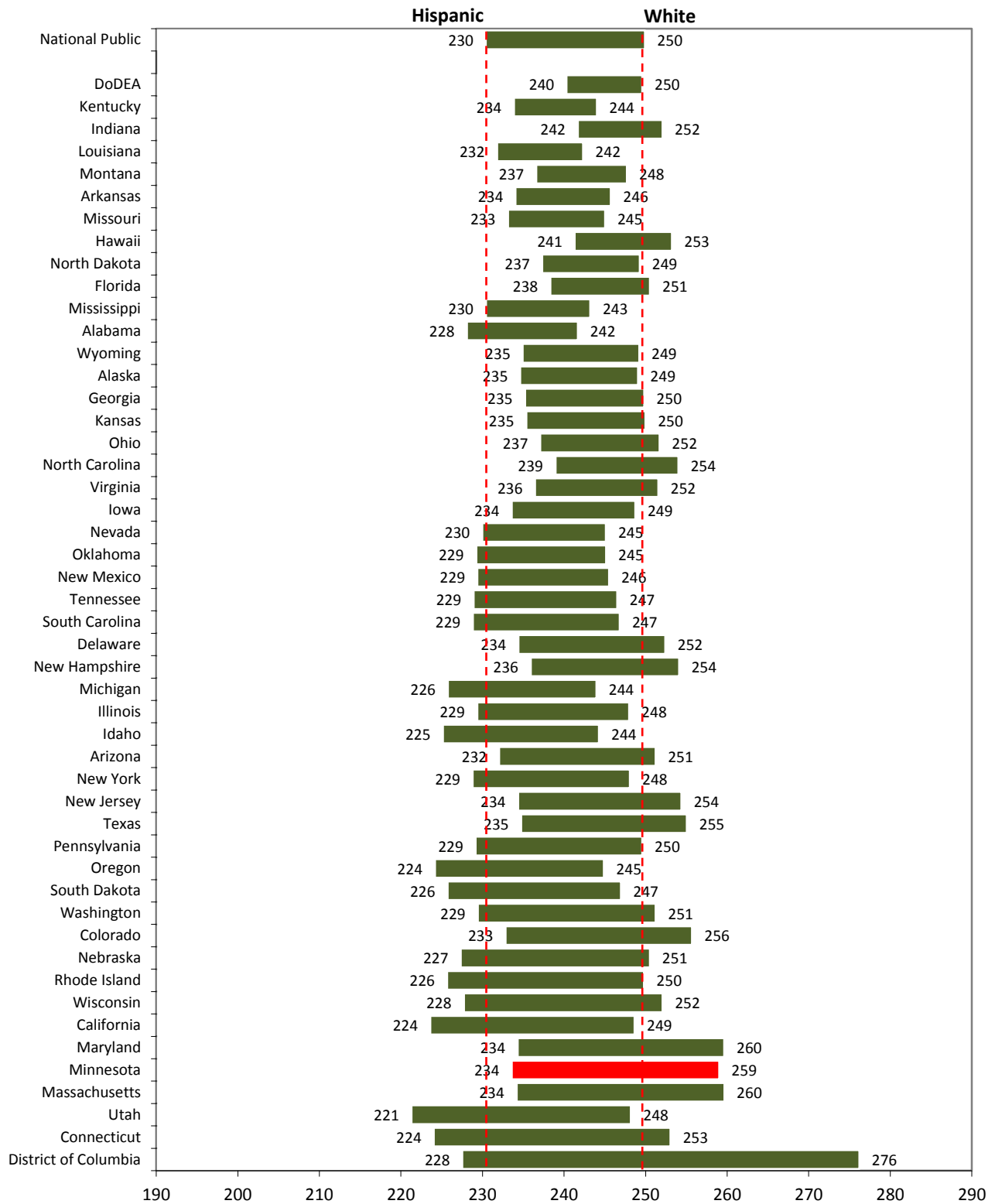
\*Protected students includes all students enrolled in any school within the district and reported in one of the following categories: American Indian/Alaskan Native, Asian/Pacific Islander, Hispanic, and Black.

Appendix B: Achievement and Integration SONAR

**NAEP Mathematics Grade 4 – White - Black**  
*Gap - Average Scale Score: 2013*

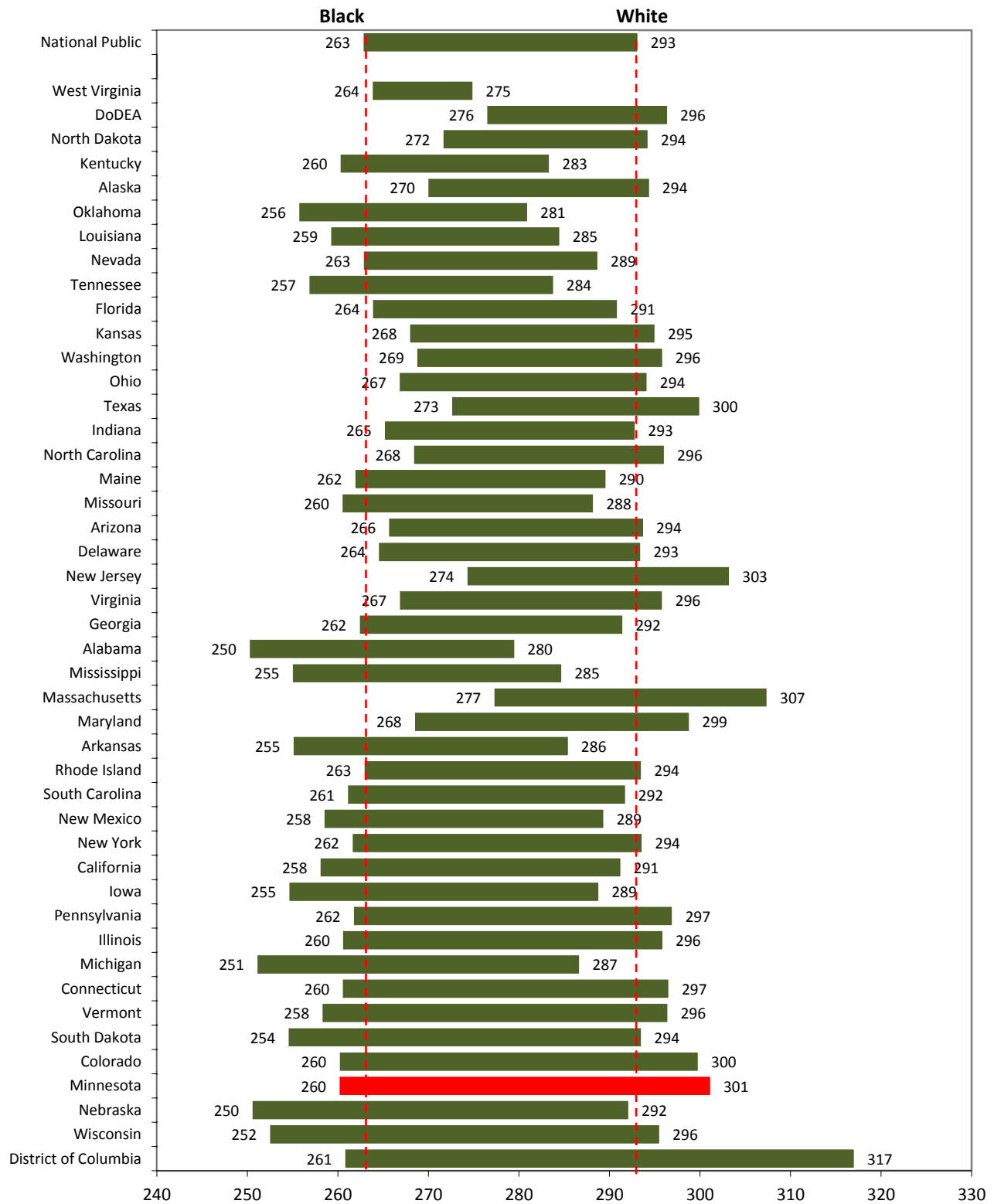


**NAEP Mathematics Grade 4 – White - Hispanic**  
*Gap - Average Scale Score: 2013*



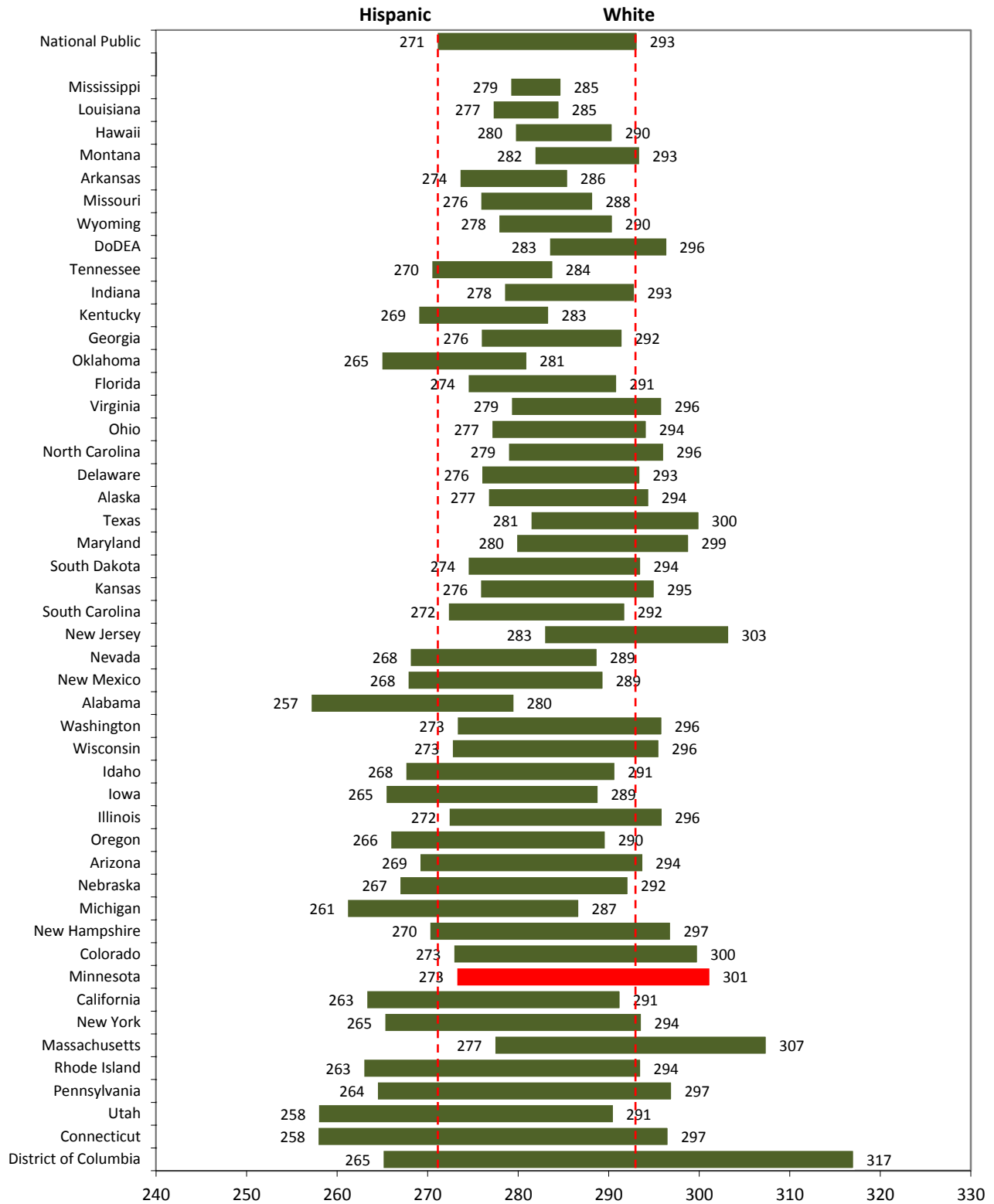
Appendix B: Achievement and Integration SONAR

**NAEP Mathematics Grade 8 – White - Black**  
*Gap - Average Scale Score: 2013*



Appendix B: Achievement and Integration SONAR

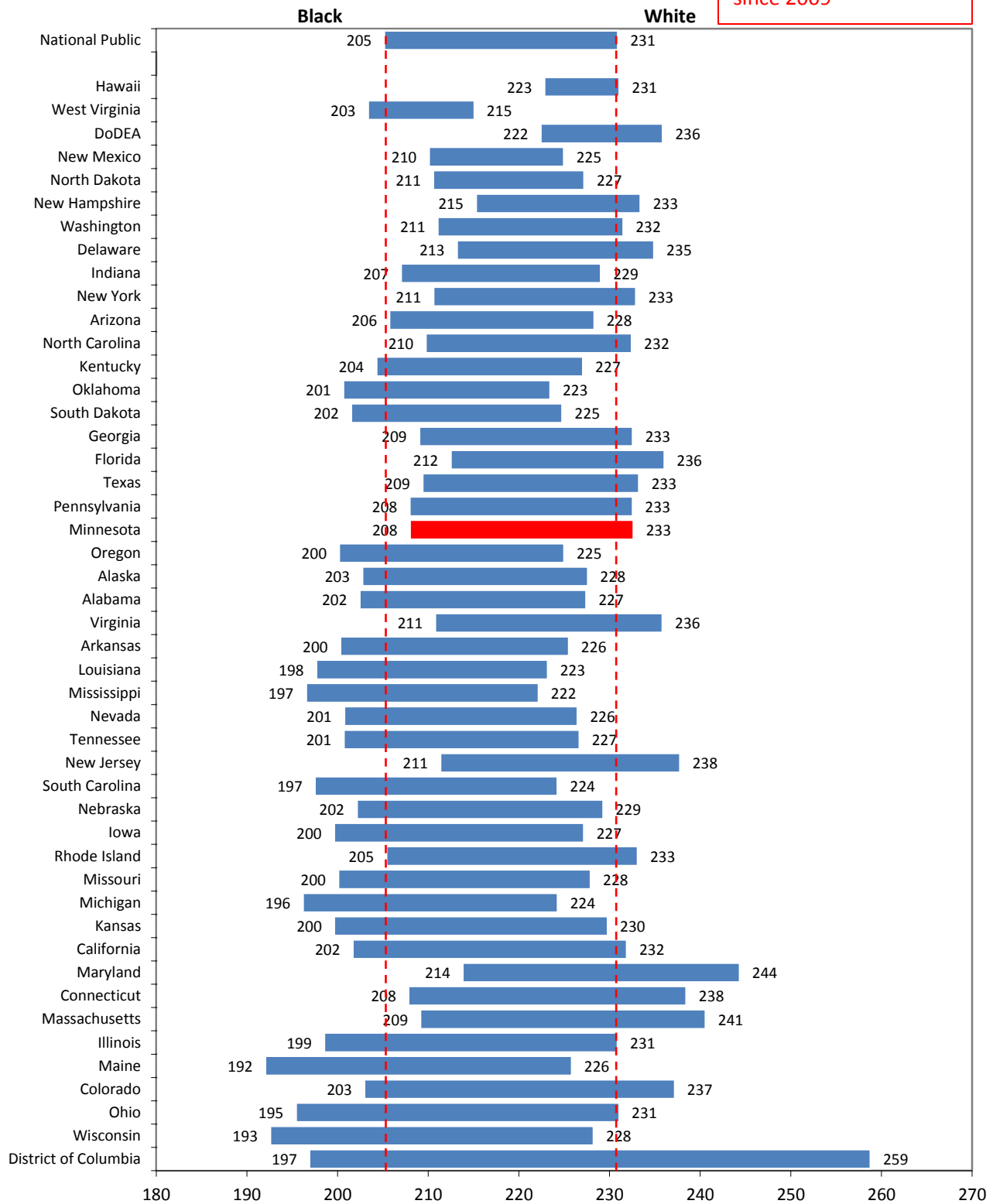
**NAEP Mathematics Grade 8 – White - Hispanic**  
*Gap - Average Scale Score: 2013*



# Appendix B: Achievement and Integration SONAR

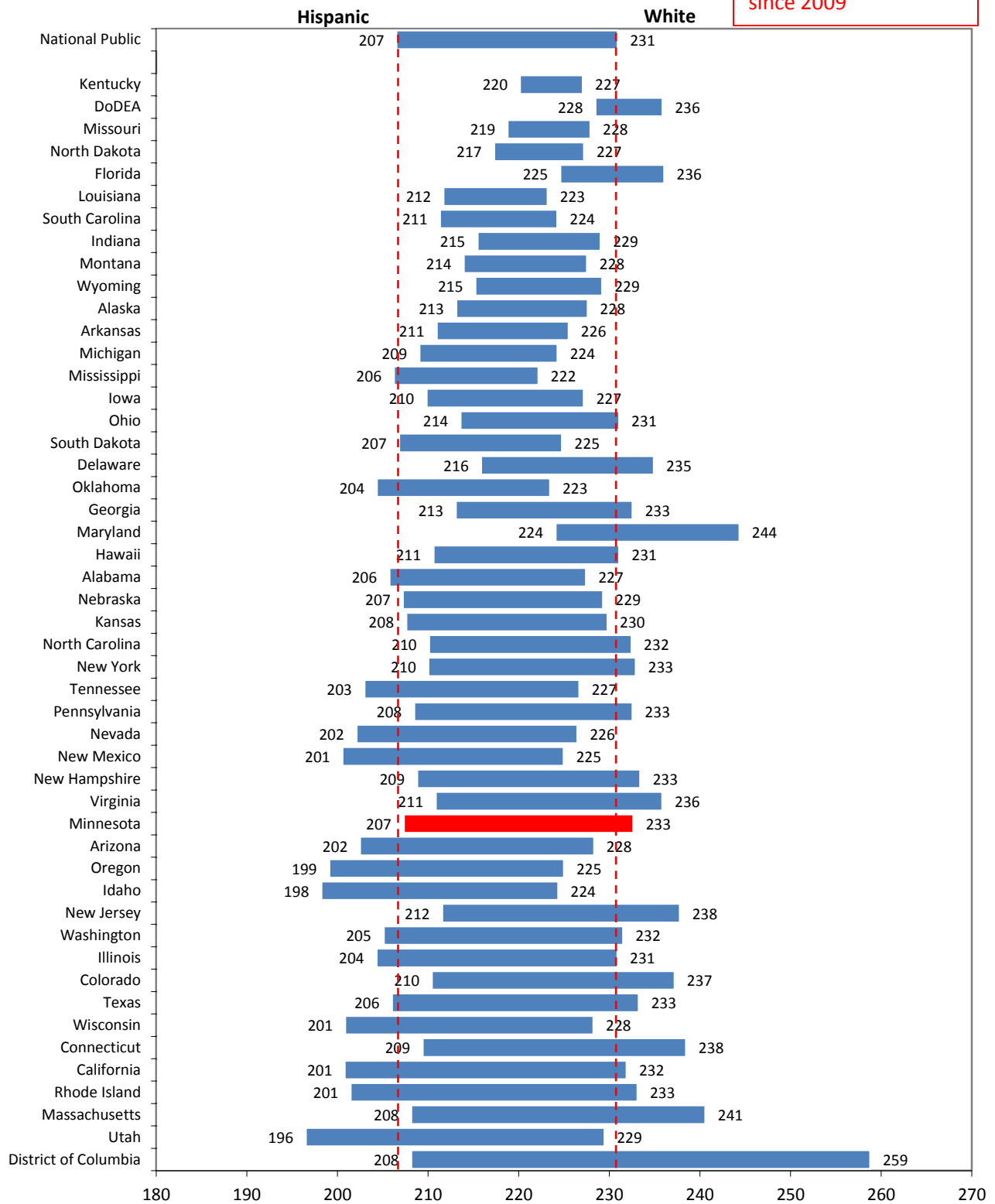
## NAEP Reading Grade 4 – White - Black Gap - Average Scale Score: 2013

Minnesota's gap has decreased by 10 points since 2009



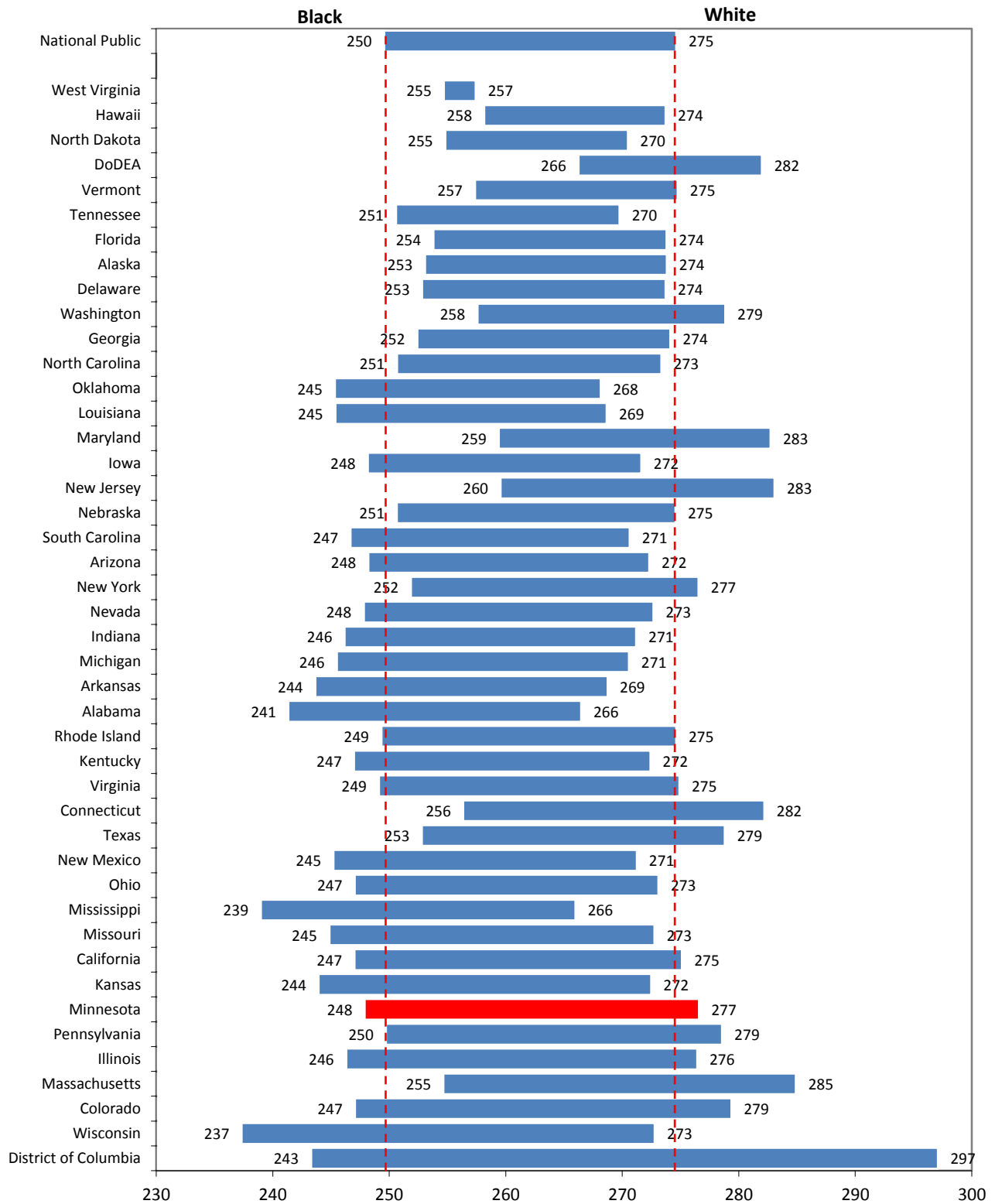
**NAEP Reading Grade 4 – White - Hispanic**  
*Gap - Average Scale Score: 2013*

Minnesota's gap has decreased by 10 points since 2009

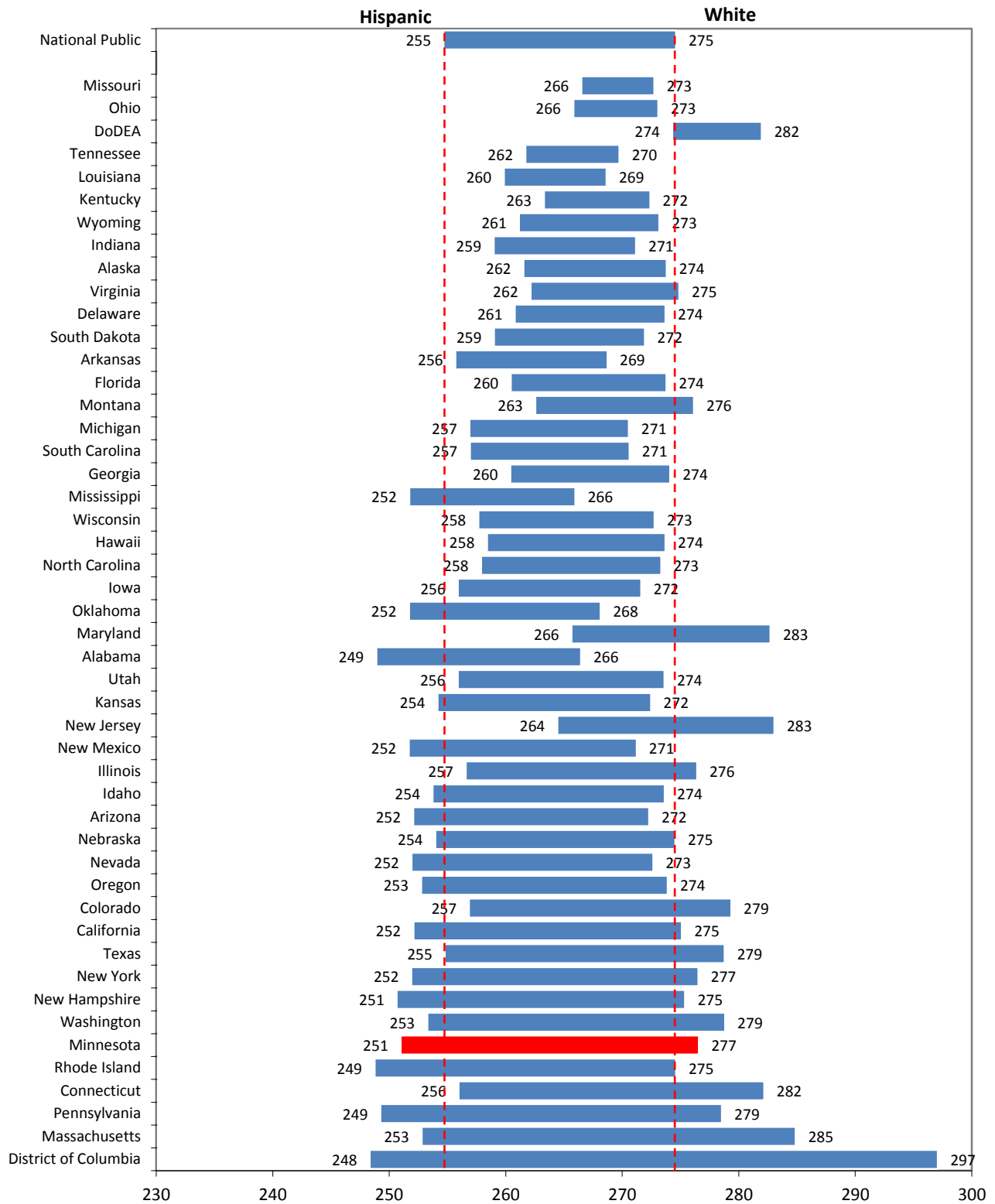




### NAEP Reading Grade 8 – White - Black Gap - Average Scale Score: 2013



**NAEP Reading Grade 8 – White - Hispanic**  
*Gap - Average Scale Score: 2013*



This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <http://www.leg.state.mn.us/lrl/lrl.asp>

**Integration Revenue Replacement**  
**Advisory Task Force**  
**Recommendations**

**February 15, 2012**

**As required by**  
**2011 First Special Session, Chapter 11**

## Legislative Charge

### **INTEGRATION REVENUE REPLACEMENT ADVISORY TASK FORCE.**

- (a) The commissioner of education must convene a 12-member advisory task force to develop recommendations for repurposing integration revenue funds to create and sustain opportunities for students to achieve improved educational outcomes. The advisory task force, among other things, must consider how districts may effectively narrow and close the academic achievement gap and foster academic success for students by:
  - (1) pursuing specific academic achievement goals premised on continuous adapting of best teaching practices and efficient use of resources, and;
  - (2) identifying variables to show annual progress toward achieving student, school, and district goals for student's academic success.
- (b) The funding allocation for the new program should ensure funding stability for districts between the current integration program and the new program. The money shall be used for the purposes recommended and forwarded by the task force and approved and appropriated by the Legislature.
- (c) The advisory task force is composed of: six members appointed by the commissioner of education, three members appointed by the speaker of the house, and three members appointed by the Subcommittee on Committees of the Committee on Rules and Administration. The commissioner must convene the first meeting of the task force and offer assistance to the task force upon request. Task force members must seek input from organizations and individuals whose expertise can help inform the work of the task force and must develop recommendations to improve the academic achievement of students.
- (d) The commissioner, on behalf of the task force, must submit a report to the Legislature by February 15, 2012, recommending how best to allocate funds previously allocated under Minnesota Statutes, section 124D.86, to achieve improved educational outcomes for students.

## Task Force Members

### Commissioner's Appointees

Helen Bassett, Golden Valley, Robbinsdale School Board Member

William Green, Professor, Augsburg College and Former Minneapolis Superintendent

Myron Orfield, Executive Director, Institute on Race and Poverty, University of Minnesota

Betty McAllister, Retired Middle School Principal, Nobles County Integration Collaborative

State Representative Carlos Mariani, representing St. Paul

Scott A. Thomas (**Task Force Co-Chair**), Educational Equity Coordinator for the Rosemount-Apple Valley-Eagan School District

### House Appointees

Robert A. Erickson, Lakeville School Board Member

Katherine Kersten, Center of the American Experiment Fellow

Peter A. Swanson (**Task Force Co-Chair**), Attorney, Golden Valley

### Senate Appointees

Reverend Robert Battle, Senior Pastor of Berean Church of God in Christ, St. Paul

Arthur Brown, University of Minnesota Family Development Research Associate, Minneapolis

State Senator Pam Wolf, representing Spring Lake Park and Blaine

## Meetings and Information

The Integration Revenue Replacement Task Force met on November 15 and 29, December 13 and 20, January 10, 17, 24 and 31, and February 7.

The Task Force received written and oral submissions from parents, students, teachers, and concerned citizens. The Task Force also invited several experts and stakeholders to appear and provide information. The list of these presenters is as follows:

### **Minnesota Rule 3535**

Anne Parks, Minnesota Department of Education (MDE) Integration Specialist

### **Statewide Integration Revenue Program**

Judy Randall, Office of the Legislative Auditor

### **Demographic Changes in the State**

Tom Gillaspay, State Demographer

### **Education Finance**

Tom Melcher, MDE Program Finance Director

### **Metropolitan Area Integration Collaboratives**

Dan Jett, WMEP and Pat Gleason, Wayzata

Mark Robertson, NWSISD

Jerry Robicheau, EMID; Cristina Gillette, EMID Board Chair; Robert Rostron, former EMID student

### **Minneapolis and St. Paul**

James Burroughs II, Minneapolis Public Schools (MPS); Jim Grathwol, MPS Lobbyist; Shana Olagbaju, Integration Coordinator, MPS

Valeria Silva, St. Paul Public Schools (SPPS); Michelle Walker, Chief Accountability Officer for SPPS; Mary Gilbert, SPPS

### **Greater Minnesota Integration Collaboratives**

Sharon Johnson, Nobles County Integration Collaborative

### **2010-11 Integration Task Force Report and Recommendations**

Kathy Griebel, Minnesota School Integration Council

### **Review of Integration Revenue**

Teresa Graham

### **Legal Perspectives on Integration**

Cindy Lavorato

Margaret Hobday and Daniel Shulman

Derek Black, Howard University Law School

John Brittain, District of Columbia Law School

## Appendix C: Achievement and Integration SONAR

### **Social Impact and Increase of Achievement through Integration**

Linda Tropp, University of Massachusetts at Amherst  
Thomas Luce, Institute for Race and Poverty, University of Minnesota  
David Armor, George Mason University  
Roslyn Mickelson, University of North Carolina–Charlotte

### **Literacy Programs**

Christy Hovanetz, Florida's Foundation for Excellence in Education

### **Magnet Schools of Minnesota**

Kim Rasch, President, Magnet Schools of Minnesota  
Gretchen Peel, Principal, Weaver Lake STEM  
Liesl Chatman, Director of Professional Development, Science Museum of Minnesota

### **AVID (Advancement Via Individual Determination)**

Maria Cobb, Minnesota State Director  
Jill Ashley-Grochowski, AVID District Director, Northwest Suburban Integration School District  
Barb Knudsen, Director of Teaching and Learning, Lakeville Public Schools  
Stacy Wells, AVID District Director, Lakeville Public Schools

### **Partnering for School Success Cultural Guides**

Pangjua Xiong  
Victoria Campoverde  
Nadifa Osman

### **Literacy Programs**

Mike Savage, Eden Prairie Public Schools

### **Districts with Racially Isolated School(s) Receiving Integration Revenue**

Jane Berenz, Superintendent, Rosemount-Apple Valley-Eagan School District

### **Voluntary District Receiving Integration Revenue**

Eric Anderson, Equity and Integration Coordinator, Stillwater Area Schools

### **Districts Not Currently Receiving Integration Revenue**

Keith Dixon, Superintendent, Centennial School District  
Dan Huffman, Business Affairs, Centennial School District

### **Charter/Private Schools**

Eric Mahmoud, Harvest Prep  
John Alexander, Groves Academy  
Mary Donaldson, Concordia Creative Learning Academy

### **Citizen Speakers**

Eric Celeste, Dr. Jennifer Marker Johnson, Loren Towle, Sara Osman, Kristen Konop, Katie Radford, Sadia Ahmed, Eva Mitchell, Aneesa Parks, Ahmed Jama

Materials presented to and from the Task Force were posted following each meeting. These documents may be viewed at the following link.

<http://education.state.mn.us/MDE/Welcome/AdvBCT/IntegRevReplaceTaskForce/index.html>

## Task Force Recommendations

Based on the information gathered and discussion at meetings, the Task Force recommends the following:

- 1. Create the “Achievement and Integration for Minnesota (AIM)” program funded through existing categorical revenue to address the concerns with the current program while focusing uses of the revenue in a manner that can be easily tied to student achievement. The new program must do the following:**
  - a. Develop a revised integration rule that is grounded in our state’s history and law, is sustainable, but also addresses a new vision that is measured beyond reading, writing and math and includes a more complete measure of achievement and access to opportunity.
    - i. Maintain language that prohibits intentional segregation in schools.
    - ii. Maintain current language defining racially isolated districts.
    - iii. Maintain current language defining racially isolated schools.
    - iv. All district plans must be locally developed and establish clear student achievement goals that address racial disparities, as well as other measureable goals to which they will be held accountable and report to their respective communities.
    - v. Reexamine the current exemption of Area Learning Centers (ALC’s) within the Rule.
  
- 2. Ensure accountability and oversight at the Department (MDE) to ensure districts are effectively using, reporting, and measuring the effectiveness of the revenue uses by doing the following:**
  - a. An adequate number of *AIM* staff (are available) to provide oversight, accountability and technical support for districts receiving *AIM* revenue.
  - b. Ensure progress monitoring, efficiency, and evaluate the effectiveness of the program overall.
  - c. Convene districts receiving revenue annually to facilitate training on uses, effective practices, and measurement of *AIM* revenue.
  - d. MDE will create an evaluation process that does the following:
    - i. Evaluate the successes and failures of current initiatives in order to provide feedback and support for improving districts use of *AIM* revenue to achieve goals.
    - ii. Evaluate the cost-effectiveness of districts use of *AIM* revenue to provide opportunities to achieve goals.
    - iii. Inform policy discussions at state and local levels by analyzing districts’ ability to efficiently and effectively use *AIM* revenue to achieve integration and achievement goals.
  - e. Require annual external evaluation and reporting to ensure progress monitoring of districts.
    - i. Districts must develop metrics in collaboration with MDE, to which their programs will be measured within their plans and have them approved by MDE.
    - ii. Metrics must include (at minimum) academic growth based on standardized assessments (i.e., NWEA, MCA), graduation rates, attendance, and parent surveys.



## Appendix C: Achievement and Integration SONAR

- iii. MDE will withhold money if districts are not making adequate progress towards goals as defined by standardized assessments and making progress in reducing disparate demographic enrollment between districts or schools.
- iv. Develop structures for support, feedback and intervention.

### 3. Clearly focus and define limited uses of *AIM* revenue. Districts must submit plans, develop measureable goals (consistent with 2e), and budgets that limit their use (districts may not supplant) within any of the following areas:

- a. ***Innovative and integrated learning environments***, including magnet schools, which promote *all* of the following: integration, achievement through innovative approaches to instruction and learning, and school choice for parents.
  - i. Resources can only be used for budget items related to the unique setting the school provides.
  - ii. Create opportunities to scale up innovative practices and interventions that increase achievement of protected-class students.
  - iii. Full-Day Kindergarten and preschool programming for families who qualify for free or reduced-price lunch.
  - iv. Operating a "student choice" system, (i.e., applications, parent notices, placing students, etc.).
  - v. Transportation for programming/public school choice.
- b. ***Family engagement*** that promotes involvement in the academic life and success of the student. This includes:
  - i. Parent classes to support successful navigation of school systems that empower parents to be involved in the life of the school community and achievement of their students.
  - ii. Family Liaisons who help bridge the cultural divide between home and school environments.
  - iii. Recruiting and engaging parent leaders from underrepresented communities for leadership roles within schools and districts.
  - iv. Promotion of public school choice information.
- c. ***Professional development*** that is focused on increasing the achievement of students of color and low-income students. This *may* include the following:
  - i. Focused literacy instruction training.
  - ii. Culturally Responsive Teaching.
  - iii. Inquiry, differentiation, and assessment training.
  - iv. Focused Math Recovery training.
  - v. Training for instruction of rigorous (advanced-level) courses.
  - vi. Deliver formal and informal training to staff that prepares them to provide instruction across race and culture.
  - vii. Professional development programs which present multiple perspectives on issues and respect the right of conscience.
- d. ***Access to opportunity*** programming that is proven to increase access to rigor, and focuses on college and career readiness for underserved populations (including low-income). Funding would support programs *like, but not limited, to*:
  - i. Advancement Via Individual Determination (AVID)
  - ii. Dual Enrollment or College in the Schools
  - iii. ACT/SAT classes and test
  - iv. Gifted and Talented preparation programs (i.e., Young Scholars)

## Appendix C: Achievement and Integration SONAR

- v. Academic camps
  - vi. Jobs for America's Graduates (JAG)
- e. ***Increase the diversity of teachers and administrators.***
- i. Develop and implement recruitment and retention programs that attract candidates from diverse backgrounds, who have been admitted to a teacher preparation program, and provide support and cooperative training with earned financial assistance with the expectation that upon successful completion of the program, the individual would teach for at least two years in a Minnesota public school.
4. **Examine the merits of one collaborative *Metropolitan Integration School District* that folds in the services of the existing integration districts to create efficiencies and eliminate duplication of services. This Collaborative Metropolitan School District serves all metro-area districts within the seven-county area that receive integration revenue.**

## Fiscal Principles for Recommendation

1. Cap the existing revenue program at the current level.
2. Level the fiscal disparities between demographically similar districts:
  - a. Reduce the disproportionality between tiers starting in FY 14.
  - b. Create incentives for districts to cooperate to reduce racial enrollment disparities using voluntary measures (public school choice).
3. Set aside .02 percent (%) of revenue to ensure oversight and accountability at the Minnesota Department of Education.
  - a. Consistent with 2, e, iii, MDE will withhold revenue for districts not making progress towards goals.
4. Create a fiscal model that is predictable over time and stable in two-year increments.
5. Define percentages of allowable expenditures in statute:
  - a. At least 80 percent (%) of revenue is spent on students.
  - b. Twenty percent (20%) spent on professional development and administration.
    - i. Administrative costs may not exceed 10 percent (%).

## **Integration Revenue Replacement Advisory Task Force Minority Report of Peter A. Swanson**

Although I am co-chair of the Integration Revenue Replacement Task Force, this minority report represents my individual opinion. I voted against the final report and am submitting this minority report reluctantly, as I do believe the majority report represents improvements over the current system. The task force expanded its schedule to include additional meetings and was able to come to remarkable consensus on many issues before running out of time. The final report does include many of the ideas that I brought forward and with which I agree. Mindful of the many positive aspects of the final recommendations, I believe there are too many details left open to interpretation that could ultimately undermine the great work of the task force. For the following reasons, I respectfully dissent.

### **UNINTENDED CONSEQUENCES**

The final recommendations include a fiscal principle that we should “level the fiscal disparities between demographically similar districts.” If the racial composition of a district (or adjoining district) continues to be the sole factor for determining how much per-pupil Achievement and Integration funding a district receives, there is a financial incentive to continue to be racially isolated. Even if racial composition is used to set the initial tiers for per-pupil funding in FY 14, districts should not be punished financially for reducing racial enrollment disparities as the funding levels continue to flatten and equalize over the years.

When encouraging districts to cooperate to reduce racial enrollment disparities, care should be taken that districts do not use Achievement and Integration funds to enact non-voluntary, race-conscious enrollment rules. This is true even if such measures are generally allowed by statute, rule, or court decisions. Achievement and Integration funding should not result in a student being denied admission to the school of their choice because of the student's skin color.

Finally on the issue of unintended consequences, the final recommendations suggest a number of metrics, but only the lack of progress on two of them result in the Minnesota Department of Education withholding Achievement and Integration funds – standardized assessments and reducing disparate demographic enrollment. Including these two different goals should not water down the focus on one of them, namely achievement. A district should not be able to make up for a lack of progress on academic achievement and retain full funding by making progress only on reducing racial isolation.

### **DEFINING FUNDS SPENT ON STUDENTS**

Current Minnesota Department of Education budget guidelines provide that “[a]t least 60 percent of a district’s proposed budget must have direct student value through initiatives such as research-based programs to improve the performance of protected students with lower measured achievement on state or local assessments or out-of-school time programs that have clear academic value.” The increase to 80 percent in the task force final recommendations is a very positive development, provided that “direct student value” is codified in statute and means what it says. The “innovative and integrated learning environments” described in paragraph 3a appear to include both direct student value and administrative costs. All of the programs described in the majority recommendations should be categorized in statute as either direct student value, professional development, or administrative expenditures.

## BUSING

The percent of Achievement and Integration funding that districts spend on transportation should be scrutinized and capped in statute. If busing is deemed to be spent “on students,” that could significantly reduce the portion of the 80 percent of funding that is spent on achievement. Moreover, there is a difference between 1) a district containing a racially isolated school, and 2) an entire district that is racially isolated. It makes some sense for the former, within limits, to bus students within the district. When the entire district is racially isolated, intra-district busing makes less sense. It is important to note that The Choice is Yours program, which buses students between districts, is a separate budget item and is not funded with Achievement and Integration funds.

## MISSION CREEP

Through the work of the task force, along with the 2005 report of the Legislative Auditor, it is clear that Integration Revenue under the old program means many different things to different people. Presentations to the task force included positive results from programs ranging from Girls in Science to special education. It was often stated that students need to prepare to compete in a “global environment.” Programs designed to sensitize Caucasian students were funded with Integration Revenue ostensibly because the programs make a more welcoming environment for minorities, which, in turn, is supposed to increase integration and shrink the racial achievement gap. It is important to note that these programs are thankfully not included in the majority's recommendations. Districts may choose to fund such programs with other dollars, but programs potentially of benefit to all students (we all have to compete in a global environment, for example) should not be funded with revenue that is only available to certain districts at disparate levels.

## DO NO HARM

People have a right to choose to associate with whatever groups they want. When government steps in to encourage more interaction between the races, at least it should not make the situation worse. Programs and curricula that are targeted at a single race should not be funded with Achievement and Integration revenue. This is true even if it is currently permitted by statute, administrative rule, and court precedent, or if the programs are nominally open to all races. Such programs can create a “school within a school” that gives the outward statistical appearance of integration, but actually lessens the interaction between races. If the programs are legal and desirable, districts can fund them with other dollars.

## FREEDOM OF CONSCIENCE

The final recommendations include provisions that would prevent individual teachers from being forced to attend one-sided, ideological presentations under the guise of professional development. This protection of Freedom of Conscience should be included in the Achievement and Integration legislation.

## **Integration Revenue Replacement Advisory Task Force Minority Report of Katherine Kersten**

Minnesota’s racial and ethnic academic learning gap is a disaster. In fourth grade reading, our state’s black and Hispanic children lag three years behind their white peers—reading at essentially a first grade level. In recent years, only Washington, D.C. has consistently had a wider gap in this respect. At higher grades, the story is even worse.

On the 2011 MCA-II’s, 55 percent of our state’s white eleventh grade students were proficient in math—hardly impressive—while only 16 percent of black students and 22 percent of Hispanic students scored proficient. In high school science, 61 percent of white students were proficient, but only 21 percent of black students and 27 percent of Hispanic students performed at that level. Ninety-five percent of our white students graduate from high school in five years. Tragically, only half of our black and Hispanic students do.

In 2012, the lives of tens of thousands of Minnesota children are blighted by their inability to read, write, do math and master the rudiments of science. In today’s “information society,” academic deficiency of this kind will confine these young people to the lower rungs of our society. It will constrict their life chances, bar them from self-sufficiency and prosperity, and prevent them from joining the middle class. In short, it will keep them from achieving “the American Dream.”

As Minnesotans, we need to confront the toll that educational failure of this kind imposes:

- 43 percent of Americans with the lowest literacy skills live in poverty, while only 5 percent of those with strong literacy skills do, according to the National Institute for Literacy.
- 70 percent of Americans with the lowest reading skills have no job or only a part-time job.
- 70 percent of inmates in our prisons can’t read above a fourth-grade level.

The Integration Revenue Replacement Advisory Task Force was charged with addressing the urgent crisis this learning gap represents. Yet the Task Force never made the gap its priority. In fact—though we heard presentations on many topics (including a whole morning devoted to potential lawsuits against the State of Minnesota)—we never had a presentation on the nature and extent of the learning gap.

The reason: Many task force members had a different priority. Their passion—their sense of urgency—centered on putting our state’s students in racially balanced settings. This is a good thing. But it pales in comparison with the difficult, classroom-centered work required to help struggling youngsters master reading and math.

The learning gap springs from socioeconomic and family risk factors that leave many poor, minority youngsters deficient in the skills and knowledge required for academic success. These children need multi-faceted, classroom-centered educational reform to learn more effectively. They need an intense emphasis on fundamentals; targeted assessment and intervention; and a school climate that emphasizes order, discipline, high expectations, accountability and incentives for success.

In fact, these are the very traits associated with “beat the odds” schools like Harvest Preparatory School in Minneapolis and Concordia Creative Learning Academy in St. Paul, which have achieved remarkable results with poor and minority students.

For decades, Minnesota’s education establishment has taken a different approach to improving these youngsters’ academic performance. It has adopted strategies that view children—and education—through the lens of race and racial balance. This approach has a dismal track record of failure in terms of boosting academic achievement. For example:

- Schoolchildren in Minneapolis and St. Paul were bused on the basis of race for many years at great expense, yet *in both districts the learning gap remains a yawning gulf*. Just last year, the St. Paul public schools rejected a policy of racial balance, after a year-long study determined that minority students perform as well or better at neighborhood schools than at expensive magnet schools.
- Low-income Minneapolis students who attend school in ten suburban districts through “The Choice Is Yours” program have *scored lower* on state tests than their low-income peers who remained in Minneapolis public schools.
- The track record of Twin Cities-area “integration districts”—set up to create racially balanced magnet schools that would reduce the learning gap—is so disappointing that the Minneapolis school district recently announced its intention to withdraw from one (WMEP), and some suburban districts have pulled out of another (EMID). In January 2012, EMID leaders proposed a budget that would remove all integration funding from EMID’s two magnets—Crosswinds and Harambee—because these schools’ academic performance has failed repeatedly to meet expectations.

This litany of failure is powerful evidence that policies inspired by the same, race-based vision---as the Task Force’s is---will do little for struggling children in the future.

The Task Force report includes some positive elements. For example, it provides more specificity about how districts can spend the funds than in the past. It also includes provisions aimed at leveling funding differences between districts. These are both good things. In general, however—given the reality of the way the public education establishment works—the recommendations represent a perpetuation of the status quo, with a few bells and whistles.

The Task Force report creates an aura of accountability. For example, it provides that “MDE will withhold money if districts are not making adequate progress” towards goals the districts choose themselves. However, the report provides that MDE will judge school districts’ performance in terms of both academic goals *and* racial and ethnic balance goals. The reality is that racial and ethnic balance in schools—misabeled “integration”—is one of MDE’s primary objectives. As a result, the department is likely to make this the controlling variable in doling out funds, unless the legislature requires that improved academic achievement be the centerpiece.

The Task Force report creates an illusion of accountability. It includes neither standards nor enforcement mechanisms that MDE must use to evaluate school district performance and eligibility for

funds. As a result, MDE will choose its own criteria for deciding whether a district should continue receiving money. The department's track record in this regard—i.e, withholding money from districts that fail to improve academic achievement—offers little grounds for hope that the MDE will make real academic progress a condition for receiving funds. On the contrary, MDE's natural reaction is often to award *more* money to a failing district.

The Task Force's recommendations to the legislature are—to put it mildly—a tepid response to Minnesota's catastrophic learning gap and the educational crisis it represents. Yet perhaps this is not surprising.

As I said at one task force meeting, “We need to remember that the voices in this meeting room are those of the ‘haves’. The ‘have-nots’—the children in desperate need of serious reform—are not represented here.” (Neither were the voices of school districts that currently receive no integration funds.)

The fact is, almost everyone in the Task Force meeting room—including the ever-present lobbyists—represented the educational status quo, the “powers that be.” Little is likely to change as a result of the Task Force's recommendations. The establishment's favorite programs and approaches are likely to continue—and so is our failure to move the needle on academic achievement enough to give poor, minority children the hope of a better life.

The Task Force's inability to manifest a sense of urgency proportional to the seriousness of the gap may shed light on why our state has such a monumental gap in the first place. We are good at averting our gaze from a fundamental truth: If we want young people to have meaningful inter-racial experiences, the most effective way to do this is by empowering them academically.

In this respect, it's important to remember the words of Minneapolis Mayor Sharon Sayles Belton in her 1996 State of the City address. At the time she spoke, the Minneapolis School District was spending \$8 million each year to cover the costs of school desegregation.

“Every day, Minneapolis children are bused a total distance equal to a trip to the moon,” Sayles Belton declared. But the city's children, she advised, would “be better served if we spent the money on strategies that would get them, at age 18 or 21, not to the moon but to the door of a well-paying employer.”

## Minnesota State Statutes that Relate to Integration, Discrimination and Desegregation

### 2014 Minnesota Statutes

#### 124D.861 ACHIEVEMENT AND INTEGRATION FOR MINNESOTA.

##### Subdivision 1. Program to close the academic achievement and opportunity gap; revenue uses.

(a) The "Achievement and Integration for Minnesota" program is established to pursue racial and economic integration and increase student academic achievement, create equitable educational opportunities, and reduce academic disparities based on students' diverse racial, ethnic, and economic backgrounds in Minnesota public schools.

(b) For purposes of this section and section [124D.862](#), "eligible district" means a district required to submit a plan to the commissioner under Minnesota Rules governing school desegregation and integration, or be a member of a multidistrict integration collaborative that files a plan with the commissioner.

(c) Eligible districts must use the revenue under section [124D.862](#) to pursue academic achievement and racial and economic integration through: (1) integrated learning environments that prepare all students to be effective citizens and enhance social cohesion; (2) policies and curricula and trained instructors, administrators, school counselors, and other advocates to support and enhance integrated learning environments under this section, including through magnet schools, innovative, research-based instruction, differentiated instruction, and targeted interventions to improve achievement; and (3) rigorous career and college readiness programs for underserved student populations, consistent with section [120B.30, subdivision 1](#); integrated learning environments to increase student academic achievement; cultural fluency, competency, and interaction; graduation and educational attainment rates; and parent involvement.

##### Subd. 2. Plan implementation; components.

(a) The school board of each eligible district must formally develop and implement a long-term plan under this section. The plan must be incorporated into the district's comprehensive strategic plan under section [120B.11](#). Plan components may include: innovative and integrated prekindergarten through grade 12 learning environments that offer students school enrollment choices; family engagement initiatives that involve families in their students' academic life and success; professional development opportunities for teachers and administrators focused on improving the academic achievement of all students; increased programmatic opportunities focused on rigor and college and career readiness for underserved students, including students enrolled in alternative learning centers under section [123A.05](#), public alternative programs under section [126C.05, subdivision 15](#), and contract alternative programs under section [124D.69](#), among other underserved students; or recruitment and retention of teachers and administrators with diverse racial and ethnic backgrounds. The plan must contain goals for: (1) reducing the disparities in academic achievement among all students and specific categories of students under section [120B.35, subdivision 3](#), paragraph (b), excluding the student categories



of gender, disability, and English learners; and (2) increasing racial and economic integration in schools and districts.

(b) Among other requirements, an eligible district must implement effective, research-based interventions that include formative assessment practices to reduce the disparities in student academic performance among the specific categories of students as measured by student progress and growth on state reading and math assessments and as aligned with section [120B.11](#).

(c) Eligible districts must create efficiencies and eliminate duplicative programs and services under this section, which may include forming collaborations or a single, seven-county metropolitan areawide partnership of eligible districts for this purpose.

### **Subd. 3. Public engagement; progress report and budget process.**

(a) To receive revenue under section [124D.862](#), the school board of an eligible district must incorporate school and district plan components under section [120B.11](#) into the district's comprehensive integration plan.

(b) A school board must hold at least one formal annual hearing to publicly report its progress in realizing the goals identified in its plan. At the hearing, the board must provide the public with longitudinal data demonstrating district and school progress in reducing the disparities in student academic performance among the specified categories of students and in realizing racial and economic integration, consistent with the district plan and the measures in paragraph (a). At least 30 days before the formal hearing under this paragraph, the board must post its plan, its preliminary analysis, relevant student performance data, and other longitudinal data on the district's Web site. A district must hold one hearing to meet the hearing requirements of both this section and section [120B.11](#).

(c) The district must submit a detailed budget to the commissioner by March 15 in the year before it implements its plan. The commissioner must review, and approve or disapprove the district's budget by June 1 of that year.

(d) The longitudinal data required under paragraph (a) must be based on student growth and progress in reading and mathematics, as defined under section [120B.30](#), subdivision 1, and student performance data and achievement reports from fully adaptive reading and mathematics assessments for grades 3 through 7 beginning in the 2015-2016 school year under section [120B.30, subdivision 1a](#), and either (i) school enrollment choices, (ii) the number of world language proficiency or high achievement certificates awarded under section [120B.022, subdivision 1a](#), or the number of state bilingual and multilingual seals issued under section [120B.022, subdivision 1b](#), or (iii) school safety and students' engagement and connection at school under section [120B.35, subdivision 3](#), paragraph (d). Additional longitudinal data may be based on: students' progress toward career and college readiness under section [120B.30, subdivision 1](#); or rigorous coursework completed under section [120B.35, subdivision 3](#), paragraph (c), clause (2).

### **Subd. 4. Timeline and implementation.**

A board must approve its plan and submit it to the department by March 15. If a district that is part of a multidistrict council applies for revenue for a plan, the individual district shall not receive revenue unless it ratifies the plan adopted by the multidistrict council. Each plan has a term of three years. For the 2014-2015 school year, an eligible district under this section must submit its plan to the commissioner for review by March 15, 2014. For the 2013-2014 school year only, an eligible district may continue to implement its current plan until the commissioner approves a new plan under this section.

**Subd. 5.Evaluation.**

The commissioner must evaluate the efficacy of district plans in reducing the disparities in student academic performance among the specified categories of students within the district, and in realizing racial and economic integration. The commissioner shall report evaluation results to the kindergarten through grade 12 education committees of the legislature by February 1 of every odd-numbered year.

**124D.862 ACHIEVEMENT AND INTEGRATION REVENUE.**

**Subdivision 1.Initial achievement and integration revenue.**

(a) An eligible district's initial achievement and integration revenue equals the lesser of 100.3 percent of the district's expenditures under the budget approved by the commissioner under section [124D.861, subdivision 3](#), paragraph (c), excluding expenditures used to generate incentive revenue under subdivision 2, or the sum of (1) \$350 times the district's adjusted pupil units for that year times the ratio of the district's enrollment of protected students for the previous school year to total enrollment for the previous school year and (2) the greater of zero or 66 percent of the difference between the district's integration revenue for fiscal year 2013 and the district's integration revenue for fiscal year 2014 under clause (1).

(b) In each year, 0.3 percent of each district's initial achievement and integration revenue is transferred to the department for the oversight and accountability activities required under this section and section [124D.861](#).

**Subd. 2.Incentive revenue.**

An eligible school district's maximum incentive revenue equals \$10 per adjusted pupil unit. A district's incentive revenue equals the lesser of the maximum incentive revenue or the district's expenditures for implementing a voluntary plan to reduce racial and economic enrollment disparities through intradistrict and interdistrict activities that have been approved as a part of the district's achievement and integration plan under the budget approved by the commissioner under section [124D.861, subdivision 3](#), paragraph (c).

**Subd. 3.Achievement and integration revenue.**

Achievement and integration revenue equals the sum of initial achievement and integration revenue and incentive revenue.

**Subd. 4. Achievement and integration aid.**

For fiscal year 2015 and later, a district's achievement and integration aid equals 70 percent of its achievement and integration revenue.

**Subd. 5. Achievement and integration levy.**

A district's achievement and integration levy equals its achievement and integration revenue times 30 percent. For Special School District No. 1, Minneapolis; Independent School District No. 625, St. Paul; and Independent School District No. 709, Duluth, 100 percent of the levy certified under this subdivision is shifted into the prior calendar year for purposes of sections [123B.75, subdivision 5](#), and [127A.441](#).

**Subd. 6. Revenue uses.**

(a) At least 80 percent of a district's achievement and integration revenue received under this section must be used for innovative and integrated learning environments, school enrollment choices, family engagement activities, and other approved programs providing direct services to students.

(b) Up to 20 percent of the revenue may be used for professional development and staff development activities and placement services.

(c) No more than ten percent of the total amount of revenue may be spent on administrative services.

**Subd. 7. Revenue reserved.**

Integration revenue received under this section must be reserved and used only for the programs authorized in subdivision 2.

**Subd. 8. Commissioner authority to withhold revenue.**

(a) The commissioner must review the results of each district's integration and achievement plan by August 1 at the end of the third year of implementing the plan and determine if the district met its goals.

(b) If a district met its goals, it may submit a new three-year plan to the commissioner for review.

(c) If a district has not met its goals, the commissioner must:

(1) develop a district improvement plan and timeline, in consultation with the affected district, that identifies strategies and practices designed to meet the district's goals under this section and section [120B.11](#); and

(2) use up to 20 percent of the district's integration revenue, until the district's goals are reached, to implement the improvement plan.

**124D.896 DESEGREGATION/INTEGRATION AND INCLUSIVE EDUCATION RULES.**

(a) The commissioner shall propose rules relating to desegregation/integration and inclusive education, consistent with sections [124D.861](#) and [124D.862](#).

(b) In adopting a rule related to school desegregation/integration, the commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the commissioner.

## **Statutes Cited in Proposed Achievement and Integration Rule**

### **124D.855 SCHOOL SEGREGATION PROHIBITED.**

The state, consistent with section [123B.30](#) and chapter 363A, does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools. Instead, the state's interest lies in offering children a diverse and nondiscriminatory educational experience.

### **123B.30 IMPROPER CLASSIFICATION OF PUPILS.**

No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semiannual apportionment the share of such district and the county auditor shall thereupon exclude such district from the apportionment for such period.

### **127A.42 REDUCTION OF AID FOR VIOLATION OF LAW.**

#### **Subdivision 1.State aids.**

The amount of state aids to which a district is entitled shall be the amount computed according to statutes. The annual state aid certificate made by the commissioner to the commissioner of management and budget shall show the amount of any reductions made.

#### **Subd. 2.Violations of law.**

The commissioner may reduce or withhold the district's state aid for any school year whenever the board of the district authorizes or permits violations of law within the district by:

(1) employing a teacher who does not hold a valid teaching license or permit in a public school;

(2) noncompliance with a mandatory rule of general application promulgated by the commissioner in accordance with statute, unless special circumstances make enforcement inequitable, impose an extraordinary hardship on the district, or the rule is contrary to the district's best interests;

(3) the district's continued performance of a contract made for the rental of rooms or buildings for school purposes or for the rental of any facility owned or operated by or under the direction of any private organization, if the contract has been disapproved, the time for review of the determination of disapproval has expired, and no proceeding for review is pending;

(4) any practice which is a violation of sections 1 and 2 of article 13 of the Constitution of the state of Minnesota;

(5) failure to reasonably provide for a resident pupil's school attendance under Minnesota Statutes;

(6) noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability, as defined in sections [363A.08](#) to [363A.19](#) and [363A.28, subdivision 10](#); or

(7) using funds contrary to the statutory purpose of the funds.

The reduction or withholding must be made in the amount and upon the procedure provided in this section, or, in the case of the violation stated in clause (1), upon the procedure provided in section [127A.43](#).

#### **Subd. 3. Assurance of compliance.**

(a) After consultation with the commissioner of human rights, the commissioner of education shall adopt rules in conformance with chapter 14. The rules must direct districts to file with the commissioner of education assurances of compliance with state and federal laws prohibiting discrimination. The assurances must be provided in a form and manner prescribed by the commissioner.

(b) If it appears that one or more violations of the Minnesota Human Rights Act are occurring in a district, the commissioner of human rights shall notify the commissioner of the violations, and the commissioner of education may then proceed pursuant to subdivision 4.

#### **Subd. 4. Notice to board.**

When it appears that a violation is occurring in a district, the commissioner shall notify the board of that district in writing. The notice must specify the violations, set a reasonable time within which the district must correct the specified violations, describe the correction required, and advise that if the correction is not made within the time allowed, special state aids to the district will be reduced or withheld. The time allowed for correction may be extended by the commissioner if there is reasonable ground therefor.

#### **Subd. 5. Dispute violations; hearing.**

The board to which such notice is given may, by a majority vote of the whole board, decide to dispute that the specified violation exists or that the time allowed is reasonable or the correction specified is correct, or that the commissioner may reduce or withhold aids. The board must give the commissioner written notice of the decision. If the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the commissioner shall notify the school board of its decision. If the commissioner, after further

investigation as the commissioner deems necessary, adheres to the previous notice, the board shall be entitled to a hearing by the commissioner under this subdivision and notwithstanding chapter 14. The commissioner must set a hearing time and place and the board of the district must be given notice by mail. The hearings must be designed to give a full and fair hearing and permit interested parties an opportunity to produce evidence relating to the issues involved. A stenographic record must be made of all testimony given and other proceedings during the hearing. If practicable, rules governing admission of evidence in courts shall apply to the hearing. The final decision of the commissioner must be in writing and the controlling facts upon which the decision is made must be stated in sufficient detail to apprise the parties and the reviewing court of the basis and reason for the decision. The decision must be confined to whether any of the specified violations existed at the date of the commissioner's first notice, whether the violations were corrected within the time permitted, whether the violations require withholding or reduction of the state aids under this section, and in what amount.

**Subd. 6. Violation; aid reduction or withholding.**

The commissioner shall not reduce state aids payable to the district if the violation specified is corrected within the time permitted, or if the commissioner on being notified of the district board's decision to dispute decides the violation does not exist, or if the commissioner decides after hearing no violation specified in the commissioner's notice existed at the time of the notice, or that the violations were corrected within the time permitted. Otherwise state aids payable to the district for the year in which the violation occurred may be reduced or withheld as follows: The total amount of state aids to which the district may be entitled shall be reduced in the proportion that the period during which a specified violation continued, computed from the last day of the time permitted for correction, bears to the total number of days school is held in the district during the year in which a violation exists, multiplied by up to 60 percent of the basic revenue, as defined in section [126C.10, subdivision 2](#), of the district for that year.

**Subd. 7. Reduction in aids payable.**

Reductions in aid under this section and sections [127A.41](#) and [127A.43](#) must be from general education aid. If there is not sufficient general education aid remaining to be paid for the school year in which the violation occurred, the reduction shall be from other aids that are payable to the district for that year. If there is not a sufficient amount of state aids remaining payable to the district for the school year in which the violation occurred to permit the full amount of reduction required, that part of the required reduction not taken from that school year's aids will be taken from the state aids payable to the district for the next school year, and the reduction will be made from the various aids payable for the next year.

**Subd. 8.**

[Repealed, [1999 c 241 art 9 s 54](#)]

**Subd. 8a. Appeal.**

A final decision of the commissioner under this section may be appealed in accordance with section [480A.06, subdivision 3](#).

**Subd. 9. Notice to district.**

Any notice given to the board of a district will be deemed given when a copy thereof is mailed, registered, to the superintendent of the district, if there is a superintendent, and to the clerk of the board of the district. If it is shown that neither the superintendent nor the clerk in fact received such notice in the ordinary course of mail, then the time for correction will be accordingly extended by the commissioner so that a reasonable time will be allowed from actual receipt of notice for correction. If notice is sent by the commissioner with respect to a violation which is continued by the district in a succeeding year, no separate notice for that violation for the succeeding year will be required. Proceedings initiated by such notice shall include any continuing violation notwithstanding that a part thereof occurs in a year different from the year in which it started. The commissioner may require reasonable proof of the time that a violation ceased for the determination of the amount of aids to be reduced or withheld. Costs and disbursements of the review by the Court of Appeals, exclusive of those incurred in the administrative proceedings, may be taxed against the losing party and in the event taxed against the state must be paid from the appropriations made to the department for the payment of state aids.

**Other Related Statutes****124D.892 OFFICE OF DESEGREGATION/INTEGRATION.****Subdivision 1. Establishment.**

(a) An Office of Desegregation/Integration is established in the Department of Education to coordinate and support activities related to student enrollment, student and staff recruitment and retention, transportation, and interdistrict cooperation among school districts.

(b) At the request of a school district involved in cooperative desegregation/integration efforts, the office shall perform any of the following activities:

- (1) assist districts with interdistrict student transfers, including student recruitment, counseling, placement, and transportation;
- (2) coordinate and disseminate information about schools and programs;
- (3) assist districts with new magnet schools and programs;
- (4) assist districts in providing staff development and in-service training; and
- (5) coordinate and administer staff exchanges.

(c) The office shall collect data on the efficacy of districts' desegregation/integration efforts and make recommendations based on the data. The office shall periodically consult with the Metropolitan Council to coordinate metropolitan school desegregation/integration efforts with the housing, social, economic, and infrastructure needs of the metropolitan area. The office shall develop a process for resolving students' disputes and grievances about student transfers under a desegregation/integration plan.

**Subd. 2. Coordination.**

The commissioner may request information or assistance from, or contract with, any state or local agency or officer, local unit of government, or recognized expert to assist the commissioner in performing the activities described in subdivision 1.

**Subd. 3.**

MS 2002 [Expired, [1Sp2001 c 6 art 2 s 51](#)]

**124D.87 INTERDISTRICT DESEGREGATION OR INTEGRATION TRANSPORTATION AID.**

(a) A district that provides transportation of pupils to and from an interdistrict program for desegregation or integration purposes is eligible for state aid to reimburse the additional costs of transportation during the preceding fiscal year.

(b) A district in the metropolitan area may apply to the commissioner for state aid to reimburse the costs of transporting pupils who are enrolled under section [124D.03](#) during the preceding fiscal year if the enrollment of the student in the nonresident district contributes to desegregation or integration purposes. The commissioner shall develop the form and manner of applications for state aid, the criteria to be used to determine when transportation is for desegregation or integration purposes, and the accounting procedure to be used to determine excess costs. In determining aid amounts, the commissioner shall consider other revenue received by the district for transportation for desegregation or integration purposes.

**124D.03 ENROLLMENT OPTIONS PROGRAM.****Subd. 4. Achievement and integration district transfers.**

(a) This subdivision applies to a transfer into or out of a district that has an achievement and integration plan approved by the commissioner of education under sections [124D.861](#) and [124D.862](#).

(b) An application to transfer may be submitted at any time for enrollment beginning at any time.

(c) A pupil enrolled in a nonresident district under an achievement and integration plan approved by the commissioner of education is not required to make annual or periodic application for enrollment but may remain enrolled in the same district. A pupil may transfer to the resident district at any time.

(d) Subdivision 2 applies to a transfer into or out of a district with an achievement and integration plan.

**124D.68 GRADUATION INCENTIVES PROGRAM.****Subdivision 1. Purpose.**

The legislature finds that it is critical to provide options for children to succeed in school. Therefore, the purpose of this section is to provide incentives for and encourage all Minnesota



students who have experienced or are experiencing difficulty in the traditional education system to enroll in alternative programs.

**Subd. 7. Desegregation plans.**

Notwithstanding any provision to the contrary, students may not enroll in a nonresident district under this section if their enrollment in another district would result in a violation of a district's desegregation plan, as mandated and approved by the commissioner of education.

**Integration Rule and Statute Alignment Work Group**

**Recommendations to the Commissioner**

**February 14, 2014**

### **Cost of Report Preparation**

The total cost for the Minnesota Department of Education (MDE) to prepare this report was approximately \$850. Most of these costs involved staff time preparing the written report. Incidental costs include paper, copying, and other office supplies.

Estimated costs are provided in accordance with Minnesota Statutes 2011, section 3.197, which requires that at the beginning of a report to the Legislature, the cost of preparing the report must be provided.

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## Integration Rule and Statute Alignment Work Group Recommendations

February 14, 2014

The following recommendations were given to the commissioner for consideration:

**Recommendation:** The legislature should enact session law that addresses the priority items listed below. In addition, the legislature should grant expedited rulemaking authority to the commissioner for priority issues, and general rulemaking authority to address remaining issues during the rulemaking process.

1. **Purpose Statement.** Because the current statute includes a purpose statement (Minn. Stat. § 124D.861 Subd. 1(a)), a similar statement is not needed in rule.

**Recommendation:** Delete purpose section from Rule 3535.0100 or replace the current rule purpose statement aligned to the statute, as well as the following: “Avoiding racial isolation and promoting diversity are legitimate activities for the state to pursue.”

2. **Student Classifications.** Clarify “protected class student” classifications.

**Recommendation:** Use the statutory designated classification and not those in rule.

- a. For the purpose of determining “eligible districts” and for determining funding, use the following NCLB designated classifications:

- American Indian/Alaskan Native
- Asian/Pacific Islander
- Hispanic
- Black

The term “protected class students” should include the foregoing classifications.

- b. For the purpose of plan development, implementation, reporting, and evaluation, use the following NCLB classifications referenced in statute:

- American Indian/Alaskan Native
- Asian/Pacific Islander
- Hispanic
- Black
- Free and Reduced Priced Lunch (economic)

- c. **Recommendation:** Retain rule language about the dual status of American Indian students to acknowledge their dual status as protected students and members of sovereign nations (3535.0110 Subp. 2).

3. **“Eligible District”.** The definition of eligible district should be modified as follows:

**Recommendation:** “Eligible district” should be defined as:

- a. A district with an enrollment of 20 percent or more “protected class students”; or
- b. A district or districts that have an enrollment disparity of 20 percent or more “protected class students” compared to an adjacent district, provided the adjacent district participates in a cross-district plan; or

## Appendix E: Achievement and Integration SONAR

- c. A district with a school site that has an enrollment disparity of 20 percent or more “protected class students” compared to other school sites within the district; or
- d. A district submitting a voluntary plan to meet the intent of the statute.

*Note: Appropriate means for addressing eligibility of districts and schools with high numbers of enrolled American Indian students should be developed in consultation with the Tribal Nations Education Committee in recognition of the unique educational needs of American Indian students and their dual status as members of sovereign nations.*

4. **Intentional Discrimination.** The statute does not cover intentional discrimination, while the rule requires the commissioner to make a determination of intent. (Minn. R. 3535.0110 Subp. 9 and 3535.0130-0150)

The work group expressed concern about acts of intentional segregation. The following recommendations address this.

### **Recommendations:**

- Eliminate current definition and process in rule pertaining to intentional discrimination.
- Utilize provisions of the Minnesota Human Rights statute and other relevant statutes to respond to acts of intentional discrimination and cross-reference either in statute or rule (Minn. Stat. § section 127A.41), which provides for the reduction in state aid if a district violates the Minnesota Human Rights Act or the Minnesota Constitution. (See Appendix C for these statutes)

5. **Collaboratives:** The rule requires all eligible districts adjacent to racially isolated districts to collaboratively develop cross-district integration plans. The new statute does not. This has raised the question of when cross-district planning for integration strategies should be required. Collaboration among districts should be meaningful and support the goals required in statute. The current rule only focuses on one of these required goals.

### **Recommendations:**

- If a district has been identified as eligible (under the new criteria) because of a disparate percentage of enrolled protected class students when compared with one or more adjacent district, cross-district collaboration is voluntary for adjoining districts and at the discretion of the racially isolated district so long as one adjoining district participates.
- If a racially isolated district declines to participate in the achievement and integration program with an adjacent district, the adjacent district shall not be required to submit a plan or engage in cross-district integration planning and shall not receive funding.
- If a district qualifies under more than one definition of “eligible”, all the definitions apply.

6. **Plan Development and Implementation:** The process for developing and implementing the integration plan is identified in statute and may conflict with the rule because the rule is not as focused on achievement. Districts should follow

the plan development process that is aligned with the World's Best Workforce process in statute.

**Recommendation:** Those similar provisions in rule should be repealed so as to prevent confusion. Integration strategies to address isolated schools within a district must be specified in the district's plan. This should be clarified by amending statute or through the rulemaking process.

7. **Evaluation:** Integration and achievement goals within the integration plan should be part of the overall achievement goals within the district's World's Best Work Force plan and aligned with the MMR measures of closing the achievement gap, proficiency, and growth and graduation rates. However, more specific measures should be identified to evaluate integration activities listed in that plan and funded with achievement and integration revenue.

**Recommendation:** Evaluation provisions in rule should be repealed so as to prevent confusion.

**Recommendation:** The commissioner should develop specific evaluation criteria to be shared with districts that determine how progress toward achievement and integration goals is to be measured. This should be done through rulemaking.

8. **Community Input on plans.** This process is required and outlined in statute.

**Recommendation:** Rules related to this should be repealed.

**Recommendation:** District plans must include a provision describing the process for input by the local American Indian Parent Advisory Committee, if such a committee is in place. This requirement can be adopted in either rule or statute.

9. **Incentive funding/Use of integration funds guidelines.** Although broad areas for the acceptable uses of integration funds are specified in statute, criteria for the use of integration funding, including the use of incentive funding, may need clarification.

**Recommendation:** Criteria for the use of integration funds should be developed in rule consistent with statutory requirements. While it is in the public's best interest to have guidelines established in rule, districts shall operate under the commissioner's guidance until rulemaking is complete.

10. **Additional issues:** Additional issues were discussed by the work group but need further study and consideration. This should take place as part of any rulemaking process. Some of these issues include:

- Ethnocentric schools.
- Language immersion schools.
- Charter schools (currently excluded in rule).
- Online schools or programs (Issue: Students enrolled in an online school or program are included in a district's overall pupil count and funding).
- EL sites (currently excluded in rule).
- Special Education sites (currently excluded in rule).
- Care and treatment facilities (currently excluded in rule).

## Appendix E: Achievement and Integration SONAR

- Open enrollment impact on an integration plan.
- The use of incentives to support pro-integrative establishment of attendance boundaries.



## Appendix A

### 124D.896 DESEGREGATION/INTEGRATION AND INCLUSIVE EDUCATION RULES.

(a) By January 10, 1999, the commissioner shall propose rules relating to desegregation/integration and inclusive education.

(b) In adopting a rule related to school desegregation/integration, the commissioner shall address the need for equal educational opportunities for all students and racial balance as defined by the commissioner.

#### History:

Ex1959 c 71 art 2 s 11; 1965 c 718 s 1; 1969 c 9 s 23,24; 1969 c 288 s 1; 1973 c 492 s 14; 1975 c 162 s 6,7; 1976 c 271 s 21; 1977 c 347 s 19; 1977 c 447 art 7 s 4; 1982 c 424 s 130; 1982 c 548 art 4 s 4,23; 1983 c 258 s 22; 1984 c 640 s 32; 1985 c 248 s 70; 1987 c 178 s 5; 1987 c 398 art 7 s 5; 1989 c 329 art 7 s 2; art 8 s 1; art 9 s 4; 1990 c 375 s 3; 1991 c 265 art 9 s 13; 1993 c 224 art 12 s 2-6; art 14 s 4; 1994 c 647 art 7 s 1; art 8 s 1; 1Sp1995 c 3 art 7 s 1; art 16 s 13; 1996 c 412 art 7 s 1; 1997 c 1 s 1; 1997 c 162 art 2 s 11; 1998 c 397 art 4 s 1,51; art 11 s 3; 1998 c 398 art 5 s 6,7; art 6 s 38; 2000 c 254 s 35,50

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## Appendix E: Achievement and Integration SONAR

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## Appendix C: Pertinent 2013 Minnesota Statutes

### 124D.855 SCHOOL SEGREGATION PROHIBITED.

The state, consistent with section [123B.30](#) and chapter 363A, does not condone separating school children of different socioeconomic, demographic, ethnic, or racial backgrounds into distinct public schools. Instead, the state's interest lies in offering children a diverse and nondiscriminatory educational experience.

#### History:

[1Sp2011 c 11 art 2 s 42](#)

### 123B.30 IMPROPER CLASSIFICATION OF PUPILS.

No district shall classify its pupils with reference to race, color, social position, or nationality, nor separate its pupils into different schools or departments upon any of such grounds. Any district so classifying or separating any of its pupils, or denying school privileges to any of its pupils upon any such ground shall forfeit its share in all apportioned school funds for any apportionment period in which such classification, separation, or exclusion shall occur or continue. The state commissioner upon notice to the offending district and upon proof of the violation of the provisions of this section, shall withhold in the semiannual apportionment the share of such district and the county auditor shall thereupon exclude such district from the apportionment for such period.

#### History:

[Ex1959 c 71 art 8 s 8](#); [1986 c 444](#); [1998 c 397 art 6 s 124](#)

### 127A.42 REDUCTION OF AID FOR VIOLATION OF LAW.

#### Subdivision 1. State aids.

The amount of state aids to which a district is entitled shall be the amount computed according to statutes. The annual state aid certificate made by the commissioner to the commissioner of management and budget shall show the amount of any reductions made.

#### Subd. 2. Violations of law.

The commissioner may reduce or withhold the district's state aid for any school year whenever the board of the district authorizes or permits violations of law within the district by:

(1) employing a teacher who does not hold a valid teaching license or permit in a public school;

(2) noncompliance with a mandatory rule of general application promulgated by the commissioner in accordance with statute, unless special circumstances make enforcement inequitable, impose an extraordinary hardship on the district, or the rule is contrary to the district's best interests;

(3) the district's continued performance of a contract made for the rental of rooms or buildings for school purposes or for the rental of any facility owned or operated by or under the

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direction of any private organization, if the contract has been disapproved, the time for review of the determination of disapproval has expired, and no proceeding for review is pending;

(4) any practice which is a violation of sections 1 and 2 of article 13 of the Constitution of the state of Minnesota;

(5) failure to reasonably provide for a resident pupil's school attendance under Minnesota Statutes;

(6) noncompliance with state laws prohibiting discrimination because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance or disability, as defined in sections [363A.08](#) to [363A.19](#) and [363A.28, subdivision 10](#); or

(7) using funds contrary to the statutory purpose of the funds.

The reduction or withholding must be made in the amount and upon the procedure provided in this section, or, in the case of the violation stated in clause (1), upon the procedure provided in section [127A.43](#).

### **Subd. 3. Assurance of compliance.**

(a) After consultation with the commissioner of human rights, the commissioner of education shall adopt rules in conformance with chapter 14. The rules must direct districts to file with the commissioner of education assurances of compliance with state and federal laws prohibiting discrimination. The assurances must be provided in a form and manner prescribed by the commissioner.

(b) If it appears that one or more violations of the Minnesota Human Rights Act are occurring in a district, the commissioner of human rights shall notify the commissioner of the violations, and the commissioner of education may then proceed pursuant to subdivision 4.

### **Subd. 4. Notice to board.**

When it appears that a violation is occurring in a district, the commissioner shall notify the board of that district in writing. The notice must specify the violations, set a reasonable time within which the district must correct the specified violations, describe the correction required, and advise that if the correction is not made within the time allowed, special state aids to the district will be reduced or withheld. The time allowed for correction may be extended by the commissioner if there is reasonable ground therefor.

### **Subd. 5. Dispute violations; hearing.**

The board to which such notice is given may, by a majority vote of the whole board, decide to dispute that the specified violation exists or that the time allowed is reasonable or the correction specified is correct, or that the commissioner may reduce or withhold aids. The board must give the commissioner written notice of the decision. If the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the commissioner shall notify the school board of its decision. If the commissioner, after further investigation as the commissioner deems necessary, adheres to the previous notice, the board shall be entitled to a hearing by the commissioner under this subdivision and notwithstanding chapter 14. The commissioner must set a hearing time and place and the board of the district must be given notice by mail. The hearings must be designed to give a full and fair hearing and

permit interested parties an opportunity to produce evidence relating to the issues involved. A stenographic record must be made of all testimony given and other proceedings during the hearing. If practicable, rules governing admission of evidence in courts shall apply to the hearing. The final decision of the commissioner must be in writing and the controlling facts upon which the decision is made must be stated in sufficient detail to apprise the parties and the reviewing court of the basis and reason for the decision. The decision must be confined to whether any of the specified violations existed at the date of the commissioner's first notice, whether the violations were corrected within the time permitted, whether the violations require withholding or reduction of the state aids under this section, and in what amount.

**Subd. 6. Violation; aid reduction or withholding.**

The commissioner shall not reduce state aids payable to the district if the violation specified is corrected within the time permitted, or if the commissioner on being notified of the district board's decision to dispute decides the violation does not exist, or if the commissioner decides after hearing no violation specified in the commissioner's notice existed at the time of the notice, or that the violations were corrected within the time permitted. Otherwise state aids payable to the district for the year in which the violation occurred may be reduced or withheld as follows: The total amount of state aids to which the district may be entitled shall be reduced in the proportion that the period during which a specified violation continued, computed from the last day of the time permitted for correction, bears to the total number of days school is held in the district during the year in which a violation exists, multiplied by up to 60 percent of the basic revenue, as defined in section [126C.10, subdivision 2](#), of the district for that year.

**Subd. 7. Reduction in aids payable.**

Reductions in aid under this section and sections [127A.41](#) and [127A.43](#) must be from general education aid. If there is not sufficient general education aid remaining to be paid for the school year in which the violation occurred, the reduction shall be from other aids that are payable to the district for that year. If there is not a sufficient amount of state aids remaining payable to the district for the school year in which the violation occurred to permit the full amount of reduction required, that part of the required reduction not taken from that school year's aids will be taken from the state aids payable to the district for the next school year, and the reduction will be made from the various aids payable for the next year.

**Subd. 8.**

[Repealed, [1999 c 241 art 9 s 54](#)]

**Subd. 8a. Appeal.**

A final decision of the commissioner under this section may be appealed in accordance with section [480A.06, subdivision 3](#).

**Subd. 9. Notice to district.**

Any notice given to the board of a district will be deemed given when a copy thereof is mailed, registered, to the superintendent of the district, if there is a superintendent, and to the clerk of the board of the district. If it is shown that neither the superintendent nor the clerk in fact received such notice in the ordinary course of mail, then the time for correction will be accordingly extended by the commissioner so that a reasonable time will be allowed from actual receipt of notice for correction. If notice is sent by the commissioner with respect to a violation

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which is continued by the district in a succeeding year, no separate notice for that violation for the succeeding year will be required. Proceedings initiated by such notice shall include any continuing violation notwithstanding that a part thereof occurs in a year different from the year in which it started. The commissioner may require reasonable proof of the time that a violation ceased for the determination of the amount of aids to be reduced or withheld. Costs and disbursements of the review by the Court of Appeals, exclusive of those incurred in the administrative proceedings, may be taxed against the losing party and in the event taxed against the state must be paid from the appropriations made to the department for the payment of state aids.