



Education-Related Mandates

Report to the Legislature

As required by Minnesota Statutes 2021, section 127A.05, subdivision 2

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As requested by Minnesota Statutes 2021, section 3.197: This report cost approximately \$779.88 to prepare, including staff time, printing and mailing expenses.

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Legislative Charge

Minnesota Statutes 2021, section 127A.05, subdivision 2, requires the commissioner of education to “...review all education-related mandates in state law and rule once every four years to determine which fail to adequately promote public education in the state.” Findings from this review are required to be sent to the education committees of the Legislature. This report includes findings from the latest review.

Introduction

In gathering information for this report, the Minnesota Department of Education (MDE) requested feedback from public school superintendents and charter school directors within the state, and MDE leadership and staff. School leaders and MDE staff were provided a survey link with multiple reminders during fall 2021 via weekly school leader updates and email, respectively, and asked to identify mandates that meet the statutory requirements of this report. This is a similar survey method used to gather recommendations for previous reports. Collectively, 32 responses were received; 18 of those responses optionally identified themselves as school leaders, meaning at least 1.3% of all approximately 1,400 school leaders responded, though that number is likely higher. The results represent an increase in participation from school leaders of approximately 60%, compared to the prior quadrennial report.

In total, 87 individual submissions of mandates meeting the statutory definition were received. They are outlined below based upon frequency, including the number of times a mandate was reported, beginning with those that were identified most often. Only one mandate identified in the last quadrennial report was identified for this report. This year’s results also indicated more consistency in the top issues.

Analysis

The following education-related mandates were identified as failing to adequately promote public education in Minnesota.

Free appropriate public education (FAPE) required for students enrolled in nonpublic schools (26)

Federal law requires a free and appropriate education (FAPE) for students with disabilities, as part of the Individuals with Disabilities Education Act (IDEA). In short, FAPE requires that special education services, such as accommodations and modifications, must meet the unique needs of a child with disabilities, must be free for parents and caregivers, and must be provided in the least restrictive environment.

These federally provided rights generally apply only to students enrolled at public schools; specifically, parentally placed private school children with disabilities do not have an individual entitlement to services they would receive if they were enrolled in a public school. However, Minnesota Statutes 2021, sections 125A.18, and

125A.03 do require a public school district to provide FAPE for private school students, as well as dispute resolution rights¹.

Feedback from respondents indicates this state law unnecessarily exacerbates an existing, underfunded federal mandate, due to a shortfall between a district's special education costs and their reimbursement revenue for providing those services. Responses consistently stated that the funds required to provide FAPE to parentally placed private school children with disabilities should be available to support students who rely on public schools to provide their education, and that Minnesota's mandate goes beyond the federal requirements without providing additional funding. Responses further indicated that despite districts' best efforts, school districts are not positioned to guarantee FAPE to nonpublic students given the lack of control over general education interventions, curriculum, teaching methods, and the environment in nonpublic schools.

Schools required to bill public and private insurance for covered services despite obstacles (26)

Minnesota Statutes 2021, section 125A.21, requires districts to seek Medicaid reimbursement for a child's individualized education program (IEP) or individualized family service plan (IFSP) health-related services through what is known as a "third party billing" program. While survey respondents did not report that this mandate itself as problematic, and actually viewed it favorably as it can result in more federal funds available to provide services, it was consistently reported that they are unable to meet this requirement.

Schools in Minnesota are able to access federal Medicaid funds for mental health services only through the Children's Therapeutic Services and Supports (CTSS) program. Unlike all other school health-related IEP and IFSP services in the state, mental health services require additional CTSS requirements. Respondents consistently identified the requirements of this program as a burden that prevents schools from accessing vital federal Medicaid funds to support students' behavioral health needs for all students, and also limiting their ability and capacity to provide FAPE for students with an IEP. Currently, only six of approximately 550 districts and charter schools in Minnesota have chosen to access CTSS. While the number of students receiving special education services and needing mental health services has increased, the number of districts that receive Medicaid reimbursement through CTSS for providing those services has steadily decreased since 2015, because of the barriers related to this mandate. Research shows the impact of unmet mental health needs leads to lower

¹ Special School District No. 1 v. R.M.M., 861 F.3d 769 (8th Cir. 2017).

attendance rates, higher rates of long-term health consequences, more significant symptoms of depression, and students being more than twice as likely to drop out of school²³⁴.

Respondents estimated that eliminating this barrier through clarification of the mandate would provide conservatively another \$8 million in federal funds to support students with disabilities, with no cost to the state. Currently, Minnesota receives approximately \$3 million. Respondents also consistently noted that by receiving reimbursement for social workers to provide screening and services for all students with an IEP who demonstrate medical necessity for mental health services, an additional \$3 million in federal funds would be made available to school districts in Minnesota.

Inability to close open enrollment for Early Childhood Special Education and transition services (24)

Minnesota school districts must accept any students who open enroll in Early Childhood Special Education (ECSE) or transition (ages 18-21) programs for students with disabilities. Minnesota Statutes 2021, section 124D.03, subdivision 2, permits school districts to close open enrollment only for nonresident districts due to limited capacity, but does not allow districts to close grade levels due to lack of ability to provide special education services.

Respondents have reported that school districts are unable to staff or find physical space for unanticipated students seeking these particular services via open enrollment, which has resulted in challenges to provide the required services for students of the resident district. Districts report that planning and preparation for program needs can be managed when there is access to resident school district data and demographic information, but that becomes near impossible when attempting to factor in open enrollment for which data is not available. Respondents consistently said that this mandate creates a disincentive for school districts to provide their own transition services for students ages 18-21 years old, instead suggesting to parents/guardians that they seek services from neighboring school districts. Additionally, respondents said that parents/guardians of students receiving ECSE will use the birth to kindergarten portion of the mandate to access ongoing enrollment in school districts that have otherwise closed elementary open enrollment to all other students.

² National Association of School Psychologists. (2021). *Comprehensive School-Based Mental and Behavior Health Services and School Psychologists* [handout]. Author.

³ Suldo, S.M., Gormley, M.J., DuPaul, G.J. & Anderson-Butcher, D. (2014). The impact of school mental health on student and school-level academic outcomes: Current status of the research and future directions. *School Mental Health, 6*(2), 84-89.

⁴ Weist, M.D., Hoover, S., Lever, N., Youngstrom, E.A., George, M., McDaniel, H.L., Fowler, J., Bode, A., Joshua Bradley, W., Taylor, L.K., Chappelle, L., & Hoagwood, K. (2019). Testing a package of evidence-based practices in school mental health. *School Mental Health: A Multidisciplinary Research and Practice Journal, 11*(4), 692-706.

World's Best Workforce (4)

World's Best Workforce is a reference to the state's accountability system for students and schools. Minnesota Statutes 2021, section 120B.11, defines "World's best workforce" as

"striving to: meet school readiness goals; have all third grade students achieve grade-level literacy; close the academic achievement gap among all racial and ethnic groups of students and between students living in poverty and students not living in poverty; have all students attain career and college readiness before graduating from high school; and have all students graduate from high school."

School districts and charter schools are required to adopt plans to meet these goals with a district advisory committee to inform active community participation in all phases of planning and improving the instruction and curriculum. Schools are also required to publish a report in the local newspaper or on the district's website on their World's Best Workforce report webpage, and hold an annual public meeting to review the report.

Four respondents identified the World's Best Workforce requirement as an education mandate that does not promote public education. They cited several reasons, including being duplicative of other required reporting and being more of an administrative exercise without accountability or results that takes staff time away from students.

Off-grade assessment questions (1)

Each spring, Minnesota students take one of two statewide assessments—either the Minnesota Comprehensive Assessments (MCA) or the Minnesota Test of Academic Skills (MTAS). Most students take the MCA; students who receive special education services and meet other eligibility requirements take the MTAS, instead. Both assessments provide information about student learning of grade-level content in reading, mathematics, and science, and specifically provide a snapshot of student learning in those areas based upon what all students are expected to learn in school by the end of the grade in which they are enrolled and Minnesota's K-12 Academic Standards. The assessments also satisfy federal requirements for state assessments under the Every Student Succeeds Act (ESSA), which requires annual assessments in reading and mathematics for all students in grades 3-8 and once in high school, as well as science, once in each of grades 3-5, 6-9, and 10-12.

Minnesota Statutes 2021, section 120B.30, outlines assessment requirements. Specifically, section 120B.30, subdivision 1a, requires "off-grade" test questions to be included. These "off-grade" test questions do not provide information about the grade-level content to be included in the math and reading MCA as intended by both state and federal law. Because this is an additional testing requirement for Minnesota students and not required by federal law, these "off-grade" question are not used for any reporting or test scoring, resulting in more staff and student time dedicated to testing without reason.

Compensatory revenue report (1)

Compensatory education revenue is state funding to help schools pay for the educational needs of students who do not meet performance standards appropriate for their age. The revenue is distributed largely based upon the

number of students qualifying for free or reduced-price lunch. There are 12 statutorily defined uses of compensatory revenue that allow spending on a wide range of educational purposes.

Minnesota Statutes 2021, section 126C.15, subdivision 5, requires school districts to determine whether compensatory revenue increased student achievement. Respondents stated that this mandate is unrealistic. In their 2020 audit, the Minnesota Office of the Legislative Auditor (OLA) recommended repeal of this requirement stating the following:

“In a survey we conducted for this evaluation, more than one-third of school districts reported that they did not measure the revenue’s impact or did not know whether they did. Of the district official saying they did report on the revenue’s impact, most did so by using standardized test results....One problem with estimating impacts of the revenue is that school districts’ indicators of academic success, such as test results, do not isolate the impacts of compensatory education revenue itself. School districts use multiple funding streams, not just compensatory revenue for their programming, making it difficult to determine whether results are tied to compensatory revenue alone.

A second problem is that valid and reliable studies of the revenue’s impact would require time, money, and analytical skills that few school districts may be able to offer. School districts would have to use rigorous research methods that could be difficult to conduct, such as setting up control groups to compare students who did and did not participate in programs funded by compensatory revenue. They would also have to account for all other school programs that might have an impact on students who are behind academically. Such research would be unreasonable to expect at the individual school district level.”

The OLA made other recommendations related to how the revenue is distributed, the current lack of data, and other statutory requirements that are outside the scope of this report.

Truth in taxation (1)

Cities with a population over 500, counties, school districts, and other public entities are required to schedule and hold public truth-in-taxation meetings, adopt and certify a proposed and final property tax levy, and monitor compliance with the truth-in-taxation law. The law was first enacted in 1988 to enhance public participation in Minnesota’s property tax system and improve accountability by focusing taxpayers on the relationship between budget decisions and property taxes.

It was reported in the survey results that the public meeting requirement in Minnesota Statutes 2021, section 275.065, subdivision 3, is a mandate that does not serve public education. Survey results indicated that accountability and sharing information should continue to be a priority, but that the reality is no one from the public attends, and the required meeting results only in duplicative information for school board members already informed about the issue.

Literacy incentive aid (1)

Literacy Incentive Aid provides general funding through formulas based upon the percentage of student who meet or exceed the standards for reading proficiency on the state's grade three reading test and the percentage of grade four students who meet their annual growth target goals on the state's grade four reading test. While the funding incentives seek to improve reading instruction through disbursement determined by student reading performance, and in order to receive aid districts must submit a Local Literacy Plan to MDE, it is part of a district's general funds and does not have to be used for literacy-related purposes.

It was reported by survey respondents that the formula for determining Literacy Incentive Aid mandated in Minnesota Statutes 2021, section 124.98, results in more funding for high-performing districts rather than to districts whose students are struggling with literacy and that need to provide more student support in literacy.

Conclusion

The survey methods used to compile this report resulted in eight education-related mandates that were identified as failing to promote public education in Minnesota. Each of these mandates would require legislative action in order to change. There was a high level of consistency in the top three that were reported, indicating these topics in particular are ripe for evaluation and discussion.