

NO CHILD LEFT BEHIND ACT OF 2001

North Dakota Century Code Section 54-35-21 (attached as an appendix), as amended by 2005 House Bill No. 1434, directs the Legislative Council to study the No Child Left Behind Act, any amendments to the Act, changes to federal regulations implementing the Act, and any applicable policy changes and letters of guidance issued by the United States Secretary of Education.

BACKGROUND

In 1965 President Lyndon B. Johnson signed into law the Elementary and Secondary Education Act. The purpose of that Act was to close the achievement gap that existed between advantaged and disadvantaged children. The Elementary and Secondary Education Act marked the first time that federal funds had been allocated to the individual states for the purpose of elementary and secondary education. Approximately every six to seven years, since its enactment, Congress has reauthorized the Act.

The 1994 congressional reauthorization of the Elementary and Secondary Education Act was called the Improving America's Schools Act. Congress found that after nearly 30 years of federal intervention in elementary and secondary education, the achievement gap not only still existed, but it had not narrowed. As a consequence, the 1994 Act sought to change the manner in which education was delivered.

It encouraged comprehensive systemic school reform, upgraded instructional and professional development to align with high standards, strengthened accountability, and promoted the coordination of resources to improve education for all children. The 1994 Act imposed requirements on states that received Title I funding. Those requirements included:

- Submitting to the United States Secretary of Education an accountability plan of standards and assessments developed in consultation with local education agencies;
- Developing challenging content standards and challenging student performance standards;
- Developing a system of high-quality yearly student assessments, including assessments in reading and mathematics;
- Disaggregating the assessment results by gender, racial and ethnic group, English proficiency status, migrant status, disability, and economic status; and
- Demonstrating adequate yearly progress based on the state's assessment system.

Congress determined that such stringent requirements, together with high academic standards, were needed to promote a national program of education

reform. What the 1994 Act lacked, however, was a timeline within which the states were to act and consequences for those states that failed to act. By 2001, when President George W. Bush took office, only 11 states were in compliance with the 1994 Act and no state was denied funding for not complying with the law.

In 2001 the Act was again reauthorized and this time it was called the No Child Left Behind Act. As did the previous law, the No Child Left Behind Act requires each state to submit an accountability plan of standards and assessments. Unlike the previous law, the No Child Left Behind Act required all states to submit their accountability plans to the United States Secretary of Education by a date certain, which was June 2003. All 50 states, together with the District of Columbia and Puerto Rico, met that deadline.

As did the previous law, the No Child Left Behind Act requires each state to implement challenging content standards and performance standards.

As did the previous law, the No Child Left Behind Act requires each state to set up a system of high-quality assessments and to disaggregate those assessments by subgroups. Unlike the previous law, however, the No Child Left Behind Act provided funding for the development and implementation of the assessment systems.

As did the previous law, the No Child Left Behind Act requires each state to demonstrate adequate yearly progress. Unlike the previous law, however, the No Child Left Behind Act provides options for students attending schools that do not meet the goal of adequate yearly progress.

In crafting the No Child Left Behind Act, Congress recognized that there was diversity among the states and therefore gave states the flexibility to provide the substance for adequate yearly progress in their plans and to define advanced, proficient, and basic levels of achievement. States were given the flexibility to determine minimum group size for accountability, to define their major ethnic and racial groups, and to determine annual measurable objectives. States were also given the flexibility to integrate adequate yearly progress with previously existing accountability systems, to account for unique schools such as small rural schools, and to determine testing standards for new teachers and evaluation standards for experienced teachers.

The No Child Left Behind Act passed by an overwhelming bipartisan vote in Congress and was signed into law on January 8, 2002. Since passage of the Act, federal funding for education has grown by 33 percent. The President's 2006 fiscal year budget proposal includes \$56 billion in federal funding for

education. With respect to North Dakota, the United States Department of Education Budget Service indicates that the President's budget would increase federal education funding to \$357.1 million and that amounts to a 37.5 percent increase since 2001. Within that amount, \$98.4 million would be set aside to help North Dakota implement the reforms of the Act, \$33.9 million would be set aside for Title I funding, and \$28.7 million would be set aside for special education grants. North Dakota's portion also would include \$4.5 million to ensure that every high school student in North Dakota graduates with the skills needed to succeed in college and in the globally competitive workforce, \$2.5 million in Reading First funding to ensure that every child in North Dakota learns to read by the third grade, \$13.9 million to attract and retain highly qualified teachers, \$3.5 million for annual assessments, and \$500,000 to support students who are English language learners.

STANDARDS AND ASSESSMENTS

The No Child Left Behind Act requires each state to adopt challenging academic content standards and challenging student achievement standards that are applicable to all schools and all students in the state. The standards may apply to whatever subjects a state selects but, at the very least, they must include mathematics and reading or English language arts. Beginning in the 2005-06 school year, the standards must also include science.

The academic content standards must:

- Specify what students are expected to know and be able to do;
- Contain coherent and rigorous content; and
- Encourage the teaching of advanced skills.

The student academic achievement standards must:

- Be aligned with the state's academic content standards;
- Describe two levels of high achievement (proficient and advanced) that determine how well students are mastering the material in the academic content standards; and
- Describe a third level of achievement (basic) to provide complete information about the progress of the lower-achieving students toward mastering the proficient and advanced levels of achievement.

ACCOUNTABILITY

The No Child Left Behind Act requires each state to develop and implement a single, statewide accountability system, which will be effective in ensuring that all local school districts and all public elementary and high schools make adequate yearly progress. Each state accountability system must:

- Be based on the state's academic standards and academic assessments and must take into account the achievement of all public

elementary school and high school students; and

- Include sanctions and rewards, such as bonuses and recognition, by which a state can hold its school districts and public elementary and high schools accountable for student achievement and for ensuring that adequate yearly progress is made.

ADEQUATE YEARLY PROGRESS

The No Child Left Behind Act requires each state to demonstrate what constitutes adequate yearly progress toward meeting the academic achievement standards with respect to the state, each of its school districts, and all of its public elementary and high schools. Although each state is permitted to define what constitutes adequate yearly progress, the definitions must:

- Apply the same high standards of academic achievement to all public elementary and high school students in the state;
- Be statistically valid and reliable;
- Result in continuous and substantial academic improvement for all students;
- Measure the progress of public elementary schools, high schools, school districts, and the state on the basis of academic assessments;
- Include separate measurable annual objectives for continuous and substantial improvement in the achievement of all public elementary school and high school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency;
- Include graduation rates for public high school students; and
- Include at least one other academic indicator, as determined by the state for all public elementary school students.

The definitions may also include other academic indicators, as determined by the state for all public school students and measured separately for each subgroup, such as achievement on additional state or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentage of students completing gifted and talented, advanced placement, and college preparatory courses.

HIGHLY QUALIFIED TEACHERS

Under the No Child Left Behind Act, "highly qualified" means that an individual has passed the state teacher licensing examination, holds a license to teach, and has not had licensure requirements waived on an emergency, temporary, or provisional basis. To be deemed "highly qualified" under the Act, an elementary teacher who is new to the profession must hold at least a bachelor's degree and have

demonstrated, by passing a rigorous state test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary school curriculum.

To be deemed "highly qualified" under the Act, a middle school or high school teacher who is new to the profession must hold at least a bachelor's degree and have demonstrated a high level of competency in each of the academic subjects in which the individual teaches. This may have been done by passing a rigorous state academic subject test in each of the academic subjects in which the individual teaches or by successfully completing, in each of the academic subjects in which the individual teaches, an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing.

To be deemed "highly qualified" under the Act, an elementary, a middle school, or a high school teacher who is not new to the profession must hold at least a bachelor's degree and either have met the requirements applicable to new teachers at the appropriate level of instruction or have demonstrated competence in all the academic subjects in which the individual teaches based on a high objective uniform state standard of evaluation that:

- Is set by the state for both grade-appropriate academic subject matter knowledge and teaching skills;
- Is aligned with challenging state academic content and student academic achievement standards and developed in consultation with core content specialists, teachers, principals, and school administrators;
- Provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which an individual teaches;
- Is applied uniformly to all teachers in the same academic subject and at the same grade level throughout the state;
- Takes into consideration, but is not based primarily on, the time the individual has been teaching in the academic subject;
- Is made available to the public upon request; and
- May involve multiple, objective measures of teacher competency.

UNDERSTANDING THE ACT

The No Child Left Behind Act, which depending on print size can run several hundred or more than 1,000 pages, is accompanied by equally voluminous regulations and policy letters from the Secretary and the Deputy Secretary of the United States Department of Education. These policy letters, according to the United States Department of Education, are designed to provide guidance and insight on a variety of topics of interest to state educational agencies, school

districts, federal program directors, and others, in implementing the No Child Left Behind Act. To date, letters have addressed areas such as accountability, adequate yearly progress in Title I targeted assistance schools, adjustments to Title I allocations, alternative methods for distributing Title I funds, assessments, calculating participation rates for adequate yearly progress determinations, choice, flexibility, highly qualified teachers, identification of districts for improvement, identification of schools for improvement, and paraprofessionals.

LITIGATION

Pontiac School District v. Spellings

On April 20, 2005, the National Education Association, together with education associations from Connecticut, Illinois, Indiana, Michigan, New Hampshire, Ohio, Texas, Utah, Vermont, and Reading, Pennsylvania, as well as one school district from Michigan, one from Texas, and seven from Vermont, filed a lawsuit claiming that the federal government is violating a specific section of the No Child Left Behind Act, referred to by the plaintiffs as the "unfunded mandates provision." The section in question provides that:

Nothing in this [No Child Left Behind] Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local education agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act. [20 U.S.C. section 7909(a).]

The lawsuit asks the court to declare that:

[S]tates and school districts are not required to spend non-NCLB funds to comply with the NCLB mandates, and that a failure to comply with the NCLB mandates for this reason does not provide a basis for withholding any federal funds to which they otherwise are entitled under the NCLB [See *School District of the City of Pontiac, et al. v. Spellings*, No. 2:05-CV-71535 (E.D. Mich. Apr. 20, 2005)]

The lawsuit also asks the court to enjoin the United States Department of Education from withholding any federal funds to which states and school districts are entitled because of a failure to comply with the Act's mandates. The lawsuit does not, however, ask the court to strike down all or even part of the No Child Left Behind Act. (See *Id.*) According to the Connecticut Education Association, the plaintiffs seek only to "hold the federal government accountable to the commitment it made when the law was passed." (See www.cea.org/NewsDesk/nealawsuit.htm)

On June 29, 2005, the federal government filed its response to the lawsuit and moved to dismiss it. The federal government argued that the various plaintiffs lack standing to proceed with the lawsuit, that the various school districts have not adequately pled the basis for their standing, and that the complaint fails to state a claim in that the so-called "unfunded mandate provision" does not prevent the imposition of unfunded mandates but only prevents federal officers or employees from adding to the No Child Left Behind Act's statutory requirements.

Oral arguments have been scheduled for October 19, 2005.

Connecticut v. Spellings

On August 22, 2005, Connecticut became the first state to file suit against the federal government over the No Child Left Behind Act. The lawsuit, filed in United States District Court in Hartford, claims that the Bush administration has not provided enough money to pay for new testing and programs and asks the court to declare that state and local funds cannot be used to meet the goals of the law. As in the case of *Pontiac School District v. Spellings*, the Connecticut case focuses on the "unfunded mandates provision." However, it also focuses on a Connecticut statute that prohibits using state resources to implement the law.

Connecticut currently tests students in grades 4, 6, and 8. Under the No Child Left Behind Act, the state

is required, beginning with the 2005-06 school year, to test students in grades 3, 5, and 7 as well. State education officials say they already know minority and poor children do not perform as well as their wealthy, white peers, and additional tests are not going to tell them more. Ms. Susan Aspey, a spokeswoman for the United States Department of Education stated that "[a] core principle of No Child Left Behind is annual testing in grades three through eight--so that we know how students are doing. Proposals to measure every two years can miss important information and in fact may provide information when it's too late." (Sam Dillon, *Connecticut Sues Feds Over No Child Left Behind Funds*, New York Times, August 23, 2005.)

According to Connecticut Education Commissioner Betty Sternberg, the federal government is providing Connecticut with \$5.8 million this fiscal year to pay for the testing. She estimates that federal funds will fall \$41.6 million short of paying for staffing, program development, standardized tests, and other costs associated with implementing the law through 2008. Ms. Aspey indicated that the Connecticut lawsuit sends the wrong message to students, educators, and parents. She said "[t]he funds have been provided for testing, but Connecticut apparently wants to keep those funds without using them as intended." (Noreen Gillespie, *Connecticut Challenges Child Left Behind Law*, Hartford Courant, August 23, 2005.)

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