



January 15, 2010

The Honorable Leroy Stumpf, Chair
Senate Education Committee
208 State Capitol
St. Paul, MN 55155

The Honorable Mindy Greiling, Chair
House K-12 Education Finance Division
381 State Office Building
St. Paul, MN 55155

Re: No Child Left Behind Act

Dear Senator Stumpf and Representative Greiling:

During the 2005 Special Session, language was adopted requiring the Minnesota Department of Education (MDE) to implement the No Child Left Behind Act (NCLB) without interruption (M.S. 127A.095). The statute also required MDE to seek enhanced flexibility through waivers from the federal Department of Education (DOE). If the waivers sought by MDE are not approved by DOE, the Commissioner of Minnesota Management and Budget must certify the amount of federal revenue that would be withheld as a result of the potential state decision to discontinue implementation of the NCLB Act.

The analysis certifying the amount of federal revenue that would be withheld as a result of the potential state decision to discontinue implementation of the NCLB Act is complete and the final report is attached. DOE estimates that NCLB funding in Minnesota will be \$245.3 million in FFY2009/SFY2010. From the district perspective, MDE estimates that nonparticipation in NCLB would have a total fiscal impact of \$218.4 million in SFY 2010 for school districts statewide. In addition, MDE would experience a fiscal impact of approximately \$16.5 million in SFY2010 for statewide NCLB costs related to assessment, school-improvement activities, support for new charter schools, and state level activities as allowed for under the law.

Additional funds at risk are the American Recovery and Reinvestment (ARRA) funds awarded through NCLB formulas. Minnesota received \$128.5 million of Title I, School Improvement, McKinney-Vento, and Education Technology funds that are all NCLB programs. Additional ARRA funds are available through competitive grants, some of which are tied to NCLB programs.

Sincerely,

A handwritten signature in black ink that reads "Tom J. Hanson". The signature is written in a cursive, slightly slanted style.

Tom J. Hanson
Commissioner

Attachments

No Child Left Behind Act

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cc: Matt Massman, Senate Lead Fiscal Analyst
Eric Nauman, Senate Fiscal Analyst
Bill Marx, House Chief Fiscal Analyst
Greg Crowe, House Fiscal Analyst
Lisa Mueller, Department of Education



No Child Left Behind Act
Report to the Legislature

January 2010

*As required by
M.S. 127A.095*

ESTIMATED COSTS OF PREPARING THIS REPORT

This report provides information that Minnesota Management & Budget does not normally collect as part of its business functions. The cost of information reported below is the estimated cost of collecting and organizing the data, determining assumptions, and preparing this report document.

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

In accordance with M.S. 3.197, the estimated cost incurred by the Minnesota Management and Budget in preparing this report is \$2,000.

No Child Left Behind Act Overview

The federal No Child Left Behind Act (NCLB) was signed into law in 2002 and affects every state and public school district in the country. More than 90 percent of America's school districts receive funding for federal educational and supportive services programs covered by the act. The wide range of services support before and after school programs, family literacy, parenting classes, library materials, technology services, educating migrant children, and safe and drug-free schools. Of the nine titles in the act, Titles I and II are the largest programs in terms of both requirements and funding. Title I funds help educators improve teaching and learning for economically disadvantaged students. In addition, Title I funds promote the involvement of parents in becoming partners in their children's education. Title II funds are used to train, retain, and recruit qualified teachers, principals, and paraprofessionals.

The main focus of NCLB is to improve the academic achievement of students in low-performing schools around the country. It strives to have every student achieving at a proficient level, as defined by each state, by the 2013–14 school year.

Additional regulations aimed at strengthening NCLB were announced by the federal Department of Education (DOE) in October 2008. The new regulations stem from lessons learned since the 2002 implementation of NCLB and address accountability and transparency, uniform and disaggregated graduation rates, improved parental notification for Supplemental Education Services, and public school choice.

Implementation of NCLB

Minnesota has participated in NCLB since its inception in SFY2002. According to M.S. 127A.095, the Minnesota Department of Education (MDE) shall continue to implement the federal NCLB Act without interruption while seeking flexibility through waivers from the federal Department of Education (DOE). If the waivers are not attained, MDE must submit a report to the legislature explaining the status of the waivers sought and provide recommendations regarding future participation in the NCLB Act. Furthermore, M.S. 127A.095, subd. 3 states that if the waivers are not obtained the commissioner of Minnesota Management & Budget shall certify to the legislature the amount of revenue that the federal government may withhold as a result of a potential state decision to discontinue implementation of the NCLB Act.

In 2007, MDE sought waivers in eight areas from DOE. Since MDE has yet to receive approval for waivers in all eight areas, this report will certify the amount of NCLB revenue that the federal government may withhold as a result of a potential state decision to discontinue implementation of the NCLB Act in Minnesota.

Certification of Federal NCLB Revenue

In Minnesota, DOE estimates that NCLB funding will be \$245.3 million in FFY2009/SFY2010, which includes an administrative allowance for statewide NCLB activities. MDE estimates that opting out of NCLB would have a total fiscal impact of \$218.4 million in SFY2010 for school districts statewide. In addition, MDE would experience a fiscal impact of approximately \$16.5 million in SFY2010 for statewide NCLB costs related to assessment, school-improvement activities, support for new charter schools, and state level activities as allowed for under the law. The American Recovery and Reinvestment Act (ARRA) awarded an additional \$128.5 million to Minnesota through NCLB programs such as Title I and School Improvement funds. If the state declined to accept future NCLB funding, the \$128.5 million of ARRA funds along with ARRA competitive grants that are determined via the NCLB formulas, are potentially forfeited.

The state has the option not to participate in one or more titles of NCLB. If the state opted out of NCLB Title I funds, for example, other competitive grant programs that receive their funding through the Title I formula would also lose funding. Specifically, other competitive grant programs that would be affected by state nonparticipation include, Safe and Drug Free Schools, 21st Century Community Learning Centers, the State and Local Technology Grants, and Even Start because the funding for these programs is based on the Title I formula.

Nonparticipation would not impact any programs that receive a formula allocation of federal funds outside of the NCLB formulas, nor would the state lose eligibility to apply for other discretionary funding. For example, state nonparticipation in NCLB does not disqualify it from receiving funds under the Perkins Vocational and Technical Education program or the Adult Education and Family Literacy Act.

In addition to federal funding, nonparticipation in NCLB may require additional state funding to administer carryforward amounts and for test development and other assessment activities. It is assumed that in the event Minnesota opts out of NCLB, carryforward funds identified by districts for competitive grant funds in FFY2008 will not be lost to either districts or MDE. Districts and MDE would continue to be responsible for the administration of the federal program through the period allowed by the Tydings Amendment.¹ If Minnesota opted out in July, 2010, districts could encumber any carryforward available to them until September, 2011 and disburse this funding through December, 2011. While there may be a small amount of administrative carryforward to accomplish administration through that period, state funding may be required to complete the work associated with administering the carryforward funds if remaining NCLB administrative funds were not adequate. Carryforward amounts vary by districts so it is not possible at this time to determine potential state costs related to the administration of NCLB carryforward after Minnesota has discontinued the program.

¹ Most formulaic allocations provide for local spending decisions that allow the allocation to be obligated over a twenty-four month period, and disbursed within a twenty-seven month period (Tydings Amendment).

Assessment funds under NCLB for test development and other assessment activities may also be lost if the state decides to opt out of NCLB. Since these funds support state testing standards as a part of NCLB, additional state funds may be required depending upon the legislature's direction for continued Minnesota standards development and testing. It is uncertain at this time to what extent funds for test development and other assessment activities would be lost if the state decides to opt out of NCLB; therefore, it is not possible at this time to estimate the potential state costs related to assessment.

Following is a list of programs included in No Child Left Behind funding along with a brief statement of purpose.

Title I Grants to LEAs (Local Education Agencies) (CFDA 84.010)

Elementary and Secondary Education Act of 1965, as amended, Title I, Part A.

Title I of the Improving America's Schools Act is the largest of the federal compensatory education programs. Almost every district in the state qualifies for Title I funds and Title I services are in approximately 90% of the state's elementary schools. More than 130,100 public and nonpublic students participate in Title I programs annually. There are several parts to Title I, including, Basic Grants, Concentration Grants, Targeted Assistance, Education Finance Incentive Grants, Accountability Grants, Grants for Neglected or Delinquent Institutions, NCLB grants, and Capital Expenses.

Minnesota's share of the national appropriation is based on the number of low-income children counted during the 2000 census. MDE adjusts these entitlements to provide the required set-asides for administration, school support teams, low-performing schools, and charter schools.

Specific objectives of the Title I basic grants to local education agencies (LEAs) are:

- ◆ to align Title I evaluation measures with the state student achievement and system performance measures;
- ◆ to identify and serve students who are most at risk of not meeting our state content and performance standards;
- ◆ to increase success in the regular classroom through coordination of supplemental services with classroom instruction and curriculum;
- ◆ to provide for the involvement of parents in the education of their children;
- ◆ to provide intensive and sustained staff development; and
- ◆ to coordinate with state and federal programs to maximize the services available for at-risk students and to increase the number of students receiving services.

School Improvement Grants (CFDA 84.215)

Elementary and Secondary Education Act of 1965; Title V, Part D, as amended.

This program funds projects that will improve the quality of education, assist all students to meet challenging state content standards, and contribute to the achievement of elementary and secondary students.

Reading First (Title 1, Part B) (CFDA 84.357)

Elementary and Secondary Education Act of 1965, as amended, Title I, Part B, Subpart 1.

The Reading First program replaced reading excellence in FFY 2002. The Reading First program is a federal education program aimed at improving K-3 reading instruction through the use of effective, research-based strategies, and methods. This program allows the state to make competitive sub-grants to school districts meeting specific eligibility criteria identified in the authorizing legislation. Grantees will use program funds to: 1) provide preschool-age children with high-quality oral language and literature-rich environments; 2) provide professional development that is based on scientifically based reading research knowledge of early language and reading development; 3) identify and provide activities and instructional materials that are based on scientifically based reading research; 4) acquire, provide training for, and implement screening reading assessments or other appropriate measures based on scientifically based reading research; and 5) integrate instructional materials, activities, tools, and measures into the programs offered.

Even Start Family Literacy Programs (CFDA 84.213)

Elementary and Secondary Education Act of 1965, Title I, Part B, Subpart 3, as amended. 20 U.S.C. 6362.

Even Start is the early childhood and family literacy initiative of the Title I program. The state's allocation for Even Start is determined by the amount of the basic and concentration funds the state receives. Funds are distributed to districts on a competitive basis; grants are awarded for four years.

Specific objectives of the Even Start Family Literacy Programs are:

- ◆ to improve the academic achievement by integrating early childhood education and adult education for parents into a unified program;
- ◆ to create a new range of services through cooperative projects that build on existing community resources; and
- ◆ to assist children and adults from low-income families in breaking the cycle of illiteracy and poverty.

Migrant Education (CFDA 84.011)

Elementary and Secondary Education Act of 1965, Title I, Part C, as amended. 20 U.S.C. 6391 et seq.

The specific purposes of the migrant education program are:

- ◆ to ensure that migratory children are provided with appropriate educational services (including support services) that address their special needs in a coordinated and efficient manner;
- ◆ to ensure that migratory children have the opportunity to meet the same state content and performance standards that all children are expected to meet;
- ◆ to prepare migratory children to make a successful transition to post-secondary education or employment by supporting high-quality educational programs to help them overcome educational disruption, cultural and language barriers, social isolation, various health-related problems, and other factors; and

- ◆ to ensure that migratory children benefit from state and local systemic reform.

Neglected and Delinquent (CFDA 84.013)

Elementary and Secondary Education Act of 1965, Title I, Part D, as amended. 20 U.S.C. 6431 et seq.

The specific purposes of the neglected and delinquent programs include:

- ◆ to provide supplementary instruction to students, ages 5-21, who are neglected and have been placed in a locally operated residential institution for such students;
- ◆ to improve educational services to neglected or delinquent children and youth so that such children and youth have the opportunity to meet the same challenging state content and performance standards that all children will be expected to meet;
- ◆ to provide the targeted population the services needed to make a successful transition from institutionalization to further schooling and employment; and
- ◆ to prevent at-risk youth from dropping out and to provide dropouts and youth returning from institutions with a support system to ensure continued education.

Impact Aid (CFDA 84.041)

Elementary and Secondary Education Act of 1965, Title VIII, as amended.

This program, which is administered directly by the federal government, provides funding based on formula to schools where enrollments or availability of revenue are adversely affected due to reduced tax base due to federal ownership of property, where there are significant number of children who reside on federal or Indian lands and/or children whose parents are employed on federal properties, or where there is a sudden change in enrollment due to federal activities. The formula includes a basic aid, aid for disabled students, and a capital component for qualifying schools. Basic aid is for general fund uses.

Improving Teacher Quality (CFDA 84.367)

Higher Education Act of 1965, Title III, Part A, P.L. 105-244.

This program provides funding to improve student achievement by improving the quality of current and future teaching force by improving the preparation of prospective teachers and enhancing professional development activities; holding institutions of high education accountable for preparing teachers who have the necessary teaching skills and are highly competent in the academic content areas in which the teacher plan to teach, such as mathematics, science, English, foreign language, history, economics, arts, civics government, and geography; including training effective uses of technology in the classroom; and recruit highly qualified individuals, including individuals from other occupations, into the teacher force.

Math and Science Partnership (CFDA 84.366)

Elementary and Secondary Education Act of 1965, as amended, Title II, Part B.

The purpose of this program is to improve the academic achievement of students in mathematics and science through projects that support partnerships of organizations representing preschool through higher education. These projects promote strong teaching methods based on scientifically based research and technology.

Education Technology State Grants (Enhancing Education Through Technology) (CFDA 84.318)

Elementary and Secondary Education Act of 1965, as amended, Title II, Part D, Subparts I and 2, as amended.

Provides funding on a formula basis to states to:

- ◆ improve student academic achievement through the use of technology in schools,
- ◆ assist all students in becoming technologically literate by the end of eighth grade, and
- ◆ encourage the effective integration of technology with teacher training and curriculum development to establish research-based instructional methods.

21st Century Community Learning Centers (CFDA 84.287)

Elementary and Secondary Education Act of 1965, as amended, Title IV Part B.

The program funds after school programs to help K-12 students attending low performing schools or schools with concentrations of families in poverty improve their academic achievement. Programs provide academic and cultural enrichment activities, tutoring, art, music, recreation, and other programs that are designed to reinforce academic instruction. Funds are distributed through an open competition.

Innovative Education Program Strategies (CFDA 84.298)

Elementary and Secondary Education Act of 1965, Title V, as amended, 20 U.S.C. 7301-7373.

This program provides funding to assist state and local education agencies in the reform of elementary and secondary education.

Improving Academic Achievement Accountability, Grants for State Assessments (CFDA 84.369)

Elementary and Secondary Education Act of 1965, as amended, Title VI, Part A, Subpart I, Public Law 107-110.

This program supports:

- ◆ the development of the additional state assessments and standards required by Section 1111(b) of the federal ESEA, as amended; or
- ◆ the administration of the assessments required by Section 1111(b) or
- ◆ to carry out other activities related to ensuring that the state's schools and local education agencies are held accountable for results.

Rural and Low-Income Schools Grant (CFDA 84.358)

Elementary and Secondary Education Act of 1965, Title VI, Part B, as amended.

This is a small grant program for small rural school districts with high poverty rates that do not qualify for the Small Rural School Achievement Program. Funds are used for teacher recruitment and retention; teacher professional development; educational technology; parental involvement activities, and activities allowed under the Title 1 program.

Safe and Drug-Free Schools and Communities State Grants (CFDA 84.186)

Elementary and Secondary Education Act, 2001, Title IV, Part A, Subpart 1, as amended 20 U.S.C. 7111-7118

Safe and drug-free schools provides resources to school districts and charter schools through a formula allocation to assist and support programs to prevent violence in and around schools and to prevent the illegal use of alcohol, tobacco, and other drugs. Specifically the law focuses on:

- ◆ supporting researched-based drug abuse and violence prevention and education programs that involve parents and are coordinated with related community efforts and resource programs;
- ◆ providing resources to schools to establish, operate, and improve programs of violence and drug abuse prevention, early intervention, rehabilitation referral, and education for elementary and secondary students; and
- ◆ providing resources to community-based organizations for programs of violence and drug abuse prevention and education, early intervention, and rehabilitation referral for school dropouts and other high-risk youth.

English Language Acquisition Grants for Limited English Proficient Students (CFDA 84.365)

Elementary and Secondary Education Act as amended, Title III, Part A, Sections 3101-3129.

This new program consolidates the 13 bilingual and immigrant education programs into a formula grant program and significantly increases flexibility and accountability. Minnesota previously received funds under the Title VII Emergency Immigrant program, while districts applied directly to the U.S. Department of Education for grants under other programs. This program maintains the current focus on assisting school districts in teaching English to limited English proficient students and in helping these students meet the same challenging state standards required of all other students. Some of the funds may be reserved to serve districts significantly impacted by the needs of immigrant students.

Assumptions

1. Minnesota's eligibility for federal programs and funding amounts as a result of Minnesota's participation in NCLB are taken from DOE's state tables and include the programs funded through the NCLB Act of 2001. The report of Minnesota's total allocation and allocation by program is available at the following website and is also provided below. <http://www.ed.gov/about/overview/budget/statetables/10stbystate.pdf>. The version used for this report was posted December 3rd, 2009.
2. The total estimated Minnesota federal funding for NCLB programs for FFY 2009/SFY 2010 is \$235.9 million.
3. Due to differences in fiscal years between DOE and MDE, federal appropriations identified as 2009 fund programs in state fiscal year 2010. Similarly, federal appropriations identified as 2010 fund programs in state fiscal year 2011. District listings of allocations/awards are provided by state fiscal year.
4. It is assumed that in the event Minnesota opts out of NCLB, carryforward funds will not be lost to either districts or MDE.

5. It is assumed that in the event the state determined to opt out of implementation of the NCLB Act, MDE would continue to be responsible for administration of the federal program through the period allowed by the Tydings Amendment. If Minnesota opted out in July, 2010, districts could encumber any carryforward available to them until September, 2011 and disburse through December 2011. While there may be a small amount of administrative carryforward to accomplish administration through that period, state funding may be required to complete the work associated with administering the carryforward funds if remaining NCLB administrative funds were not adequate.
6. Assessment funds under NCLB for test development and other assessment activities may be lost if the state decides to opt out of NCLB. Since these funds support state testing standards supporting NCLB, additional state funds may be required depending upon the legislature's direction for continued Minnesota standards development and testing.
7. Due to carryforward provisions, total allocations and awards identified here will not equal amounts carried on the statewide accounting or budget system or provided in the Governor's Budget as both of these presentations are based on estimated expenditures.
8. On district runs, organizations such as, nonprofits, institutions of higher education, service cooperatives, cities and counties may be included, if the organization is an eligible recipient of the federal funds.
9. On district runs, a district, charter school, or other organization may be listed twice within a competitive grant program as they may receive multiple grants within a year.
10. Many federal programs under the NCLB Act allow for an administrative allowance or set-asides for statewide activities. Also, funding for new charter schools may not be included in district allocations/awards. Funding for those activities is included in the totals by program, and amounts for assessment, administration and statewide activity set-asides are assumed to be the difference between the total appropriations and district allocations or awards. A calculated estimation of the amount currently available for assessment, administration, statewide activity set-asides, and new charter schools, based on federal appropriation amounts and school district allocations/awards is included.

Table 1. NCLB Federal Funding	FFY2007 SFY2008	FFY2008 SFY2009	FFY2009 SFY2010	FFY2010 SFY2011
ESEA Title I Grants to LEAs	114,582,991	126,939,366	140,233,611	123,051,058
School Improvement Grants	1,103,590	4,457,449	5,272,121	14,760,605
Reading First State Grants	9,714,518	3,721,969	0	0
Even Start	669,824	566,276	587,354	0
State Agency Program-Migrant	1,723,537	1,734,113	3,294,917	2,151,830
State Agency Program-Neglected and Delinquent	211,804	203,358	248,418	248,418
Subtotal: Education for Disadvantaged	128,006,264	137,622,531	149,636,421	140,211,911
Impact Aid Basic Support	14,019,661	15,196,798	17,534,611	17,534,611
Impact Aid Children with Disabilities	698,060	771,904	888,410	888,410
Impact Aid Construction	183,541	0	0	0
Subtotal Impact Aid	14,901,262	15,968,702	18,423,021	18,423,021
Improving Teach Quality State Grants	36,857,558	38,482,785	37,873,657	37,873,657
Mathematics and Science Partnerships	1,595,121	1,603,816	1,749,902	1,749,902
Educational Technology State Grants	2,314,265	2,339,005	2,489,933	2,489,933
21 st Century Community Learning Grants	7,952,424	9,333,801	10,020,010	10,020,010
State Grants for Innovative Programs	1,611,074	0	0	0
State Assessments	7,047,027	7,033,188	7,006,812	7,006,812
Rural and Low-Income Schools Program	114,793	80,497	142,858	142,858
Small, Rural School Achievement Program	2,929,922	3,256,119	3,493,411	3,493,411
Indian Education Grants	3,353,680	3,398,783	3,413,111	3,413,111
Safe and Drug Free Schools and Communities	3,719,372	3,148,289	3,148,289	3,148,289
Language Acquisition State Grants	6,739,911	8,251,148	7,922,699	7,922,699
Subtotal, All of the Above Programs that constitute NCLB	217,142,673	229,518,131	245,320,124	235,895,614

Amounts identified by district for Title formulaic programs are the amounts allocated or awarded for the year and do not include carryforward from previous years. In addition, amounts identified by districts for competitive grant funds for FFY 2008 may include carryforward amounts from previous years' allocations. For this reason, actual spending in any given year at both the state and local level may be higher or lower due to these carryforward provisions and local budget decisions, which will cause district level totals not to match federal funding totals.

Table 2. NCLB District Level Totals	FFY2007	FFY2008	FFY2009	FFY2010
	SFY2008	SFY2009	SFY2010	SFY2011
Title program grants	154,505,302	154,505,302	166,512,983	166,512,983
NCLB Competitive Grants	30,495,676	30,495,676	24,860,461	31,252,702
Impact Aid (Basic Support/Children with Disabilities)	13,942,173	13,942,173	18,556,883	18,556,883
Rural and Low Income*	114,793	114,793	142,858	142,858
Indian Education Grants*	3,249,968	3,249,968	3,413,111	3,413,111
District NCLB Total	202,307,914	202,307,914	218,397,626	224,789,867
Federal Direct Impact Aid Variance	(2,351,340)	(2,351,340)	0	0
Statewide allowance for administration, school-improvement activities, support for new charter schools, and state level activities as allowed for under the law	15,119,687	15,119,687	16,528,969	16,528,969

**District data not available*

Agency Contact:
 Kristy Swanson, Executive Budget Officer
 Minnesota Management & Budget
 658 Cedar Street
 400 Centennial Office Bldg
 St. Paul, MN 55155
 Tel: 651-201-8082
 Fax: 651-296-8685

APPENDIX A. MDE Waiver Requests to the U.S. Department of Education

- 1. Participate in the growth model pilot program:** The Minnesota Department of education (MDE) has submitted a growth model to the U.S. Department of Education. In January 2009, the Minnesota Department of Education received approval for the growth model defined below:

AYP Growth Component Adjustment:

For cells that fall below the proficiency target, a computation is made to determine if individual students in the cell showed growth from one year to the next. An AYP Growth Score is assigned to each cell and compared to an AYP Growth Target (based on the same statewide starting points for proficiency). The AYP Growth Target does not include an adjustment for a confidence interval. If the AYP Growth Score meets or exceeds the AYP Growth Target, the AYP Mark for the cell is set to 'A' – above target.

- 2. Exclude from sanctions schools that have not made adequate yearly progress due solely to a subgroup of students with disabilities not testing at a proficient level:** Minnesota has historically emphasized the inclusion of special education populations in its testing. Prior to the passage of NCLB, Minnesota developed an alternate assessment for special education students based on requirements in Individuals with Disabilities Education Act (IDEA of 1997). During a review of Minnesota assessment system, the secretary informed the department that the current alternate assessment did not meet the technical aspects required of all statewide assessments used for accountability. Consequently, the Minnesota Test of Academic Skills (MTAS) was developed for students with significant cognitive disabilities. This test is based on alternate achievement standards and has met all the technical aspects of statewide assessments used for accountability. The secretary proposed further regulations on December 15, 2005. These regulations provide for the potential use of a new modified alternate assessment for special education students who are not able to access the general education assessment but are not significantly cognitively disabled.

In October 2007, Minnesota was awarded a competitive General Supervision Enhancement grant from the U.S. Department of Education. This grant is part of a consortium with the states of Ohio and Oregon and the American Institute for Research in Washington, D.C. The one million dollar competitive award is for the development of the modified assessment for implementation in 2010-11.

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

3. Identify a school as not making adequate yearly progress only after the school has missed the adequate yearly progress targets in the same subgroup for two consecutive years: The U.S. Department of Education does not offer waivers for the same subgroup not making AYP two consecutive years. However, Minnesota does take advantage of the uniform averaging provision which allows multi-year averaging over two and three years. If a school does not meet its target in the current year for any of the subgroups, data will be averaged across two years to determine AYP status; if the school still does not make AYP, data will be averaged across three years to see if the school meets the target. Essentially, the school has to miss its targets over two and three years because of averaging to be identified as not meeting the target. The commissioner believes that the ability to average over multiple years gives schools a great deal of flexibility.

4. Determine when to hold schools accountable for including a student with limited English proficiency in adequate yearly progress calculation; Since the passage of NCLB, the U.S. Department of Education has issued guidance letters or regulations that give states greater flexibility. The most recent example of this flexibility is the Secretary's September 13, 2006 Final Regulations. These regulations allow states to exempt "recently arrived ELL students" from one administration of the state's reading/language arts assessment. A recently arrived student is a student who has attended schools in the U.S. for less than 12 months. The new regulations further allow states to exclude the scores of recently arrived ELL student on the reading/language arts assessment (if taken) in decisions regarding proficiency in the calculation of AYP, even if the student was enrolled for a full academic years. These students however can be counted as participants toward meeting the 95 percent participation requirement for AYP. In addition, these regulations do not require states to include the scores of recently arrived ELL students on the mathematics assessment in AYP decisions.

Minnesota has been allowed to include "former ELL" students within the AYP LEP subgroup for up to two years after they no longer meet the state's definition for limited English proficiency. This option gives schools credit for the good work they have done helping ELL students attain proficiency. This flexibility is also included in the new regulations.

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

5. Allow a district not making adequate yearly progress to offer supplemental educational services as an option before offering school choice: In July 2009, the Secretary of Education issued guidance that allowed State Education Agencies to request waivers for Title I regulations that were enacted in October 2008. The ability to request such a waiver was included in the guidance. Through a review and comments period as well as input received from Title I district directors at the Title I Statewide Conference districts did not express an

interest in having this waiver request included in the document that was sent to the U.S. Secretary of Education in December 2009. Therefore, this waiver was not requested.

Recommendation: Due to the fact that district administrators did not express an interest in this opportunity, the commissioner did not include this waiver in the request submitted to the U.S. Secretary of Education in December 2009.

6. Allow a district not making adequate yearly progress to also be the supplemental educational services provider: In July 2009, the Secretary of Education issued guidance that allowed State Education Agencies to request waivers for Title I regulations that were enacted in October 2008. The ability to allow districts not making adequate yearly progress to be allowed to provide supplemental educational services was included in this guidance. Districts administrators expressed an interest in this waiver and a letter to the U.S. Secretary of Education outlining the request was posted to the Minnesota Department of Education's website for a period of one month. The posting of the letters fulfilled the period of review and comment required before the Commissioner could submit the request to the Secretary of Education. This waiver request was submitted to the Secretary of Education in December 2009. The Commissioner is waiting for a response.

Recommendation: In December 2009, the commissioner submitted a letter to the U.S. Secretary of Education requesting that districts not making adequate yearly progress be allowed to provide supplemental educational services.

7. Allow the state to maintain a subgroup size to 40 for the purposes of calculating adequate yearly progress for subgroups of students with limited English proficiency and subgroups of students with disabilities: Beginning in 2002-03, Minnesota original accountability plan had a subgroup size of 40 for students with disabilities. In 2005, Minnesota requested, and was granted, the flexibility to use a minimum group size of 40 for the limited English proficient subgroup. In 2007, Minnesota was required by USDE to reestablish a uniform call size of 20. Beginning with the 2007 AYP calculation, Minnesota uses a uniform group size for all student groups as required by NCLB.

8. Create flexibility to enable the state to define and identify highly qualified teachers: In response to NCLB, Minnesota created the Minnesota State Plan for Highly Qualified (HQ) teachers in 2004. Minnesota did not request flexibility because it was determined at the time the plan was drafted that current policies and rules met the HQ definitions. Minnesota had recognized core areas required demonstration of content knowledge as evidenced by the current licensure rules. In order to apply for a teaching license Minnesota candidates must hold a bachelor's degree, have earned an academic major in the licensure field, and must pass appropriate state licensure tests. Minnesota revised the Plan in 2006 to reflect flexibility the federal guidelines gave to rural districts and teachers new to special education. Minnesota has an approved high objective and uniform state system of evaluation (HOUSSE) for existing teachers licensed prior to 2001 under the old licensure rules. This provides flexibility for these teachers to meet HQ requirements using a point process based on work experience, academic preparation

and other approved indicators. A teacher must reach 100 points using the HOUSSE application. Currently, 98 percent of Minnesota teachers meet the highly qualified requirements under No Child Left Behind.