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Operator's Signature

Salvatore Rickford

10/15/03
Date

2003 SENATE EDUCATION

SB 2065

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Operator's Signature

La Costa Rickford

Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 01-14-03

Tape Number	Side A	Side B	Meter #
1		x	0 - 50.0
Committee Clerk Signature <i>Dan Johnson</i>			

Minutes: SENATOR FREBORG called the committee to order. Roll Call was taken with all (6) members present.

SENATOR FREBORG opened the hearing on SB 2065 relating to state assessment of public school students in reading, mathematics, and science.

GREG GALLAGHER, Education Improvement Director, DPI, testified. (see attached). He stated the monies appropriated in the bill are in the DPI budget.

SENATOR COOK asked if schools in ND have requested more assessment from DPI. MR.

GALLAGHER stated local school districts have done so and used the results for school improvement as a supplement to their own evaluations. He stated NAPE is a separate assessment that is done on a federal level.

SENATOR COOK asked if the language only affects public schools. MR. GALLAGHER stated yes, but nonpublic schools can also have an assessment without any cost to them.

Page 2

Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 01-14-03

SENATOR COOK feels there are three categories of policy makers for this bill: 1. those who strongly want the standards and assessments expanded, 2. those who totally are against it, 3. those who feel they must support it because of the Title I money that will be lost if they don't do it. He asked if ND has any schools who receive no Title I funding. MR. GALLAGHER said yes, and it is the responsibility of the state to establish the accountability and assessment system. If a school accepts Title I funds, they are held accountable to the sanctions in Title I. If they don't accept Title I funds, they are not held accountable, but are still included in the state figures.

SENATOR FLAKOLL feels the 12th grade students may not be serious about doing an assessment. (see testimony submitted from Dr. Charles DeRemer). Could the assessment be done with just 10th and 11th grade. MR. GALLAGHER said DPI would not eliminate 12th grade assessment. He feels 12th grade students do take the assessment seriously if the results are important to them. Sometimes the local district has not communicated the importance to the students. (The information can be used to place the students in remedial courses in college and can also be given to potential employers, as long as the student consents to them reviewing the assessment.)

It was asked how education can be packaged to fit all students and teach all students the same.

The state publishes all results of the assessment and passes the information onto the local school districts to disseminate to the local schools.

SENATOR FREBORG had seen the results of several schools and found that some had looked for excuses as to why they got low scores. (example: the tests were given on Monday, the students had been out late due to a sporting event, many students were suffering from a virus, or it had rained for several days and everyone was feeling blue.)

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Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 01-14-03

SENATOR FLAKOLL would like a printout on the number of students assessed.

SENATOR COOK asked what the fiscal impact would be if this bill is not passed. MR.

GALLAGHER STATED it would be speculative on his part and would have to cover several scenarios.

Testimony in opposition to SB 2065:

BEV NIELSON, ND School Bd. Assn., has a number of questions on this bill (see attached). We are always looking for better tools to do assessments to give the teachers an idea of what is needed to help and improve the students learning. If Federal funding stops for this program, what will happen then, especially if this is mandated. ND has the option of setting standards in NCLBA legislation.

SENATOR COOK sees this as enabling legislation to allow DPI to set the standards.

Testimony received from DEBRA BIFFERT, sent to Senator G. Lee. (see attached)

The hearing was closed on SB 2065.

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Operator's signature

LaCosta Rickford

10/15/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 01-22-03

Tape Number	Side A	Side B	Meter #
2	x		3.0 - 19.7
Committee Clerk Signature <i>Debra Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

SENATOR FLAKOLL said the suggestion has been made to put the testing back to 11th grade. He presented an amendment for discussion.(38226.0101) (see attached).

SENATOR LEE asked if this amendment eliminates 12th grade from the assessment or does it drop both 11th and 12th grade from the testing. If assessing 11th grade in the fall, they are actually being tested on their 10th grade knowledge. SENATOR FLAKOLL stated the results are available in February of their 11th year.

SENATOR COOK presented e-mail testimony he had received from Kent Hjelmstad, Supt. of Mandan schools and written by Dr. Don Piper, facilitator for Walsh/Pembina schools..(see attached). The letter makes reference to a meeting of a group of superintendents with DPI officials on the whole issue of testing. It reveals their many concerns with NCLB.

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Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 01-22-03

SENATOR COOK stated he feels it is imperative that when a bill is passed out of committee, it should not go any farther than what is required in NCLB, unless it is a benefit to the state of ND.

SENATOR CHRISTENSON stated the spring of the 11th year is the best time to test. She feels this should be included in the bill and should be in statute.

SENATOR COOK feels this bill enables DPI to implement NDLB as they see fit.

The consensus of the committee is that there needs to be language put in the bill specific to what is desired by this committee.

Meeting Adjourned.

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Operator's Signature

La Costa Rickford

10/15/03

Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 1-27-03

Tape Number	Side A	Side B	Meter #
2		x	11.5 - 35.0
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

SENATOR FLAKOLL stated the difference is the grade 11 test must be administered after March 1 of the 11th grade. this is only to be given to 11th grade. It would be the last test given to the student for standards and assessment.

SENATOR FLAKOLL moved the amendments (38226.0102). Seconded by SENATOR CHRISTENSON.

SENATOR CHRISTENSON feels some parts of the bill are necessary for NCLB. Other parts could have serious implications for which schools would be determined as either low achievement or high. At a forum she attended, Dr. Piper stated he feels this bill could be disastrous as the ramification from it arise., It puts ND in a position of having to raise their standards. She feels our standards are high already.

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Senate Education Committee
Bill/Resolution Number SB 2065
Hearing Date 01-27-03

SENATOR COOK feels there are many entities looking at amending the bill. He feels this is enabling legislation that could open a can of worms.

SENATOR FREBORG would like SENATOR CHRISTENSON and SENATOR FLAKOLL along with the Intern to study NCLB and how it relates to this bill and perhaps look into how it will affect other legislation. (subcommittee)

SENATOR FREBORG would like legislation to give blanket coverage that DPI can't initiate legislation unless it is mandated by NCLB unless it is due to statute. In other words it has to come through committee and the committee needs to know if it is required.

SENATOR COOK stated we need to be careful. The legislative body should be doing what they think is best to measure the education of our ND students and put that into law. He would like to hear from the leaders in education what they want and think.

Roll Call Vote on amendment 38226.0102: 6 YES. 0 NO. 0 Absent.

SENATOR FREBORG stated this bill and NCLB gives such latitude to DPI and the legislative body needs to be aware of that. He asked that LARRY KLUNDT be contacted and present in writing to the committee the concerns with NCLB and this bill and the changes they would suggest.

The committee was adjourned.

LaCosta Rickford
Operator's Signature

10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 2-03-03

Tape Nurnber	Side A	Side B	Meter #
2		x	0 - 19.0
Committee Clerk Signature <i>Sandra Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll call was taken with all (6) members present.

The committee received written comments from GREG GALLAGHER and LARRY KLUNDT stating their positions and concerns with this bill and with NCLB. (see attached)

SENATOR COOK stated he had been contacted by an administrator and a school board member who felt these are needed amendments. They put in a mechanism that requires another step for approval on content standards and assessments through the ND Council of Educational Leaders.

The last section also has language that all state tests must provide accompanying nationally normed-reference student evaluations with proficiency standards. His understanding of their concern is that the present tests seem to show that many students are not proficient and they would like another testing mechanism for this (the norm-based test) which would give another means of measuring student performance.

Page 2

Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 2-03-03

SENATOR COOK moved the amendment (38226.0103). Seconded by **SENATOR**

FLAKOLL.

SENATOR CHRISTENSON feels too many groups need to be involved. **SENATOR FLAKOLL** asked if we are still okay as to a high school student viewing the tests. **SENATOR COOK** stated that parameters had been set last session that state high school students can not view tests.

SENATOR CHRISTENSON stated norm-reference is not what standards and benchmarks are all about. They are criteria referenced standards. Is this suggesting we need two kinds of tests?

SENATOR COOK stated he believes the amendments ask for two types of tests, core-based tests (National Assessment of Educational Progress) and norm-referenced tests (Iowa Basic Skills)

This will give two perspectives as to the quality of education being provided. This possibly will increase the fiscal note or it may be a local expense. **SENATOR CHRISTENSON** asked Senator Cook what, exactly, he is uncomfortable with in this bill. **SENATOR COOK** stated that NCLB is a great concept but brings a policy schift to ND. We need to provide a proficient level of educational opportunities to students. He also feels that those who should be held accountable for a child not learning should not be the teachers, in most cases.

SENATOR FLAKOLL stated there is no provision if one of the three groups does not approve.

SENATOR COOK feels before the 2005 - 2006 school year, the groups will agree. **SENATOR**

FREBORG asked what if they don't. **SENATOR COOK** stated the legislative body at the next session will have to deal with it once they find out what the disagreements are. **SENATOR**

FLAKOLL said maybe an interim committee of the Legislative Council should have the final

say. That would give an out card. **SENATOR COOK** has had much e-mail from school

administrators. They would like to have some input as to these issues. Maybe by the end of

Page 3

Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 2-03-03

session we will have addressed most of their concerns. SENATOR COOK feels there is time to put this together where all three groups agree before 2005 - 2006 school year.

Roll Call Vote: 4 YES. 2 NO. 0 Absent. Amendment Adopted.

Tape 3, Side A, 0 - 2.0

SENATOR FLAKOLL received an amendment he would like to present, but it isn't correct. He will present it later.

Committee Adjourned.

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LaCosta Rickford

Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 02-04-03

Tape Number	Side A	Side B	Meter #
2	x		5.0 - 23.0
Committee Clerk Signature <i>Audrey Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

SENATOR FLAKOLL would still like to divide the four categories into three. He also addressed cut scores.

SENATOR COOK feels we need three categories which he supports. He further feels this should be in effect only as long as federal dollars are available.

SENATOR FLAKOLL hopes to address what courses will be offered.

SENATOR CHRISTENSON stated that Greg Gallagher, DPI, brought to her attention that spring of the eleventh year would probably miss one year in the testing and reporting.

GREG GALLAGHER stated that the cut scores are determined after the assessment. He would see assessing in the Fall (November would be ideal) as best for timely reporting.

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Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 02-04-03

SENATOR COOK moved to amend amendment 38226.0102 with: line 22, replace "before

March 1" with "after November 1". Seconded by SENATOR LEE. Roll Call Vote: 6

YES. 0 NO. 0 Absent. Amendment Adopted.

Committee Adjourned.

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10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Conference Committee

Hearing Date 02-05-03

Tape Number	Side A	Side B	Meter #
1		x	29.0 - end
2	x		0 - 9.2
2	x		10.9 - 28.5
Committee Clerk Signature <i>Daniel Johnson</i>			

Minutes: CHAIRMAN FREBORG called the committee to order. Roll Call was taken with all (6) members present.

SENATOR FLAKOLL raised the question that if the bill requires the three groups to approve (ND council of educational leaders, superintendent of public instruction and an interim committee of the legislative council) the assessment, will there be a risk of impasse. He wonders if the interim committee should be the ones to have the final say.

SENATOR COOK said there needs to be a change in the language of his amendment (38226.0103). Maybe the concerns can be addressed and solved with other language. He feels we need to pass this bill out as good as we can make it and it will have another hearing in the House. We would have to stipulate the interim education finance committee as the final ones to have the say on assessments and tests.

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Senate Education Committee

Bill/Resolution Number SB 2065

Hearing Date 02-05-03

GREG GALLAGHER, DPI, was asked to speak. He stated it is a trust issue. Who are the people establishing the core essentials. Who are the ones drafting the standards and assessments. He feels there are problematic differences here.

SENATOR CHRISTENSON feels there needs to be qualified people making the decisions on standards and assessments. She would even consider putting it back in the hands of DPI.

SENATOR COOK stated that NCLB is going to have an impact/consequence on all involved in educating our youth. He feels this will be an ongoing process and we will need to build trust and understanding among all the players (students, teachers, parents, school districts and taxpayers). He supports Senator Freborg's suggestion that anyone, Educational Leaders, etc., can make recommendations to the interim committee and they can then make a decision.

Committee adjourned.

Tape 2, Side A, 10.9 - 28.5

SENATOR FLAKOLL presented an amendment (38226.0105). He stated SENATOR CHRISTENSON and himself were presenting the amendments and hope the concerns of everyone have been somewhat addressed. Page 1, line 22, the testing will be the 11th grade and not after Nov. 1 of each school year. Subsection 3 cut scores, the tests, must be reviewed by the committee consisting of two representatives of DPI; two members of the Legislative assembly, appointed by the chair of the legislative council; and three individuals with backgrounds in education appointed by the governor. This would allow for a diverse group who would pick their own chair. Under number 4, the last sentence was added which states three categories, advanced, proficient, and novice. Section 2 offers an expiration date if there are no federal funds available.

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Senate Education Committee
Bill/Resolution Number SB 2065
Hearing Date 02-05-03

SENATOR COOK is still uncomfortable with the bill.

SENATOR CHRISTENSON stated that we have now defined the committee and it is some from each group of people.

SENATOR COOK asked for an explanation of section 2. SENATOR CHRISTENSON stated that we do not want to undertake this unless there is federal funding to implement it.

SENATOR COOK still has some concerns. His concern is with the formation of the committee and the makeup of it.

SENATOR CHRISTENSON feels it is in statute "if not funded, it is not the state's responsibility".

SENATOR COOK moved to amend 38226.0103 by adding the last sentence in subsection 4 of 38226.0105 to subsection 4 of 38226.0103. Seconded by SENATOR LEE.

Roll Call Vote: 4 YES. 2 NO. 0 Absent. Motion Carried

SENATOR COOK moved a DO PASS as Amended and be Rereferred to Appropriations.

Seconded by SENATOR LEE.

Roll Call Vote: 4 YES. 2 NO. 0 Absent.

Carrier: SENATOR COOK

The committee was adjourned.

FISCAL NOTE
Requested by Legislative Council
04/17/2003

Amendment to: SB 2065

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$3,690,000	\$0	\$6,935,000	\$0	\$7,300,000
Expenditures	\$1,200,000	\$3,250,000	\$0	\$8,115,000	\$0	\$9,100,000
Appropriations	\$1,200,000	\$0	\$1,200,000	\$0	\$1,800,000	\$0

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2065 requires the state to develop and implement state assessments in reading/English language arts, mathematics, and science in identified grades as established by a specified schedule. The fiscal impact from SB 2065 falls entirely on the state. School districts are responsible for the administration of the state assessments within their proscribed instructional periods; therefore, there are no additional costs that impact local schools.

Costs associated with the development and implementation of the state assessments include: the development of state content standards, the development of state achievement standards, the alignment of state content standards with test items; the development of future test items, the administration of the actual assessments to students; the scoring of student tests; the establishment of achievement cut scores related to the state achievement standards; the printing and dissemination of reports to students, schools, districts, and the state; the development of school and district Report Cards and Profiles; the use of student data analysis and reporting applications, and associated professional development and technical assistance to schools. A state advisory committee has concurred with the Department of Public Instruction's identification of these development and administration activities. The cost estimates for each of these identified categories are included within this fiscal note.

SB 2065 identifies an implementation schedule for various assessments. This schedule requires the state to fund certain development activities prior to the eventual administration activities. Additionally, all standards and assessments must be maintained in order to assure the validity and reliability of the assessment instruments. All development, administration, and maintenance costs are included within this fiscal note.

A detailed accounting of each activity is provided in Section 3B of this fiscal note.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Department of Public Instruction has included within its 2003-05 operational budget all general funds required to administer the state assessment program. The department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium. There are no proposed increases in general funds for the state assessment program above the 2001-03 biennium. The state must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the state reading/English language arts, and mathematics assessments in Grades 4, 8, and 12.

The Department of Public Instruction has also included within its operational budget (SB 2013) an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the state assessment program. These federal funds, supported through Title VI of the Elementary and Secondary Education Act, cover any new development and implementation costs associated with the extension of the state's assessment program as identified within SB 2065. There is no appropriation attached to this bill.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Listed below is an outline of the projected costs associated with the state assessment program. These activities are identified in the narrative section above.

Activity	2002-03	2003-04	2004-05	2005-06	2006-07
Standards Development:	350,000	275,000	50,000	50,000	350,000
Assessment Development:	800,000	2,480,000	3,310,000	4,150,000	3,950,000
State Accountability Initiatives:	1,500,000	1,050,000	950,000	300,000	300,000
Total	2,650,000	3,805,000	4,310,000	4,500,000	4,600,000

These projections may vary depending on the final determination of contract negotiations, unanticipated costs or savings, schedule delays or postponements, or other associated project activities.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

As identified within the Revenue section above (3A), there is no appropriation for general funds attached to this bill.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	04/17/2003

FISCAL NOTE
Requested by Legislative Council
03/18/2003

Amendment to: SB 2065

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$3,690,000	\$0	\$6,935,000	\$0	\$7,300,000
Expenditures	\$1,200,000	\$3,250,000	\$0	\$8,115,000	\$0	\$9,100,000
Appropriations	\$1,200,000	\$0	\$1,200,000	\$0	\$1,800,000	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SB 2065 requires the state to develop and implement state assessments in reading/English language arts, mathematics, and science in identified grades as established by a specified schedule. The fiscal impact from SB 2065 falls entirely on the state. School districts are responsible for the administration of the state assessments within their proscribed instructional periods; therefore, there are no additional costs that impact local schools.

Costs associated with the development and implementation of the state assessments include: the development of state content standards, the development of state achievement standards, the alignment of state content standards with test items; the development of future test items, the administration of the actual assessments to students; the scoring of student tests; the establishment of achievement cut scores related to the state achievement standards; the printing and dissemination of reports to students, schools, districts, and the state; the development of school and district Report Cards and Profiles; the use of student data analysis and reporting applications, and associated professional development and technical assistance to schools. A state advisory committee has concurred with the Department of Public Instruction's identification of these development and administration activities. The cost estimates for each of these identified categories are included within this fiscal note.

SB 2065 identifies an implementation schedule for various assessments. This schedule requires the state to fund certain development activities prior to the eventual administration activities. Additionally, all standards and assessments must be maintained in order to assure the validity and reliability of the assessment instruments. All development, administration, and maintenance costs are included within this fiscal note.

A detailed accounting of each activity is provided in Section 3B of this fiscal note.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Public Instruction has included within its 2003-05 operational budget all general funds required to administer the state assessment program. The department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium. There are no proposed increases in general funds for the state assessment program above the 2001-03 biennium. The state must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the state reading/English language arts, and mathematics assessments in Grades 4, 8, and 12.

The Department of Public Instruction has also included within its operational budget (SB 2013) an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the state assessment program. These federal funds, supported through Title VI of the Elementary and Secondary Education Act, cover any new development and implementation costs associated with the extension of the state's assessment program as identified within SB 2065. There is no appropriation attached to this bill.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Listed below is an outline of the projected costs associated with the state assessment program. These activities are identified in the narrative section above.

Activity	2002-03	2003-04	2004-05	2005-06	2006-07
Standards Development:	350,000	275,000	50,000	50,000	350,000
Assessment Development:	800,000	2,480,000	3,310,000	4,150,000	3,950,000
State Accountability Initiatives:	1,500,000	1,050,000	950,000	300,000	300,000
Total	2,650,000	3,805,000	4,310,000	4,500,000	4,600,000

These projections may vary depending on the final determination of contract negotiations, unanticipated costs or savings, schedule delays or postponements, or other associated project activities.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

As identified within the Revenue section above (3A), there is no appropriation for general funds attached to this bill.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	03/19/2003

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La Costa Rickford 10/15/03
Operator's Signature Date

FISCAL NOTE
Requested by Legislative Council
02/20/2003

Amendment to: SB 2065

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$3,690,000	\$0	\$6,935,000	\$0	\$7,300,000
Expenditures	\$1,200,000	\$3,250,000	\$0	\$8,115,000	\$0	\$9,100,000
Appropriations	\$1,200,000	\$0	\$1,200,000	\$0	\$1,800,000	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Reengrossed SB 2065 requires the state to develop and implement state assessments in reading/English language arts, mathematics, and science in identified grades as established by a specified schedule. The fiscal impact from Reengrossed SB 2065 falls entirely on the state. School districts are responsible for the administration of the state assessments within their proscribed instructional periods; therefore, there are no additional costs that impact local schools.

Costs associated with the development and implementation of the state assessments include: the development of state content standards, the development of state achievement standards, the alignment of state content standards with test items; the development of future test items, the administration of the actual assessments to students; the scoring of student tests; the establishment of achievement cut scores related to the state achievement standards; the printing and dissemination of reports to students, schools, districts, and the state; the development of school and district Report Cards and Profiles; the use of student data analysis and reporting applications, and associated professional development and technical assistance to schools. A state advisory committee has concurred with the Department of Public Instruction's identification of these development and administration activities. The cost estimates for these identified activities are included within this fiscal note.

Reengrossed SB 2065 identifies an implementation schedule for various assessments. This schedule requires the state to fund certain development activities prior to the eventual administration activities. Additionally, all standards and assessments must be maintained in order to assure the validity and reliability of the assessment instruments. All development, administration, and maintenance costs are included within this fiscal note.

A detailed accounting of each activity is provided in Section 3B of this fiscal note.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Public Instruction has included within its 2003-05 operational budget all general funds required to administer the state assessment program. The department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium. There are no proposed increases in general funds for the state assessment program above the

2001-03 biennium. The state must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the state reading/English language arts, and mathematics assessments in Grades 4, 8, and 12.

The Department of Public Instruction has also included within its operational budget (SB 2013) an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the state assessment program. These federal funds, supported through Title VI of the Elementary and Secondary Education Act, cover any new development and implementation costs associated with the extension of the state's assessment program as identified within SB 2065.

There is no appropriation attached to this bill.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Listed below is an outline of the projected costs associated with the state assessment program. These activities are identified in the narrative section above.

ACTIVITY: 2002-03/2003-04/2004-05/2005-06/2006-07

Standards Development: 350,000/275,000/50,000/50,000/350,000
Assessment Development: 800,000/2,480,000/3,310,000/4,150,000/3,950,000
State Accountability Initiatives: 1,500,000/1,050,000/950,000/300,000/300,000

TOTAL: 2,650,000/3,805,000/4,310,000/4,500,000/4,600,000

These projections may vary depending on the final determination of contract negotiations, unanticipated costs or savings, schedule delays or postponements, or other associated project activities.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

As identified within the Revenue section above (3A), there is no appropriation for general funds attached to this bill.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	02/25/2003

FISCAL NOTE
Requested by Legislative Council
02/07/2003

Amendment to: SB 2065

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$3,690,000	\$0	\$6,935,000	\$0	\$7,300,000
Expenditures	\$1,200,000	\$2,050,000	\$6,690,000	\$6,935,000	\$9,900,000	\$7,300,000
Appropriations	\$1,200,000	\$0	\$6,690,000	\$0	\$9,900,000	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Engrossed SB 2065 requires the State to develop and implement State assessments in reading/English language arts, mathematics, and science in identified grades as established by a specified schedule. Engrossed SB 2065 also requires the administration of a second tier of nationally norm-referenced student evaluations with proficiency standards in the identified grade levels. This inclusion of an additional tier of testing has effectively doubled the fiscal note for Engrossed SB 2065 over the original fiscal note for SB 2065.

The State assumes the full fiscal impact from Engrossed SB 2065. School districts are responsible for the administration of the State assessments within their proscribed instructional periods; therefore, there are no additional costs that impact local schools.

Costs associated with the development and implementation of the State assessments include: the development of State content standards, the development of State achievement standards, the alignment of State content standards with test items; the development of future test items, the administration of the actual assessments to students; the scoring of student tests; the establishment of achievement cut scores related to the State achievement standards; the printing and dissemination of reports to students, schools, districts, and the State; the development of school and district Report Cards and Profiles; the use of student data analysis and reporting applications, and associated professional development and technical assistance to schools. A State advisory committee has concurred with the Department of Public Instruction's identification of these development and administration activities. The cost estimates for each of these identified activities are included within this fiscal note.

Engrossed SB 2065 identifies an implementation schedule for various assessments. This schedule requires the State to fund certain development activities prior to the eventual administration activities. Additionally, all standards and assessments must be maintained in order to assure the validity and reliability of the assessment instruments. All development, administration, and maintenance costs are included within this fiscal note. This fiscal note also includes the costs associated with the development and implementation of a second tier of nationally norm-referenced assessments with proficiency standards.

An outline of each activity category is provided in section 3B of this fiscal note. The overall cost impact of Engrossed SB 2065 surrounds assessment development and implementation activities. As required within the bill, a second tier of testing must be provided. A second tier of testing requires the same activities as the first tier of testing. This effectively doubles the cost of testing. Engrossed SB 2065 does not impact activities related to standards

development or accountability.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Department of Public Instruction has included within its 2003-05 operational budget (SB 2013) all general funds required to administer the State assessment program. The Department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium within the Department's operational budget. There are no proposed increases in general funds for the State assessment program above the 2001-03 biennium within SB 2013. The State must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the State reading/English language arts and mathematics assessments in grades 4, 8, and 12.

The Department of Public Instruction has also included within its operational budget (SB 2013) an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the State assessment program. These federal funds, supported through Title VI of the Elementary and Secondary Education Act, cover any approved development and implementation costs associated with the extension of the State's assessment program. The activities identified within Engrossed SB 2065, subsection 4, lie outside the approved activities of ESEA Title VI; therefore, Title VI cannot be used to support the activities of subsection 4. These activities must be supported entirely with State funds.

Engrossed SB 2065 requires an additional appropriation above the appropriation request within SB 2013. Engrossed SB 2065 requires an additional appropriation of State funds, beyond the current request, totaling \$5,490,000 for the 2003-05 biennium and \$8,100,000 for the 2005-07 biennium.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Listed below is an outline of the projected costs associated with the State assessment program. These activities are identified in the narrative section above.

Activity Expenditures: 2002-03/2003-04/2004-05/2005-06/2006-07

Standards Development Activities: 350,000/275,000/50,000/50,000/350,000

Assessment Development Activities:
800,000/4,680,000/6,620,000/8,300,000/7,900,000

State Accountability Initiatives:
1,500,000/1,050,000/950,000/300,000/300,000

Total Annual Expenditures:
2,650,000/6,005,000/7,620,000/8,650,000/8,550,000

Total Biennium Expenditures: \$13,625,000/\$17,200,000/

These projections may vary depending on the final determination of contract negotiations, unanticipated costs or savings, schedule delays or postponements, or other associated project activities.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

As identified within the Revenue section above (3A), Engrossed SB 2065 will require an additional appropriation of

State funds, above the amount requested within SB 2013, totaling \$5,490,000 for the 2003-05 biennium and \$8,100,000 for the 2005-07 biennium.

The effect of Engrossed SB 2065 will be to double the cost of the State's academic assessment program beyond that proposed within the original SB 2065 and that supported within SB 2013.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	02/11/2003

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In Costa Rickford
Operator's Signature

10/15/03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: SB 2065

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$3,690,000	\$0	\$6,835,000	\$0	\$7,300,000
Expenditures	\$1,200,000	\$3,260,000	\$0	\$8,115,000	\$0	\$9,100,000
Appropriations	\$1,200,000	\$0	\$1,200,000	\$0	\$1,800,000	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SB 2065 requires the state to develop and implement state assessments in reading/English language arts, mathematics, and science in identified grades as established by a specified schedule. The fiscal impact from SB 2065 falls entirely on the state. School districts are responsible for the administration of the state assessments within their proscribed instructional periods; therefore, there are no additional costs that impact local schools.

Costs associated with the development and implementation of the state assessments include: the development of state content standards, the development of state achievement standards, the alignment of state content standards with test items; the development of future test items, the administration of the actual assessments to students; the scoring of student tests; the establishment of achievement cut scores related to the state achievement standards; the printing and dissemination of reports to students, schools, districts, and the state; the development of school and district Report Cards and Profiles; the use of student data analysis and reporting applications, and associated professional development and technical assistance to schools. A state advisory committee has concurred with the Department of Public Instruction's identification of these development and administration activities. The cost estimates for each of these identified categories are included within this fiscal note.

SB 2065 identifies an implementation schedule for various assessments. This schedule requires the state to fund certain development activities prior to the eventual administration activities. Additionally, all standards and assessments must be maintained in order to assure the validity and reliability of the assessment instruments. All development, administration, and maintenance costs are included within this fiscal note.

A detailed accounting of each activity is provided in Section 3B of this fiscal note.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Department of Public Instruction has included within its 2003-05 operational budget all general funds required to administer the state assessment program. The department has proposed a maintenance budget of \$1.2 million for the 2003-05 biennium.

There are no proposed increases in general funds for the state assessment program above the 2001-03 biennium. The state must maintain its appropriation of \$1.2 million in general funds during the 2003-05 biennium in order to meet its maintenance-of-effort commitment with the U.S. Department of Education. This maintenance-of-effort commitment covers the costs of administering the state reading/English language arts, and mathematics assessments in Grades 4, 8, and 12.

The Department of Public Instruction has also included within its operational budget (SB 2013) an authority request to cover \$6,935,000 in allocated federal funds that are earmarked for the state assessment program. These federal funds, supported through Title VI of the *Elementary and Secondary Education Act*, cover any new development and implementation costs associated with the extension of the state's assessment program as identified within SB 2065.

There is no appropriation attached to this bill.

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Listed below is an outline of the projected costs associated with the state assessment program. These activities are identified in the narrative section above.

Activity	2002-03	2003-04	2004-05	2005-06	2006-07
Standards Development:	350,000	275,000	50,000	50,000	350,000
Assessment Development:	800,000	2,480,000	3,310,000	4,150,000	3,950,000
State Accountability Initiatives:	1,500,000	1,050,000	950,000	300,000	300,000
Total	2,650,000	3,805,000	4,310,000	4,500,000	4,600,000

These projections may vary depending on the final determination of contract negotiations, unanticipated costs or savings, schedule delays or postponements, or other associated project activities.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

As identified within the Revenue section above (3A), there is no appropriation for general funds attached to this bill.

Name:	Greg Gallagher	Agency:	Public Instruction
Phone Number:	328-1838	Date Prepared:	01/13/2003

38226.0101
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
January 14, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 15, remove the first "and", after "eight" Insert an underscored comma, and replace
"in one grade selected within the grade span ten" with "eleven"

Page 1, line 16, remove "through twelve"

Page 1, line 20, replace "within each of" with "from"

Page 1, line 21, remove "the following grade spans:" and after the first underscored semicolon
Insert "to at least one grade level selected from"

Page 1, line 22, replace "grades ten through twelve" with "to grade eleven"

Renumber accordingly

*Flakoll will ask LC to draft amend. to
reflect when 11th grade should be tested -
Christenson - at least Mar./April or last 9 wks.*

*"not before Mar 15th" of 11th grade -
↑ committee agrees w*

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 2, after "science" insert "; and to provide an expiration date"

Page 1, line 15, remove the first "and", after "eight" insert an underscored comma, and replace
"In one grade selected within the grade span ten" with "eleven"

Page 1, line 16, remove "through twelve"

Page 1, line 20, replace "within each of" with "from"

Page 1, line 21, remove "the following grade spans: grades" and replace the second "grades"
with "to at least one grade level selected from"

Page 1, replace line 22 with "to grade eleven. The superintendent of public instruction may not
administer the grade eleven test after November first of each school year."

3. Before administration in the 2005-06 school year, all state tests and accompanying rubrics and cut scores referenced in this section must be reviewed and approved by a committee consisting of three representatives of the superintendent of public instruction, three members of the legislative assembly appointed by the chairman of the legislative council, and three individuals with backgrounds in education appointed by the governor. One member of the committee, to be selected by the committee members, shall serve as chairman. The committee shall hold public hearings to provide opportunity for comment on the state tests, accompanying rubrics, and cut scores.
4. All state tests must provide accompanying nationally norm-referenced student evaluations with proficiency standards for at least grades four and eight and for the high school grade in which the tests are administered. In all test categories referenced in this section or in the alternative, another nationally normed test other than the national assessment of educational progress must be administered at the time the state tests are administered to students in grades four and eight and to students at the high school level, and the results must be provided to school districts and to parents. The proficiency standards into which results must be segregated are to be known as advanced, proficient, and novice.

SECTION 2. EXPIRATION DATE. This Act is effective only until the date on which the superintendent of public instruction certifies to the secretary of state and the legislative council that federal funds are no longer available to fully support the cost of administering section 15.1-21-08 and after that date is ineffective."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 15, remove the first "and", after "eight" insert an underscored comma, and replace "in one grade selected within the grade span ten" with "eleven"

Page 1, line 16, remove "through twelve"

Page 1, line 20, replace "within each of" with "from"

Page 1, line 21, remove "the following grade spans: grades" and replace the second "grades" with "to at least one grade level selected from"

Page 1, line 22, replace "grades ten through twelve" with "to grade eleven. The superintendent of public instruction may not administer the grade eleven test after November first of each school year."

Page 1, after line 22, insert:

- "3. Before application in the 2005-06 school year, all state tests and accompanying rubrics and cut scores referenced in this section must be independently reviewed by representatives of the North Dakota council of educational leaders and may be administered only upon the written concurrence of the North Dakota council of educational leaders and the superintendent of public instruction, and approval of an interim committee of the legislative council. Any other individual who wishes to view and comment on the tests and accompanying rubrics and cut scores must be provided an opportunity to view the tests by the superintendent of public instruction and may provide comments to the interim committee of the legislative council.
4. All state tests must provide accompanying nationally norm-referenced student evaluations with proficiency standards for at least grades four and eight and for the high school grade in which the tests are administered. In all test categories referenced in this section or in the alternative, another nationally normed test other than the national assessment of educational progress must be administered at the time the state tests are administered to students in grades four and eight and to students at the high school level, and the results must be provided to school districts and to parents. The proficiency standards into which results must be segregated are to be known as advanced, proficient, and novice.

Renumber accordingly

38226.0102
Title.

Prepared by the Legislative Council staff for
Senator Flakoll
January 23, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, line 15, remove the first "and", after "eight" insert an underscored comma, and replace
"in one grade selected within the grade span ten" with "eleven"

Page 1, line 16, remove "through twelve"

Page 1, line 20, replace "within each of" with "from"

Page 1, line 21, remove "the following grade spans: grades" and replace the second "grades"
with "to at least one grade level selected from"

Page 1, line 22, replace "grades ten through twelve" with "to grade eleven. The superintendent
of public instruction may not administer the grade eleven test before March first of each
school year"

after 5700.1

Renumber accordingly

Date: 1/27/03

Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken moved amend. 38226.0102

Motion Made By Sen. Flakoll Seconded By Sen. Christenson

[illegible]

Total (Yes) 6 No 0

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

amendment adopted

Lacosta Rickford
Operator's Signature

10/15/03
Date

38226.0103
Title.

Prepared by the Legislative Council staff for
Senator Cook
February 3, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2065

Page 1, after line 22, Insert:

- "3. Before application in the 2005-06 school year, all state tests and accompanying rubrics and cut scores referenced in this section must be independently reviewed by representatives of the North Dakota council of educational leaders and may be administered only upon the written concurrence of the North Dakota council of educational leaders, the superintendent of public instruction, and approval of an interim committee of the legislative council. Any other persons who wish to view and comment on the tests and accompanying rubrics and cut scores must be provided an opportunity to view the tests by the superintendent of public instruction and may provide comments to the interim committee of the legislative council.
4. All state tests must provide accompanying nationally norm-referenced student evaluations with proficiency standards for at least grades four and eight and for the high school grade in which the tests are administered. In all test categories referenced in this section or in the alternative, another nationally normed test other than the national assessment of educational progress must be administered at the time the state tests are administered to students in grades four and eight and to students at the high school level, and the results must be provided to school districts and to parents."

Renumber accordingly

Date: 2/3/03

Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate	EDUCATION	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken moved amendments (38226.0103)

Motion Made By Sen. Cook Seconded By Sen. Hakoll

[illegible]

Total (Yes) 4 No 2

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Amendment adopted

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Operator's Signature Salvatore Rickford

10/15/03
date

Date: 2/4/03

Roll Call Vote #: /

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken amend amendment 38226.0102

Motion Made By Sen. Cook Seconded By Sen. Lee

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

line 22 replace 'before March first' with
"after November first"

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Salvatore Rickford
Operator's Signature

Date _____

Date: 2/5/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. *SB2065*

Senate	EDUCATION	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken amend .0103

Motion Made By Sen. Cook Seconded By Sen. Rice

[illegible]

Total (Yes) 4 No 2

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Sub sec. 4 of 38226.0103 add "The proficiency standards into which results must be segregated are to be known as advanced, proficient, and novice."

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Operator's Signature Lo Costa Rickford Date 10/15/03

Date: 2/5/03

Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES

Senate EDUCATION

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

[illegible]

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Cook

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

Date _____

REPORT OF STANDING COMMITTEE (410)
February 6, 2003 8:59 a.m.

Module No: SR-23-1800
Carrier: Cook
Insert LC: 38226.0106 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2065: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2065 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the first "and", after "eight" insert an underscored comma, and replace "In one grade selected within the grade span ten" with "eleven"

Page 1, line 16, remove "through twelve"

Page 1, line 20, replace "within each of" with "from"

Page 1, line 21, remove "the following grade spans: grades" and replace the second "grades" with "to at least one grade level selected from"

Page 1, line 22, replace "grades ten through twelve" with "to grade eleven. The superintendent of public instruction may not administer the grade eleven test after November first of each school year"

Page 1, after line 22, insert:

- "3. Before application in the 2005-06 school year, all state tests and accompanying rubrics and cut scores referenced in this section must be independently reviewed by representatives of the North Dakota council of educational leaders and may be administered only upon the written concurrence of the North Dakota council of educational leaders and the superintendent of public instruction, and approval of an interim committee of the legislative council. Any other individual who wishes to view and comment on the tests and accompanying rubrics and cut scores must be provided an opportunity to view the tests by the superintendent of public instruction and may provide comments to the interim committee of the legislative council.
4. All state tests must provide accompanying nationally norm-referenced student evaluations with proficiency standards for at least grades four and eight and for the high school grade in which the tests are administered, in all test categories referenced in this section or in the alternative, another nationally normed test other than the national assessment of educational progress must be administered at the time the state tests are administered to students in grades four and eight and to students at the high school level, and the results must be provided to school districts and to parents. The proficiency standards into which results must be segregated are to be known as advanced, proficient, and novice."

Renumber accordingly

2003 SENATE APPROPRIATIONS

SB 2065

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Operator's Signature

La Costa Rickford

Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

Senate Appropriations Committee

☐ Conference Committee

Hearing Date 2-12-03

Tape Number	Side A	Side B	Meter #
1		X	5375 -end
2	X		0-555
Committee Clerk Signature <i>Sandra Davison</i>			

Minutes: Chairman Holmberg opened the hearing to SB 2065. A bill relating to state assessment of public school student in reading, mathematics, and science. A group of students were visiting and Chairman Holmberg explained to the students that the committee members are in and out of the committees hearing and speaking on other bills. He also explained that this bill was referred to Appropriations committee from the Education committee with a vote of 4-2. He explained that the purpose of this committee is the appropriations of the bill not the policy. (Meter 5444)

Greg Gallagher, Director of Education Improvement within the DPI: See testimony Exhibit 1 which he is the author of the engrossed bill and offered a copy of the engrossed bill. This was submitted yesterday. Under the original bill the funding was supplied within the departments funding bill of operation. With the engrossed bill, we do see some amendments that do affect the fiscal note. Overview of the engrossed bill and explained the amendment. (Meter 6130)

Chairman Holmberg: Was the Education committees concern about the money in it or was their concern about the fact that the state was to set up this parallel system? (Meter 6200) Greg

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Gallagher: I believe that the Senate Education committees intent was the policy issue of a parallel system. There was no discussion at all about the impact financially to the state.

Tape 2 Side A

Chairman Holmberg: The additional amount of money that would have to be added to HB 1013 would be what? (Meter 19) Roxanne Woeste, LC: 5.9 million dollars to be added to DPI appropriate for the '03'-'05 biennium. (Meter 80) Senator Bowman: You are trying to find another way to test kids in these three areas in grade school, is that what this is? (Meter 102)

Greg Gallagher: This is the proposal coming from the Education committee itself. The Department would not support this but their intention to find a secondary means to validate the finding of the state primary assessment system. Something other than NAT. (Meter 154)

Chairman Holmberg: If this is not passed, what impact will it have? (Meter 173) Greg: The impact would go back under the original proposal, SB 2013, the funding within operations. The state will continue to do its assessment as it currently do. We would have no federal issues to deal with so we are fine as far as policy issues are concerned. It is 6.9 for the federal title VI funds, and then 1.2 million of state funding we are obligated to. (Meter 266) Senator Mathern: Why is there an impact? (Meter 363) Senator Andrist: What is the decrease side of a DO NOT PASS? (Meter 419) Greg: Looking for another means to validate, to confirm the quality of the state assessments of the students. The data from these assessments (Meter 476) Chairman Holmberg: Clarified that it is a good idea but the Education committee do not have knowledge about the fiscal impact. We end up with a pretty heavy fiscal note, when we are scraping around and kind of undoes all our work. (Meter 555) Chairman Holmberg closed the hearing to SB 2065.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065 Votes

Senate Appropriations Committee

☐ Conference Committee

Hearing Date Feb. 17, 2003

Tape Number	Side A	Side B	Meter #
#1	x		1,986 - 2176
Committee Clerk Signature <i>Jean Hemdrickson</i>			

Minutes:

Senator Holmberg stated that SB 2065, as amended has a price tag of \$6.69 million, the amendments that were put on would require a second set of testing assessments for students in ND during this biennium. This committee has to operate under the fiscal notes, whether we like them or not. One of the people who was very much in favor of this bill said why doesn't the committee change it and put a starting date of 2005. I told them that unless the entire concept, what you have done is just encumbered the next session to the tune of \$6.69 million.

Senator Andrist moved for a DO NOT PASS, seconded by **Senator Bowman**.

No discussion

Roll call vote was taken, which is attached. Total: 13 yes, 0 no and 1 absent and not voting

Motion carried. Senator Mathern will carry the bill.

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10/15/03
Date

Date: 2/17/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Andrist Seconded By Bowman

Senators	Yes	No	Senators	Yes	No
Senator Holmberg, Chairman	✓				
Senator Bowman, Vice Chair	✓				
Senator Grindberg, Vice Chair					
Senator Andrist	✓				
Senator Christmann	✓				
Senator Kilzer	✓				
Senator Krauter	✓				
Senator Kringstad	✓				
Senator Lindaas	✓				
Senator Mathern	✓				
Senator Robinson	✓				
Senator Schobinger	✓				
Senator Tallackson	✓				
Senator Thane	✓				

Total (Yes) 13 No _____

Absent 1

Floor Assignment ~~Robinson~~ Mathern

If the vote is on an amendment, briefly indicate intent:

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Salvatore Rickford 10/15/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 12:02 p.m.

Module No: SR-17-2903
Carrier: Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2065, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2065 was placed on the Eleventh order on the calendar.

2003 HOUSE EDUCATION

SB 2065

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Date

10/15/03

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. SB 2065
House Education Committee

☐ Conference Committee

Hearing Date March 12, 2003

Tape Number	Side A	Side B	Meter #
1	x		00-end
1		x	00-end
2	x		00-730
Committee Clerk Signature <i>Linda Fiechter</i>			

Chairman Kelsch opened the hearing on SB 2065.

Greg Gallagher, Education Improvement Director, DPI, See Attached Testimony & appendixes, ND Consolidated State Application Accountability Workbook

Questions on Appendix B

Chairman Kelsch Why would we want to wait and find out that they need remedial reading courses in the 12th grade, would it not be better to find it out earlier, so that we can actually do something for them.

Gallagher: Schools currently have built into there instruction, ample opportunity to assess remediation. That is what happens with the day to day instruction. It should not be based on this single tool. What doing it in 12th grade does is give us the fullest understanding of what is happening with student achievement closest to the exit as possible.

Questions on Graph F in the handout

Rep. Sitte are you following the NCTM math guidelines?

Gallagher: They are obviously factoring in those standards.

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Rep. Sitte kids are calculator dependent, and so if our state standards are based on these rather than common sense, I can see why are students are not proficient as we hope them to be.

Gallagher: The global statement of what reference would a teacher use for it, they obviously are going to reference those particular guidelines or criteria. They look at them independently and with other sources as well. Committees that identifies and works to do the research and alignment. They are made available to all the teachers of the state to participate and offer comments and recommendations to amend the standards to what they see fit. We are now just beginning that this week. So the second generation of content of standards. Because of the importance of the accountability system, and now more hen ever under the AYP definition. I fully expect that the teachers of this state are going to as engaged as they have ever been in the development of those standards. To make sure that it is the best, the best practices of the classroom. From the protocol perspective, the standards are based on the research of a number of different sources and not just one.

Rep. Sitte . . . There is not enough time to do the national standards and what teachers wants to accomplish.

Gallagher: I disagree with that, I don't believe that is the intent of the law. The law intent is that the state establishes its own standards. There is not a requirement in the federal law that the states criteria becomes that of the state. That is not the intent of the law. The law says to every state, develop the standards as you see fit, assess as you see fit, but at some point every state must go through calibration. The law remains silent there after. You must take and use that data as a way to help you understand your own standards, they may be higher or lower. At least you will have had a dialogue. And that is what the law states.

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Questions on state ranking, Adequate Yearly Progress process.

Rep. Mueller There is some concern on our part, to shift into a category of needs improvement, can you explain to me the proficiency level in the 4th grade reading was not met, does that put the school into AYP or are there more factors involved? How much do you have to have to get into the undesirable category?

Gallagher: The law states that if the schools is in the lower 20%, two years in a row, shows a pattern, find a reliant indicator, then identification, then the school puts into process a plan to improve; curriculum, instructional practices, plus others including a deeper parent involvement.

Rep. Mueller One category of student, 4th grade math, two years in a row, that puts them into the category regardless of what is happening with the other scores.

Gallagher: Composite results of the school as a whole. A bigger number of students for the overall subject in that school. The law looks at disabilities and economic status and allows for those sub groups. It deals with issues of achievement for students, but also for high school it looks at the graduation rate, elementary it is attendance rate. This is a report card for the school. What is the overall score, many factors.

Chairman Kelsch When we are talking about this and the sub groups in how they can affect your school, I'm not trying to point any fingers at any body, however, we have some schools that are in AYP that are on the reservation, the bill that we passed about open enrollment, to the closest school district. What happens then if you have a school that need improvement and you have these sub groups that traditional your school has not had a lot of and now you have an increase of that subgroup and now all of a sudden your school is at risk, perhaps you have been a successful school and now you are at risk?

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Gallagher: We find in most schools lower numbers, based on rules of statistical significance.

That lower population has a greatly reduced chance of being identified simply because the numbers are too small to make the reliable identification. But if the numbers are at a level that you can, yes it will become a factor. These students are not castoffs, They are legitimate students in their own right. What it becomes is a challenge to the school, given what you know about your student population, there are a lot of things that can be outside the control of the school, but there are a lot of things that they can control. Think outside the box and figure it out. If you are looking at a subgroup where there is a challenge, what do we need to do with that group in order to raise the prospects of their success. The law says keep your eye on the ball and they are an important part of the game.

Chairman Kelsch I have a file this thick regarding the cut scores and proficiency level. I believe the overview that we just had was very informative, especially for me because when I started receiving those letters I was quite alarmed. 1st issue: have you sat down with administrators and visited with them about this, cut scores and proficiency levels and 2nd have any of them sat in on the peer review meetings 3rd Why the Department feels that the four categories are necessary.

Gallagher: Communication: the first emergence of concern on cut scores were indicated to us January. That is when we had the meeting with representatives of schools in the northeast. We have not had a series of forms for people to discuss this through. Prior to our work back in April of 2002, when we heard for the first time NCLB, we walked through the protocol issues associated with how the standards were set, how the achievement scores were set and what the roll out would be at that time. It is hard for people to grasp the concept when they don't have something tangible to hold on to and understand. With the release of the data that occurred in

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Nov. of 2002, schools were seeing the results for the first time. From that time until January, we received no communication, it takes time to absorb this information. It is a hard thing to get your arms around. There is a lot that still needs to be communicated on our part so that people can understand. We are also being very sensitive by putting forth by building into our protocol a tact team review. And that is the gathering experts from around the country, who come in and talk through as they see it and lay out all of the data, to make sure that we have everything right.

Rep. Mueller So that I am clear about this cut score process, and how we arrive at this **flip tape** **Gallagher**: In the orientation period that we have for teachers, the teachers were informed that this becomes the basis for identifying proficiency. And upon these definitions of proficiency that were able to move forward with identification for program improvement. Were people fully understanding the nature of this, it is a hard thing for people to see the implications of. A critical thing to remember is that their job was to identify proficiency as they understood it as professionals, so that they could in fact identify what is worthy of a student in the categories. And they did that very well.

Rep. Mueller Did the Department of Public Instruction convey to them your understanding of how this was going to play out?

Gallagher: indeed, I was responsible for the overview session and as a reference to requirements that are set forth by the Federal law. Department of Public Instruction did not influence the teachers or coerce them in any way.

Chairman Kelsch 4 levels vs. 3 levels It made sense to me to have 4 levels.

Gallagher: The core of the law, the elementary and secondary education act beginning in 1994 put forth that the states could set at least three achievement levels. They are Advanced,

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Proficient, and Basic. Under current practice across the states, we have states that have three levels, we have states that have four levels, and we have states that have more than that. The states choose the levels that serve them best. In ND back in 1997 when the four were set, was to establish a means that we could find migration or change amongst the levels. We could know how many are advanced, or proficient. But if you have a big group down on the bottom, and it doesn't matter what you call them partially proficient or basic, it doesn't matter what you call them, how would you be able to quickly understand those who are moving up or those who are moving lower and not making any movement. For an improvement plan that is critical. We could say that some of our programming is hitting fine for those in the upper level, but we are not hitting the lowest students at all. By having a four achievement level structure, we are able to monitor it better as the student move up. Federal Law allows it and the peer review process agrees with it, and we think it is the best interest of the state to do so. If we take it away it would be like covering part of your eye, your not going to see what you need to see in the data.

Chairman Kelsch In other words what you are saying is that by putting in the four levels, instead of just having a kid at the novice level, perhaps he can look as he is moving forward to the partial proficient.

Gallagher: Yes you can move forward. There is an opening that we should consider. And I think there is a model out of New York as we look to improve our approach, that opens the door for indexing, to give possible credit given for those who are moving up from the lower levels.

Rep. Jon Nelson The states that use 5 levels, do they break them down the lowest level.

Gallagher: absolutely right, they try to break down the lowest level to see even more refined data. It is easier for the public, policy makers and so forth to understand better, without going

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through and doing elaborate statistical review.

Rep. Jon Nelson Primarily concerned with the partial proficient and novice.

Gallagher: As long as you have reached proficiency, you have met clearly the expectation, but you may also want to see how you are progressing from novice, proficient to advanced. We want to be able to look at the entire population. We need credible data to go through this process.

Rep. Haas Was it in New York, went from 4 to 5 levels **Gallagher:** New York or Indiana

Rep. Haas The reason they did it was to monitor students as they moved through the levels.

Rep. Sitte High stakes testing, and I think what Rep. Mueller was asking, what are the stakes, so after two years, having students in the failing category, the school is identified being AYP, and the students may transfer to other schools, or may receive tutoring, what happens to the students?

Gallagher: You need to look at the break down that happens years to year. What basically occurs you go through identification, you set program plan in place, open the possibility for transferring out, supplemental services - tutoring, revisit curriculum. In ND it is a moderate stake, and maybe in ND the single highest stake is the issue of pride. Schools have a lot of pride, rightfully so, in the work that they do. And to be AYP, if you see this as another opportunity to focusing your school improvement purposes.

Rep. Sitte Who has the authority to go in and dictate a change in curriculum, DPI?

Gallagher: When it gets to that level it is driven by the districts themselves, that there becomes a negotiated period, of saying are you doing practices of that are in fact doing justice to that.

Rep. Sitte Who is going to be paying for that tutoring

Gallagher: It is the responsibility of the district using the Federal Title I funds that they have, they have certain funds that must be set aside for the purposes of tutoring or transportation or

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things like that. So it is driven by the Title I, that's why within the law, what the law has done is appropriated an increase in funds to cover these types of activities and then it says when you are identified you must earmark certain amounts of your funds to those activities to make sure you are doing what is required to improve the quality of your program.

Rep. Sitte Are we not hurting schools more by requiring them to expend significant dollars, when maybe those dollars better used by enhancing the entire curriculum in the classroom, and then when we are sending all this money on tutoring at the lowest level, what happening to those who want a challenge at the top, when all the resources are going to the bottom.

Gallagher: Very few high schools are going to be impacted by this. But for those who are, the law is intended to 1) we are going to give you more funds then what you would have in the past 2) you need to earmark those for students that need it, keeping the student in the forefront all along. If the system is not supporting the student well, then we cant sit and wait for the system to make a complete change, something has to happen immediately in order to offer additional supplemental services for those students. The big debate long term is how does one sufficiently fund the demands of schools where there will be program improvement.

Rep. Herbel You referenced the NE administration, is there some concerns on the cut scores and if they don't make progress because the cut scores are wrong?

Gallagher: If you take a look at the what the break down where we have a listing of all the schools, you will note that here in Beulah, they are currently identified because of the statistical significance. Given the nature of the fact that we are increasing grade levels and more classes being assessed, we are going to have more total data, more reliable data to make those identifications. That is driven by the formula layout of federal dollars, on how we determine from

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where that 20% population will be, that is where the attention must be focused. That money is to help move their overall achievement levels of their students up.

Rep. Haas Describe the process that will be used for the continued updating of the content standards and the procedure used to measure those.

Gallagher: there is a complete breakdown in the handbook that you received.

Rep. Hawken: Title I schools, if they received the funds, and are put on the AYP, that they don't receive their moneys

Gallagher: Under the provision of the law, all schools must be within the assessment and accountability system. All students must be assessed. When it comes to identification for AYP that applies only to the those schools that receive title I funds, if you are a school that does not, you will get the same report card, but it will have no bearing in terms of the requirement for AYP. That is where the federal law is very clear. That if you accept the funds you are also under the federal accountability system for program improvement.

Rep. Hawken: I don't disagree, but if in fact the schools who receive title I money have the ability to access the fund to improve. . . we would know that but they wouldn't have any money to make it better, right?

Gallagher: they would know it, we would know it, that becomes a piece of information in front of you as a Legislator, ultimately the Legislature is the school board of the state. And if you are given data that shows an array of schools that are performing below what is expected, these are schools that are not covered under title program, the state's responsibility is still there, but the Legislature has to assume responsibility and your call.

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LeAnn Nelson: Director of Professional Development for the NDEA

We support re-engrossed bill as amended. I am going to focus in on the 11th grade testing. We like the idea of the 11th grade testing because it does give that extra year for some type of remediation plan before that students go out into the real world. But we do have some concerns about the 11th grade testing, if you do test no later than Nov. 1, what you will be doing is testing them on 10th grade information. And according to the US Department of Education out of level testing is not an acceptable means for meeting either the assessment or the accountability requirements for NCLB. So if we test at the 10th grade level, and we can't do that, so lets test at the 11th grade level, if you test no later than Dec. 1 you are testing on information that they have not yet had. So how about January, but here you are getting into semester testing, conflict with that. So we have struggled with this issue. We like the option of testing in the 11th grade so we can help the students for an additional year.

Chairman Kelsch Do you like the idea of 10th or 12th, or do you specifically like the idea of 11th and testing at any time the school district sees fit.

Nelson: We like the idea of 10-12, 12th is a little to late

Rep. Mueller 12th grade testing, It is designed for the end of the 12th or middle of the year.

Nelson I am not sure what the test will include if you test in the 12th grade and the time of it. If to late then the students are gone, whereas if you test in the 11th grade we still have those students.

Rep. Sitte Tests are usually calibrated that if you are taking them in Nov. it is going to be the 11th grade information, when they are grading the tests don't they take that into consideration, Right. Would you see them moving the tests to Feb/March, and making their recommendation?

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Nelson: That is a good point, and I do think they are, but if you move to Feb/March I don't think you will get the results back for any recommendations.

Rep. Meier how long does it take to get the test results back?

Nelson: I did ask Department of Public Instruction, and if you do Nov. testing, how long does it take, up to 2004 you would get the results back in January.

Rep. Hawken: A e-mail for someone in education that suggested that the final test be the ACT.

Rep. Jon Nelson I came in here with a somewhat prejudice view because of the e-mail's that we have received. I thought that the 12th year testing made little sense, but if you do it in the fall you are getting as much knowledge in that cup before testing. The problem that I still have, is that there is still the ACT testing, but I don't know if Higher Ed should get into the business of this type of testing.

Darren Christenson, Rock Lake Superintendent

I support the 11th grade testing vs. the 12th grade testing. Less motivation in the 12th grade, they are winding down. Math classes are in the Sophomore years so for retention the 11th grade is great. Cut scores, a correlation to what senior cut score is compared to the ACT score. If they scored below 24 on the ACT, they were considered partially proficient. If you could get that information, I'm sorry I don't have it, but I think that will give you some more information to work with. Really see what most of us are familiar with as far as ACT scores.

Chairman Kelsch You said that if they scored 24 or below that they are partially proficient

Christenson: below 24, I only had 7 seniors **Chairman Kelsch** Do you consider that to be skewed **Christianson:** The UND admits as low as 17.

Chairman Kelsch Are you saying it is to high, or that it should be proficient at 24.

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Christianson: I think, if it is below 24 you could be put into improvement over a number of years and I think to make all of our students proficient at a level to score a 24 on the ACT is a very high level. I would love to see all our kids score that high but we have a variety of students.

Rep. Herbel 24 on the ACT is high for cut score proficiency, average for the state is 20/21

Rep. Haas You probably would not be failing because of 'test of significant difference' 75% proficient 1 out of 7 fall below the proficient level and still not be identified.

Christenson:

Rep. Haas multiple years and test of significant difference is also very important because of the small number of students. There is a danger, if we set all of the test scores in such a way, that the level at which we are performing now tells us that we are proficient in everything, then where does that leave us from the stand point of trying to do a better job.

Christenson: I believe we do need to strive to be better, but the intent of the law is to bring the lowest end up to the middle. And try to make sure all are proficient.

Mary Wahl, ND Council of Education Leaders

We support as it is engrossed. My comments to the proposed amendments that you have heard this morning. Basically, with regard to line 15 and 21. The test grade. One of the concerns that was addresses for changing that to a 12th grade assessment, was that then the universities could use that information who might need remedial work. Secondly it was also suggested that it might be a really good tool for the state, to do it's final 'how have we done' look. In those may have merit to them, My objection to expanding the use of this test for these other functions is it won't serve its purpose and that is to identify remediation for the student. It has also been said that the results in the 12th grade, students attitudes towards testing is very poor. But I think it does make

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a difference personally. With regard to the second proposed amendment, the oversight that it suggested be given, that we proceed with a great deal of caution as we implement this huge requirement that has been placed upon us. Initially their was a provision in the bill that created an oversight committee was created, the task would be given to the NDCEL, we though that was a good thing. We do feel that there is a need for some type of review on this if we are to proceed with the greatest amount of caution and trust. When I reread the rationale for doing it, I summarized what I though was said, and it seemed like such circular thinking, maybe you understand it better than I do. On page 3 of the testimony, this kind of oversight committee should not be given, because these assessments have to be secured in order to have validity, so because of the we have had the committee doing any kind of oversight because that would in turn jeopardize the validity of the test. But then the reasoning goes on to say that oversight committee is not necessary, because the law now accomndates the publics right to review or to preview the assessment. So in other words we are saying that it can't be done because it will jeopardize the validity and we should not have the committee for this reason and we really don't need the committee because the public has the right to review the assessment. I'm not sure where that all ends up. With regards to the question on how many categories. I would just like to give you a gut response to the placing the results into three categories has resulted in. I know that when the results of how the Bismarck School district had performed came out in the Tribune. I talked to a lot of people who said 'holy smokes, I thought we had a really good school system'. There is a disconnection between what we thought from previous years that we had the best to the current failing. Why the discrepancy? Is there something wrong with the cut scores or have we by virtue of placing these into four categories created a situation that reflects that our students

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are really doing more poorly then we thought.

Rep. Haas Is it a remote chance that we were using substandard CTBS standards to make our comparisons and now we have a more realistic view.

Wahl I would suggest to you that is it very possible for some of the things that you have suggested are coming into play when we see this discrepancy. But I do find it remarkable that the state was claiming to have the best now has 67% of their seniors are not proficient.

Rep. Haas How do you account for the large number of students in remedial reading and math at the college level **Wahl:** Standards, I'm sure.

Chuck DeRemmer, Fargo Public School, Assistant Superintendent

Support for this bill. Comments directed to the two proposed amendments. This whole game of NCLB, it is kinda like a basketball games where we have been set out on the court and started told to play the games, it is called basketball and we have been given a ball, we have gone out to play and the rules change as the game is played. It would have been nice to have the information we have today two years ago. Excluding the data we currently have, I think we would be having a different conversations today. So let me address two things. The one amendment for deleting the 11th grade, I strongly in favor of continuing the bill as it is, I want the testing I the 11th grade. There is absolutely no benefit to have it in the 12th grade. First of all the Legislature has already spoken that students should have completed their math by the end of the 10th grade and the bill is just signed by the Governor. I can speak for our students 98% of the kids have taken it by the end of the Sophomore year. So if you are saying that kids are not proficient in Math at the end of the Sophomore year then you need to go back and amend 1033 to three credits of Math. Second, Kids have learned the math, but how serious are the seniors when they take the test. Only 75% of

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our kids even take the test, they were not taking it very seriously. And the ones that di how serious were they. If that is the case then what data do we really have.

Flip tape. Categories, the increase, so that we get the information. It is like taking a drivers test, when you take it there is a standard that is already set for you, and all you really want to know is if you passed or failed. And lets face it when we give report cards there is only two things, did we or didn't we pass. Whether there are 15 categories that tell me how well I did will help me in how I teach the students. But if you just tell me that they were all 70 or less, it tells me something but not as much as the other detail. Increase instead of decrease, we need the information. We are going to do the segregation on our own because we want to have that information.

Rep. Norland Jr. and Sr. don't have to take math and so they loose out when they get to college and have to take more math when they get to college, when they could have taken one or two more while in high school. That is why they have to take remedial math, because they loose out.

Chairman Kelsch You think it is more valuable to expand the categories, have you talked to other administrators. You sat in on the peer review meetings, have you talked to others about this. Has you decided to do this before or were you enlightened when you were at the review.

DeRemmer: I had my made up before it. I have also had conversations with administrators in the NE part of the state. Part of the original rationale was immediate reaction to the test scores and the whole political issue of the cut scores. If you go from 4 to 3 you will also up change the cut score which will make us look better. I don't follow the logic of that at all. And I still don't.

Rep. Sitte Have you hear d of the trend that schools in anticipation of NCLB are concerned about the assessments that they have decided to make Algebra a two year course.

DeRemmer: Yes I heard that and I don't agree with it, we are having the same conversation in

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our district, I think some kids need two years for Algebra I if we are going to stay in the traditional track. But not for counting for two credits. I think we are also putting the emphasis on the wrong math classes. That is a real problem, we are not teaching the right stuff. You have 4 courses in 2031, if you look at the standards and the practicality, this is the challenge, I will pay out a dollar for every trig function that you see in the paper over the course of your life time, and you give me a nickel for every statistic that you see in there, and lets see who retires first. Yet what do we put into our curriculum. It doesn't make any sense to me.

Rep. Hawken: How do you feel about the ACT being the 12th grade testing.

DeRemmer: I think you need to be real careful, If you are going to correlate one test to another, you better have perfect reliability in both of them. And I don't think we have reliability of Seniors on this test. 2nd ACT was never designed as an achievement test, it is designed to predictor of success in college. 3rd I think that you have to be real careful about not having enough data, and using one piece of data to make decisions, I am even cautious about two, I think you need to have at least three to make a picture.

closed hearing.

2003 HOUSE STANDING COMMITTEE MINUTES
BILL/RESOLUTION NO. SB 2065
House Education Committee

☐ Conference Committee

Hearing Date March 17, 2003

Tape Number	Side A	Side B	Meter #
1	x		1800-end
Committee Clerk Signature <i>Linda Flechter</i>			

Rep. Mueller I think what we have discussed on 2065 are four points. Line 15 of the Engrossed bill to adding the 12th grade to it. Leave that at 3,4,5,6,7,8,11 not add 12, at this point. Moving down to line 21, Strike 'Superintendent ... of each school year.' eliminate that sentence. On the back side sections 3 & 4, we are eliminating both of them. Lines 1-6 on page 2 are gone.

Rep. Jon Nelson You struck the last sentence on line 21 as well **Rep. Mueller** that is correct.

Chairman Kelsch who is drafting the amendments, Mark could you put those together for us for this afternoon. repeated for Mark so that he could do the amendment.

Chairman Kelsch we were not concerned at all about reporting, when would they be giving the test anyway.

Rep. Mueller In discussions it was very evident that window of opportunity, October 15-end of Nov. is about the only time that test can be given. I think that is going to happen with or without this language. It is not necessary. Another thing that was a little puzzling to the committee was that why don't we just designate the 11th grade as being subject to this when they all should be subject to that Oct.- Nov. time slot. That was put in by the Senate and we could not figure out why that was put in. Inside on that, we will go to conference committee on this, we probably

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would be able to okay or agree to an October 15-end of November timeline, but then I think it should also include all grade levels.

Chairman Kelsch Well that is a good argument.

Rep. Jon Nelson So I understand are we at three levels of proficiency, where are we at on that.

Rep. Mueller Elimination of that language would put us at four levels of proficiency.

Chairman Kelsch it would keep us at four levels of proficiency that was proposed by Department of Public Instruction during the development of the testing, back to the last session.

Rep. Jon Nelson That is a concern of mine that the schools have had really had some concerns about the fourth level being added. That may add some burdens.

Rep. Mueller Basically we are still talking about either you are proficient or not going to be identified as a school that needs adequately yearly progress. What that does by putting four back in to say that if you are in the proficient level you are okay. Now the argument comes in do you need the partially proficient and the novice level. And the argument that we heard had to do with making some decisions to moving in the right direction from novice to partially proficient Now there are still some unanswered questions out there, but it did make some sense on how Gallagher outlined it. We can make some changes down the road, and that is very important to have here, because we are showing movement from the novice to the partially proficient position in regards to the school performances.

Rep. Haas I think that it helps to have 4 levels to check progress at the lowest level to determine what kind of progress they are making. There is also an erroneous assumption that if we now automatically change 4 levels to three levels that all the kids in the partially proficient level will automatically jump in the proficient category. That is not so. Because in order to change that you

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have to bring those 150 teachers back to study the content standards and say and change what they have determined are the things that students have to know and do at a certain level. You can't just arbitrarily take kids and throw them from one category to another. So if we eliminate the partially proficient category, then we have all those kids who were partially proficient now have become novices. They have not become proficient because they have not met the standards, they have not been able to do exactly what the teachers said they should be able to do to be proficient. So then you have to back up and take a look at that process and it takes from 18-36 months to make that determination on those groupings. The key thing is there are some states that have gone from 4 to 5 categories. And they are always adding categories at the below proficient level in order to give them a better tool to determine how their students are moving. And it is a tool they are using to make adjustment in curriculum or techniques or whatever it takes in order to move forward.

Rep. Mueller Number one we know that 2014 the idea is to have them all in the proficient level, but the second part of the whole criteria is are you making progress are you moving. Maybe you are not moving up to the proficient but are you moving. I think that you need to keep the two lower levels in there to make a better mechanism for that to be determined.

Chairman Kelsch Mary Wahl, do the administrators understand this now?

Mary Wahl, understand it in what sense.

Chairman Kelsch In the sense that the committee just noted. Do they understand that we have to go back to square one to have the three categories?

Wahl I think the administrators understand that to be able to go from four to three, they would have to revisit the process. I think that there is some real concern that the process as they are

Lacosta Rickford
Operator's signature

10/15/03
Date

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established, is not truly indicative of where are kids are. And then the remark that was made the other day, 'it really helps us monitor our kids', I think that maybe if we have more categories, that made some sense to me, with regards to monitoring the progress of students. Then one person said we are going to do that anyway. So I think there are really two issues, how you are going to report to the public as to whether or not the students have reached a proficiency level and then how you might internally monitor those different levels. I think you can have a half dozen categories under proficient if you want to monitor them. But that may not be the same issue as reporting the less proficient to the public.

Rep. Norland They need to look at this two ways; this test developed by standards of ND, and that is what we are concerned about. And that is looked at differently then the federal government is looking at the test. And it was also pointed out to us that the federal government is not interested in whether you have three, four, five categories as they are in progress. And so if after you have been tested and you show this is where you are at, those students who are basic, but as long as you are moving up that satisfy them. You are moving up to be proficient. this is something that schools are not really understanding at this point.

Rep. Sitte I keep going to this chart that Gallagher gave us. And it shows us the NAEP results. Right now 2% of our students are advanced, when you picture this bell curve in your mind we have 22% proficient, 49% partially proficient, 27% at novice. What we are saying by 2014 we are going to take that standard where 2% of our students are, because the NAEP is going to be correlated with state tests and we are going to move 100% where the 2% are now. Is this in anyway shape or form a practical plan, NO. We are setting so many schools up for failure with this plan.

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Chairman Kelsch the difference is that your basing this on the NAEP and they the other is based on the state standards.

Rep. Sitte He kept talking about the correlation between the two and how he is doing all of these correlation studies.

Rep. Haas the purpose of the correlation is simply to say is that our results are not that far off.

Because when you correlate them with the NAEP, ND results show that we had 20%.

Chairman Kelsch What he is saying is that in 96 and 2000 we only had 2% when he correlated that were in the advanced level and when they took our own test, which is the 2002 results that are based on the ND standards we had 20% that were in the advanced and we had 37% that were in the proficient, which gives you 57%, whereas in 2000 we only had 25% that were in proficient and above.

Rep. Haas so if we want to approach the NAEP we should make our tests tougher. And we should set higher standards. That is what this is saying. At the request of our Chair I attended the full day meeting when the Department did present their peer review at the Kelly Inn 2 weeks ago. I think that there are a couple more key points here that we need to remember: One: is that because we only have one year of test results on the new system and this is indeed work in progress, the Department of Public Instruction requested of the Department of Education in Washington that we not determine any Annual Yearly Progress status until we have two full years of data. And it was encouraging to me that day that the request was probably going to be granted. So that we are not making these decisions on one year of data, particularly when you are going into the development of a new system. That is a key point. Secondly, we have talked about this with some of the members, Because of the ruralness of ND and because of the sparseness of

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our population they are requesting that we determine our annual yearly progress based on a test of statistical significance. Now what that means is if 50%, if we want a 50% proficiency level and you have 100 kids in the class, that means 50 kids have to be proficient. But when you apply statistical significance formula based on very small enrollments, you may not get to a 50% valid figure until you have 2000 kids being tested. So this formula allows for a school district to be meeting AYP maybe with 5 out of 100 kids being tested proficient. Because of statistical significance. **The sheet, attached,** The higher number of students that you test the more students you have to have be proficient in order to reach the 50% level. But you don't have to have 50% until you get out to 2014. The farther we get as we advance on this and make improvements the larger the number we will have to have in order to reach a certain goal. The other factor is that in this formula there is a number that you plug in formula which determines confidence levels. And in these early years, Department of Public Instruction is using in that formula what they call 99.9% confidence level. That means that they want to be 99.9% sure that if they are identifying a school as needing annual yearly progress (AYP) that they want to be absolutely sure. The peer review committee said that you should probably working with a 95% confidence level because that chances are with a 99.9 level you will be under identifying schools. That is the plan that is going for approval at the Department of Education in Washington DC. My point of this is to say that I believe that in the development of this plan for complying with NCLB and to make a meaningful test of student achievement in ND based on our content standards I think that we are proceeding cautiously and reasonably. Now in addition to that when we meet with people from the department, there is going to be annual reviews of this, annual reviews of content standards and test items, whenever that happens their has to be revalidation of all of these things. And

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when that happens they have to look at the cut scores, review them annual. I truly believe that there are enough precautions and safe guards in this process so that we are not going over board and as we move forward there will be modifications at the state level and there may or may not be modifications at the federal level, but we can make adjustment. I feel we should move forward as it is now.

Chairman Kelsch One of the issues that cam up during the peer review, there were two gentlemen who were here from the department of Education that visited with me. I guess I was reassured and we have had some concerns and been a little bit suspicious of a lot of the activities surrounding the NCLB this session. I found it to be interesting that they had sat in on the peer review meetings and felt as thou the DPI had done as many things as they possibly could to try to help the rural schools in ND and all of the schools in ND. And I wish that all of us could have been at that meeting but it was 8-5 on a Wed. when we hold hearings. It would have been beneficially for both houses to be there to hear and observe the process.

Rep. Haas Let's look at the sheet, to explain what I was talking about statistical significance. If you look at the student total of 30, go over to 60% proficient, 60% of 30 is 18. But because of the small numbers, if you have 10 kids who are proficient you are meeting the AYP. You are proficient. Go down the scale and when you get to 500 kids if you want 60% proficiency, 266 kids showing proficiency you meet AYP, and will not be identified. So that is the point of this. When I asked several administrator if they understood this they said no. They had never heard of it. So I think there is a lot of educating and communication that needs to be done. We need to move this forward and let the process take place.

Rep. Mueller I think there are a lot of things we don't know yet and this is brand new ground. In

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visiting with Greg Gallagher, in two and four years from now it will be tweaked. I'm comfortable with this particular area of it.

Rep. Jon Nelson If that 99.9 confidence level changes does this chart change significantly and have you seen that chart. **Rep. Haas** I am not sure, I will find out,

Chairman Kelsch It should change because if it goes down to a 95% confidence level, it should

Rep. Haas But the statistical significance may not change. If you are flipping a quarter, how many times do you have to flip the coin to get a even number of heads and tails. You might have to do that 1000 or 800 times to get that to come out. I will follow up.

Rep. Mueller will it change 5% if you are dropping it **Rep. Haas** the % across the top are not confidence levels. **Rep. Mueller** I know that , but what I am saying is the 99.9 down to 95 is a 5% change, meaning that the #'s would go up 5%. **Rep. Haas** I don't know if it is that direct

Rep. Jon Nelson The other question that I have is after this process begins does the peer review committee have some latitude to change the standards.

Rep. Haas the peer review committees objective was to look at our plan, and the lady from DOE was very favorable and thought we were justified in all of the modifications to NCLB that the Department of Public Instruction had prepared, so thought there was good justification for going back, it has to be approved by DOE, and doing what we were doing because of the ruralness of our state and that they were going to do everything they could to convince DOE to approve what we wanted to do. If they don't approve it all, Gallagher indicates that there is an appeal process they will take it all the way to Secretary Payton if they have to. But this may take another week if they will be approved.

Chairman Kelsch I have developed a really good relationship also with DOE and have e-mail

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contact quit regularly. So I would think that if there was something we were extremely concerned about, if we got it to them it could be taken care of in some fashion.

Rep. Mueller in reference to Rep. Jon Nelson concern, I think there is two different reviews that we are talking about. This peer review thing is going on currently has to do with the system we are putting in place here in the state. Gallagher referenced technical TAC review, that group goes back on a yearly basis to look at some of those things that Rep. Jon Nelson is concerned about, the cut scores, they then have the wherewithal to make recommendations for change.

Rep. Haas Technical Advisory Committee

Rep. Jon Nelson along the same lines, did you go through the process, how would they be implemented, what is the likelihood, is it a sounding board and nothing is going to happen or is there a process for the things that are identified that need to change.

Rep. Haas Lets say for example that the TAC met and said we think that based on your content standards and these testing items and based on what you have defined as your proficiency levels, we think it is not valid. If that happens, because the TAC are experts in this field, it wouldn't make any sense to enlist their support and then not follow their recommendations. But then what has to happen is then you have to have teacher committees come in again, review the content standards, make changes, then they have to change the test items, once they have changed those then the teachers would have to say, now how are we going to define proficiency? At the fourth grade in Math for example. They look at the content standards, test, students must be able to know and do this before they get out of the fourth grade. If they don't know they are not proficient. So that is how you establish new cut scores. That will happen.

Rep. Jon Nelson we are setting our selves up for the majority of the schools in the state being

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failing schools unless we have that flexibility. **Rep. Haas** I am confident that it is there.

Chairman Kelsch This was one of the issues that the peer review committee was very supportive of this. They thought it was real creative and they had not seen anything like ours.

Rep. Sitte Lets say that a school has 30 in the high school, and the first year they test 8 students are proficient, that happens to be a very bright class. So lets say that the next year the bright class has moved on and the next year only 5 students are proficient, what sort of flexibility are they

going to have. **Chairman Kelsch** If we take this scenario, we are only in years one and two, statistically how does that work. Because in years one and two they would have 1 student, then 2 students need to be proficient. They exceeded that so they don't have to worry until the sixth year

out. **Rep. Haas** there is no problem, One more thing, we used to test not in every grade, now we will be testing 3,4,5,6,7,8, this addresses exactly what you are concerned about. You will be able

to compare the same subgroup in the same subject two years in a row. That takes care of the bright class. **Chairman Kelsch** there is more consistence in this then what we are doing now.

Rep. Haas In ND that is particularly valid because we have such a homogenous population.

Rep. Hawken: My concern with this is, when you say every child will be proficient and they will all know 100%, that is what it says, it is just not possible and they don't give you a big enough % for the special needs children. **Chairman Kelsch** You can determine the sub group

Rep. Hawken: You can take 5% of the sub group. **Rep. Haas** But there is also alternative assessment tools for the 5%

Rep Hawken You still have a % of that sub group in there. If we tested in this room and the material we just listened to two minutes ago we would make it. I asked d the guy that was here on the Commission to the States if there was there anyway to do this without having all the

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House Education Committee
Bill/Resolution Number SB 2065
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schools fail, and he said no. That is a mode point, how it is set up is excellent, but the point is down the line we will fail. **Rep. Haas** I agree with you, but there will be modifications down the road.

Rep. Solberg If these cut scores are not achieved do we loose federal funding or what.

Chairman Kelsch You become classified as AYP, and then there are sanctions that come in as you progress through the NCLB, such as the children can move out, tutoring, etc. One of the issues is that Title I moneys can be used for tutoring, it is a concern, is there enough federal money to cover the costs. flip tape.

Rep. Norland One of the things that we have to remember is that 2014 is a long ways away. We might have half the districts that we have at this point, we might have consolidation counties, we might have whole new direction of leadership at the federal level regarding education, so I don't think we need to get real excited about the end result here because there are so many things that are going to happen between now and 2014 and we don't have any control over it. We just need to go and deal with the present and wait to see what happens. Testing starts in 2004 and then we need two years of data , so we are talking about 2006 until we have results on what we are doing.

Rep. Williams We are piloting, as far as measuring and sanctions on AYP, they will not come in to play in the first year.

Rep. Haas There are no schools meeting AYP, we have nothing to compare it to, then after two years of data, except there are 31 schools from the old Title one as needing school improvement process that had been identified earlier.

Rep. Mueller those schools are in a vulnerable position, this system did not erase the slate for them

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Chairman Kelsch We had hoped they would get to start over but that didn't happen.

Vice Chair Johnson they are identified and 10% of their title one money are cut back already.

Rep. Hunsakor There major concern is some kind of progress year to year that is what I am hearing, and so the more categories that we have, we will be able to show progress. This is a real argument for having 4-5-6 categories. **Rep. Haas** that is right

Chairman Kelsch And that was something that I didn't understand the need for until after the discussion with the two members who had sat in on the peer review.

Rep. Hawken moved the amendment, **Rep. Meier** seconded

Rep. Sitte inquired about getting a copy of the testing to see how you did.

Rep. Haas 15.1-21-14 allows anyone 20 years or older to go into school district and get a copy of the test. Read this section and 44-04-08

Amendments passed voice vote,

Rep. Norland moved a DO PASS as Amended and referred to Appropriations, **Rep.**

Mueller second the motion

Roll Vote: Passed 14-0-0 Rep. Haas will carry the bill to the floor.

38226.0204
Title.0300

Prepared by the Legislative Council staff for
Senator Cook
February 18, 2003

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2065

Page 1, replace lines 23 and 24 with:

- "3. Before any test required by this section may be administered, the investigative committee created by Senate Bill No. 2418, as approved by the fifty-eighth legislative assembly, shall hold a public hearing and review the test.
4. The superintendent of public instruction shall segregate the results of tests administered under this section into the categories known as advanced, proficient, and novice."

Page 2, remove lines 1 through 16

Renumber accordingly

Date: 3/17/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendments

Action Taken _____

Motion Made By Hawken Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch					
Rep. Johnson					
Rep. Nelson					
Rep. Haas					
Rep. Hawken					
Rep. Herbel					
Rep. Meier					
Rep. Norland					
Rep. Sitte					
Rep. Hanson					
Rep. Hunskor					
Rep. Mueller					
Rep. Solberg					
Rep. Williams					

Total (Yes) 12 No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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LaCosta Rickford 11/15/03
Operator's Signature Date

Date: 3/17/03
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

House HOUSE EDUCATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO Pass As Amended

Motion Made By

Norland Seconded By Mueller Approp.

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓				
Rep. Johnson	✓				
Rep. Nelson	✓				
Rep. Haas	✓				
Rep. Hawken	✓				
Rep. Herbel	✓				
Rep. Meier	✓				
Rep. Norland	✓				
Rep. Sitte	✓				
Rep. Hanson	✓				
Rep. Hunsakor	✓				
Rep. Mueller	✓				
Rep. Solberg	✓				
Rep. Williams	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment

Haas

If the vote is on an amendment, briefly indicate intent:

Lacosta Rickford
Operator's Signature

10/15/03
Date

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 4:20 p.m.

Module No: HR-47-4966
Carrier: Haas
Insert LC: 38226.0301 Title: .0400

REPORT OF STANDING COMMITTEE

SB 2065, as reengrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2065 was placed on the Sixth order on the calendar.

Page 1, line 21, remove "The superintendent of public instruction may not administer the"

Page 1, remove line 22

Page 2, remove lines 1 through 6

Renumber accordingly

2003 HOUSE APPROPRIATIONS

SB 2065

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Operator's Signature

LaCosta Rickford

Date

10/15/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2065

House Appropriations Committee
Education and Environment Division

☐ Check here for Conference Committee

Hearing Date March 25, 2003

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Criste Keller</i>			

Minutes:

Chairman Martinson opened the hearing on SB 2065. All members of the committee were present.

Rep. Raeann Kelsch, Chairman of the House Education Committee, presented SB 2065.

Rep. Wald Are we working out the second engrossment with house amendments?

Kelsch Yes.

Rep. Wald And the fiscal note, \$3.69 million, is that all federal?

Kelsch Yes.

Rep. Gulleeson With regards to the years that had been selected for testing, I know there had been some discussion about removal of the senior year and I don't see that on here. Was that by choice or is this pretty much prescribed through no child left behind?

Page 2

Education and Environment Division

Bill/Resolution Number 2065

Hearing Date March 25, 2003

Kelsch The way that the bill was originally introduced it said between grades 10 and 12, so you could have tested between those grades. The Senate had amended and put in grade 11. I think there are mixed feelings on whether or not it is good to test them at grade 11 or grade 12. Our committee felt as though grade 11 is probably the best grade to test them in. Sometimes we find seniors get a little apathetic and perhaps won't take the tests as seriously. There was talk of putting incentives for seniors. We felt as though you will probably get a better result if it is tested in grade 11 rather than grade 12.

Rep. Aarsvold Does this go beyond the minimum requirement for no child left behind?

Kelsch No. It stays right within the guidelines.

Rep. Wald moved a do pass and Rep. Brusegaard seconded.

ROLL CALL VOTES ON A DO PASS

6 YES 0 NO 1 ABSENT

Chairman Martinson Rep. Kelsch, you will have someone from your committee carry that?

Kelsch Rep. Haas will carry it.

Chairman Martinson closed the hearing on SB 2065.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2065

House Appropriations Committee

☐ Conference Committee

Hearing Date March 26, 2003

Tape Number	Side A	Side B	Meter #
3	X		20
Committee Clerk Signature <i>Chris J. Nyhus</i>			

Minutes:

REP. SVEDJAN Called the committee to order.

REP. MONSON Stated this is already in the budget of DPI. Last biennium one million dollars was appropriated for the "No Child Left Behind" test. In 2003-2005, we have to expand our testing program from the original three grades to five elementary grades. They have to develop more tests and are anticipating their bid will be about the same. It is in DPI's budget. Their whole operating budget is 2.5 million dollars, roughly, in general funds. That's how the governor passed it on. The Senate took out approximately one half million dollars, so there is about two million left. 1.2 million that you see here, is in their budget, and that leaves them about \$800,000 to run the rest of the department, which is about 7% of their whole operating budget. There is no way we are going to be able to avoid this one, the way it looks.

REP. MONSON Made a motion for a DO PASS.

REP. BRUSEGAARD Second the motion.

Page 2

House Appropriations Committee

Bill/Resolution Number SB 2065

Hearing Date March 26, 2003

REP. SKARPHOL Asked what do we give up if we don't do "No Child Left Behind"?

REP. MONSON Stated, about 70 million dollars of federal money per biennium.

REP. KERZMAN Asked what it will cost us to get the schools all up to snuff and the teachers, do you have a ballpark figure?

REP. MONSON I wish I knew. I don't know if anybody really knows. We have to keep it as minimum as we can. It will cost some money. There are a lot of federal funds that come with it, but it is about 80 to 90% federal. All of our Title I money is rolled up into this now.

REP. DELZER Why would we want to go there, if our MOE maintenance effort of 1.2 million is the same as the prior biennium.

REP. MONSON For this biennium, we only need to do the 1.2 million because we don't have to include science. My understanding is in 2005-07, we would be expected to increase the testing program to include science.

REP. DELZER Even if it is a contract or whatever, what are we contracting for, the makeup of the test or just viewing the test?

REP. MONSON These tests are much different than the old tests that we used to give that were the same every year. These tests require handwriting by the students. The students write paragraphs, they have to be corrected by real people, you can't just run them through a machine. These companies are hiring people to correct the punctuation and spelling and the sentence structure. We, in North Dakota, part of this is for grants to bring in teachers to work on the writing portions and set the test scores, it involves some local teachers and some development of the science tests, which will be new and it will involve the correction and materials.

MOTION CARRIED 15 YES 6 NO

Date: March 25, 2003

Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2065

House Appropriations Education/Environment Division Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Wald Seconded By Rep. Brusegaard

Representatives	Yes	No	Representatives	Yes	No
Representative Martinson	X				
Representative Brusegaard	X				
Representative Monson	X				
Representative Rennerfeldt					
Representative Wald	X				
Representative Aarsvold	X				
Representative Gulleason	X				

Total (Yes) _____ 6 No _____ 0

Absent _____ 1

Floor Assignment Rep. Haas

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature

LaCosta Rickford

Date

10/15/03

REPORT OF STANDING COMMITTEE (410)
March 27, 2003 9:35 a.m.

Module No: HR-55-5885
Carrier: Haas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2065, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)
recommends DO PASS (15 YEAS, 6 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2065 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-55-5885

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Date

10/15/03

2003 SENATE EDUCATION

CONFERENCE COMMITTEE

SB 2065

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10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed HB 2065

Senate Education Committee

☒ Conference Committee

Hearing Date 4-8-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 35.1
Committee Clerk Signature <i>Andie Johnson</i>			

Minutes: Conference Committee CHAIRMAN COOK called the committee to order with all members present.

Senators

Cook
G. Lee
Christenson

Representatives

R. Kelsch
Haas
Mueller

REPRESENTATIVE HAAS explained what the House committee had done. The language stating the testing had to be done by November 1st they felt was too restrictive. Their understanding is that the testing will be done in the Fall. Subsection 3 was removed because of the confidentiality. It stated there had to be a public hearing on a test that has to be kept very confidential. They were informed it is already in century code (Sec. 15.1-21-14) where it states in another section "available for viewing". It states "Upon request, a school district must allow any individual over the age of twenty to view any test administered under sec. 15.1-21-08 to 15.1-21-14 as soon as that test is in the possession of the school district." So if anyone wants to view that test who is over twenty, they can do it by requesting so and it cannot be denied. REP.

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10/15/03
Date

Page 2
Senate Education Committee
Bill/Resolution Number Eng. SB 2065
Hearing Date 4-8-03

KELSH also stated that 44-04-18.8 is the "empowerment act" which backs up that the test records are not subject to Article VI of the Constitution. Between these two sections of code, the committee felt there were enough safeguards built in so a public hearing did not need to be held. REPRESENTATIVE HAAS stated the committee concluded there should be four or more categories rather than fewer categories. Because it is an annual test, if there are more categories, you could tell where there is even a small improvement. With more categories, the school can gauge a student's progress better.

SENATOR COOK asked REPRESENTATIVE HAAS what is most important, one cut score that determines proficient or not proficient or various cut scores that separate the categories. REP. HAAS stated that cut scores that determine proficiency are extremely important because that is the level of accomplishment that the teachers who helped determine the content standards and who helped with writing and norming the test, said, that at the end of grade four, here is where the students have to be to be proficient. This is the accountability of the whole educational system. Are the students able to know and do what we want them to, or aren't they. If there are more categories below the proficient level (partly proficient and novice), we would be able to slowly move the student upward toward the proficiency level. We are looking to move the student upward.

SENATOR COOK stated that with 4 categories, the novice and partly proficient would be below the proficient and advanced. With three categories, the novice level would be below and the proficient and advanced would be above. REP. HAAS stated yes, and we can't assume the partly proficient to be proficient. If we would go to three categories, the partly proficient may not have met the standard to be proficient. Therefore they would be considered novice.

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Senate Education Committee
Bill/Resolution Number Eng. SB 2065
Hearing Date 4-8-03

SENATOR COOK stated that the amendments the Senate put on the bill he would classify as reactionary. The teachers and administrators and school board members had e-mailed the members requesting there be only three categories. REP. HAAS stated he felt that, after having it explained to them, those wanting three categories (the administrators, counselors, and testing experts across the state) would now support four or more. He feels there is much less opposition and misunderstanding now than at the beginning of session.

SENATOR COOK asked then if we have two categories below the proficient level, we will then be able to realize movement from the novice to the partly proficient. REP. HAAS said Yes.

SENATOR COOK asked when we look at Annual Yearly Progress (AYP) and how that plays out through the whole picture of NCLB, is there room to consider that movement, or is the only room in NCLB as far as AYP relative to that one cut score of what is proficient. REP. HAAS stated that ultimately at least proficient is the goal. There are some provisions in NCLB and in AYP reports that would be better if there were four categories as compared to three.

REP. R. KELSCH stated that the administrators didn't understand what the three categories meant. After an explanation, they now understand the four categories and that it is better for them as a school district if they can show their patrons and the rest of the state they are actually making progress. It looks much better for them if they can classify some of the students as partly proficient instead of novice.

SENATOR COOK stated that once the test is given, if the school is failing, they can say we're failing but it isn't too bad because there are more categories to show some improvement with.

He also stated that the 20% cap (that is waived if a school is not meeting AYP for six consecutive years) kicks in at the proficient level.

La Costa Rickford
Operator's Signature

10/15/03
Date

Page 4
Senate Education Committee
Bill/Resolution Number Eng. SB 2065
Hearing Date 4-8-03

REP. MUELLER stated ND has been doing four levels previous to NCLB. There is a lot of discussion on the federal level with NCLB. He feels we will see some changes in the Act, perhaps differentiation of the required levels that are in this legislation.

SENATOR COOK stated he thinks the cut score, and where it is, is the biggest issue out there rather than the categories themselves. REP. HAAS stated that in correlating the ND test with the NAEP (National Assessment of Educational Progress), the ND test showed we had 20% advanced, 37% proficient, 27% partly proficient, and 15% novice. When correlating this with the NAEP, it showed ND had 2% advanced, 23% proficient, 48% partly proficient, and 27% novice. The result of correlating the tests showed that ND's cut scores should have been higher. We had 20% advanced and NAEP had only 2% advanced. He feels we need to consider the cut scores as a teacher would. It goes to the credibility of the teacher and the accountability of the district. He feels the cut scores are determined by teachers, who are saying this is what the students need to be able to know and understand and able to do. There is also a five year review process in ND that allows the program to be looked at on a continuing basis, so if there are abnormalities in the cut scores, they will be addressed with committees of teachers and other experts. REP. KELSCH stated the administrators had picked the teachers to set up what the cut scores would be. Maybe the administrators need to visit with the team of teachers who came up with the cut scores. SENATOR COOK stated that through e-mails he has been told that a lot of the teachers that were on the team would like to revisit the issue and do it over.

REP. HAAS stated that this bill could be amended to read "mid-October to the end of November" as to when to administer the tests.

Page 5

Senate Education Committee

Bill/Resolution Number Eng. SB 2065

Hearing Date 4-8-03

SENATOR COOK stated that all those affected by NCLB should be in sync and he would like this to happen. He feels subsection 3 of the Senate version is in the bill because of the concern over cut scores.

REP. HAAS stated this issue is complicated because of changing from the CTBS test to our own test. ND was then compared to all groups over the national level. Now we are finding out our scores weren't as high as expected. We do have set standards.

REP. MUELLER says subsection 3 is a concern. He asked if we want the committee to be in a position of having to hold a public hearing on a test. Is there possibly some other language that could be used. SENATOR COOK doesn't see the hearing as much about the test as consequences of the test. He doesn't see the review of the test being jeopardized.

REP. KELSCH stated the cut scores were developed in ND the same as in other states. States that have developed these are now seeing improvement with their students reaching higher levels.

SENATOR COOK asked if it is possible to teach toward the test rather than toward the content and standards.

REP. KELSCH and REP. HAAS don't think so. They feel the teachers in this state are teaching toward content and standards.

SENATOR CHRISTENSON stated that she knows of teachers who have been told to teach to the test. There are consequences to deal with if the scores are not up. She stated that teachers have feared all along that they won't be teaching to benchmarks and standards and curriculum, but to the test.

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Senate Education Committee

Bill/Resolution Number Eng. SB 2065

Hearing Date 4-8-03

SENATOR COOK would like to review the materials passed out and would like the committee members to do likewise.

The committee was adjourned.

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Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Engrossed SB 2065

Senate Education Committee

☒ Conference Committee

Hearing Date 4-10-03

Tape Number	Side A	Side B	Meter #
1	x		0 - 26.0
Committee Clerk Signature <i>Andrew Johnson</i>			

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

CHAIRMAN COOK asked the committee if they had any thoughts on this bill and what should be done.

REPRESENTATIVE KELSCH stated she had called the Department of Education in

Washington regarding cut scores. They told her:

1. NCLB states that cut scores are revisited annually
2. the procedure in establishing cut scores for North Dakota was the norm, all states did the same thing
3. every year the cut scores can change because they will be based on the test
4. scores can be tweaked. up 5 or down 5 - but if there is a large change, it can be revisited and reassessed
5. there are no guidelines yet because this is such a new program in ND

This seems to be the issue: The math test is geared to 12th grade and the reading test is geared to 11th grade. If the math test were to be given in the 11th grade, the students would not have been taught the content necessary to complete the test. The math test would have to be geared to 11th

Page 2
Senate Education Committee
Bill/Resolution Number Eng. SB 2065
Hearing Date 4-10-03

grade instead of 12th. Scores could drop dramatically the next time they are tested if this issued isn't revisited. Then the cut score would have to be approved by DPI.

GREG GALLAGHER, DPI, said the law states that if the test is to change, it has to be reviewed by the original group of teachers (150) who set it up. By definition, it is for the states to determine entirely their assessment system in the matter they identified proficiency. It is never to be reviewed independently by the department. The department will do a review to see if the assessment system is technically sound. At no point will there be a review on the federal level on the state's assessment system or the where the cut scores will occur. If there are discrepancies in the test scores, a TAC (Technical Advisory Committee) team is brought in. They will review the data on the cut scores and check if there are irregularities in the test scores and make recommendations to the state to either adjust up or down to the minor standard. If the state would go from 12th to 11th grade testing, new lines would be drawn on the cut score. Asked if the questions would change, he said in 2003 - 2004 they would not, but 2004 - 2005 they would look at changing the questions. The test level is designed against standards and is designed for 11/12 grade. The high school level of testing is different than the elementary level of testing. The ultimate goal is to have a criteria for those who graduate. How that is achieved may be different for each individual student. Standards are important and the time that the student would have the best exposure to the standard is equally important and must be weighed out.

SENATOR COOK said the whole process of standards and assessments does more to dictate to schools what they teach than anything the legislature has done. MR. GALLAGHER stated that is correct to the extent that it says this is what we expect of a graduate.

Page 3
Senate Education Committee
Bill/Resolution Number Eng. SB 2065
Hearing Date 4-10-03

REPRESENTATIVE R. KELSCH stated she will call the US Department of Education and ask some more questions. She asked if the TAC team is coming in now, this month, to review the cut scores. If so, what is going to happen. MR. GALLAGHER said yes. The TAC team is made up of three experts and the vendor (CTB) and there is dialogue between them where they review all the elements of the bookmark settings (each individual, each group, and how they scored and what the final product is). These people are able to look at the data and see how it plays out as to the impact on student achievement. They prepare a series of recommendations for consideration by the state (in ND the superintendent). The call is for the superintendent to adjust the score. This is made available for review by DPI.

SENATOR CHRISTENSON asked how they calibrate the indifferent attitude of some twelfth graders. MR GALLAGHER stated they do have a scale for this. Twelfth graders need to be shown that their scores will be used and it is to their benefit they perform well.

SENATOR COOK stated the issue is cut score and where it's at. Also, trying to understand the test, grading the test, and the cut score are issues.

REP. MUELLER said the state allows for review of the test already. He feels that does not have to be in the bill. Maybe we could reference the TAC team. He also feels the issue is the cut score.

SENATOR COOK stated we can't change the cut score.

REP. KELSCH referenced the short statement from Larry Klundt the committee had received which called for a review by the committee that had developed the cut score (150 teachers).

SENATOR CHRISTENSON stated it would be costly and there is also a logistics problem because the committee was made up of teachers from all over the state.

Lacosta Rickford
Operator's Signature

10/15/03
Date

Page 4

Senate Education Committee

Bill/Resolution Number Eng. SB 2065

Hearing Date 4-10-03

REP. HAAS stated this is new to ND and there needs to be an increased understanding across the state on this whole issue of cut scores. There just seems to be a lot of misunderstanding. There is a process in place and therefore there is not need for amendments. The process of how this evolves and how it is evaluated need to be understood by the teachers, administrators, and school board members.

REP. KELSCH asked if a lack of communication is the problem. There needs to be a strong message to all those involved.

SENATOR COOK stated there has to be trust and understanding to make this work.

REP. KELSCH stated all those involved have to be informed.

The committee was adjourned.

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10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Reengrossed SB 2065

Senate Education Committee

☒ Conference Committee

Hearing Date 4-11-03

Tape Number	Side A	Side B	Meter #
2	x		0 -9.6
Committee Clerk Signature <i>Andrew Johnson</i>			

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

SENATOR COOK stated he had visited with the committee members and it was the consensus of the members that the intent of the testing in the fall of the 11th grade is okay. The other two issues are subsection 3, how having the mechanism for the cut scores reviewed and have dialogue among all the parties involved with it and the third issue is the categories. There seems to be an agreement among the members that the number of categories isn't as important as where the one cut score will be established that determines the difference between proficient and non-proficient. His suggestion is to do whatever needs to be done to make it clear in the language of the bill keep Fall testing in the 11th grade. He also feels we should work with the language presented by Larry Klundt regarding having the mechanics of determining the cut score reviewed by the special committee and we take out the reference of the three categories.

Page 2
Senate Education Committee
Bill/Resolution Number Reengrossed SB 2065
Hearing Date 4-11-03

REP. HAAS feels we should not reference the number of categories in the bill and let DPI continue to use the four categories. With regard to subsection 3, he is agreeable to what has been said if the wording can be changed to delete any reference to "holding a public hearing to review the test". It was never the intent to hold a public hearing to review the test. If that can be reworded, he would support that part. With regard to section 2 on page 1, he is comfortable with the fact the all the requirements of NCLB are going to mandate fall testing. He doesn't think it has to be specified in section 2. He also stated that grade 11 testing is in section 1.

REP. MUELLER asked about spring testing and if the committee needed to consider it.

SENATOR COOK stated the Senate hearing had discussed that issue, and the logistics in getting the test data back would be harder if done in the Spring. He further said there needs to be discussion on cut scores and the process of how they were put in place. This would perhaps help in understanding the issue.

REP. KELSCH stated before the 2005 - 2006 school year, cut scores will be brought to the NCLB committee and then explained to the committee how the scores were derived and the process involved in setting them. She feels there are enough safeguards on the test.

SENATOR COOK asked if there should be language in the bill to have a TAC team report.

Would it be beneficial.

SENATOR COOK and REPRESENTATIVE KELSCH are to work on the language in Section 3 to be ready for the committee's next meeting.

The committee was adjourned.

L. Costa Rickford
Operator's Signature

10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Reengrossed SB 2065

Senate Education Committee

☒ Conference Committee

Hearing Date 4-14-03

Tape Number	Side A	Side B	Meter #
2	x		0 - 18.2
Committee Clerk Signature <i>Shirley Johnson</i>			

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

REPRESENTATIVE R. KELSCH presented proposed amendments (38226.0302) and explained them to the committee. (see attached).

REP. KELSCH stated that what the committee was trying to do was test all the students in public schools. The first part of the amendment is cleanup language to get us to that point and to clarify the intent. The second part deals with a section of code that we already had and they thought the language dealing with cut scores would fit in here. She wonders if cut scores should have been mentioned in the title. This is how they would obtain the report from DPI regarding the cut scores.

SENATOR COOK asked about page 1, line 21. He thought that language was to stay in the bill.

REP. KELSCH had not mentioned that to LC when they prepared the amendment.

Page 2

Senate Education Committee

Bill/Resolution Number Reengrossed SB 2065

Hearing Date 4-14-03

SENATOR COOK asked about the time frame for those who are affected by this legislation. He questioned the language "the superintendent shall present the test scores publicly for the first time". REP. HAAS explained that is existing language in statute. SENATOR COOK asked if it would be beneficial for those who have concerns to have been able to review the scores prior to the public meeting. REP. KELSCH stated that she is not sure that listing in code who should be at the meeting either by individual or group is a good idea. She sees no difference as to whether the cut scores are published before or after the public meeting. The scores will not be able to be changed anyway. REP. HAAS stated that anyone can be invited to the meetings by the legislative committee that is reviewing this. It is a matter of coordination.

SENATOR COOK asked if maybe we should state that after receiving notice that the compilation of test scores has been completed, the superintendent shall inform the legislative council and make such records available for public review. Then add, the superintendent shall present the test scores and the methodology used to the legislative committee designated by the legislative council within 30 days of that point. (Ex: Once they are done, the LC has been informed they are done, they are a public record open for review, and within 30 days this committee has to meet.) This will solve his concern.

REPRESENTATIVE MUELLER stated there is a process in place in code already and why change it. If left as is, it just means the first time public and many more meetings can be held to resolve the issue. SENATOR COOK likes to go the "extra mile" to make things public.

SENATOR CHRISTENSON feels 30 days gives all concerned a chance to have questions ready for the set meeting. The whole point is to get those concerned to come to the meeting and have their concerns heard.

Page 3
Senate Education Committee
Bill/Resolution Number Reengrossed SB 2065
Hearing Date 4-14-03

REPRESENTATIVE KELSCH feels the information should be given at once to all concerned.

She sees no need for a 30 day waiting period.

REP. MUELLER asked why the language is in code as it is. REP. HAAS stated that when ND decided to do their own testing, that's when the language was put in code. The public sees the information after it is validated by those in the know. Detailed work will take place among the groups that represent all the parties involved. He feels the legislature has broad oversight on this project and should leave the communication of the details to other stakeholders on this issue.

SENATOR COOK would like to offer another amendment and will have it drafted by council.

REPRESENTATIVE MUELLER still has concerns with the dates for testing.

Committee adjourned.

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Operator's Signature

10/15/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. Reengrossed SB 2065

Senate Education Committee

☒ Conference Committee

Hearing Date 4-15-03

Tape Number	Side A	Side B	Meter #
1		x	13.9 - 36.1
Committee Clerk Signature <i>Andrea Johnson</i>			

Minutes: CONFERENCE COMMITTEE CHAIRMAN COOK called the committee to order with all members present.

SENATOR COOK presented an amendment to the committee for review. (38226.0303) The amendment changes the date for testing from November 1 to December 1. Otherwise the amendment is the same as previously reviewed.

SENATOR COOK explained the language in Section 2, Test scores - Publication, on the fourth line, "publicly for the first time". He stated that Council told him that particular language was put in code to remove some concern or shock of the public being notified of some negative test scores prior to policy makers.

REPRESENTATIVE HAAS would like to remove the specific date for the testing. There was discussion on whether they should be done in the spring or fall and when the students are going to do better on testing. SENATOR CHRISTENSON and REPRESENTATIVE HAAS both feel

Page 2

Senate Education Committee

Bill/Resolution Number Reeng. SB 2065

Hearing Date 4-15-03

spring testing is preferable. SENATOR COOK stated that the testing date could be changed by the next legislature when DPI streamlines it's operation and it's reporting.

REPRESENTATIVE HAAS said that right now the test is aligned for twelfth graders, but once realigned it will be for eleventh grade and it could then be possible for testing to be done in the spring. DPI had stated that fall testing allows them to get the results back to the schools in a timely manner. This could change once DPI streamlines their operation.

Discussion on Section 2. SENATOR LEE asked if we should put a 30 day period in section 2, where the public meeting has to be held within 30 days of the committee's findings. Is there a need to protect the test scores. REPRESENTATIVE HAAS said that is an important issue. He feels the legislators should have the information up front. He does feel some protection is still needed.

REPRESENTATIVE KELSCH moved that the House recede from its amendments and we amend reengrossed SB 2065 with 38226.0303. Seconded by REPRESENTATIVE HAAS.

REPRESENTATIVE KELSCH would like on record that the TAC team results be sent to the House and Senate Education Standing Committee members and the members be extended an invitation to the meetings.

Roll Call Vote: 6 YES. 0 NO. 0 Absent. Motion Carried.

The Committee was adjourned.

La Costa Rickford
Operator's Signature

10/15/03
Date

38226.0302
Title.

Prepared by the Legislative Council staff for
Conference Committee
April 14, 2003

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2065

That the House recede from its amendments as printed on page 1007 of the Senate Journal and pages 921 and 922 of the House Journal and that Reengrossed Senate Bill No. 2065 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "15.1-21-08" insert "and 15.1-21-10"

Page 1, line 2, after "to" insert "the"

Page 1, line 8, remove "all"

Page 1, line 10, after "to" insert "all public school students in"

Page 1, line 14, after "test" insert "to all public school students"

Page 1, line 17, remove "to all public school students"

Page 1, line 19, after "to" insert "all public school students in"

Page 1, line 20, replace the first "to" with "in" and replace the second "to" with "in"

Page 1, line 21, replace "The superintendent of public instruction may not administer the" with:

"SECTION 2. AMENDMENT. Section 15.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-10. Test scores - Publication. Upon receiving notice that the compilation of test scores has been completed, the superintendent of public instruction shall inform the legislative council. The superintendent shall present the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative council. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, the established cut scores, the methodology used to determine the cut scores, the validation of all test products, and the significance of the test scores."

Page 1, remove line 22

Page 2, remove lines 1 through 6

Renumber accordingly

38226.0303
Title.0500

Prepared by the Legislative Council staff for
Senator Cook
April 15, 2003

CS
4-15-03

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2065

That the House recede from its amendments as printed on page 1007 of the Senate Journal and pages 921 and 922 of the House Journal and that Reengrossed Senate Bill No. 2065 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "15.1-21-08" insert "and 15.1-21-10"

Page 1, line 2, after "to" insert "the"

Page 1, line 8, remove "all"

Page 1, line 10, after "to" insert "all public school students in"

Page 1, line 14, after "test" insert "to all public school students"

Page 1, line 17, remove "to all public school students"

Page 1, line 19, after "to" insert "all public school students in"

Page 1, line 20, replace the first "to" with "in" and replace the second "to" with "in"

Page 1, line 22, replace "November" with "December"

Page 1, after line 22, insert:

"SECTION 2. AMENDMENT. Section 15.1-21-10 of the North Dakota Century Code is amended and reenacted as follows:

15.1-21-10. Test scores - Publication. Upon receiving notice that the compilation of test scores has been completed, the superintendent of public instruction shall inform the legislative council. The superintendent shall present the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative council. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, the established cut scores, the methodology used to determine the cut scores, the validation of all test products, and the significance of the test scores."

Page 2, remove lines 1 through 6

Renumber accordingly

Date: 4/15/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2065

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38226.0303

Action Taken House recede and amend reengrossed SB2065

Motion Made By Rep. Kelsch Seconded By Rep. Haas W 38226.0303

Senators	Yes	No	Representatives	Yes	No
Senator Cook	✓		Representative Kelsch	✓	
Senator Gary Lee	✓		Representative Haas	✓	
Senator Christenson	✓		Representative Mueller	✓	

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

REPORT OF CONFERENCE COMMITTEE (420)
April 15, 2003 4:56 p.m.

Module No: SR-68-7770

Insert LC: 38226.0303

REPORT OF CONFERENCE COMMITTEE

SB 2065, as reengrossed: Your conference committee (Sens. Cook, G. Lee, Christenson and Reps. R. Kelsch, Haas, Mueller) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 1007, adopt amendments as follows, and place SB 2065 on the Seventh order:

That the House recede from its amendments as printed on page 1007 of the Senate Journal and pages 921 and 922 of the House Journal and that Reengrossed Senate Bill No. 2065 be amended as follows:

Page 1, line 1, replace "section" with "sections" and after "15.1-21-08" insert "and 15.1-21-10"

Page 1, line 2, after "to" insert "the"

Page 1, line 8, remove "all"

Page 1, line 10, after "to" insert "all public school students in"

Page 1, line 14, after "test" insert "to all public school students"

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Page 1, line 20, replace the first "to" with "in" and replace the second "to" with "in"

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Page 1, after line 22, insert:

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Page 2, remove lines 1 through 6

Renumber accordingly

Reengrossed SB 2065 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

SB 2065

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LaCosta Rickford

Date

10/15/03

**TESTIMONY ON SB 2065
SENATE EDUCATION COMMITTEE**

January 14, 2003

**By Greg Gallagher, Education Improvement Director
Department of Public Instruction
328-1838**

Mr. Chairman and Members of the Senate Education Committee:

I am Greg Gallagher, Education Improvement Director within the Department of Public Instruction. I am here to support SB 2065 and to report on its fiscal note.

SB 2065 amends NDCC 15.1-21-08 to expand the administration of North Dakota state assessments in reading, mathematics, and science to public school students statewide.

In 2001, the 57th Legislative Assembly enacted law (NDCC 15.1-21-08, 15.1-21-09, 15.1-21-10, 15.1-21-11, 15.1-21-12, 15.1-21-13, and 15.1-21-14) that mandates the administration of assessments that are aligned to the State's content and achievement standards in reading and mathematics for all public school students in grades 4, 8, and 12. This State law further requires the disaggregated reporting of results, the publication of these results, the provision of technical assistance to schools regarding the meaning and use of these results, the right of the public to review the state assessments, the submission of district professional development reports, and the public's right to access a district's translated standards and curricula.

During the 2001-02 school year, the Department of Public Instruction with the assistance of all public schools across the State administered these state assessments for the first time. Results from this first test administration are attached for reference. Although assessments may be used for a variety of purposes, assessments are most meaningful when they are used to identify the level of student performance against clear expectations and when these results are used to improve the quality of curriculum and instruction. These first-year results constitute baseline data for future accountability measurements.

On January 8, 2002, President Bush signed into law the *No Child Left Behind Act (NCLBA)*, which reauthorized the *Elementary and Secondary Education Act of 1965*

SB 2065
Department of Public Instruction

1

January 14, 2003

(ESEA). The NCLBA requires States that accept ESEA Title I funds to expand their state assessment programs to include additional student assessments in:

- (1) reading/language arts and mathematics at grades 3, 5, 6, 7, by 2005-06;
and
- (2) science in at least one grade level selected within each of the following grade spans by 2007-08:
 - (a) grades three through five;
 - (b) grades six through nine; and
 - (c) grades ten through twelve.

The Department of Public Instruction has proposed a development plan within its Consolidated Application for federal ESEA funding that would institute the expanded reading/language arts and mathematics assessments one year in advance, by 2004-05, and the science assessments one year in advance, by 2006-07.

Schools historically have requested the State to expand its assessment program in *more levels & more grades* order to provide better, more reliable assessment results for school improvement.

North Dakota's ESEA program approval is contingent on the State enacting legislation that evidences a commitment to developing and administering these new assessments and a statewide accountability system. These assessments are required by federal ESEA, Title I law as requisite for the State to receive full program approval by the U.S. Department of Education. Such program approval is required for the State to receive its full Title I allocation, beginning 2005-06. The Department of Public Instruction has proposed SB 2065 to ensure the State's long-term ESEA program approval and the full participation of public schools statewide.

The NCLBA has authorized sufficient funding to assure the development and administration of these assessments. Any and all expansion activity proposed within SB 2065 is supported by federal Title VI funding appropriated within the NCLBA. The level *3.5 mil \$ per year* of federal Title VI funding is identified within SB 2065's fiscal note. This fiscal note is predicated on the adoption of the Department of Public Instruction's operations budget for statewide assessments contained within SB 2013.

The State has made substantial progress since the 57th Legislative Assembly to assess students in terms of our expectations for them and reporting these results to our

students, their parents, and the wider community. For the first time, the State has established a statewide accountability system to measure students' and schools' improvement efforts based on credible, reliable criteria. SB 2065 extends the State's ability to measure student progress in core learning areas, to establish a highly reliable accountability system, and to ensure future federal funding for program improvement.

Mr. Chairman, this completes my testimony. I am available to answer any questions from the committee.

SB 2065
Department of Public Instruction

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January 14, 2003

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La Costa Rickford

10/15/03

Date

North Dakota Assessment System

Student Achievement Results
2001-02

*1st year doing assessments
now will assess in
Fall of year over
previous year.
Learning*

Reading			
Performance Level	Grade Level		
	4	8	12
Advanced: Demonstrates exemplary understanding and exceeds expected level of performance.	21%	16%	19%
Proficient: Demonstrates understanding and meets expected level of performance.	53%	50%	31%
Partially Proficient: Demonstrates an emerging or developing level of performance.	18%	20%	26%
Novice: Attempt made; lack of understanding evident.	8%	13%	22%

Mathematics			
Performance Level	Grade Level		
	4	8	12
Advanced: Demonstrates exemplary understanding and exceeds expected level of performance.	19%	10%	13%
Proficient: Demonstrates understanding and meets expected level of performance.	38%	32%	20%
Partially Proficient: Demonstrates an emerging or developing level of performance.	29%	45%	41%
Novice: Attempt made; lack of understanding evident.	14%	12%	25%

Department of Public Instruction
SB 2065

January, 2003

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2003 North Dakota Legislative Assembly
Senate Education Committee
Testimony SB 2065

I am writing this in general support of SB 2065. While I am in general support of this bill, I would like to suggest the following amendments:

Line 15: Five, six, seven, eight and eleven. Delete the language "and in one grade selected within the grade span ten through twelve."

Line 22: Delete "grade twelve" and insert "grade eleven."

The inclusion of the additional grades and the inclusion of science, as part of the assessment is greatly needed. These additions will assist schools in helping to measure student achievement more systematically than we currently do.

The amendments that I propose address one shortfall of the current legislation. Let me explain. The current legislation allows the administration of assessments in one of grades 10-12. The DPI has selected grade 12 for these assessments. The rationale for the selection of grade 12 is based on the fact that all students will have the opportunity to take all the courses that they will have by the time they take this assessment. Therefore the assessment will measure the knowledge that these seniors will be taking with them.

While the theory behind this may sound good, the reality is quite different. First, our conversations with seniors indicate that they do not take this test seriously. They have no ownership in the results. In fact they are already halfway through their first year of college before they get the results! More importantly, the schools are not afforded the opportunity to remediate those students that do not do well. The amendment suggests changing the assessment to grade 11, so that schools may work with the students and their parents in an attempt to bring the student up to the standards expected of a graduate. Since nearly all students have completed their graduation requirements in mathematics and reading by grade 11, an assessment at this time would allow the results to be used to better prepare the student. Under the current arrangement, this opportunity does not exist.

In summary, while the legislation is a significant step in the right direction, it does have one flaw. With continued limited resources, we must make the best use of those that we have. Testing students in grade 11 instead of grade 12, optimizes the utilization of these resources at NO additional cost.

I hope that you will support SB 2065 with the proposed amendments.

Dr Charles DeRemer, Asst. Supt.
Fargo Public School District #1



**NORTH DAKOTA
SCHOOL BOARDS
ASSOCIATION**
INCORPORATED

Excellence in North Dakota public education through local school board governance

**SENATE EDUCATION COMMITTEE
SB2065**

January 14, 2003

COMMENTS AND QUESTIONS

Bev Nielson, North Dakota School Boards Association

COMMENTS:

- With the myriad of system changes mandated by NCLB, compliance is going to be a strain on time and resources for local school districts. We ask that the Legislature NOT push further than the federal law requires in any of the NCLB compliance bills.
- There may be requests of DPI from the field for useful, reliable assessment tools to assist teachers in determining the needs of their students. We seriously doubt there have been many requests from school boards, superintendents, or teachers for a single, stringent, state-wide test to be utilized to impart labels and sanctions on schools which do not meet pre-determined levels of achievement.
- We support fall testing because it will allow the "identification" of schools in February or March during the early stages of their budget planning and before the April 15th deadline for "reduction-in-force" notifications. HOWEVER, if fall tests are given, they MUST be on the previous year's curricular standards. One cannot expect to test 12th graders in October on information scheduled to be taught throughout the 12th grade year.

QUESTIONS:

- Are we assessing students on some concepts which are primarily taught in courses students are not REQUIRED to take? We must remember that the required Annual Yearly Progress mandates are on the scores of this assessment tool. If the teachers writing the standards even said, "We don't teach these principles to all kids," then why would we expect students to be "proficient" in them? One thing the feds did leave up to the states is the setting of our standards. Let's not set ourselves up for failure by being unreasonable in the setting of standards by which we will be judged.
- Do local school districts receive any of the appropriated money to help defray local costs of assessing and distributing results to constituents? Is all the assessment money for DPI?

Thank you for your consideration of these concerns.

110 North Third Street • P.O. Box 2276 • Bismarck, North Dakota 58502
1-800-932-8791 • (701) 255-4127 • FAX (701) 258-7992
www.ndsba.k12.nd.us

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LaCosta Rickford

10/15/03
Date

Sandy - would you see that she receive the testimony - Thank you Senator Gary Lee



"Debi Biffert"
<biff@pop.attel.com>
>

01/13/2003 11:20 PM

To: "Sen. Gary Lee" <galee@state.nd.us>
cc: "Sen. Ryan Taylor" <rtaylor@state.nd.us>, "Sen. Tim Flakoll" <tflakoll@state.nd.us>, "Sen. Dwight Cook" <dcook@state.nd.us>, "Sen. Linda Christenson" <lchriste@state.nd.us>

Subject: SB 2065 Testimony

Dear Senators Freborg and Lee,

Sen. Lee, please copy this for Sen. Freborg, as he has no e-mail address. Also, please copy my testimony and give to members of the Senate Education Committee. I am unable to appear to testify today due to job commitment. Also, could you please send me copies of all testimony in favor of SB 2065? My address is: 8530 12th St. SW, Halliday, ND 58636.

I hope that you are able to receive this before the hearing. Thank-you for your help. Have a nice day.

Sincerely,

Debi Biffert

Halliday

Testimony of Debra Biffert

SB 2065

January 14, 2002

Mr. Chairman, and Senate Education Committee Members. My name is Debi Biffert. I live in Halliday and have prepared this testimony for you and sent it via e-mail. I am testifying against SB 2065.

The reasons are because in 1994, Goals 2000 provided the "framework for all federal education funding," and it provided a "carrot" of money for states if they restructured their state education legislation to be compliant with Goals 2000 and School to Work (STW).

The 1994 ESEA reauthorization, HR6, at the same time, provided a requirement that states restructure their education legislation to be compliant with Goals 2000 and STW. This HR6 was the "stick" that removed all federal Title I money from states if they would not restructure education. In addition, placing the federal government in authority over all state education plans was included in both Goals 2000 and HR6.

The new proposed ESEA reauthorization of 2001, "No Child Left Behind" (HR1),

La Costa Rickford
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10/15/03
Date

continues the restructuring mandate of 1994 through both the "carrot" approach, that is found in Goals 2000, and the "stick" approach, that is found in HR6. In addition, the accountability system put in place in 1994 is continued in "No Child Left Behind," though it dramatically expands the authority of the federal government over all schools and all curriculum in the country.

Finally, HR6 authorized a specific nonprofit group, the Center for Civic Education (CCE), to develop national standards and a model curriculum for Civics Education and Government. No oversight by any elected or appointed board is provided. "No Child Left Behind" continues that authorization and provides the CCE an unlimited amount of money to accomplish its purpose.

The GOALS 2000: EDUCATE AMERICA ACT 1994 provides the framework for all federal education funding:

In Section 2 of that Act is the purpose. Purpose The purpose of this Act is to provide a framework for meeting the National Education Goals established by title I of the Act by--
...(6) providing a framework for the reauthorization of all federal education programs by--(D) encouraging states to develop comprehensive plans that will provide a coherent framework for the implementation of re-authorized federal education and related programs in an integrated fashion..

["Re-authorized federal education programs" include the Elementary and Secondary Education Act of 1965 (ESEA). Title I is the bulk of federal education funds that states receive. Most schools accept federal Title I money.]

Grant money is available to states that develop a federally approved education plan -- the carrot:

Title III, Section 305: Each state that desires to receive [a grant] under this title shall submit an application to the Secretary [of the federal Department of Education].

Section 306: (a) Each state that wishes to receive [a grant]...shall develop and implement a plan.

(n)(1) The Secretary (of the federal Department of Education) shall review...each state plan...

(2) The Secretary shall approve a state plan...when the Secretary determines that such plan (C) meets the requirements [of this Act].

[Requiring the Secretary of the Department of Education to approve a state education plan is a violation of the U.S. Constitution under the 10th amendment.]

State content and performance standards must be consistent with the National Goals, and they must align local curricula and assessments with those standards:

Title III, Section 306(c) Each state...shall establish strategies for meeting the National

Education Goals. Such strategies (1) shall include (A) a process for developing state content standards and state student performance standards for all students... (B) a process for developing... state assessments (1) to be aligned with the state's content standards... (C) a process for aligning state or local curricula, instructional materials, and state assessments with the state content standards and state student performance standards. This would be SB 2065.

We are not opposed to the state having standards and aligned tests. We oppose the requirement that they must be approved by the federal government and aligned with the National Assessment of Educational Progress (NAEP), which is the federal curriculum. "Title I, Part A, Subpart 1, Sec. 1111(a)(1) Any state desiring to receive a grant [Title I money] shall submit to the Secretary a plan... that is coordinated with other programs under this Act..."

There are many in this state opposed to this bill as well as No Child Left Behind. I ask you as a citizen of North Dakota to recommend a "Do Not Pass" for SB 2065; and please vote no for SB 2065 on the floor.

Thank-you.

Debi Biffert

Halliday

701-938-4341

Kent Hjelmstad
<Kent.Hjelmstad@sen
dit.nodak.edu>

01/21/2003 01:50 AM

To: Dwight Cook <dcook@state.nd.us>
cc:
Subject: FW: Follow-up on Meeting Regarding No Child Left Behind
(Bismarck, Jan.15, 2003)

Dwight,
I thought you would want to be aware of this letter. DPI seems not to understand the ramifications of making up their own version of NCLB. This letter follows a meeting of outraged superintendents from NE North Dakota last week. There is an IVN meeting with Rep. Pomeroy on Wed. of this week. I'll keep you posted. This ultimately should impact SB 2065. The cut scores need to be either re-done or set with "three" categories not four, and later we need to stop the foolishness about testing all teachers and disallowing our high quality standards which are already in place. I assure you a good teacher can teach very well in a minor. Thanks for all you do. Mandan and North Dakota are better for your work. Call if you have questions.

Kent Hjelmstad
"Home of the Braves"

From: "Don Piper" <Don.Piper@mail.und.nodak.edu>
Date: Sat, 18 Jan 2003 17:31:53 -0600
To: <ggallagher@state.nd.us>, <lmatzke@state.nd.us>, <wsanstead@state.nd.us>
Cc: <senator@conrad.senate.gov>, <senator@dorgan.senate.gov>,
<Rep.Earl.Pomeroy@mail.house.gov>, <kent.hjelmstad@sendit.nodak.edu>,
<larry.klundt@sendit.nodak.edu>, <bstenehj@state.nd.us>,
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<jtraynor@state.nd.us>, <jwentz@state.nd.us>, <lchriste@state.nd.us>,
<mboucher@state.nd.us>, <mevery@state.nd.us>, <rberg@state.nd.us>,
<rchristm@state.nd.us>, <rkelsch@state.nd.us>
Subject: Follow-up on Meeting Regarding No Child Left Behind (Bismarck,
Jan.15, 2003)

TO: Wayne Sanstead, Greg Gallagher, and Laurie Matzke

Thank you for spending the 2 1/2 hours with our Walsh-Pembina administrators in Bismarck on Wednesday, January 15, 2003, to discuss our serious concerns about the DPI plans for implementing "No Child Left Behind" in North Dakota.

All of our people who met with you on Wednesday surely do want to provide the very best education possible for our students in North Dakota. We appreciate and support the intent of "No Child Left Behind," and we recognize that we should and must implement the specific requirements spelled out in the law. If we are able to accomplish just those things that are REQUIRED in the law, this surely will present a great challenge for most of our school districts. Therefore, as we reiterated MANY times in our meeting, it is very important that we not put into place either in North Dakota statute or in the DPI state plan anything that will RESTRICT our flexibility or that will EXCEED the already challenging provisions of the federal law.

We have grave concerns about a number of procedures that DPI is planning to include in the North Dakota plan. However, two particular issues related directly to determining "adequate yearly progress" (AYP) just must be reconsidered and adjusted.

First, it is imperative that we reconsider and revise the "cut scores" which were put into place based solely on the judgments of a selected group of

teachers. These "cut scores" are completely unrealistic! For a number of years our North Dakota students in mathematics consistently have ranked above (and usually significantly above) the national averages as measured by both the ACT data and the CTBS scores. Incredibly though, based on these new unrealistic "cut scores" and the percentages already released by DPI in the subject area of mathematics for grades 4, 8, and 12, MORE THAN HALF of our students who took the tests now would be judged as "below proficient." Clearly, it is not our students who are not proficient. Instead, it is the measuring sticks (these new "cut scores") by which they are judged that should be labeled as "not proficient"! Since these "cut scores" were established solely on the basis of judgment calls, and since we now have the data to indicate the disastrous consequences of applying these unrealistic "cut scores" measurements to our North Dakota students and schools, we simply MUST reconsider and revise these "cut scores" to provide a more true picture of what our students have learned.

Second, in NCLB (Title I, Part A, Sec. 1111) states are required to report academic achievement using three levels (Advanced, Proficient, and Basic). However, North Dakota has chosen to report four levels (Advanced, Proficient, Partially Proficient, and Novice), thus going beyond the requirements of the law. To complicate things even further, in reporting the test results to the public, DPI has chosen to collapse (or merge) "Partially Proficient" and "Novice" into ONE category and then identify all of those students as "Below Proficient" even though DPI explains "Partially Proficient" as "Demonstrates an emerging or developing level of performance" and "Novice" as "Attempt made; however, lack of understanding evident." Put another way, the "Partially Proficient" students are not really at risk of being "left behind" as the "Novice" students are, and they should not be labeled as "Not Proficient."

If we are going to merge categories and thereby come closer to following the intent of the law, it appears that we should merge our two middle categories ("Proficient" and "Partially Proficient") into one and label it "Proficient." This would leave us with the three categories that the law specifies (except that we then would call them "Advanced," "Proficient," and "Novice"). If this were done, the distribution of scores would look much more like the typical "normal curve" that we would expect to see in almost any distribution of test scores. This would produce more realistic (and true) measurements of our students. Also, it clearly would be more in accord with the intent of the federal law. Although we can assume that the federal lawmakers wanted to improve education for ALL students, even the title of the law ("No Child Left Behind") seems to make it clear that their MAJOR concern was that the students at the lower level of achievement ("Basic" or "Novice") not be "left behind" and thus be denied the opportunity to make a good life for themselves.

If this assumption is correct, then it is clear that the lawmakers wanted to make sure that these students ("Basic" or "Novice") were clearly identified and then brought up to an appropriate level of academic achievement. Therefore, if we are to carry out the intent of this law, we should NOT be including those students who are demonstrating "an emerging or developing level of performance" along with the "Novices" who actually are in danger of being "left behind."

I apologize for the length of this message, but I wanted to be as specific and complete as possible so that there would be no misunderstanding about our concerns and the suggested solutions. If you need any further clarification or if we can help in any way to solve these particular problems, please do not hesitate to let me know.

Thank you for your help in addressing these crucial concerns right away before we move ahead beyond the point of no return and do significant and

irreparable harm to many of our North Dakota students and schools.

Don Piper, Facilitator for
Walsh-Pembina Schools

Dr. Don Piper
Associate Vice President Emeritus and
Professor Emeritus of Educational Leadership
University of North Dakota, Box 8113
Grand Forks, ND 58202-8113
Phone: 701.777.6270
FAX: 701.777.6271
E-mail: don_piper@mail.und.nodak.edu

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Date

10/15/03



Department of Public Instruction

600 E Boulevard Ave., Dept. 201, Bismarck, ND 58505-0440
(701) 328-2260 Fax - (701) 328-2461
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead
State Superintendent

TO: Senate Education Committee

FROM: Greg Gallagher, Education Improvement Director

SUBJECT: SB 2065 Amendments and Fiscal Impact

DATE: January 28, 2003

I thank the Subcommittee on SB 2065 for the opportunity to discuss the Department's position regarding the proposed amendments to SB 2065.

The Department respectfully requests that the Senate Education Committee *reconsider and remove* the proposed amendments that would legislate the state high school assessment at the eleventh grade. Although these amendments are well intentioned and are initiated at the request of some school leaders, the amendments suffer from several critical deficiencies. The following outlines our position.

- *The twelfth-grade assessment was recommended by an advisory committee to the State Superintendent. The Standards, Assessment, Learning and Teaching (SALT) Team, an advisory committee to the State Superintendent consisting of teachers, administrators, and Department staff, recommended to the State Superintendent that a twelfth-grade assessment be administered within North Dakota. This recommendation came after extensive deliberation, spanning months, to define the components of a balanced and comprehensive assessment system.*
- *A twelfth-grade assessment offers a superior perspective on the effects of our K-12 educational system. Until the State recently initiated a twelfth-grade assessment, the State had suffered from a fundamental blindness regarding the effects of our education system. We simply have never had a summative assessment of student achievement. If we define standards for what a student should know and be able to do by the time they graduate, then we must assess students as deep into their high school grade years as practicable. An eleventh-grade assessment is inadequate, especially in light of the growing interest to expand core course requirements for all our students throughout all their years in high school.*
- *A twelfth-grade assessment links K-12 and higher education into a more unified effort and defines remediation criteria. We know that approximately 75-80% of our high school graduates enter into the higher education system. We also know*

School for the Deaf
Devils Lake, ND
(701) 662-8000
SB 2065 Amendments

School for the Blind
Grand Forks, ND
(701) 795-2700

State Library
Bismarck, ND
(701) 328-2460
January 28, 2003

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10/15/03

that approximately 28% of these students are found to be in need of remedial courses, courses that require more time and money on the part of the student and courses that do not count toward the student's core credits.

Until now, the University System's campuses have set the criteria by which incoming students are identified for remediation courses. Now, the Office of the Chancellor of the North Dakota University System has identified the benefit in using the twelfth-grade assessments as an appropriate indicator of a student's achievement toward proficiency and the fairest criteria for identifying possible remediation courses. An eleventh-grade assessment does not offer a close enough proximity to graduation to serve the purposes of higher education. A twelfth-grade assessment applies a steady pressure on schools to maintain their efforts, as measured by state standards, in assuring that all students graduate fully prepared to resume their advanced studies, as measured by state standards.

- *A twelfth-grade assessment, when its incentives are communicated, will motivate students.* It has been observed that twelfth grade students are not sufficiently motivated to perform well on a standardized test. One should not be deluded into thinking that a tenth or eleventh grader is any more motivated than a twelfth grader to participate in a standardized assessment. Standardized assessments, by their nature, do not move the souls of students. However, at the twelfth grade, unique incentives exist that can motivate students. These incentives have been endorsed by the national Council on Economic Development, a clearinghouse of industry leaders who advocate for the improvement of the nation's workforce.

For college-bound students, the prospect of saving time and money by passing out of remedial courses is a powerful incentive for students. For students transitioning immediately into the workforce, the growing prospect of future employers seeking evidence of basic skills on achievement tests rather than on GPAs, offers an incentive for students to demonstrate optimal performance. The use of achievement test results for college remediation and future employment is only now beginning to emerge. These incentives should be given a chance to work. Students will respond positively if they know that these results will be used.

What is important is for schools to communicate these incentives to students. The Department is aware that some schools are not currently communicating this to students. These incentives have not been sufficiently communicated. They must be given a chance.

- *Schools have ample tools to identify the need for remediation; schools have no reliable means to recognize summative results.* It has been stated that an eleventh grade assessment will afford schools the opportunity to measure for remediation, while a twelfth grade assessment will occur too late. This concentration on remediation misses the assessment's central purpose.

Schools practice remediation assessment on a daily basis. Classroom instruction is designed to carefully monitor student achievement gains and deficiencies. Schools can, as many have done voluntarily over the years, supplement these observations with additional standardized assessment tools. The Department endorses such practices. Assessing for reteaching is a critical component within instruction. It is important that schools perform this activity daily.

However, schools and the State have no other reliable means to assess students' overall achievement in terms of state standards, except with the state assessment. There simply must be some means to monitor overall student achievement toward the close of their tenure in K-12. No other assessment measures--not the ACT, not the SAT, nothing--can measure such performance, except the State twelfth grade assessment.

It is in the State's overriding interest to adopt the twelfth grade assessment as a summative assessment. No single assessment will do more to drive systemic improvements than a twelfth grade assessment.

- *A legislated spring assessment will delay results and threaten the State's ability to inform districts, schools, and parents of their AYP status in a timely manner.* ESEA Title I law requires States to inform districts and schools of their adequate yearly progress (AYP) status in a timely manner. Once informed, districts and schools must inform parents of their schools' AYP status so that parents can exercise their right for supplemental services or free choice. Timeliness of reporting is a critical principle within ESEA law.

The Department has been moving steadily to administer all student assessments in November. During 2002-03 the twelfth grade assessment was administered in the fall. During 2004-05 all assessments will be administered in the fall. This time frame allows our contractor and the Department ample time to score, set achievement cut-scores, develop reports, print and disseminate reports, and offer technical assistance to districts. This time frame is designed to release AYP status reports well in advance of July each year. This is ample time for districts and schools to inform parents of their options. If the state assessment were to be conducted in the spring, then the final report to districts and schools would be pushed back to mid-September at the earliest. This is insufficient notice to schools. The State and the districts could be in an untenable position and any defense regarding timeliness would be weak, at best.

The State should allow itself sufficient time to conduct its assessments and reporting. The proposed amendments to SB 2065 are problematic and will defeat all reporting efforts from the outset.

- *With a transfer to the eleventh grade in 2003-04, the State will bypass assessing the 2003-04 twelfth grade.* The Department of Public Instruction has conferred

with the U.S. Department of Education regarding the effect of ESEA law regarding the exclusion of the 2003-04 twelfth grade from ever being assessed. The issue entails provisions within ESEA that (1) require a State's assessment and accountability system to be inclusive of all students and (2) allow States the privilege to select their grade levels. The U.S. Department of Education has instructed us that nothing in ESEA law would require the State to also test the twelfth grade in 2003-04 during this transition. The State may transition to another grade level as it chooses. The Senate Education Committee should be aware that with this transition, our 2003-04 twelfth grade students will not have been assessed in terms of their achievement against standards anytime during high school. With this interpretation in place, there is no fiscal impact to the amendments proposed in SB 2065.

- *Legislating the specifics of assessment administration interferes with the State Superintendent's ability to balance and accommodate complex issues.* As illustrated in the statements above, an assessment system involves a network of interrelated, detailed issues. Some of these factors are driven by either State or federal law, the requirements of contractor protocols, the careful timing of related events, among others. State law places responsibility for the administration of state assessments with the State Superintendent. This placement of responsibility occurred, in part, because of a historical appreciation regarding the complexity of assessment administration. The amendments to SB 2065 will restrict the ability of the State Superintendent to optimize the assessment system; indeed, the amendments will initiate a series of foreseeable problems that will work directly against the State's best interests and, in fact, make any acceptable resolution to these problems impossible.

The Department did not arrive at the need for a twelfth grade assessment lightly. Great care has gone into crafting a system that (1) offers the State and schools the best insight into the achievement of students at the close of their K-12 tenure, in terms of the State's standards; (2) unifies the K-12 and university systems in terms of expectations; (3) supports a meaningful measure of achievement for transitions into college and the workforce; (4) offers meaningful incentives for students; and (5) provides a timely means of informing schools and parents of a school's achievement within AYP.

The Department respectfully requests that the Senate Education Committee remove all amendments related to eleventh grade assessments and return to the original language within SB 2065. Thank you for your attention to the issues raised within this memo. I am available to address any further questions from the Committee.

explanation from Doug Gallagher
2-5-03

Amendment to SB 2065

A technical advisory committee shall review and recommend to the state superintendent any adjustments to the established cut scores for the state assessment. The technical advisory committee shall consist of four assessment consultants appointed by the state superintendent, one school administrator recommended by the council of educational leaders, one legislator appointed by the legislative council, one school board member appointed by the school board association, and two individuals appointed by the governor. The state superintendent will review the recommendation of the technical advisory committee and issue the final cut scores for the state assessment.

La Costa Rickford
Operator's Signature

10/15/03
Date

North Dakota
Council of
EDUCATIONAL LEADERS



January 29, 2003

TO: Senate Education Committee
FROM: Larry Klundt, NDCEL
RE: SB 2065

The NDCEL has several concerns with this bill as it relates to the Department of Public Instruction's development of content and achievement standards as well as the grade levels being tested.

- (1) In order to comply with NCLB, I believe that we have to administer tests in reading/language arts and math to students in grades 3-8 beginning in 2005-06. This also is true for science beginning in 2007-08. It appears that states may obtain a one-year extension in implementing this provision.
- (2) NCLB also will require testing a grade in the grade span of 10-12 in reading/language arts, math and science. DPI has selected grade 12 for the tests in this grade span. We believe this to be problematic in that twelfth graders are not particularly motivated to take a test like this in the spring or fall. We believe that these tests should be administered no later than the 11th grade. Most schools in North Dakota require students to take and pass two math and two science classes to graduate from high school. If given in grade 12, the test will assess achievement on the content standards as if students have completed four math classes, chemistry and physics. An amendment should be written to require the tests be administered in either the 10th grade or 11th grade, not the 12th grade.

Dr. Larry Klundt, Executive Director 1720 Burnt Bo Drive Bismarck, ND 58503 701-258-3022 FAX: 701-258-9826 www.ndcel.org

Affiliated with AASA, NASSP, NAESP

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- (3) The NDCEL also is concerned about the content standards. Some teachers believe that the expectation for what students should be able to know and do at the 4th and 8th grade may be too high. This bill probably cannot address this problem, but we believe that the content standards should be revisited to determine their proper rigor.
- (4) The NDCEL believes that the achievement standards must be revisited. The process that was used to determine the cut scores was less than scientific and the teachers involved apparently did not know the ramifications of the work they were doing. For example, I do not believe the math teachers would have set cut scores that resulted in 66 percent of our seniors being not proficient in math. I am pretty sure that most teachers would re-examine their tests and assessment process if 66 percent of their students were failing their class. **We believe that the cut scores should be revisited and should be lowered.** Again, this bill doesn't address this issue, but is of great concern to the NDCEL.
- (5) The NDCEL also believes that the current proficiency categories being used by DPI should be re-worked. Presently, the categories are Advanced, Proficient, Partially Proficient, and Novice. We believe that NCLB only requires Advanced, Proficient, and Basic. **We strongly believe that the current Partially Proficient category should be combined with the Proficient category.** Some will say that this is just to make schools look better. We disagree. We believe that if you read the definition for Partially Proficient, you will agree that these students should be in the Proficient category. We believe that the children that NCLB did not want left behind were those in the Basic category, not the Partial or Proficient categories. Again this bill probably can't address this issue, but it is a related problem.
- (6) Another problem that we are working on at the federal level is the formula used to determine adequate yearly progress (AYP). The feds will require comparisons of grades from year to year and report percentages of students

who are proficient without regard to any individual differences. This must be fixed.

The NDCEL strongly encourages you to do what you can to make sure that *we do not put anything into law that would go beyond the requirements of NCLB*. The school administrators of North Dakota have NOT had any opportunity at this point to read or give input into the state plan that DPI has to submit to Washington this week. The state plan is the document that will outline for the Fed's what North Dakota plans to do regarding testing, assessment, and adequate yearly progress. **Two of our members received an e-mail today regarding the plan and they are supposed to provide their comments by this afternoon or noon tomorrow.** This doesn't give them nearly enough time to read, reflect and make suggestions on the plan. This timing seems a little ridiculous! NCLB will allow for amendments to the state plan for AYP (testing and assessment) until May, but shouldn't we have been involved in the development of the plan that will affect every school, student, teacher, and administrator in North Dakota?

Thank you for this opportunity, and I apologize for the length, as I am pretty sure it is more than you wanted at this time. I just thought you might like to know what we think about this whole arena (I will deal with highly qualified teachers later).

**Amendments to the
North Dakota
Consolidated State Application
Accountability Workbook**

**Submitted by
The North Dakota Department of Public Instruction**

On behalf of the State of North Dakota, the North Dakota Department of Public Instruction submits the enclosed amendments to the *North Dakota Consolidated State Application Accountability Workbook*, pursuant to Section 9302 of the *Elementary and Secondary Education Act* (PL 107-110).

These amendments clarify and supplement elements of the State's Consolidated Application Workbook submitted on January 31, 2003. The following enclosures amend the specified elements of the Workbook.

- Principle 3.2a regarding the establishment of the State's starting points for determining Adequate Yearly Progress as supported with Impact data.
- Principle 3.2b regarding the establishment of the State's measurable objectives for determining Adequate Yearly Progress as supported with Impact data.
- Principle 3.2c regarding the establishment of the State's intermediate goals for determining Adequate Yearly Progress as supported with Impact data.
- Principle 7.1 regarding the establishment of the State's graduation rate for determining Adequate Yearly Progress as supported with Impact data.
- Principle 7.2 regarding the establishment of the State's attendance rate for determining Adequate Yearly Progress as supported with Impact data.
- Principle 9.1 regarding the invoking of privileges within the State's approved assessment waiver to exempt the use of 2001-02 achievement data for the purposes of identifying first-year Adequate Yearly Progress status.
- Principle 9.1 clarifying the State's method of identifying schools and districts for Adequate Yearly Progress and rejecting any method based on cohorts.
- Principle 5.6 clarifying the "total population below proficient rule".

To provide appropriate evidence for these amendments, the State has prepared additional appendices, itemized below.

- Appendix X: North Dakota Assessment System 2001-02 Baseline Impact Data.
- Appendix Y: North Dakota Graduation 2001-02 Impact Data.
- Appendix Z: North Dakota Attendance 2001-02 Impact Data.
- Appendix AA: North Dakota Participation 2001-02 Impact Data.
- Appendix BB: North Dakota Composite AYP Identification Impact Data

ND State AYP Plan
Amendments

1

March 5, 2003

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These appendices will be made available to peer review team members at the time of the peer review.

The Department of Public Instruction requests that these amendments be accepted as an addendum to the *North Dakota Consolidated State Application Accountability Workbook*.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
<p>3.1 How does the State Accountability System determine whether each student subgroup, public school and LEA makes AYP?</p>	<p>For a public school and LEA to make adequate yearly progress, each student subgroup must meet or exceed the State annual measurable objectives, each student subgroup must have at least a 95% participation rate in the statewide assessments, and the school must meet the State's requirement for other academic indicators.</p> <p>However, if in any particular year the student subgroup does not meet those annual measurable objectives, the public school or LEA may be considered to have made AYP, if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the State assessments for that year decreased by 10% of that percentage from the preceding public school year; that group made progress on one or more of the State's academic indicators; and that group had at least 95% participation rate on the statewide assessment.</p>	<p>State uses different method for calculating how public schools and LEAs make AYP.</p>

RESERVED AND STAFF COMMENTS FOR REVIEWER COMMENTS

The State of North Dakota stipulates that the State will determine AYP for each public school and LEA as provided for within ESEA section 1111, including emphasis on the school identification method referenced to proficiency ratings, safe harbor provisions, statistical reliability assurances, graduation rates for secondary schools, attendance rates for elementary and middle schools, and a minimum assessment participation rate of 95%.

The State of North Dakota will only recognize and reference student achievement proficiency ratings generated by the North Dakota State Assessment and its Alternate Assessment. No other student achievement assessment tools or means will be recognized. No local assessments will be recognized as an alternative to the North Dakota State Assessment.

The only definitions of achievement levels recognized by the State AYP accountability system are those proficiency levels set for the North Dakota State Assessment through the standards-setting process. Refer to **Appendix J: North Dakota State Assessment, Bookmark Standards Setting Technical Report, 2002** for the established definitions of the North Dakota achievement levels. The State cut scores for the North Dakota State Assessment will constitute the defining scales for identifying schools and districts for AYP. Refer to **Appendix K: State Superintendent's Approval Notification of North Dakota State Assessment Cut Scores** for the State's announced policy regarding the establishment of achievement level cut scores.

All student achievement data collected during the administration of the State Assessment will be used to aggregate overall student achievement and to disaggregate student achievement results into each of the required student sub-populations to determine AYP. Refer to **Appendix X: North Dakota Assessment System 2001-02 Baseline Impact Data** to review the State's impact data.

AYP will be determined using 2001-02 school year data as the baseline. The starting points are calculated pursuant to the prescribed ESEA section 1111 requirements. The same starting point and annual, measurable objectives apply to all student sub-populations resulting in 100% proficiency of all students by 2013-2014.

In calculating AYP for student aggregated and subgroup populations, the State will employ a binomial distribution statistical model to ensure high levels of reliability. Ninety-five percent of students in each applicable student sub-group must be tested in order for the school to make AYP.

In calculating AYP for any student sub-population that did not meet the AYP goal but did decrease the percentage of students in the applicable student sub-group by 10% or more, the school or district will then be judged to have made AYP if the LEA or school also meets the state's other criteria when using the safe harbor provision (graduation rate for high school and attendance rates for elementary and secondary). Goals must be met for all applicable student sub-populations. The State will employ a binomial distribution statistical method within the calculation of safe-harbor status.

All students' scores will be used as an aggregate to determine the AYP of schools as a whole. All schools' scores will be used as an aggregate to determine the AYP of LEAs. All LEAs scores will be used as an aggregate to determine the AYP of the State.

Please refer to **Appendix T: State AYP Computation Rules** for the working rules used to determine AYP. These rules will be finalized in February 2003.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
<p>3.2a What is the State's starting point for calculating Adequate Yearly Progress?</p>	<p>Using data from the 2001-2002 school year, the State established separate starting points in reading/language arts and mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.</p> <p>Each starting point is based, at a minimum, on the higher of the following percentages of students at the proficient level: (1) the percentage in the State of proficient students in the lowest-achieving student subgroup; or, (2) the percentage of proficient students in a public school at the 20th percentile of the State's total enrollment among all schools ranked by the percentage of students at the proficient level.</p> <p>A State may use these procedures to establish separate starting points by grade span; however, the starting point must be the same for all like schools (e.g., one same starting point for all elementary schools, one same starting point for all middle schools...).</p>	<p>The State Accountability System uses a different method for calculating the starting point (or baseline data).</p>

STATE RESPONSE AND AYP ACTIVITIES FOR MEETING REQUIREMENTS

Based on the administration of the rules identified within section 3.2 above, the State has established starting points for calculating Adequate Yearly Progress.

Using baseline data from the 2001-02 school year, the State will establish starting points of proficiency separately in reading and math for each grade level. Refer to **Appendix X: North Dakota Assessment System 2001-02 Baseline Impact Data** to review the State's impact data. The same starting point for reading and math will apply to the aggregate student population within each subject and to each student sub-population for each of the three grade levels. Each starting point is based, at a minimum, on the higher of the following percentages of students at the proficient level: (1) the percentage in the State of proficient students in the lowest-achieving student subgroup; or, (2) the percentage of proficient students in a public school at the 20th percentile of the State's total enrollment among all schools ranked by the percentage of students at the proficient level.

The State has established the following starting points for AYP.

Subject	Grade Level		
	Fourth	Eight	Ten
Reading/language arts	65.3%	55.5%	47.4%
Mathematics	45.5%	33.6%	24.9%

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2b What are the State's annual measurable objectives for determining adequate yearly progress?	<p>State has annual measurable objectives that are consistent with a state's intermediate goals and that identify for each year a minimum percentage of students who must meet or exceed the proficient level of academic achievement on the State's academic assessments.</p> <p>The State's annual measurable objectives ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline.</p> <p>The State's annual measurable objectives are the same throughout the State for each public school, each LEA, and each subgroup of students.</p>	<p>The State Accountability System uses another method for calculating annual measurable objectives.</p> <p>The State Accountability System does not include annual measurable objectives.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

Based on the administration of the rules identified within section 3.2 above, the State has established measurable objectives for determining Adequate Yearly Progress.

Using baseline data from the 2001-02 school year, the State has established measurable objectives for proficiency separately in reading and math for each year from 2001-02 to 2013-14. Refer to **Appendix X: North Dakota Assessment System 2001-02 Baseline Impact Data** to review the State's impact data. The same measurable objectives for reading and math will apply to the aggregate student population within each subject and to each student sub-population for each of the three grade levels.

The measurable objectives are determined using the baseline percentage of proficient students statewide from the 2001-02 school year and prorating the expected annual growth required to achieve 100% by 2013-14. The following chart identifies the measurable objectives established for Adequate Yearly Progress.

Subject/ Grades	School Years												
	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
Reading													
4	65.3	68.2	71.1	74.0	76.9	79.8	82.7	85.5	88.4	91.3	94.2	97.1	100.0
8	55.5	59.3	63.1	66.9	70.7	74.4	78.2	82.0	85.8	89.6	93.4	97.2	100.0
12	47.4	51.8	56.2	60.5	64.9	69.3	73.7	78.1	82.4	86.8	91.2	95.58	100.0
Math													
4	45.5	50.1	54.7	59.4	64.0	68.6	73.2	77.8	82.5	87.1	91.7	96.3	100.0
8	33.6	39.1	44.7	50.2	55.7	61.2	66.8	72.3	77.8	83.4	88.9	94.4	100.0
12	24.9	31.2	37.4	43.7	49.9	56.2	62.5	68.7	75.0	81.2	87.5	93.8	100.0
Graduation	91.5			TBD									
Attendance	93.0												

* 2004-05 will initiate a new method for determining graduation rates based on the tracking of 9th grade cohorts through to graduation. In 2005 the State will recalculate the target graduation rate using the 20% ranking rule for graduation rates..

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2c What are the State's intermediate goals for determining adequate yearly progress?	<p>State has established intermediate goals that increase in equal increments over the period covered by the State timeline.</p> <ul style="list-style-type: none"> • The first incremental increase takes effect not later than the 2004-2005 academic year. • Each following incremental increase occurs within three years. 	<p>The State uses another method for calculating intermediate goals.</p> <p>The State does not include intermediate goals in its definition of adequate yearly progress.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that the State Superintendent has established State intermediate goals for determining adequate yearly progress that meet the provisions of ESEA section 1111. The intermediate goals are based on the respective measurable objectives established from the 2001-02 baseline data, set forth within Principle 3.2b above. Refer to **Appendix X: North Dakota Assessment System 2001-02 Baseline Impact Data** to review the State's impact data.

The intermediate goals will be based on the respective measurable objectives for reading/language arts, mathematics, graduation, and attendance determined independently and defined for the following years:

Step 1: 2001-02 through 2003-04 and set at the 2001-02 baseline AYP cut-point.
Step 2: 2004-05 through to 2006-07 and set at the 2004-05 measurable objective;
Step 3: 2007-08 through to 2009-10 and set at the 2008-09 measurable objective;
Step 4: 2010-11 through to 2012-13 and set at the 2010-11 measurable objective; and
Step 5: 2013-14 and set at the 2013-14 measurable objective.

The intermediate goals will be the effective AYP cut-point for all years within each respective step. The intermediate goal will constitute the AYP cut-point upon which all school and district program improvement identification will be made. The following chart identifies the respective intermediate goals for each respective subject and grade level.

Subject/Grades:	School Years												
	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12	12-13	13-14
Reading													
	65.3			74.0			82.7			91.3			100.0
	55.5			66.9			78.2			89.6			100.0
	47.4			60.5			73.7			86.8			100.0
Math													
	45.5			59.4			73.2			87.1			100.0
	33.6			50.2			68.8			83.4			100.0
	24.9			43.7			62.5			81.2			100.0
Graduation	91.5												
Attendance	93.0												

- * 2004-05 will initiate a new method for determining graduation rates based on the tracking of 9th grade cohorts through to graduation. In 2005 the State will recalculate the target graduation rate using the 20% ranking rule for graduation rates.

PRINCIPLE 7. State definition of AYP includes graduation rates for public High schools and an additional indicator selected by the State for public Middle and public Elementary schools (such as attendance rates).

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.1 What is the State definition for the public high school graduation rate?	<p>State definition of graduation rate:</p> <ul style="list-style-type: none"> • Calculates the percentage of students, measured from the beginning of the school year, who graduate from public high school with a regular diploma (not including a GED or any other diploma not fully aligned with the state's academic standards) in the standard number of years; or, • Uses another more accurate definition that has been approved by the Secretary; and • Must avoid counting a dropout as a transfer. <p>Graduation rate is included (in the aggregate) for AYP, and disaggregated (as necessary) for use when applying the exception clause¹ to make AYP.</p>	State definition of public high school graduation rate does not meet these criteria.

¹ See USC 6311(b)(2)(I)(i), and 34 C.F.R. 200.20(b)

STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS

The State of North Dakota stipulates that it has established the graduation rate of each high school as a component within the determination of adequate yearly progress as provided within ESEA section 1111.

The State has established a graduation target point based on North Dakota 2001-02 graduation baseline impact data. Refer to **Appendix Y: North Dakota 2001-02 Graduation Impact Data** for a summary of the impact data. The State has set the target graduation rate based on the 20% ranking rule for graduation rates. Any district with a graduation rate lower than this target point will be identified for not making Adequate Yearly Progress. This target point will remain as the State definition for graduation throughout the duration of the 2001-2005 school years. In 2005 when the State transfers from its current definition of graduation to that used within NCLBA, the State will recalculate the target graduation rate using the 20% ranking rule for graduation rates. This target point will remain as the State definition for graduation throughout the duration of the 2005-2014 school years. Based on the State's current graduation rate definition, the State graduation target point has been set at 91.5%.

The State will begin reporting graduation rates using the NCLBA definition in 2005, using State data from 2001 - 2005. The rate will be calculated as follows:

$$\frac{\text{\# Graduates (with regular diploma) who completed high school in four years}}{\text{Divided by}} \\ \frac{(\text{\# Graduates (same as above)} + \text{\# of 9}^{\text{th}} \text{ grade dropouts/retentions} + \text{\# 10}^{\text{th}} \text{ grade dropouts/retentions} + \text{\# 11}^{\text{th}} \text{ grade dropouts/retentions} + \text{\# 12}^{\text{th}} \text{ grade dropouts/retentions} + \text{\# students who complete 12}^{\text{th}} \text{ grade without a regular diploma})}$$

The data for each class will be tracked forward from 9th grade. Dropouts are defined as students who leave school prior to graduation for reasons other than transfer to another school. Students who are retained in grade, and thus leave their original class, will not count toward the number of graduates, but will be included in the denominator as members of the original class.

In the interim, until State data to perform the calculation set out above becomes available, the State will define and use an alternative measure, based on schools' reported aggregate dropout and graduation data. The interim measure, for the class of 2003 and 2004, will be the percentage of students who took the 12th grade State Assessment, who graduated with a standard diploma. Students that transfer in or out of the school after the State Assessment administration will not be included in the denominator or numerator.

$$\frac{\text{\# Graduates (with a standard diploma) who took the 12th grade State Assessment}}{\text{Divided by}} \\ (\text{\# of students enrolled at the time of the 12}^{\text{th}} \text{ grade test four years prior}) - (\text{\# students who transferred in or out of the class since the 12}^{\text{th}} \text{ grade test})$$

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.2 What is the State's additional academic indicator for public elementary schools for the definition of AYP? For public middle schools for the definition of AYP?	<p>State defines the additional academic indicators, e.g., additional State or locally administered assessments not included in the State assessment system, grade-to-grade retention rates or attendance rates.²</p> <p>An additional academic indicator is included (in the aggregate) for AYP, and disaggregated (as necessary) for use when applying the exception clause to make AYP.</p>	State has not defined an additional academic indicator for elementary and middle schools.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has adopted the attendance rate for elementary and middle schools as the additional academic indicator for determining AYP.

The State has established an attendance target point based on North Dakota 2001-02 attendance baseline impact data. Refer to **Appendix Z: North Dakota 2001-02 Attendance Impact Data** for a summary of the impact data. The State has set the target attendance rate at the second standard deviation below the norm of ranked district attendance rates. Any district with an attendance rate lower than this target point will be identified for not making Adequate Yearly Progress. This target point will remain as the State definition for attendance throughout the duration of the 2001-2014 school years. Based on the State's attendance rate definition, the State attendance target point has been set at 93%.

Attendance rate is defined as the aggregate days of attendance in a school or school district divided by the aggregate days of enrollment. The attendance rate is included in the aggregate for AYP. Attendance data are collected through the State's ADM (average daily membership) reporting system.

² NCLB only lists these indicators as examples.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.3 Are the State's academic indicators valid and reliable?	<p>State has defined academic indicators that are valid and reliable.</p> <p>State has defined academic indicators that are consistent with nationally recognized standards, if any.</p>	<p>State has an academic indicator that is not valid and reliable.</p> <p>State has an academic indicator that is not consistent with nationally recognized standards.</p> <p>State has an academic indicator that is not consistent within grade levels.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

Attendance rates are widely recognized as a valid indicator of student success. Attention to student achievement in addition to attendance and graduation rates offers a balanced presentation of key student performance indicators.

The State's ADM reporting system provides a reliable means of identifying students and monitoring student attendance rates.

The State of North Dakota has established a definition for the minimum number of students for both reporting and accountability purposes. This definition is consistent with the minimum number identified within Principle 9. The State has established a test of statistical significance for the method of determining a minimum number within a given population and referenced to the established measurable objective. Refer to Principle 9.1 for a detailed overview of this method of statistical significance.

North Dakota Accountability Workbook

Amendments to Principle 9.1

2001-02 Baseline Accountability Exemption Rule

The State of North Dakota proposes to invoke the full privilege of its 2001 State Assessment Waiver, approved by the U.S. Department of Education, and the principles of reliability, secured within ESEA section 1111, to exempt the use of 2001-02 baseline achievement data for the purposes of identifying schools for adequate yearly progress.

The State will report student achievement results from the 2001-02 school year as baseline data to establish the State's accountability targets and measurable objectives. However, the State will not recognize 2001-02 school achievement data for the purposes of identifying schools for adequate yearly progress. The State will begin the use of school achievement data for the purposes of first-year adequate yearly progress identification with the 2002-03 achievement data.

Privileges within the 2001 State Assessment Waiver.

The U.S. Department of Education has granted a waiver to the State of North Dakota regarding its state assessment system through August 2003. Refer to **Appendix A: North Dakota State Assessment Waiver Plan**. This waiver plan has established clear timelines for the State to achieve the full implementation of a valid and reliable assessment system. The State has achieved all the various activities identified within the waiver plan largely within the anticipated time frame.

The 2001-02 school year marked the first year that the State administered its criterion-referenced assessment. The test administration process has included a variety of critical activities designed to ensure the validity and reliability of the assessment system. These activities are summarized in the chart below.

State Assessment System Development Cycle State Waiver Activities	
March 2002	2001-02 State Assessment administered to schools statewide
March - May 2002	2001-02 State Assessment scored and results initially tabulated
May - June 2002	2001-02 State Assessment results reviewed by CTB/McGraw-Hill in anticipation of state
July 2002	State Assessment cut scores set by North Dakota teachers
July - August 2002	CTB/McGraw-Hill reviews integrity of cut score activities and issues report on reliability of cut score activity.
September 2002	State Superintendent approves State Assessment cut scores.
September - November 2002	CTB/McGraw-Hill prepares final reports for students, schools, districts, and the State.
November 2002	State receives and disseminates 2001-02 final assessment results to schools and districts.
November 2002	State administers 2002-03 high school State Assessments.
November 2002 - February 2003	State validates, cleans, and aligns all student demographic information with student achievement results. State reviews impact data for establishment of state adequate yearly progress definition.
January 2003	State drafts and submits initial adequate yearly progress proposal.
February - March 2003	State generates and disseminates first adequate yearly impact data to districts
March 2003	State administers 2002-03 elementary and middle level State Assessments.

ND State AYP Plan
Amendments

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March 5, 2003

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Operator's Signature

Lacosta Rickford

10/15/03
Date

February – April 2003	State evaluates impact data for adequate yearly progress, State negotiates final state adequate yearly progress definition with U.S. Department of Education.
May 2003	State submits final adequate yearly progress proposal to U.S. Department of Education.

ESEA section 1116 requires the State to inform districts and schools in a timely manner, prior to the beginning of the next school year, of their adequate yearly progress status and pertinent information to be used for the districts' and schools' annual report card and parental notifications.

As identified in the chart above, the State of North Dakota administered, scored, set out scores, produced reports, validated demographic information, generated impact data on AYP, and prepared its initial AYP definition on its state assessment and accountability system over a period spanning March 2002 to February 2003. This timeline was anticipated in the State's Assessment Waiver Plan approved by the U.S. Department of Education. This timeline of events, conducted under an approved waiver, however, extended well beyond the schedule of events required within ESEA section 1116 regarding timely notice to districts and schools. In effect, the approved waiver timeline made impossible any effort on the part of the State to inform districts and schools in a timely manner. The State's approved waiver status has been inherently incompatible with the timely reporting requirements within ESEA sections 1111 and 1116 for the baseline year, 2001-02. This incompatibility does not play out for outlying years beyond the 2001-02 reporting cycle.

Because the reporting time requirements within ESEA sections 1111 and 1116 are incompatible with the State's approved waiver plan for the 2001-02 school year, the State proposes that the provisions of the State Waiver Plan take precedence and be honored with no penalty imposed on the State or its districts or schools.

Therefore, it would be a violation of the State's approved waiver plan and an unfair application of the timely reporting requirement of ESEA section 1116 to use 2001-02 achievement data for the purposes of reporting districts and schools for first-year adequate yearly progress identification.

Ensuring validity within the 2001-02 baseline year.

ESEA section 1111 places a high level responsibility on the State to ensure that its accountability system is both valid and reliable. The previous subsections within Principle 9.1 develop the State's proposal for ensuring validity and reliability in its accountability identification and reporting.

To apply the principle of validity onto the 2001-02 assessment administration time cycle, which is defined by the State's waiver plan and is itself incompatible with ESEA section 1116 reporting timelines, illuminates glaring failures of this principle. To require the use of 2001-02 achievement data for first-year adequate yearly progress identification would violate the principle of validity.

Validity is violated within the 2001-02 year by the extended delays in the State's initial administration cycle, although the administration cycle is permitted within the State's approved waiver plan. The failure of the State to conduct its initial administration activities prior to the beginning of the 2002-03 school year violates the requirement to meet the timeliness requirement of ESEA section 1116. Effectively, the first year administration of the State Assessment could not produce timely reports for the State, districts or schools by any reasonable measure. Districts and schools were unable to disseminate the reports or initiate constructive changes based on these reports.

According to the administration chart above, the State's administration cycle during the approved waiver period actually produces a scenario where the 2002-03 assessment administration is conducted before the 2001-02 assessment cycle can produce meaningful results to districts and schools. Because schools cannot benefit from the 2001-02 achievement data prior to the administration of the 2002-03 assessments, schools are not allowed to make any necessary

changes in their curriculum or instruction to effectively improve their students' performance. The extended turn-around time makes the accountability system invalid for the purposes of reporting and reform during the waiver period. The reports were not allowed to serve their primary purposes. As such, the 2001-02 reporting cycle is invalid if it is used as the first-year of Adequate Yearly Progress Identification.

Any such validity concerns do not extend to outlying years beyond the waiver period. Future years can be assured of a valid and reliable accountability system.

Therefore, it would be a violation of the principle of validity to use 2001-02 achievement data for the purposes of reporting districts and schools for first-year adequate yearly progress identification.

Resolution.

The State will report student achievement results from the 2001-02 school year as baseline data to establish the State's accountability targets and measurable objectives. However, the State will not recognize 2001-02 school achievement data for the purposes of identifying schools for adequate yearly progress. The State will begin the use of school achievement data for the purposes of first-year adequate yearly progress identification with the 2002-03 achievement data. The state will stipulate to the use of school achievement data for the purposes of adequate yearly progress identification effective with 2002-03 achievement data and for all outlying years.

North Dakota Accountability Workbook

Clarification of Narrative within Principle 9.1

Clarification: North Dakota determines Adequate Yearly Progress with up to three years of combined achievement data within a given grade or school but with no consideration given to tracking cohort achievement.

Within the narrative of Principle 9.1 of the State Workbook submitted on January 31, the State proposes to establish greater reliability within the identification process for Adequate Yearly Progress by combining up to three years of achievement data within a grade or school. This combination of achievement data is restricted to accumulating sufficient data within a specified grade or school for the purposes of enhancing reliability. The State is not proposing to use or track the accumulation of selected cohorts in order to determine Adequate Yearly Progress; in deed, any such practice is forbidden under federal regulation. The State does not support any such practice of accumulating cohort achievement data and does not propose to do so for the purposes of conducting the statewide review of Adequate Yearly Progress.

The State's proposal to accumulate achievement data for up to three years from grades within a school is supported within federal regulation.

North Dakota Accountability Workbook

Clarification of Principle 5.6
"Total Population Below Proficient Rule"

Clarification: North Dakota proposes to employ a method that will identify schools and districts, within the rules of reliability, if their total academic achievement scores fall below the proficient cut point. A school's or district's achievement reports will include a set percentage of students at the proficient level in such proportion as not to allow for the identification of any student. This practice will allow for the proper identification of such schools or districts for program improvement as indicated by their low achievement scores.

The State amends the "total population below proficient rule" within Principle 5.6 as follows.

(3) *Total Population Below Proficient Rule.* The Department employs a rule to allow for the proper identification of a school or district where all students' achievement scores fall below proficient (i.e., the combination of partially proficient and novice). It is in the interest of the public and students that any school or district with 100% below-proficient achievement scores be identified for not making Adequate Yearly Progress. To eliminate the possibility of identifying any student, the reports for schools and districts with 100% below-proficient achievement scores will include a limited set percentage of students in the proficient level. This percentage of proficient students would eliminate any possible identification and also allow for the proper identification of the school or district. In the absence of this rule, extremely low performing schools would be exempt from not making Adequate Yearly Progress. In the absence of this rule, the principle of validity would be violated.

North Dakota Consolidated State Application Accountability Workbook

**for State Grants under Title IX, Part C, Section 9302 of the Elementary and
Secondary Education Act (Public Law 107-110)**

DUE: JANUARY 31, 2003



**U. S. Department of Education
Office of Elementary and Secondary Education
Washington, D.C. 20202**

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Operator's Signature

In Costa Rickford

Date

10/15/03

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

**Instructions for Completing Consolidated State Application
Accountability Workbook**

By January 31, 2003, States must complete and submit to the Department this Consolidated State Application Accountability Workbook. We understand that some of the critical elements for the key principles may still be under consideration and may not yet be final State policy by the January 31 due date. States that do not have final approval for some of these elements or that have not finalized a decision on these elements by January 31 should, when completing the Workbook, indicate the status of each element which is not yet official State policy and provide the anticipated date by which the proposed policy will become effective. In each of these cases, States must include a timeline of steps to complete to ensure that such elements are in place by May 1, 2003, and implemented during the 2002-2003 school year. By no later than May 1, 2003, States must submit to the Department final information for all sections of the Consolidated State Application Accountability Workbook.

Transmittal Instructions

To expedite the receipt of this Consolidated State Application Accountability Workbook, please send your submission via the Internet as a .doc file, pdf file, rtf or .txt file or provide the URL for the site where your submission is posted on the Internet. Send electronic submissions to conapp@ed.gov.

A State that submits only a paper submission should mail the submission by express courier to:

Cella Sims
U.S. Department of Education
400 Maryland Ave., SW
Room 3W300
Washington, D.C. 20202-6400
(202) 401-0113

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

PART I: Summary of Required Elements for State Accountability Systems

Instructions

The following chart is an overview of States' implementation of the critical elements required for approval of their State accountability systems. States must provide detailed implementation information for each of these elements in Part II of this Consolidated State Application Accountability Workbook.

For each of the elements listed in the following chart, States should indicate the current implementation status in their State using the following legend:

- F:** State has a final policy, approved by all the required entities in the State (e.g., State Board of Education, State Legislature), for implementing this element in its accountability system.
- P:** State has a proposed policy for implementing this element in its accountability system, but must still receive approval by required entities in the State (e.g., State Board of Education, State Legislature).
- W:** State is still working on formulating a policy to implement this element in its accountability system.

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

Summary of Implementation Status for Required Elements of State Accountability Systems

Status	State Accountability System Element
Principle 1: All Schools	
F	1.1 Accountability system includes <i>all schools and districts in the state</i> .
F	1.2 Accountability system holds <i>all schools to the same criteria</i> .
F	1.3 Accountability system incorporates the <i>academic achievement standards</i> .
W	1.4 Accountability system provides <i>information in a timely manner</i> .
W	1.5 Accountability system includes <i>report cards</i> .
W	1.6 Accountability system includes <i>rewards and sanctions</i> .
Principle 2: All Students	
F	2.1 The accountability system includes <i>all students</i> .
F	2.2 The accountability system has a consistent definition of <i>full academic year</i> .
F	2.3 The accountability system properly includes <i>mobile students</i> .
Principle 3: Method of AYP Determinations	
W	3.1 Accountability system expects <i>all student subgroups, public schools, and LEAs to reach proficiency by 2013-14</i> .
W	3.2 Accountability system has a method for determining whether <i>student subgroups, public schools, and LEAs made adequate yearly progress</i> .
W	3.2a Accountability system establishes a <i>starting point</i> .
W	3.2b Accountability system establishes <i>statewide annual measurable objectives</i> .
W	3.2c Accountability system establishes <i>intermediate goals</i> .
Principle 4: Annual Decisions	
F	4.1 The accountability system <i>determines annually the progress of schools and districts</i> .

STATUS Legend:

F – Final state policy
P – Proposed policy, awaiting State approval
W – Working to formulate policy

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

Principle 5: Subgroup Accountability

- | | | |
|---|-----|--|
| F | 5.1 | The accountability system <i>includes all the required student subgroups.</i> |
| F | 5.2 | The accountability system holds schools and LEAs accountable for the progress of student subgroups. |
| F | 5.3 | The accountability system includes students with disabilities. |
| F | 5.4 | The accountability system includes limited English proficient students. |
| F | 5.5 | The State has determined the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used. |
| F | 5.6 | The State has strategies to protect the privacy of individual students in reporting achievement results and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated subgroups. |

Principle 6: Based on Academic Assessments

- | | | |
|---|-----|--|
| F | 6.1 | Accountability system is based <i>primarily on academic assessments.</i> |
|---|-----|--|

Principle 7: Additional Indicators

- | | | |
|---|-----|---|
| W | 7.1 | Accountability system includes <i>graduation rate for high schools.</i> |
| W | 7.2 | Accountability system includes an <i>additional academic indicator for elementary and middle schools.</i> |
| F | 7.3 | Additional indicators are valid and reliable. |

Principle 8: Separate Decisions for Reading/Language Arts and Mathematics

- | | | |
|---|-----|--|
| F | 8.1 | Accountability system holds students, schools and districts separately accountable for <i>reading/language arts and mathematics.</i> |
|---|-----|--|

Principle 9: System Validity and Reliability

- | | | |
|---|-----|--|
| F | 9.1 | Accountability system produces <i>reliable decisions.</i> |
| F | 9.2 | Accountability system produces <i>valid decisions.</i> |
| W | 9.3 | State has a plan for addressing <i>changes in assessment and student population.</i> |

Principle 10: Participation Rate

- | | | |
|---|------|---|
| F | 10.1 | Accountability system has a means for calculating the <i>rate of participation</i> in the statewide assessment. |
| F | 10.2 | Accountability system has a means for applying the <i>95% assessment criteria</i> to student subgroups and small schools. |

STATUS Legend:

- F – Final policy
P – Proposed Policy, awaiting State approval
W – Working to formulate policy

PART II: State Response and Activities for Meeting State Accountability System Requirements

Instructions

In Part II of this Workbook, States are to provide detailed information for each of the critical elements required for State accountability systems. States should answer the questions asked about each of the critical elements in the State's accountability system. States that do not have final approval for any of these elements or that have not finalized a decision on these elements by January 31, 2003, should, when completing this section of the Workbook, indicate the status of each element that is not yet official State policy and provide the anticipated date by which the proposed policy will become effective. In each of these cases, States must include a timeline of steps to complete to ensure that such elements are in place by May 1, 2003, and implemented during the 2002-2003 school year. By no later than May 1, 2003, States must submit to the Department final information for all sections of the Consolidated State Application Accountability Workbook.

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

PRINCIPLE 1. A single statewide Accountability System applied to all public schools and LEAs.

CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.1 How does the State Accountability System include every public school and LEA in the State?	<p>Every public school and LEA is required to make adequate yearly progress and is included in the State Accountability System.</p> <p>State has a definition of "public school" and "LEA" for AYP accountability purposes.</p> <ul style="list-style-type: none"> The State Accountability System produces AYP decisions for all public schools, including public schools with variant grade configurations (e.g., K-12), public schools that serve special populations (e.g., alternative public schools, juvenile institutions, state public schools for the blind) and public charter schools. It also holds accountable public schools with no grades assessed (e.g., K-2). 	<p>A public school or LEA is not required to make adequate yearly progress and is not included in the State Accountability System.</p> <p>State policy systematically excludes certain public schools and/or LEAs.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that every public school and LEA is held accountable to the provisions of adequate yearly progress and is included in the State Accountability System. The North Dakota Assessment System assesses all students within a single, unified, statewide assessment that measures students' performance in terms of the State's challenging content and achievement standards and that all schools and all LEAs are measured for adequate yearly progress within a single, unified accountability system.

North Dakota, through an agreement with the U.S. Department of Education, has established an assessment waiver plan to bring the State into full compliance with ESEA, Section 1111(b)(1) requirements. This waiver plan, approved through August 2003, is enclosed as **Appendix A: North Dakota State Assessment Waiver Agreement Plan** and can be accessed at the following web site: <http://www.dpi.state.nd.us/testing/assess/plan.pdf>. To date, the State has met all objectives identified within the waiver agreement plan. The State stipulates that it will meet all requirements identified within the Waiver Agreement Plan.

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

The evidence of a single, unified, statewide assessment and accountability system is demonstrated by the grounding authority for State content standards and assessments in North Dakota State Law and in the North Dakota Department of Public Instruction's adherence to the requirements of Federal Law.

(a) Authority within State Law for State Content Standards.

North Dakota state law (NDCC 15.1-02-04.3) places responsibility for the development of State academic content standards with the State Superintendent (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C02.pdf>). The North Dakota Department of Public Instruction has developed and adopted academic content standards in mathematics (reference **Appendix D: North Dakota Mathematics Content Standards** or reference these standards at the following web site, <http://www.dpi.state.nd.us/standard/content/math.pdf>) and English language arts (refer to **Appendix F: North Dakota English Language Arts Content Standards** or reference these standards at the following web site, <http://www.dpi.state.nd.us/standard/content/english.pdf>). These State content standards have been developed at grades 4, 8, and 12 in accordance with the *North Dakota Standards and Assessment Development Protocols* (refer to **Appendix C: North Dakota Standards and Assessment Development Protocols** or reference the following web site, <http://www.dpi.state.nd.us/standard/content/toc.pdf>). North Dakota mathematics and English language arts academic content standards meet the requirements of section 1111(b)(1).

The State Superintendent oversees and approves all standards development. A State-level advisory committee consisting of LEA and SEA representatives, titled the *Standards, Assessment, Learning and Teaching (SALT) Team*, advises the Department of Public Instruction on the process and quality of standards development committee work. North Dakota's standards development protocols currently are being revised to incorporate improvements into the development process and to accommodate the development of grade-level content standards in grades 3, 5, 6, and 7.

North Dakota will continue to use adopted content standards as the basis for statewide assessments at grades 4, 8, and 12 in accordance with *No Child Left Behind Act (NCLBA)*, section 1111(b)(1). In addition, North Dakota will expand its statewide assessments into grades 3, 5, 6, and 7, in accordance with NCLBA section 1111(b)(1) by 2005-06, based on state-defined, grade-level content standards in reading/English language arts and mathematics. These grade-level content standards will be developed and adopted in accordance with North Dakota's standards development protocols.

North Dakota has submitted its plan for the development of grade-specific content standards to meet the requirements of NCLBA. This submission was a part of the State's Consolidated Application for ESEA funding, dated June 2002. Refer to **Appendix H: North Dakota State ESEA Consolidated Application**, pages 3-6, or refer to the following web site: <http://www.dpi.state.nd.us/grants/DOEapp.pdf>. The North Dakota State Consolidated Application has since been approved by the U.S. Department of Education.

(b) Authority within State Law for State Assessments.

North Dakota state law (NDCC 15.1-21-08) places responsibility with the State Superintendent for the administration of State assessments to all public schools statewide that are aligned to the State's content standards in reading and mathematics (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). State law requires that the assessments be administered to at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. The North Dakota Department of Public Instruction has developed and administers assessments at grades 4, 8, and 12 to correspond with the State's content standards.

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

State law requires that the State assessments compile aggregated results and disaggregated results. The State assessments must compile student achievement data that allows for a comparison of individual students, classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, disability, limited English proficient) and assessment status (i.e., enrollment period within a school and LEA), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

State law requires the State Superintendent to present to the legislative council the test scores publicly for the first time at a meeting of a legislative committee designated by the legislative council. At the meeting, the superintendent and representatives of the testing service that created the tests shall provide detailed testimony regarding the testing instrument, the methodology used to test and assess the students, and the significance of the test scores. (Refer to NDCC 15.1-21-09 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

State law requires the State Superintendent to require that the entity developing a test to be administered under section 15.1-21-08 not include questions that might be deemed personal to a student or to the student's family and that the entity developing the test not include questions requiring responses that might be deemed personal to a student or to the student's family. Before a test is finalized for use in North Dakota, the State Superintendent must require that the test be reviewed by a standards alignment committee appointed by the State Superintendent to ensure that the test meets the requirement of privacy. (Refer to NDCC 15.1-21-11 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

State law requires school districts to allow any individual over the age of twenty to view any test administered under sections 15.1-21-08 as soon as the test is in the possession of the school district. (Refer to NDCC 15.1-21-14 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

(c) Fulfilling the Requirements of the ESEA Waiver Plan

North Dakota, through an agreement with the U.S. Department of Education, has established an assessment waiver plan to bring the State into full compliance with ESEA, Section 1111(b)(1) requirements. This waiver plan, approved through August 2003, is enclosed as **Appendix A: North Dakota State Assessment Waiver Agreement Plan** and can be accessed at the following web site: <http://www.dpi.state.nd.us/testing/assess/plan.pdf>. During the 2001-02 school year, North Dakota administered its state assessment and is on schedule to meet fully all provisions set forth within the waiver plan.

State assessments have been developed and adopted thus far in mathematics and reading/language arts at grades 4, 8, and 12 in accordance with North Dakota's approved assessment waiver agreement and the *North Dakota Standards and Assessment Development Protocols* (<http://www.dpi.state.nd.us/standard/content/toc.pdf>). North Dakota will proceed to develop state assessments in mathematics and reading/language arts at additional grades (grades 3, 5, 6, and 7) by 2005-2006 in accordance with State protocols and section 1111(b)(1) requirements. North Dakota will proceed to develop state assessments in science at grades 4, 8, and 12 by 2007-2008 in accordance with State protocols and section 1111(b)(1) requirements. Additionally, North Dakota will expand its science assessment, voluntarily, at grades 3, 5, 6, and 7 by 2007-2008, based on the availability of ESEA Title VI funds, in accordance with State protocols and section 1111(b)(1) standards.

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North Dakota has submitted its plan to expand the development of grade specific assessments to meet the requirements of NCLBA. This submission was an element of the State's Consolidated Application for ESEA funding, dated June 2002. Refer to **Appendix H: North Dakota State ESEA Consolidated Application**, pages 7-10, or refer to the following web site: <http://www.dpi.state.nd.us/grants/DOEapp.pdf>). The North Dakota State Consolidated Application has since been approved by the U.S. Department of Education.

The North Dakota Assessment System provides for a single, unified, statewide assessment that measures the performance of *all* students in *all* schools and *all* LEAs in terms of the State's challenging content and achievement standards.

(d) Fulfilling the requirements of ESEA Consolidated Application. Agreement to administer a statewide accountability system based on adequate yearly progress.

State law grants to the State Superintendent of Public Instruction authority to apply for, abide by the requirements of, and administer any federal funded program on behalf of the State of North Dakota. In June 2002, the State Superintendent of Public Instruction signed the North Dakota Consolidated Application for programs administered under the *Elementary and Secondary Education Act*. This application included a signed certificate of assurances that obligated the State to administer a single, unified assessment and accountability system based on adequate yearly progress. With the signature of the State Superintendent, the State of North Dakota entered into an agreement with the U.S. Department of Education to abide with all provisions of Section 1111 of the ESEA, including all elements of accountability based on adequate yearly progress.

(e) Accountability System applies to all public schools within North Dakota, including schools with variant grade configurations, schools serving special populations, and schools that with no grades assessed.

The State of North Dakota stipulates that all public schools, regardless of grade configuration or service population, will participate in the state accountability system. State law defines any public school to include any educational institution supported through State funding. The state accountability system will include all public schools identified as K-12, all alternative public schools, the North Dakota School for the Deaf and the North Dakota State Youth Correctional Center.

Most schools within North Dakota minimally cover grade spans of K-6, 6-8, or 9-12. However, a review of School Year 2001-02 statewide student enrollments reveals 10 individual schools with student populations that do not fit within the typical grade span observed statewide. The following data indicate the respective number and type of school grade spans that do not correspond to the general assessment grade spans. Refer to **Appendix I: Schools Falling Outside Assessment System Grade Spans** for a list of schools identified with a type of organization that does not allow for any assessments within the State Assessment System.

	Type of School Organization (grade span)					
	Kindergarten	K-1	K-2	K-3	6-7	9-10
Number of Schools	3	2	2	1	1	1

Students who attend any of the schools above will eventually graduate to a higher grade level in another designated school. As such, there is a clearly identified school that will receive each student from their school-of-origin listed above. Where schools-of-origin exist with grade spans that do not allow for the administration of the State Assessment, as are the cases above, student achievement reports from the

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receiving school will be forwarded to the school-of-origin by the State. No reports will be issued that might identify an individual student.

(f) Definition of "public school" for AYP determination.

For the purposes of determining AYP, a public school within North Dakota is identified by the grade levels it serves and is approved to operate based upon its meeting criteria established in State law (NDCC 15.1-06.06). Schools report their approval status annually, as identified on the State's MIS 02 report for school approval. The Department of Public Instruction will reference this grade level approval status for the purposes of classifying and reporting public schools.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.2 How are all public schools and LEAs held to the same criteria when making an AYP determination?	All public schools and LEAs are systematically judged on the basis of the same criteria when making an AYP determination. If applicable, the AYP definition is integrated into the State Accountability System.	Some public schools and LEAs are systematically judged on the basis of alternate criteria when making an AYP determination.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that all public schools and LEAs will be judged systematically on the basis of the same criteria when making AYP determination. The State will adopt the definition of AYP as set forth within ESEA section 1111.

All schools and LEAs will be measured for AYP in terms of their demonstrated achievement of each of the following criteria:

- A school's or LEA's aggregate proficiency in both mathematics and reading/language arts, determined independently;
- A school's or LEA's proficiency, determined on the disaggregated achievement results for each subgroup (ethnicity, disability, limited English proficient, and economic disadvantaged), determined independently;
- A school's or LEA's aggregate participation rate that equals or exceeds 95%;
- A school's or LEA's disaggregated participation rate that equals or exceeds 95% within each subgroup, determined independently;
- A secondary school's or LEA's achievement of the required graduation rate;
- An elementary or middle school's or LEA's achievement of the required attendance rate;
- A school's or LEA's achievement of Safe Harbor in the aggregate or disaggregated for each subgroup, determined independently.
- The rules of statistical reliability apply to all independent measures of AYP.

Each criteria stated above will apply to all public schools and LEAs, without exception.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.3 Does the State have, at a minimum, a definition of <i>basic</i> , <i>proficient</i> and <i>advanced</i> student achievement levels in reading/language arts and mathematics?	<p>State has defined three levels of student achievement: <i>basic</i>, <i>proficient</i> and <i>advanced</i>.¹</p> <p>Student achievement levels of <i>proficient</i> and <i>advanced</i> determine how well students are mastering the materials in the State's academic content standards; and the <i>basic</i> level of achievement provides complete information about the progress of lower-achieving students toward mastering the <i>proficient</i> and <i>advanced</i> levels.</p>	Standards do not meet the legislated requirements.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has established achievement standards in reading/language arts and mathematics, based on four distinct levels of student achievement: novice, partially proficient, proficient, and novice.

The State of North Dakota has developed and adopted academic achievement standards in mathematics (refer to **Appendix E: North Dakota Mathematics Achievement Standards**, at the following web site, <http://www.dpi.state.nd.us/standard/perform/index.shtm>) and English language arts (refer to **Appendix G: North Dakota English Language Arts Achievement Standards**, at the following web site, <http://www.dpi.state.nd.us/standard/perform/index.shtm>). These State achievement standards have been developed at grades 4, 8, and 12 in accordance with North Dakota's content and achievement standards protocols (<http://www.dpi.state.nd.us/standard/content/toc.pdf>). North Dakota mathematics and English language arts academic achievement standards meet the requirements of section 1111(b)(1). North Dakota's achievement standards in science will be completed by the winter 2003, in accordance with State standards development protocols and section 1111(b)(1) requirements.

North Dakota will continue to use adopted achievement standards as the basis for statewide assessments at grades 4, 8, and 12 in accordance with section 1111(b)(1). In addition, North Dakota will expand its statewide assessments into grades 3, 5, 6, and 7 in mathematics and reading/English language arts, in accordance with section 1111(b)(1) by 2005-06, based on State-defined, grade-level achievement standards. Additionally, North Dakota will expand its statewide assessments, voluntarily, based on the availability of ESEA Title VI funding, into grades 3, 5, 6, and 7 in science by 2007-2008, based on State-defined, achievement standards. All achievement standards at grades 3, 5, 6, and 7 will be aligned with North Dakota's corresponding grade-level content standards. These achievement

¹ System of State achievement standards will be reviewed by the Standards and Assessments Peer Review. The Accountability Peer Review will determine that achievement levels are used in determining AYP.

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standards will be developed and adopted in accordance with North Dakota's standards development protocols.

North Dakota proposes to develop narrative achievement standards at grades 3, 5, 6, and 7 contemporaneously with the development of grade-level content standards. The content expectation committees will also draft the narrative achievement standards. These narrative achievement standards will act as the primary calibration tool for the cut-point standards setting performed to align the State assessment scale scores to State achievement standards.

The State of North Dakota will only recognize and reference student achievement proficiency ratings generated by the North Dakota State Assessment and its Alternate Assessment. No other student achievement assessment tools or means will be recognized. No local assessments will be recognized as an alternative to the North Dakota State Assessment.

The only definitions of proficiency levels recognized by the State AYP accountability system are those proficiency levels set for the North Dakota State Assessment through the standards-setting process. Refer to **Appendix J: North Dakota State Assessment, Bookmark Standards Setting Technical Report, 2002** for the established definitions of the North Dakota proficiency levels. The State cut scores for the North Dakota State Assessment will constitute the defining scales for identifying schools and districts for AYP. Refer to **Appendix K: State Superintendent's Approval Notification of North Dakota State Assessment Cut Scores** for the State's announced policy regarding the establishment of proficiency level cut scores.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.4 How does the State provide accountability and adequate yearly progress decisions and information in a timely manner?	<p>State provides decisions about adequate yearly progress in time for LEAs to implement the required provisions before the beginning of the next academic year.</p> <p>State allows enough time to notify parents about public school choice or supplemental educational service options, time for parents to make an informed decision, and time to implement public school choice and supplemental educational services.</p>	Timeline does not provide sufficient time for LEAs to fulfill their responsibilities before the beginning of the next academic year.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

During the 2001-02 school year and pursuant to the State's Assessment Waiver Plan approved by the U.S. Department of Education, the State received its baseline assessment results from its assessment vendor during the fall, 2002. The Department of Public Instruction will use these baseline assessment results to conduct the 2001-02 AYP review of each school and LEA in February 2003.

The State is scheduled to release its AYP reports in February 2003. The State provides technical assistance on programmatic issues related to AYP reports to LEAs and schools. In the spring of each school year, the Department of Public Instruction conducts a workshop for all schools identified as not achieving AYP. At this workshop, schools are provided with a timeline of required activities and information on implementing all required AYP provisions. Schools are informed of their responsibilities on parent notification, school choice, supplemental services, and other corrective actions sanctions, and are given guidance on writing a school improvement plan. The schools prepare and implement these requirements before the beginning of the next academic school year. Additionally, schools receive ongoing guidance throughout the school year including informative memos on required procedures, example forms and ideas for implementation. The Title I website for program improvement also contains the information distributed at the spring workshop to help schools as they implement required provisions before and during the school year. Refer to **Appendix L: Program Improvement Activities** at the following website: www.dpi.state.nd.us/title1/progress/index.shtml.

For the 2002-03, and 2003-04 school years, all final assessment scores will be made available to the State from the State's assessment contractor by June of each respective year. It is anticipated that the State will be in a position to conduct its AYP determination and report dissemination by late July of each respective year. Schools will receive their AYP status reports during the summer of each respective year. This notification will arrive in time for schools and LEAs to notify, in turn, parents regarding their right to seek a supplemental service, travel service, or school choice option under program improvement with ESEA section 1116.

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Beginning during the 2004-05 school year and for every school year thereafter, the State will conduct fall assessments that will ensure the State's ability to conduct ongoing achievement cut-score analyses and AYP determinations well in advance of the end of a given school year. The advancement of a fall assessment schedule is designed to improve the quality of cut-score analyses, the generation and dissemination of reports, the timely notification of schools and LEAs, the more conducive turn-around time for school- and LEA-reporting to parents, and the more relaxed deliberation of parents in determining their parental rights options identified within ESEA, section 1116.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.5 Does the State Accountability System produce an annual State Report Card?	<p>The State Report Card includes all the required data elements [see Appendix A for the list of required data elements].</p> <p>The State Report Card is available to the public at the beginning of the academic year.</p> <p>The State Report Card is accessible in languages of major populations in the State, to the extent possible.</p> <p>Assessment results and other academic indicators (including graduation rates) are reported by student subgroups</p>	<p>The State Report Card does not include all the required data elements.</p> <p>The State Report Card is not available to the public.</p>

STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS

The State stipulates that it will produce and disseminate a State Report Card and Profile for the state as a whole, for each LEA, and for each public school to meet all accountability requirements specified within ESEA section 1111. The State Report Card and Profile will publish all aggregate student achievement data, all disaggregate student achievement data by subgroup, graduation rates, attendance rates, participation rates, and AYP status for the State, each LEA, and each school respectively.

State law requires the dissemination of individual student assessment reports to parents and schools in an understandable format. State law also requires the presentation of State assessment results to the Legislative Council summarizing overall student achievement. Further, State law requires that aggregated and disaggregated student achievement results be published for the review of the public. Refer to **Appendix B: North Dakota Century Code, Assessment Statutes** for a summary of State's reporting requirements. Refer to **Appendix M: Testimony Before the Education Committee by the Department of Public Instruction, October 10, 2002** for a summary outline of the testimony delivered to the Legislative Council's Interim Education Committee on October 10, 2002.

The State's assessment contractor scores, prints, packages and ships all student achievement reports to the respective schools. Teachers are instructed to review the results of each student's assessment with each student and subsequently with each student's parents. Teachers are instructed to review a student's performance at the subject level, the standards level, and at the benchmark level. Further, teachers are instructed to clarify the meaning of the State content standards and achievement standards. The back-side of all reports offers a summary of these standards and identifies a web site for a more detailed presentation of the State's standards. Refer to **Appendix N: North Dakota State Assessment, Student Achievement Reports** for illustrations of the various achievement reports.

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The Department of Public Instruction receives all student achievement data for each school and district from the State's assessment contractor through a comprehensive data transfer. The Department compiles the data, identifies and corrects any inconsistencies, generates disaggregated reports according to defined subgroup populations, and prints summative reports for each school, each district, and the State. The results of these reports are forwarded to each school and district. These results are also listed on the State Report Card and School Profile of the Department's web site. Refer to **Appendix O: North Dakota State Report Card and Profile** for an illustration of the content. The 2001-02 State Report Card and Profile and its web site are under development and will be completed in early February 2002.

The State will produce all district- and school-level reports for the districts and schools. These reports will include both aggregated and disaggregated student achievement data. Refer to **Appendix O: North Dakota School Report Card and Profile** for an illustration of the content of these student achievement profiles. Districts may use these reports as the foundation for their locally produced report cards and profiles. These State-generated reports will offer quality assurances regarding the generation of any district achievement data.

All public information will be disseminated through the public media, as described below.

(1) The Department of Public Instruction will present an annual report to the North Dakota Legislative Council as required by law (refer to **Appendix B: North Dakota Century Code, Assessment Statutes** for an overview of State statutes on public disclosure of State Assessment results, and **Appendix M: Testimony Before the Education Committee by the Department of Public Instruction, October 10, 2002** for the 2002 presentation to the Legislative Council).

(2) The Department of Public Instruction will publish press releases for use by radio/television, the print media, and other publication media. The content for these press releases will reflect the school profile and report card. Refer to **Appendix O: North Dakota School Report Card and Profile** for an illustration of this content. Refer to **Appendix P: State Superintendent's Release of State Assessment Results** for the November 2002 press release on the 2001-02 school year achievement data, submitted by the State Superintendent.

(3) The Department of Public Instruction will publish the school report card and profile electronically through the Department's website. Refer to **Appendix O: North Dakota School Report Card and Profile** or refer to the following web site, <http://www.dpi.state.nd.us/dpi/reports/profile/0102/50128.htm>. This public information process supplements the Department's communication to parents regarding standards and assessment.

The State will publish all aggregated and disaggregated student achievement data by school, district, and the State on the Department of Public Instruction web site. This publication will allow school districts to access information on their district and other districts for use in general school improvement activities. Refer to **Appendix T: North Dakota Sample School Report Card and Profile** or refer to the following web site, <http://www.dpi.state.nd.us/dpi/reports/profile/0102/50128.htm>.

Parents will have access to the information through their students' individual achievement reports, the Department of Public Instruction website, the dissemination of their district's local school report card and profile, and other forms of public documents. The Department of Public Instruction will analyze data and review policies on a regular basis in order to assure that data are used to advance school improvement plans.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
1.6 How does the State Accountability System include rewards and sanctions for public schools and LEAs? ²	<p>State uses one or more types of rewards and sanctions, where the criteria are:</p> <ul style="list-style-type: none"> • Set by the State; • Based on adequate yearly progress decisions; and, • Applied uniformly across public schools and LEAs. 	State does not implement rewards or sanctions for public schools and LEAs based on adequate yearly progress.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The state of North Dakota is in the process of revising our prior system of rewards and sanctions to align with the *No Child Left Behind* Act. The Department of Public Instruction has always had a system of rewards and sanctions in place. The prior and new system for rewards and sanctions for public schools and LEAs in North Dakota is based solely on a district's or school's adequate yearly progress status.

The state's prior system of rewards was based on a state assessment that measured student progress using national percentiles. Schools that scored above the 65 percentile for 3 consecutive years were identified as Title I distinguished schools. These districts and schools were recognized and served as models under the statewide school support system.

As of 2001-2002, the state assessment measures student progress against our North Dakota state standards in reading and mathematics. North Dakota teachers, under the direction of our state assessment contractor, went through a standard setting process and identified cut scores for proficiency on the state assessment. Schools that meet or exceed the standard are declared satisfactory in making adequate yearly progress.

The state of North Dakota is developing a rewards system that includes strategies such as distinguished schools designations or financial rewards to recognize schools that have significantly closed the achievement gap, exceeded adequate yearly progress, or have made the greatest gains in student performance.

The state of North Dakota is working with various advisory groups, including our Committee of Practitioners, Title I School Support Team, and the Standards Assessment and Learning Team to develop criteria on what constitutes a significant gain for the recognition awards and the financial rewards. This information will be described in detail in the May 2003 submission of our state plan.

² The state must provide rewards and sanctions for all public schools and LEAs for making adequate yearly progress, except that the State is not required to hold schools and LEAs not receiving Title I funds to the requirements of section 1116 of NCLB [§200.12(b)(40)].

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All districts and schools in the state that significantly exceed the adequate yearly progress expectations for any given year will be recognized as a distinguished school.

In addition, financial rewards will be given to Title I districts and schools that have significantly closed the achievement gap or have made the greatest gains in student performance.

The state of North Dakota has established an accountability system that is based on the state's definition of adequate yearly progress and is applied uniformly across all public schools and districts in the state. All schools and districts are held to the same standards. All schools and districts will receive written notification of whether they are satisfactory in making adequate yearly progress. However, the state does not hold schools and districts not receiving Title I funds to the requirements of Section 1116 of the *No Child Left Behind Act*.

The state's prior system of sanctions remains intact. Schools that were in program improvement status in the old law remained in the same category after the *No Child Left Behind Act* was enacted. North Dakota currently has twenty-three schools identified for program improvement. Twenty-one of the schools are currently in the fourth year of program improvement. Two schools are in their third year of program improvement. All twenty-three schools have submitted a program improvement plan which is currently being peer reviewed against established rubrics which assesses the quality of the plans. All twenty-three schools have notified parents and community members of their program improvement identification and the appropriate parent options available to them. The annual workshop for schools identified for program improvement was held on April 29, 2002 and will be conducted again in the spring of 2003. School personnel were appraised of the new regulations in the *No Child Left Behind Act*.

The school choice and supplemental service provisions are currently being implemented for the twenty-three schools in program improvement status. Current North Dakota law allows for open enrollment so the choice provision can be implemented in districts with more than one school per grade span.

The state of North Dakota created a supplemental service application and went through a request for proposal process in August 2002. This process resulted in two supplemental service providers being approved to offer supplemental services. In December 2002, the Department of Public Instruction went through a second request for proposals process. A state review panel is currently in the process of reviewing applications submitted so that additional supplemental service providers can be added to the state list.

The North Dakota state legislative assembly is currently in session. Current state law authorizes a process for the SEA to take at least one of the actions against LEAs in corrective action, listed in the NCLB legislation. Proposed state legislation would authorize in state law the authority for the Department to implement at least one of four alternative governance options, or another option that leads to "major restructuring" to improve student achievement for schools in year seven of the program improvement timeline.

The menu of options available to schools identified for program improvement and in the school restructuring phase will be finalized at the conclusion of our state legislative session and will be defined in detail in the submission of our state plan due in May 2003.

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PRINCIPLE 2. All students are included in the State Accountability System.

CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
2.1 How does the State Accountability System include all students in the State?	<p>All students in the State are included in the State Accountability System.</p> <p>The definitions of "public school" and "LEA" account for all students enrolled in the public school district, regardless of program or type of public school.</p>	Public school students exist in the State for whom the State Accountability System makes no provision.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The North Dakota Assessment System assesses *all* students, regardless of status, within a single, unified, statewide assessment that measures students' performance in terms of the State's challenging content and achievement standards.

North Dakota state law (NDCC 15.1-21-08) places responsibility with the State Superintendent for the administration of State assessments to all public school students that are aligned to the State's content standards in reading and mathematics (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). State law requires that the assessments be administered to at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. The North Dakota Department of Public Instruction has developed and administers assessments at grades 4, 8, and 12 to correspond with the State's content standards.

State law provides for the assessment of all students within the designated grade levels. Therefore, all students are to be included within the State assessment and accountability system. No exceptions or systematic exemptions to the State assessment and accountability system are allowed.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
2.2 How does the State define "full academic year" for identifying students in AYP decisions?	<p>The State has a definition of "full academic year" for determining which students are to be included in decisions about AYP.</p> <p>The definition of full academic year is consistent and applied statewide.</p>	<p>LEAs have varying definitions of "full academic year."</p> <p>The State's definition excludes students who must transfer from one district to another as they advance to the next grade.</p> <p>The definition of full academic year is not applied consistently.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota requires all students enrolled in public schools within North Dakota to participate in the State Assessment system. Refer to **Appendix B: North Dakota Century Code** citations or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). All students, regardless of their enrollment status, participate in the State Assessment. This total inclusion policy includes those students who may have enrolled in a district or school after the beginning of a school year.

For the purpose of identifying students whose achievement results are to be included within a school's or LEA's AYP determination, a student must be in school for the full academic year. A "full academic year" means a student has been enrolled at a school or within an LEA since the first day of the current school year (i.e., since day one of the school year until the day of the state assessment).

Any student who may have been enrolled in a school or district after the beginning of a school year is identified on their assessment demographic sheet. Students or school personnel mark a special code on the assessment demographic sheet that identifies their late enrollment status. This code identifies the student and to remove them from the school's student roll for AYP identification purposes. Refer to page 29 for codes "R" and "S" of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for the enrollment code identification fields. A student who has not been enrolled in a school for the entire year but has been enrolled in the district for the entire year will not be included into AYP consideration for the school but will be included into AYP consideration for the district.

All students must be accounted for regarding their enrollment status. This is a required entry on the demographic sheet of all students. Student participation rates will be compared to a school's and district's Average Daily Membership student count used to reimburse schools and districts for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates. Refer to page 29 for codes "R" and "S" of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for the enrollment code identification fields. Student participation rates will be compared to the schools and districts Average Daily Membership student count used to reimburse school's and district's for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates.

The State is developing a statewide student data analysis and reporting system to aid the State in monitoring the enrollment patterns and participation rates of students. The TetraData application will allow

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the State to link district enrollment files with the State's assessment participation files in order to assure that all enrolled students are accounted for in the State Assessment system files. Refer to **Appendix R: TetraData Data Analysis and Reporting System Summary** for an overview of the TetraData system's purpose and design.

The State currently is reviewing its ESEA and accreditation monitoring policies. The State is pursuing an amendment to its monitoring requirements that would mandate districts to produce evidence regarding the enrollment dates of all students. Monitors would check for any students who had enrolled after the beginning of a school year and cross-check their participation status in the State Assessment data file. Any failures to include such students would be identified as a compliance violation of the school's and district's ESEA compliance agreement. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State Assessment requirement for receipt of federal ESEA funding. A school or district may be sanctioned for any compliance violation of their ESEA assurances agreement.

It is the expressed policy of the State of North Dakota to include all students within the North Dakota State Assessment.

Lacosta Rickford
Operator's signature

10/15/03
Date

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CRITICAL ELEMENT	EXAMPLES FOR MEETING STATUTORY REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
2.3 How does the State Accountability System determine which students have attended the same public school and/or LEA for a full academic year?	<p>State holds public schools accountable for students who were enrolled at the same public school for a full academic year.</p> <p>State holds LEAs accountable for students who transfer during the full academic year from one public school within the district to another public school within the district.</p>	<p>State definition requires students to attend the same public school for more than a full academic year to be included in public school accountability.</p> <p>State definition requires students to attend school in the same district for more than a full academic year to be included in district accountability.</p> <p>State holds public schools accountable for students who have not attended the same public school for a full academic year.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

All students participating in the State assessment must be accounted for regarding their enrollment status. This is a required entry on the student demographic sheet of all students. Student participation rates will be compared to the school's and district's Average Daily Membership student count used to reimburse schools and districts for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates.

The State requires all schools to account for all students regarding their enrollment status within the school and district and their inclusion within the State Assessment. The enrollment status of each student is a required entry on the demographic sheet of all students. Refer to page 29 for codes "R" and "S" of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for the enrollment code identification fields. Student participation rates will be compared to the school's and district's Average Daily Membership student count used to reimburse school's and district's for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates.

The State is developing a statewide student data analysis and reporting system to aid the State in monitoring the enrollment patterns and participation rates of students. The TetraData application will allow the State to link district enrollment files with the State's assessment participation files in order to assure that all enrolled students are accounted for in the State Assessment system files. Refer to **Appendix R: TetraData Data Analysis and Reporting System Summary** for an overview of the TetraData system's purpose and design.

The State currently is reviewing its ESEA and accreditation monitoring policies. The State is pursuing an amendment to its monitoring requirements that would mandate districts to produce evidence regarding the enrollment dates of all students. Monitors would check for any students who had enrolled after the beginning of a school year and cross-check their participation status in the State Assessment data file.

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Any failures to include such students would be identified as a compliance violation of the school's and district's ESEA compliance agreement. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State assessment requirement for receipt of federal ESEA funding. A school or district may be sanctioned for any compliance violation of their ESEA assurances agreement.

It is the expressed policy of the State of North Dakota to include all students within the North Dakota State Assessment.

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PRINCIPLE 3. State definition of AYP is based on expectations for growth in student achievement that is continuous and substantial, such that all students are proficient in reading/language arts and mathematics no later than 2013-2014.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.1 How does the State's definition of adequate yearly progress require all students to be proficient in reading/language arts and mathematics by the 2013-2014 academic year?	The State has a timeline for ensuring that all students will meet or exceed the State's proficient level of academic achievement in reading/language arts ³ and mathematics, not later than 2013-2014.	State definition does not require all students to achieve proficiency by 2013-2014. State extends the timeline past the 2013-2014 academic year.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that its State Accountability System provides for an established timeline that ensures that all students will be proficient in reading/language arts and mathematics by the 2013-14 academic year, as specified within ESEA section 1111.

The State of North Dakota has developed and adopted academic achievement standards in mathematics (refer to **Appendix E: North Dakota Mathematics Achievement Standards** at the following web site, <http://www.dpi.state.nd.us/standard/perform/index.shtm>) and English language arts (refer to **Appendix G: North Dakota English Language Arts Achievement Standards** at the following web site, <http://www.dpi.state.nd.us/standard/perform/index.shtm>). These State achievement standards have been developed at grades 4, 8, and 12 in accordance with North Dakota's content and achievement standards protocols (<http://www.dpi.state.nd.us/standard/content/toc.pdf>). North Dakota mathematics and English language arts academic achievement standards meet the requirements of section 1111(b)(1). North Dakota's achievement standards in science will be completed by the winter 2003, in accordance with State standards development protocols and section 1111(b)(1) requirements.

It is the policy of the State that all students achieve proficiency as defined within the State's challenging achievement standards by the 2013-14 academic year.

For the purposes of determining AYP, proficiency means the aggregation of all student achievement within the "proficient" and "advanced" performance levels of the State's achievement standards. Schools and LEAs must evidence a steady improvement of student achievement from the below-proficient performance level (the aggregate of the novice and partially-proficient performance level) to the proficient performance level.

³ If the state has separate assessments to cover its language arts standards (e.g., reading and writing), the State must create a method to include scores from all the relevant assessments.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2 How does the State Accountability System determine whether each student subgroup, public school and LEA makes AYP?	<p>For a public school and LEA to make adequate yearly progress, each student subgroup must meet or exceed the State annual measurable objectives, each student subgroup must have at least a 95% participation rate in the statewide assessments, and the school must meet the State's requirement for other academic indicators.</p> <p>However, if in any particular year the student subgroup does not meet those annual measurable objectives, the public school or LEA may be considered to have made AYP, if the percentage of students in that group who did not meet or exceed the proficient level of academic achievement on the State assessments for that year decreased by 10% of that percentage from the preceding public school year; that group made progress on one or more of the State's academic indicators; and that group had at least 95% participation rate on the statewide assessment.</p>	State uses different method for calculating how public schools and LEAs make AYP.

STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS

The State of North Dakota stipulates that the State will determine AYP for each public school and LEA as provided for within ESEA section 1111, including emphasis on the school identification method referenced to proficiency ratings, safe harbor provisions, statistical reliability assurances, graduation rates for secondary schools, attendance rates for elementary and middle schools, and a minimum assessment participation rate of 95%.

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The State of North Dakota will only recognize and reference student achievement proficiency ratings generated by the North Dakota State Assessment and its Alternate Assessment. No other student achievement assessment tools or means will be recognized. No local assessments will be recognized as an alternative to the North Dakota State Assessment.

The only definitions of achievement levels recognized by the State AYP accountability system are those proficiency levels set for the North Dakota State Assessment through the standards-setting process. Refer to **Appendix J: North Dakota State Assessment, Bookmark Standards Setting Technical Report, 2002** for the established definitions of the North Dakota achievement levels. The State cut scores for the North Dakota State Assessment will constitute the defining scales for identifying schools and districts for AYP. Refer to **Appendix K: State Superintendent's Approval Notification of North Dakota State Assessment Cut Scores** for the State's announced policy regarding the establishment of achievement level cut scores.

All student achievement data collected during the administration of the State Assessment will be used to aggregate overall student achievement and to disaggregate student achievement results into each of the required student sub-populations to determine AYP.

AYP will be determined using 2001-02 school year data as the baseline. The starting points are calculated pursuant to the prescribed ESEA section 1111 requirements. The same starting point and annual, measurable objectives apply to all student sub-populations resulting in 100% proficiency of all students by 2013-2014.

In calculating AYP for student aggregated and subgroup populations, the State will employ a binomial distribution statistical model to ensure high levels of reliability. Ninety-five percent of students in each applicable student sub-group must be tested in order for the school to make AYP.

In calculating AYP for any student sub-population that did not meet the AYP goal but did decrease the percentage of students in the applicable student sub-group by 10% or more, the school or district will then be judged to have made AYP if the LEA or school also meets the state's other criteria when using the safe harbor provision (graduation rate for high school and attendance rates for elementary and secondary). Goals must be met for all applicable student sub-populations. The State will employ a binomial distribution statistical method within the calculation of safe-harbor status.

All students' scores will be used as an aggregate to determine the AYP of schools as a whole. All schools' scores will be used as an aggregate to determine the AYP of LEAs. All LEAs scores will be used as an aggregate to determine the AYP of the State.

Please refer to **Appendix T: State AYP Computation Rules** for the working rules used to determine AYP. These rules will be finalized in February 2003.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2a What is the State's starting point for calculating Adequate Yearly Progress?	<p>Using data from the 2001-2002 school year, the State established separate starting points in reading/language arts and mathematics for measuring the percentage of students meeting or exceeding the State's proficient level of academic achievement.</p> <p>Each starting point is based, at a minimum, on the higher of the following percentages of students at the proficient level: (1) the percentage in the State of proficient students in the lowest-achieving student subgroup; or, (2) the percentage of proficient students in a public school at the 20th percentile of the State's total enrollment among all schools ranked by the percentage of students at the proficient level.</p> <p>A State may use these procedures to establish separate starting points by grade span; however, the starting point must be the same for all like schools (e.g., one same starting point for all elementary schools, one same starting point for all middle schools...).</p>	The State Accountability System uses a different method for calculating the starting point (or baseline data).

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STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS

Based on the administration of the rules identified within section 3.2 above, the State is establishing starting points for calculating Adequate Yearly Progress.

Using baseline data from the 2001-02 school year, the State will establish starting points of proficiency separately in reading and math for each grade level. The same starting point for reading and math will apply to the aggregate student population within each subject and to each student sub-population for each of the three grade levels. Each starting point is based, at a minimum, on the higher of the following percentages of students at the proficient level: (1) the percentage in the State of proficient students in the lowest-achieving student subgroup; or, (2) the percentage of proficient students in a public school at the 20th percentile of the State's total enrollment among all schools ranked by the percentage of students at the proficient level.

The State will submit an amended application in late February 2003 identifying the State's starting points for AYP. The State will report these starting points according to the following format.

Subject	Grade Level		
	Four	Eight	Twelve
Reading/language arts	TBD	TBD	TBD
Mathematics	TBD	TBD	TBD

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2b What are the State's annual measurable objectives for determining adequate yearly progress?	<p>State has annual measurable objectives that are consistent with a state's intermediate goals and that identify for each year a minimum percentage of students who must meet or exceed the proficient level of academic achievement on the State's academic assessments.</p> <p>The State's annual measurable objectives ensure that all students meet or exceed the State's proficient level of academic achievement within the timeline.</p> <p>The State's annual measurable objectives are the same throughout the State for each public school, each LEA, and each subgroup of students.</p>	<p>The State Accountability System uses another method for calculating annual measurable objectives.</p> <p>The State Accountability System does not include annual measurable objectives.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

Based on the administration of the rules identified within section 3.2 above, the State is establishing measurable objectives for determining Adequate Yearly Progress.

Using baseline data from the 2001-02 school year, the State will establish measurable objectives for proficiency separately in reading and math for each year from 2001-02 to 2013-14. The same measurable objectives for reading and math will apply to the aggregate student population within each subject and to each student sub-population for each of the three grade levels.

The measurable objectives will be determined using the baseline percentage of proficient students statewide from the 2001-02 school year and prorating the expected annual growth required to achieve 100% by 2013-14. The State will submit an amended application in late February 2003 identifying the State's measurable objectives for AYP. The State will report these starting points according to the following format.

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Subject/ Grades	School Years												
	01- 02	02- 03	03- 04	04- 05	05- 06	06- 07	07- 08	08- 09	09- 10	10- 11	11- 12	12- 13	13- 14
Reading													
4													
8													
12													
Math													
4													
8													
12													
Graduation													
Attendance													

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
3.2c What are the State's intermediate goals for determining adequate yearly progress?	<p>State has established intermediate goals that increase in equal increments over the period covered by the State timeline.</p> <ul style="list-style-type: none"> • The first incremental increase takes effect not later than the 2004-2005 academic year. • Each following incremental increase occurs within three years. 	<p>The State uses another method for calculating intermediate goals.</p> <p>The State does not include intermediate goals in its definition of adequate yearly progress.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that the State Superintendent will establish State intermediate goals for determining adequate yearly progress that meet the provisions of ESEA section 1111. The intermediate goals will be based on the respective measurable objectives established in February 2002, set forth within Principle 3.2b above.

The intermediate goals will be based on the respective measurable objectives for reading/language arts, mathematics, graduation, and attendance determined independently and defined for the following years:

- Step 1: 2001-02 through 2003-04 and based on the 2001-02 baseline AYP cut-point;
- Step 2: 2004-05 through to 2006-07 and based on the 2004-05 measurable objective;
- Step 3: 2007-09 through to 2009-10 and based on the 2008-09 measurable objective;
- Step 4: 2010-11 through to 2012-13 and based on the 2010-11 measurable objective; and
- Step 5: 2013-14.

The intermediate goals will be the effective AYP cut-point for all years within each respective step. The intermediate goal will constitute the AYP cut-point upon which all school and district program improvement identification will be made.

PRINCIPLE 4. State makes annual decisions about the achievement of all public schools and LEAs.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
4.1 How does the State Accountability System make an annual determination of whether each public school and LEA in the State made AYP?	AYP decisions for each public school and LEA are made annually. ⁴	AYP decisions for public schools and LEAs are not made annually.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that it will conduct annual reviews of school and district achievement data for the purposes of determining whether each public school and LEA had made AYP as provided within ESEA section 1111.

North Dakota state law (NDCC 15.1-21-08) places responsibility with the State Superintendent for the annual administration of State assessments that are aligned to the State's content standards in reading and mathematics (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). State law requires that the assessments be administered annually to at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. The North Dakota Department of Public Instruction has developed and administers assessments at grades 4, 8, and 12 to correspond with the State's content standards.

State law further requires that the State assessments compile aggregated results and disaggregated results. The annual State assessments must compile student achievement data that allows for a comparison of individual students, classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, LEP, disability), and assessment status (i.e., enrollment status and participation status), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

The State will make its annual AYP review and determinations based solely on student achievement data generated by the annual State Assessment and on official graduation and attendance data reported to and monitored by the State. The State will issue annual AYP status reports to all LEAs and schools identifying each LEA's and school's overall performance in terms of AYP performance goals.

The State will produce all district- and school-level reports for districts and schools regarding their respective student achievement levels. These reports will include both aggregated and disaggregate student achievement data. Refer to **Appendix O: North Dakota School Report Card and Profile** for an illustration of the content of these student achievement profiles. Districts may use these profile reports as

⁴ Decisions may be based upon several years of data and data may be averaged across grades within a public school [§1111(b)(2)(J)].

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the foundation for their locally produced profiles. The State-generated reports will offer quality assurances regarding the generation of any district achievement data.

The State requires all districts to disseminate student achievement report cards and profiles to their communities. This mandate is required as a condition of their receipt of federal funds. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State assessment requirement for receipt of federal ESEA funding. To assure compliance with this provision for the development and dissemination of performance profiles per Title I funding, the Department will require timely and comprehensive reports as a condition of receiving uninterrupted Title I funds. Further, evidence of these profiles will be one of the criteria in the Department's Title I monitoring program.

The State currently is reviewing its ESEA and accreditation monitoring policies. The State is pursuing an amendment to its monitoring requirements that would mandate districts to produce evidence regarding the dissemination of achievement profiles to their communities. Monitors would check for the production and dissemination of such achievement profiles. Any failures to disseminate such profiles would be identified as a compliance violation of the school's and district's ESEA compliance agreement. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State Assessment requirement for receipt of federal ESEA funding. A school or district may be sanctioned for any compliance violation of their ESEA assurances agreement.

All AYP review and determination activity will be conducted annually and completed by July of each respective year.

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PRINCIPLE 5. All public schools and LEAs are held accountable for the achievement of individual subgroups.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
5.1 How does the definition of adequate yearly progress include all the required student subgroups?	Identifies subgroups for defining adequate yearly progress: economically disadvantaged, major racial and ethnic groups, students with disabilities, and students with limited English proficiency. Provides definition and data source of subgroups for adequate yearly progress.	State does not disaggregate data by each required student subgroup.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that the State's definition of adequate yearly progress includes all required subgroups as provided within ESEA section 1111.

State law requires that the State assessments compile aggregated results and disaggregated results. The State assessments must compile student achievement data that allows for a comparison of individual students, classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, LEP, and disability), and assessment status (i.e., enrollment and participation status), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

The results generated by the North Dakota State Assessment are reported in mathematics and reading/language arts for grades 4, 8, and 12. Results are reported at the individual student, school, district, and State level. Results are disaggregated by gender, ethnicity, disability, limited English proficiency status, migrant status, and economic disadvantaged status. AYP determination includes consideration for ethnicity, disability, limited English proficiency, and economic status. The following tables summarize the level of the disaggregated reports.

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Disaggregation Levels for ND State Assessment in Mathematics and Reading/language Arts Grades 4, 8, and 12 (** refers to AYP subgroups)				
Reporting Level	Individual Student	School	District	State
Gender	N/A	*	*	*
Ethnicity **	N/A	*	*	*
Disability **	N/A	*	*	*
Limited English Proficient **	N/A	*	*	*
Migrant	N/A	*	*	*
Economically Disadvantaged **	N/A	*	*	*

The State and its assessment contractor assume the full responsibility for generating aggregate and disaggregated student achievement reports. Local districts do not generate these reports.

Student demographic information is gathered at the time of the assessment administration on the individual student's assessment demographic sheet. On this sheet the student or a school official completes basic information about the student, including their name and other essential information. The assessment requires completion of certain demographic and special codes that are included on the demographic sheet and detailed for testing coordinators within the *Test Coordinator's Manual*. Refer to pages 28-31 of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for a listing of the various demographic and special categories used to describe a student. These codes are then used during the process of classifying student achievement by subgroup populations.

A central concern of any demographic collection process is the introduction of erroneous information on the part of an individual. This is especially troublesome within an assessment system where information can be inadvertently omitted. The State of North Dakota has established a plan to centralize student identification information with the use of a data analysis and reporting application contracted through TetraData Corporation. Refer to **Appendix R: TetraData Data Analysis and Reporting System Summary** for an overview of the application. This application will allow the State to routinely link student identification information statewide with the database supplied by CTB/McGraw-Hill in order to identify and reconcile incorrect information. The use of this data linkage application will enhance the accuracy, reliability, and speed of collecting the demographic information used to classify school, district, and State subgroup achievement reports.

Disaggregated reports will approximate the presentation format identified with the State Report Card and Profile. Refer to **Appendix O: North Dakota State Report Card and Profile** for an example of the presentation format used to report disaggregated subgroup achievement data.

The State alone may authorize the publication of any reports regarding the State Assessment for accountability purposes based on State Assessment data. The State's contractor (CTB/McGraw-Hill) produces all reports for the State Assessment. The State recognizes no other assessment reports produced by other outside sources, including districts and schools, as authoritative regarding the State Assessment.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
5.2 How are public schools and LEAs held accountable for the progress of student subgroups in the determination of adequate yearly progress?	Public schools and LEAs are held accountable for student subgroup achievement: economically disadvantaged, major ethnic and racial groups, students with disabilities, and limited English proficient students.	State does not include student subgroups in its State Accountability System.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that it will conduct an AYP review and determination for each school and LEA based on the progress of student subgroups as provided within ESEA section 1111.

As identified in Principle 5.1 above, the State provides a method to identify, record, and report student achievement for all subgroups. The State will disaggregate and hold schools and LEAs accountable for the performance of each of the following student subgroups:

- All Students
- Asian/Pacific
- Black
- Hispanic
- Native American
- White
- Economic disadvantaged
- Limited English Proficient
- Students with Disabilities

The State will determine whether each subgroup within each school and LEA achieved the annual measurable objective, or met the "Safe Harbor" provision, and met the 95% participation rate criteria. For a school or LEA to make AYP, every group for which a school or LEA is accountable must make AYP. The rules for statistical reliability will apply in reviewing and determining subgroup accountability.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
6.3 How are students with disabilities included in the State's definition of adequate yearly progress?	<p>All students with disabilities participate in statewide assessments: general assessments with or without accommodations or an alternate assessment based on grade level standards for the grade in which students are enrolled.</p> <p>State demonstrates that students with disabilities are fully included in the State Accountability System.</p>	<p>The State Accountability System or State policy excludes students with disabilities from participating in the statewide assessments.</p> <p>State cannot demonstrate that alternate assessments measure grade-level standards for the grade in which students are enrolled.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that all students with disabilities will be included in the State's definition of adequate yearly progress as provided within ESEA section 1111.

State law requires that the State assessments compile aggregated results and disaggregated results. The State assessments must compile student achievement data that allows for a comparison of classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, LEP, and disability), and assessment status (i.e., enrollment and participation status), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

It is the policy of the Department of Public Instruction to include all students with disabilities in the North Dakota accountability system. See enclosed **Appendix U: Individualized Education Program Planning Process**, or access this document at <http://www.dpi.state.nd.us/speced/guide/iep/index.shtml>. The State's Individualized education program (IEP) form (page 4), required for every student eligible under the Individuals with Disabilities Education Act (IDEA), includes a section requiring the description of the student's participation in district-wide and statewide assessments. The IEP team must indicate whether the student will participate without accommodations, with accommodations (which must be stated), or in the Alternate Assessment. This element of the IEP is addressed by the school district as it conducts a self-assessment in preparation for the Office of Special Education monitoring. If violations are found, corrective actions are determined and evidence of completion is required.

The State Assessment Program *Test Coordinator's Manual, 2002-2003*, (**Appendix Q**) provides very limited opportunity for a school to exclude a student from participation in the State Assessment. Any school that proposes to invalidate a student's test must provide written documentation to the Department of Public Instruction stating the reason for test invalidation. The form must be signed by the authorizing administrator. If a school fails to include students in the State Assessment, sanctions will be imposed.

All students who participate in the North Dakota Alternate Assessment will have levels of performance included within the State accountability system. The State Assessment Program *Test Coordinator's*

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Manual, 2002-2003, provides guidance for use of the Alternate Assessment (Appendix Q), and in the use of accommodations (pages 33 – 35).

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
5.4 How are students with limited English proficiency included in the State's definition of adequate yearly progress?	<p>All LEP student participate in statewide assessments: general assessments with or without accommodations or a native language version of the general assessment based on grade level standards.</p> <p>State demonstrates that LEP students are fully included in the State Accountability System.</p>	LEP students are not fully included in the State Accountability System.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that all limited English proficient students will be included in the State's definition of adequate yearly progress as provided within ESEA section 1111.

State law requires that the State assessments compile aggregated results and disaggregated results. The State assessments must compile student achievement data that allows for a comparison of classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, LEP, and disability) and assessment status (i.e., enrollment and participation status), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

It is the policy of the Department of Public Instruction to include all LEP students in the State Assessment program. The State Consolidated Application (Part I-H), which was approved by the U.S. Department of Education (see **Appendix H**), indicates the State's commitment to include all students in the State Assessment.

The School Report Card and Profile, as illustrated in **Appendix O**, reports LEP student achievement against the State standards, compared with other students.

Accountability for LEP student achievement is predicated on the ability of schools and LEAs to assess all students suspected of having limited English proficiency, to identify those meeting the federal definition of LEP, and to record all LEP students who participate in the State Assessment. The Department of Public Instruction reconciles all discrepancies in LEP student numbers reported via the Survey of the State's Limited English Proficient Students and Available Educational Programs and Services compared with State Assessment statistics and the TetraData data analysis and reporting system.

The State provides to LEP student the right to accommodations in the classroom and in the State Assessment. Accommodations are listed in the Test Coordinator's Manual for the statewide achievement testing program on pages 33 - 35, located in **Appendix Q**, and at the following website: <http://www.dpi.state.nd.us/testing/assess/testman1.pdf>. The North Dakota State Task Force on Limited English Proficiency, convened by the Department of Public Instruction in 2000, developed guidance for LEP students and state content standards. During the 2002-2003 school year, the Task Force will further

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refine the guidance for limited English proficient students and statewide achievement testing. This will be provided to schools and districts, along with specific accommodations for the levels of English language proficiency. See **Appendix H: North Dakota State ESEA Consolidated Application** for further discussion of accommodations.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
5.5 What is the State's definition of the minimum number of students in a subgroup required for reporting purposes? For accountability purposes?	<p>State defines the number of students required in a subgroup for reporting and accountability purposes, and applies this definition consistently across the State.⁵</p> <p>Definition of subgroup will result in data that are statistically reliable.</p>	<p>State does not define the required number of students in a subgroup for reporting and accountability purposes.</p> <p>Definition is not applied consistently across the State.</p> <p>Definition does not result in data that are statistically reliable.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has established a definition for the minimum number of students in a subgroup for both reporting and accountability purposes. The definition is consistent with the minimum number identified within Principle 9. The State has established a test of statistical significance for the method of determining a minimum number within a given population and referenced to the established measurable objective. Refer to Principle 9.1 for a detailed overview of this method of statistical significance.

⁵ The minimum number is not required to be the same for reporting and accountability.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
5.6 How does the State Accountability System protect the privacy of students when reporting results and when determining AYP?	Definition does not reveal personally identifiable information. ⁶	Definition reveals personally identifiable information.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The Department of Public Instruction employs a four level procedure, described below, to eliminate the possibility of compromising student identification through an inadvertent publication of student achievement results. These procedures are designed to eliminate any violation of FERPA law regarding student privacy.

(1) *Minimal N Value Rule.* The Department employs an $N < 10$ value, where any population value N less than 10 will prohibit the reporting of students within an identified population. Any population value N of 10 or greater will allow the reporting of students within an identified subgroup.

(2) *Single-populated Level Rule.* The Department employs a rule where if all students within a school or subgroup report at a certain performance level and no other performance levels record any students, then no reporting of that school or subgroup's achievement level is made. As such, if all students were to reside within a given level, for example "partially proficient", then reporting on that level will identify any and all students. This would be a violation. Such a practice is not allowed under North Dakota reporting rules.

(3) *Total Population Below Proficient Rule.* The Department employs a rule where if all students reside below proficient (either partially-proficient or novice), then no reporting of that school or subgroup is made. As such, if all students were to reside below proficient, then reporting on that school or subgroup will identify any and all students as below proficient. This would be a violation. Such a practice is not allowed under North Dakota reporting rules.

(4) *Distinguished Students Rule.* The Department employs a rule where if all students reside above proficient (either proficient or advanced), then that school's or subgroup's results will be reported. As such, if all students were to reside above proficient, then reporting on that school or subgroup will identify any and all students as above proficient. This would be a recognition of distinguished student achievement.

⁶ The Family Education Rights and Privacy Act (FERPA) prohibits an LEA that receives Federal funds from releasing, without the prior written consent of a student's parents, any personally identifiable information contained in a student's education record.

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PRINCIPLE 6. State definition of AYP is based primarily on the State's academic assessments.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
6.1 How is the State's definition of adequate yearly progress based primarily on academic assessments?	Formula for AYP shows that decisions are based primarily on assessments. ⁷ Plan clearly identifies which assessments are included in accountability.	Formula for AYP shows that decisions are based primarily on non-academic indicators or indicators other than the State assessments.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that the State's definition of adequate yearly progress is based primarily on academic assessments as provided within ESEA section 1111.

North Dakota state law (NDCC 15.1-21-08) places responsibility with the State Superintendent for the administration of State assessments that are aligned to the State's content standards in reading and mathematics (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). State law requires that the assessments be administered to at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. The North Dakota Department of Public Instruction has developed and administers assessments at grades 4, 8, and 12 to correspond with the State's content standards.

The State AYP plan meets the requirements of the ESEA, including emphasis on the school identification method referenced to student achievement proficiency rating, safe harbor provisions, statistical reliability assurances, graduation rates for secondary schools, attendance rates for elementary schools, and a minimum assessment participation rate of 95%. The primary means for the identification of schools and LEAs is, nevertheless, student achievement data.

The State of North Dakota will only recognize and reference student achievement proficiency ratings generated by the North Dakota State Assessment and its Alternate Assessment. No other student achievement assessment tools or means will be recognized. No local assessments will be recognized as an alternative to the North Dakota State Assessment.

The only definitions of achievement levels recognized by the State AYP accountability system are those proficiency levels set for the North Dakota State Assessment through the standards-setting process. Refer to **Appendix J: North Dakota State Assessment, Bookmark Standards Setting Technical Report, 2002** for the established definitions of the North Dakota achievement levels. The State cut scores for the North Dakota State Assessment will constitute the defining scales for identifying schools and districts for AYP. Refer to **Appendix K: State Superintendent's Approval Notification of North Dakota State Assessment Cut Scores** for the State's announced policy regarding the establishment of performance level cut scores.

⁷ State Assessment System will be reviewed by the Standards and Assessments Peer Review Team.

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PRINCIPLE 7. State definition of AYP includes graduation rates for public High schools and an additional indicator selected by the State for public Middle and public Elementary schools (such as attendance rates).

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.1 What is the State definition for the public high school graduation rate?	<p>State definition of graduation rate:</p> <ul style="list-style-type: none"> Calculates the percentage of students, measured from the beginning of the school year, who graduate from public high school with a regular diploma (not including a GED or any other diploma not fully aligned with the state's academic standards) in the standard number of years; or, Uses another more accurate definition that has been approved by the Secretary; and Must avoid counting a dropout as a transfer. <p>Graduation rate is included (in the aggregate) for AYP, and disaggregated (as necessary) for use when applying the exception clause⁸ to make AYP.</p>	State definition of public high school graduation rate does not meet these criteria.

⁸ See USC 6311(b)(2)(I)(i), and 34 C.F.R. 200.20(b)

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STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS

The State of North Dakota stipulates that it will include the graduation rate of each high school as a component within the determination of adequate yearly progress as provided within ESEA section 1111.

The State will set its initial target rate in February 2003.

The State will begin reporting graduation rates using the NCLBA definition in 2005, using State data from 2001 - 2005. The rate will be calculated as follows:

Graduates (with regular diploma) who completed high school in four years

Divided by

[# Graduates (same as above) + # of 9th grade dropouts/retentions + # 10th grade dropouts/retentions + # 11th grade dropouts/retentions + # 12th grade dropouts/retentions + # students who complete 12th grade without a regular diploma]

The data for each class will be tracked forward from 9th grade. Dropouts are defined as students who leave school prior to graduation for reasons other than transfer to another school. Students who are retained in grade, and thus leave their original class, will not count toward the number of graduates, but will be included in the denominator as members of the original class.

In the interim, until State data to perform the calculation set out above becomes available, the State will define and use an alternative measure, based on schools' reported aggregate dropout and graduation data. The interim measure, for the class of 2003 and 2004, will be the percentage of students who took the 12th grade State Assessment, who graduated with a standard diploma. Students that transfer in or out of the school after the State Assessment administration will not be included in the denominator or numerator.

Graduates (with a standard diploma) who took the 12th grade State Assessment

Divided by

(# of students enrolled at the time of the 12th grade test four years prior) - (# students who transferred in or out of the class since the 12th grade test)

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.2 What is the State's additional academic indicator for public elementary schools for the definition of AYP? For public middle schools for the definition of AYP?	<p>State defines the additional academic indicators, e.g., additional State or locally administered assessments not included in the State assessment system, grade-to-grade retention rates or attendance rates.⁹</p> <p>An additional academic indicator is included (in the aggregate) for AYP, and disaggregated (as necessary) for use when applying the exception clause to make AYP.</p>	State has not defined an additional academic indicator for elementary and middle schools.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has adopted the attendance rate for elementary and middle schools as the additional academic indicator for determining AYP.

The State will set its initial target rate in February 2003.

Attendance rate is defined as the aggregate days of attendance in a school or school district divided by the aggregate days of enrollment. The attendance rate is included in the aggregate for AYP. Attendance data are collected through the State's ADM (average daily membership) reporting system.

⁹ NCLB only lists these indicators as examples.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
7.3 Are the State's academic indicators valid and reliable?	<p>State has defined academic indicators that are valid and reliable.</p> <p>State has defined academic indicators that are consistent with nationally recognized standards, if any.</p>	<p>State has an academic indicator that is not valid and reliable.</p> <p>State has an academic indicator that is not consistent with nationally recognized standards.</p> <p>State has an academic indicator that is not consistent within grade levels.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

Attendance rates are widely recognized as a valid indicator of student success. Attention to student achievement in addition to attendance and graduation rates offers a balanced presentation of key student performance indicators.

The State's ADM reporting system provides a reliable means of identifying students and monitoring student attendance rates.

The State of North Dakota has established a definition for the minimum number of students for both reporting and accountability purposes. This definition is consistent with the minimum number identified within Principle 9. The State has established a test of statistical significance for the method of determining a minimum number within a given population and referenced to the established measurable objective. Refer to Principle 9.1 for a detailed overview of this method of statistical significance.

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PRINCIPLE 8. AYP is based on reading/language arts and mathematics achievement objectives.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
8.1 Does the state measure achievement in reading/language arts and mathematics separately for determining AYP?	<p>State AYP determination for student subgroups, public schools and LEAs separately measures reading/language arts and mathematics.¹⁰</p> <p>AYP is a separate calculation for reading/language arts and mathematics for each group, public school, and LEA.</p>	State AYP determination for student subgroups, public schools and LEAs averages or combines achievement across reading/language arts and mathematics.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that the State will measure achievement in reading/language arts and mathematics separately for determining AYP.

North Dakota state law (NDCC 15.1-21-08) places responsibility with the State Superintendent for the administration of State assessments that are aligned to the State's content standards in reading and mathematics (refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). State law requires that the assessments be administered to at least one grade level selected within each of the following grade spans: grades three through five; grades six through nine; and grades ten through twelve. The North Dakota Department of Public Instruction has developed and administers assessments at grades 4, 8, and 12 to correspond with the State's content standards.

State law requires that the State assessments compile aggregated results and disaggregated results. The State assessments must compile student achievement data that allows for a comparison of classrooms within a given school and school district, schools within the district, and school districts within the state. The test scores must also allow for comparisons based on students' gender, ethnicity, economic status, service status (i.e., migrant, LEP, disability), and assessment status (i.e., enrollment and participation status), unless doing so enables the identification of any student. (Refer to NDCC 15.1-21-08 within **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>).

The State will produce all district- and school-level reports for districts and schools regarding their respective student achievement levels in both reading/language arts and mathematics separately. These profile reports will include both aggregated and disaggregate student achievement data. Refer to **Appendix O: North Dakota Sample School Report Card and Profile** for an illustration of the content of these student achievement profiles. Districts may use these profile reports as the foundation for their locally

¹⁰ If the state has more than one assessment to cover its language arts standards, the State must create a method for including scores from all the relevant assessments.

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produced profiles. These State-generated reports will offer quality assurances regarding the generation of any district achievement data.

The State requires all districts to disseminate student achievement profiles to their communities. This mandate is required as an element of their receipt of federal funds. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State assessment requirement for receipt of federal ESEA funding. To assure compliance with this provision for the development and dissemination of performance profiles per Title I funding, the Department will require timely and comprehensive reports as a condition of receiving uninterrupted Title I funds. Further, evidence of these profiles will be one of the criteria in the Department's Title I monitoring program.

The State currently is reviewing its ESEA and accreditation monitoring policies. The State is pursuing an amendment to its monitoring requirements that would mandate districts to produce evidence regarding the dissemination of achievement profiles to their communities. Monitors would check for the production and dissemination of any such achievement profiles. Any failures to disseminate these profiles would be identified as a compliance violation of the school's and district's ESEA compliance agreement. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State Assessment requirement for receipt of federal ESEA funding. A school or district may be sanctioned for any compliance violation of their ESEA assurances agreement.

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PRINCIPLE 9. State Accountability System is statistically valid and reliable.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
9.1 How do AYP determinations meet the State's standard for acceptable reliability?	<p>State has defined a method for determining an acceptable level of reliability (decision consistency) for AYP decisions.</p> <p>State provides evidence that decision consistency is (1) within the range deemed acceptable to the State, and (2) meets professional standards and practice.</p> <p>State publicly reports the estimate of decision consistency, and incorporates it appropriately into accountability decisions.</p> <p>State updates analysis and reporting of decision consistency at appropriate intervals.</p>	<p>State does not have an acceptable method for determining reliability (decision consistency) of accountability decisions, e.g., it reports only reliability coefficients for its assessments.</p> <p>State has parameters for acceptable reliability; however, the actual reliability (decision consistency) falls outside those parameters.</p> <p>State's evidence regarding accountability reliability (decision consistency) is not updated.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota stipulates that all AYP determinations meet the State's standard for acceptable reliability. The State has adopted, with the technical assistance of Richard Hill of the National Center for the Improvement of Educational Assessments, a test for statistical significance that establishes a balance between systemic validity and reliability.

Background

Each state must create an accountability system in response to the requirements of the No Child Left Behind Act (NCLB). Among the requirements is the determination of whether schools and subgroups within the school either have achieved a particular percentage of students at the proficient level or higher (met the "status" requirement) or have improved their percentage of students achieving at the proficient level or higher over the prior year's level (met the "improvement" requirement). If a school or a subgroup falls one or both those tests, it fails to make Adequate Yearly Progress (AYP). Results for subgroups are not required to be included "in a case in which the number of students in a category is insufficient to yield statistically reliable information." States are left to determine what that number might be.

One issue to be addressed is how low reliability can go before it is "insufficient." If the stakes are low, a fairly low level of reliability might be acceptable. If the stakes are high, however, one would want to be fairly certain that a school had been correctly classified before applying the prescribed consequences to the school. In NCLBA, annual judgments are made about whether a school has made AYP. If a school fails to make AYP two years in a row, a series of rather drastic consequences begin. So, unquestionably, one would want the decision about whether a school had failed to make AYP two years in a row to be

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highly reliable. But being identified as a "falling" school even for one year could have serious negative consequences for a school, so a reasonable argument can be constructed for wanting a reliable decision to be made every year for every school.

Selecting a Fixed N

Many states are taking the approach of requiring that a subgroup have a particular number of students (for example, 30) in order to be included, regardless of the performance of the subgroup. This appears to be an approach that will not work well for either measuring status or improvement. If a certain fixed number is chosen, schools will not be directly accountable for subgroups with fewer than that number (those subgroups will be included in the school's total score, but the performance of that subgroup by itself will not be considered). No matter how small a number is chosen, this will exclude many subgroups, leading to an incomplete look at the performance of the school. Thus, one could argue that a number like 30 is far too large a number—a requirement that subgroups meet this minimum N will eliminate the vast majority of subgroups in most states.

On the other hand, the results for subgroups are supposed to be "statistically reliable." That would mean, at a minimum, that if a subgroup causes a school to fail AYP, another sample of students in that subgroup drawn for that school would be likely to have the same result. While reasonably modest numbers of students often (but not always) can be used to reliably determine whether a subgroup has met the status requirement, it takes large numbers (hundreds of students) to reliably detect whether a school has made sufficient improvement.

So, on the one hand, a state should pick a fairly small N for purposes of validity (say, certainly something no larger than 10), but needs a very high N (say, 300 or more) for purposes of reliability. Obviously, a value that provides reasonable validity is wholly inadequate for reliability purposes; a value that provides reasonable reliability is wholly inadequate for validity purposes. A figure between those two is largely inadequate for both purposes. This is the reason states are having such a hard time choosing a fixed value for minimum N. Until one looks carefully at the issue, one presumes that a modest fixed N will be a reasonable compromise between reliability and validity. A careful look tells us that choosing any value is wholly inadequate for at least one of the two concerns, if not both. In short, there isn't a reasonable answer to this dilemma. One is not faced with a reasonable balancing of concerns over reliability and validity; any answer will be clearly wrong for at least one of the two.

Given that one cannot have validity without reliability, it would be justifiable for a state to select a minimum N of 300. Granted, an N of this size will eliminate virtually every subgroup in a state, essentially eliminating this aspect of NCLBA. But such an N would at least ensure that decisions would be sufficiently reliable.

Selecting an Alternative Method: the North Dakota Model

An alternative to selecting a fixed N is to run a test of statistical significance. That way, subgroups that are far from the standard do not need to have a large N for a reliable decision to be made. For example, suppose the standard for a state is 50 percent proficient. If no students in a subgroup are proficient, a reliable decision (one that has less than a 1 percent probability of misclassifying the subgroup) that the subgroup fails the status test can be made if there are just seven students in the subgroup. That is, if 50 percent of the students in a subgroup are proficient, there is less than 1 chance out of 100 that no students within a sample of seven would be proficient. Thus, in cases where results are extremely low, the inadequate performance of the subgroup can be reliably detected even with small Ns. On the other hand, if 499 out of 1000 students were proficient, one would not be certain that another sample of students from that same subgroup wouldn't have at least 50 percent proficient. So, this system will select a group that is far away from the standard even if the group is small, but will not select a group that is very, very close to the standard even if the group is quite large. Not only is this a better application of statistics than the fixed N approach, it also is more fair and valid. Certainly, one would want to identify and target resources to very low-achieving subgroups before doing the same to subgroups that are very close to the state's standard.

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However, even this system cannot solve the problem of measuring subgroup improvement. Measuring improvement over one year is difficult to do because the amount of improvement desired is small, relative to status (10 percentage points or less) and the measurement is made between two samples of students rather than one. A subgroup's status might be 50 percentage points away from the state's standard; detecting differences that large can be done with samples as small as seven (as shown above). But a subgroup's required annual improvement can be no larger than 10 percent, and is often considerably smaller than that. Given that measurement of improvement is made by comparing one sample to another, each with its own sampling error, reliable judgments require, at a minimum, scores of students, and more typically require hundreds of students.

Take this specific example. Suppose a subgroup has 50 percent of its students passing one year. To make AYP, the subgroup must improve to 55 percent passing the following year. If the subgroup really does improve its performance by 5 percentage points, how many students will it take, each year, to have at least a 95 percent probability that the subgroup's performance will *increase* over the previous year, much less go up the required amount?

A school with 50 percent of its students failing is supposed to reduce that percentage by 5 in one year, and a z-score of 2.33 cuts off the upper 1 percent of the area under a normal curve. So, to reject the null hypothesis at the .01 level one-tailed, the standard error of the difference can be no bigger than $5/2.33$, or 2.15.

Now, suppose we hypothesize that a school has N students in each of two years, and its proportion of students passing goes from 50 percent passing the first year to 55 percent the second year. The equation we need to solve is as follows:

$$2.15 = \sqrt{P1 * Q1 / N + P2 * Q2 / N}, \text{ or}$$

$$2.15 = \sqrt{50 * 50 / N + 55 * 45 / N}$$

Solving for N produces a result of 1076.25. Rounding up means that an N of 1,077 students per year is required to have a 99 percent probability that a school's observed scores will increase from one year to the next if its true percentage of proficient students increases from 50 to 55.

The results above assume that the two samples are independent (as would be the case, for example, if testing were done at just one grade and the same grade was tested two consecutive years). If the results of the two years are not independent but are positively correlated, the required N drops. This would be the case if, for example, we followed the progress of a group of students from one year to the next. In that case, the standard error of the difference scores is computed as follows:

$$\sigma_{P1-P2} = \sqrt{\sigma_{P1}^2 + \sigma_{P2}^2 - 2r\sigma_{P1}\sigma_{P2}}$$

Now, suppose we continued our example from above (determine the standard error of difference scores when a school's true score changes from 50 percent passing to 55 percent), but followed the same cohort of students from one year to the next. Suppose further that all the students tested in one year are tested the next, and suppose the correlation between scores from one year to the next is .7 (a typical intra-school student-level correlation of scores across one year). We still need a standard error of the difference of 2.15, but now the equation is:

$$2.15 = \sqrt{P1 * Q1 / N + P2 * Q2 / N - 2 * .7 * \sqrt{P1 * Q1 * P2 * Q2 / N}}$$

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Solving for N produces a result of 245. So, even if the same students are tracked from one year to the next, it takes a very large number to be 99 percent certain that the observed results from one year to the next will increase if the percent proficient goes from 50 to 55.

Specifics of North Dakota's Approach

Subgroups will be identified if their status score is insufficiently high, and failing that, if their improvement is insufficient. This section will describe in more detail how each of those judgments will be made.

Status

North Dakota will establish a required statewide status score equal to the percentage of students proficient or higher in the 20th percentile school in the state, as required by NCLB. Call that value π_0 . Once that "starting point" has been established, each subgroup will pass the status test if the null hypothesis that the proportion of students for that school is equal to π_0 cannot be rejected at the .01 level.

Exact probabilities vs. normal approximation. The exact probability that the null hypothesis can be rejected, given X students proficient out of N tested and a population proportion of π_0 , is:

$$P(X \leq X_0 | \pi_0, N) = \sum_{i=0}^{X_0} C_i^N \pi^i (1-\pi)^{N-i}$$

For example, if $N = 3$ and $\pi_0 = .5$, the probability that $X = 0$ is .125 and the probability that $X = 1$ is .375. The probability that $X \leq 1$ is .5.

To further illustrate, suppose the starting point for North Dakota is 40 percent proficient, and suppose a certain subgroup of 10 students has 2 proficient students. The observed percentage of students passing in the subgroup is 20, which is less than the required value of 40. But would one reject the null hypothesis that the true population percentage for that subgroup is 40? The test for the subgroup would proceed as follows:

The probability of having 0 students proficient out of 10 if $\pi_0 = .40$ is .0001.
The probability of having 1 student proficient out of 10 if $\pi_0 = .40$ is .0016.
The probability of having 2 student proficient out of 10 if $\pi_0 = .40$ is .0106.

Therefore, the probability of 2 or fewer students proficient out of 10 if $\pi_0 = .40$ is .0123. Since this value is greater than .01, this subgroup would *not* be identified as not having met the AYP status standard. If, on the other hand, only 1 student had been proficient, the subgroup *would* be identified as not having met the AYP status standard, and therefore would have to meet the improvement standard to avoid having the school identified as failing to make AYP.

Computing these exact probabilities is computationally intense. Before today's super-fast computers, the amount of computation required was so extreme that often these exact probabilities were estimated through normal approximation. With that method, one first computes the standard error of the mean as $\sqrt{\pi_0(1-\pi_0)/N}$, computes a z-score, and then determines the probability of a z-score that extreme or more in a table of normal probabilities.

Taking our second example of 1 student proficient out of 10 with $\pi_0 = .40$, we would compute the standard error as .1549. In that case, the observed proportion of proficient students (.10) would yield a z-score of $(.10 - .40) / .1549$, or -1.94. The probability of observing a z-score of that value or lower is .026. Thus, in this case, the normal approximation is not a very good approximation of the exact (correct) probability; we would have not rejected the null hypothesis in this case, but as was shown above, we should have. A general rule of thumb is that the normal approximation works well if $pN > 5$. In this case, it equals 1, so the normal approximation does not approximate well.

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It would be reasonable to compute exact probabilities only for the most extreme cases and use the normal approximation for the remainder of the calculations. In fact, until recently, that was fairly common practice. However, since modern computers can make the complex calculations for the exact probability quickly and that using one method for all calculations leads to easier programming than using multiple methods, North Dakota proposes to make the exact calculations for all subgroups. Given that there will be many subgroups in North Dakota for which $pN < 5$ (and therefore many cases in which the exact calculations would need to be done anyway), this is by far the most practical approach for assessing status. However, the calculations for improvement are much more complex, and therefore the normal approximation will be used for those tests.

For the purposes of calculating AYP, the State will reference a school's and LEA's current year's achievement results in addition to two previous years' achievement results. Additionally, the State will reference the combined effect across all grades tested within the school and LEA. The addition of a total of three years data and the combined effect of all grades will increase the N value and ensure greater reliability.

Choosing an α level. North Dakota has decided to use an α level of .01 to run these tests of statistical significance. This level of confidence will be applied to each subgroup tested within a school. Given that there will be multiple subgroups within each school (and tests of reading and math to be done on each subgroup), the school-level α will be something higher than .01. If there are nine subgroups in a school, there would be 18 tests a school would need to pass to avoid being labeled as failing to make AYP. If all these tests were independent, the joint probability of error would be .165 (that is, the probability of an error across the 18 tests is .165 if each test has a probability of error equal to .01). However, the tests are not independent. Reading and math are well correlated, and some of the subgroups are so highly inter-correlated as to be assessing virtually the same students (for example, when there is just one minority group in a school, that group often comprises the vast majority of the "economically disadvantaged" students). Thus, for most schools, the probability of an error across all the tests done is likely to be something close to .05, which is the standard often used in educational research.

Improvement

The approach described above will work well for assessing status. In contrast to selecting a fixed N, where many subgroups would pass AYP regardless of performance, only the very smallest subgroups will receive this automatic pass in North Dakota. Subgroups of even modest size will need to have at least some reasonable portion of their students proficient in order to pass the status test. On the other hand, by selecting an α -level of .01, North Dakota assures that those subgroups identified as not having met AYP would be very likely to have a value lower than the state-required amount even if another sample of students were drawn. This approach provides an excellent balance between validity (accountability for all subgroups) and reliability (assuring that those subgroups identified have not been so identified simply on the basis of random fluctuation).

Assuring this same appropriate balance for measuring improvement will not be as easy. The amount of improvement required each year is small relative to the standard error for most groups. As a result, it is possible to reliably detect the required amount of annual improvement only for very large groups, as was shown in an earlier section of this paper. Measuring improvement reliably will require a multi-year approach.

Thus, North Dakota's approach will be the following:

1. For the first year of the program, measure improvement from the previous year. Identify the subgroup as having failed to make sufficient improvement if one rejects the null hypothesis at the .01 level that the portion of students not proficient has reduced by 10 percent.
2. For the second year of the program, measure improvement from the previous year and from two years previously. Identify the subgroup as having failed to make sufficient improvement if (a) one rejects the null hypothesis at the .01 level that the portion of students not proficient has reduced

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by 19 percent over two years AND (b) the *observed portion* of students proficient over the past year has not reduced by 10 percent. Note that the test of statistical significance will be run on the two-year data only. If the subgroup fails that test, then it can still make AYP if the observed data show the required growth, but the subgroup will not get the advantage of a test of statistical significance for the second test. If that were done, far too many groups that had not grown would never be identified.

3. For the third and subsequent years of the program, measure improvement from the previous year, two years previously and three years previously. Identify the subgroup as having failed to make sufficient improvement if (a) one rejects the null hypothesis at the .01 level that the portion of students not proficient has reduced by 27.1 percent over three years AND (b) the observed portion of students proficient over the past two years has not reduced by 19 percent and (c) the observed portion of students proficient over the past year has not reduced by 10 percent. Note that, again, the test of statistical significance applies to the first (three-year) test only.

What this system does, in essence, is acknowledge that while the reliability of measuring improvement over one year is low except for the largest subgroups, it becomes substantially higher if one looks at improvement over two years (since twice as much improvement is required) and even higher if one looks at improvement over three years. At the same time, the system recognizes that a school should not be identified as having failed to make AYP if it can show that performance has substantially improved in the most current year(s). Therefore, the first test in each case is one of statistical significance for improvement over the longest period of time possible. If the subgroup fails that test, it still can avoid being identified by showing substantial growth, but it no longer has the advantage of statistical uncertainty being on its side—the observed results must have increased by the required amount or it is identified as having failed to make AYP.

The net result of this system is that few subgroups will be identified as having failed to make AYP in the first year of the program—there simply is too little information to detect that small amount of change. If that system simply were repeated year after year, many schools that were making no improvement would never be identified—there would not be enough information to come to that conclusion (reliably). However, by expanding the system in future years to look at progress over two years and then three, smaller and smaller subgroups that have not made sufficient progress will start to be identified. This is an excellent balance between providing safeguards against unreliable over-identification of small groups and holding as many subgroups as possible accountable for improvement.

An example. To illustrate how this system will work, let's take the example of a subgroup that has 40 students per year and had 4 students proficient in the base year. In the first year, 5 are proficient; in the second year, 6; and in the third year, 6. Let's further assume that each year 20 of the students included the previous year are still in the same school the next year. Further, assume we know that the intra-school correlation of performance across years is .7.

Let us assume that the required status score for all those years was 40 percent proficient. The subgroup would fail the status test each of the three years (a minimum of 9 students would have had to have passed in any given year for the subgroup to have met the status test), and therefore would make AYP only if the improvement was sufficient. The calculations for improvement in Year 1 would be as follows:

$$S_{P2-P1} = \sqrt{P1 * Q1 / N + P2 * Q2 / N - 2 * PR * .7 \sqrt{P1 * Q1 * P2 * Q2 / N}}$$

where PR = proportion of students remaining in the school from one year to the next

$$S_{P2-P1} = \sqrt{10 * 90 / 40 + 87.5 * 12.5 / 40 - 2 * .5 * .7 \sqrt{10 * 90 * 87.5 * 12.5 / 40}}$$

$$S_{P2-P1} = 5.7$$

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Since the subgroup had 90 percent of its students failing the first year, it was expected to decrease that result by 9 percent. It actually decreased the percentage failing by 2.5 percent. So the pertinent z-score will be:

$$z = (2.5 - 9) / 5.7 = -1.14$$

With that z-score, we would not reject the null hypothesis at the .01 level, so the subgroup is not identified as having failed the AYP test. In essence, for this first year, its small size permits it to have only a modest increase in the percentage of students proficient and still not be identified as having failed the AYP improvement test.

Now, let's take a look at the Year 2 results. The proportion of students who are in the subgroup at the end of Year 2 who were also there in the baseline group would be considerably smaller than 50 percent; let's assume that the value decreases to 25 percent. That means that the standard error for comparing Year 2 to the baseline year is as follows:

$$S_{p2-p1} = \sqrt{10 * 90 / 40 + 85 * 15 / 40 - 2 * .25 * .7 \sqrt{10 * 90 * 85 * 15 / 40}}$$

$$S_{p2-p1} = 6.7$$

By the end of Year 2, the subgroup was supposed to reduce the percentage of non-proficient students by 17.1 percent. It actually reduced the percentage by 5 percent. The pertinent z-score therefore is:

$$z = (5.0 - 17.1) / 6.7 = -1.81$$

The subgroup is getting closer to failing AYP, but that z-score would not be rejected at the .01 level, so the subgroup is not identified as having failed AYP.

Finally, let's take a look at the Year 3 results. Suppose none of the students who were in the school in the baseline year are there at the end of Year 3. In that case, the standard error would be:

$$S_{p2-p1} = \sqrt{10 * 90 / 40 + 85 * 15 / 40}$$

$$S_{p2-p1} = 7.4$$

Now, by this point, the subgroup was supposed to have reduced its percentage of non-proficient students by 24.4. It actually reduced the percentage by 5. Therefore, the pertinent z-score is:

$$z = (5.0 - 24.4) / 7.4 = -2.62$$

That z-score would be rejected at the .01 level. In addition, the subgroup did not reduce its percentage of non-proficient students from Year 2 to Year 3 by 10 percent, nor did it reduce its percentage of non-proficient students from Year 1 to Year 3 by 19 percent. The subgroup therefore has failed to meet both the status requirement and the improvement criterion and therefore is identified as having failed AYP. The subgroup causes the school to be identified.

What makes this system so fair while still rigorous is the building of required improvement over time. Note that even though the standard error of the difference scores increased modestly over time (because fewer and fewer students in the baseline year remained in the school over time), the required amount of improvement (and the lack of real improvement in the subgroup) caught up with it after three years. After the first year, the school would have been informed that the subgroup would not have improved sufficiently, but because of the relatively small number of students tested (and the concomitant likelihood

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that the observed results could have been a result of random error, not real change—or the lack thereof—in the subgroup's performance), the subgroup was not identified as having failed AYP. After the second year, the school would have been informed that the subgroup still was not making sufficient progress; and in fact, the lack of progress had brought the subgroup to the brink of identification (but not quite over it). By the end of the third year, however, it was clear that the subgroup was not making sufficient progress. Even taking sampling error into account, it was highly unlikely that the group had truly made the required amount of improvement over the past three years, and therefore was identified as having failed to make AYP. This system appears to ideally balance protection for the school from random error, while still holding schools accountable for the progress of subgroups, even when they are of modest size.

Transition Alpha Rule

Reliability as a principle exists to lessen the impact of error or to mitigate the extenuating influences that affect systems and populations. The Department of Public Instruction proposes to institute a "transitional alpha rule" that raises the level of confidence during the first three, transitional years of a new accountability system. This raised confidence level would establish an alpha level of .001 for the 2001-02, 2002-03, and 2003-04 school years. Beginning in the 2004-05 school year, the alpha level would revert to the commonly accepted .01 level established within scientific research.

The Department proposes to establish this transitional alpha rule until 2003-04 to offset the increased effects of error inherent within any complex system that undergoes a transition. The Department proposes that a new assessment and accountability system raises confusion and inconsistencies in the administration of a new assessment tool, thereby affecting directly the performance of students, the capturing of student demographic or special coding, the enforcement of participation rates, the proper reporting of enrollment data or attendance rates or graduation rates, the miscommunication of new regulations, or the handling of materials. Such transitional challenges must be accounted for and the establishment of an alpha level to .001 aims to mitigate such influences.

This transitional alpha rule would only be effective during a three-year period and then retired in favor of the research standard, .01 alpha level.

Two Consecutive Year Identification Rule for Subject and Subgroup.

ESEA section 1111 requires any state accountability system to be both valid and reliable. The presentations above strike a healthy balance between the, oftentimes, conflicting influences of validity (the pressure to identify) and reliability (the mitigating fairness rules). The preceding presentations address the effects of reliability on a population of students, schools, and districts.

Reliability also plays an effect on how many times an event must occur before it is identified as a legitimate factor requiring identification. Under ESEA rules, an AYP identification is based on two consecutive years of low performance. The State of North Dakota proposes that in order for a legitimate AYP identification to occur the identification must be based on reliable data. If low performance were to occur in the same subject or subgroup for two consecutive years, then there is a reliable basis for an AYP identification based on repeated evidence. A repeated low performance would reinforce previous data; therefore, it is reliable. An AYP identification is proper and required.

If low performance were to occur in different subjects or subgroups across two consecutive years, then there is no reliable basis for an AYP identification based on disconnected evidence. Disconnected low performance would show no consistency; therefore, there is no reliable means to make an AYP identification. If a school or district were to be identified for inconsistent low performance, not only would the principle of reliability have been violated, but the identification process would have degenerated to a vindictive "got 'cha!" exercise. Such an identification method smacks of caprice, violates the principle of reliability required in the law, and erodes public confidence in a fair AYP process.

Therefore, the State of North Dakota will employ a two consecutive year identification rule for both subject and subgroup, administered independently.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
9.2 What is the State's process for making valid AYP determinations?	State has established a process for public schools and LEAs to appeal an accountability decision.	State does not have a system for handling appeals of accountability decisions.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has established its accountability system upon assessments that are documented as valid and reliable measures of student achievement. Validity denotes the appropriateness, meaningfulness, and usefulness of any inferences made from an assessment tool. As such, validity addresses whether an assessment truly assesses what it purports to assess and whether it will lead any user to an appropriate understanding and application of results. The State's Assessment System imbeds the elements of content validity (alignment to State content standards), item design validity, related assessment validity, and consequential validity.

(a) Content validity (alignment to State content standards).

The activities conducted by the State to assure that all test items are aligned to the State's content standards. This review of content coverage, conducted by North Dakota teachers, offers assurance that the State Assessment indeed does assess student achievement in terms of the State standards in breadth. North Dakota teachers affirm that the State Assessment does assess the breadth of the standards and that each standard is covered sufficiently to generate meaningful results. Each standard is identified and is supported by a sufficient number of items to offer enough data to reach a valid indication of a student's performance.

(b) Test design validity.

The construction of individual test items and the test as a whole are critical elements of validity. Additionally, the effects of any test item or the test as a whole on subgroups of students similarly becomes an element of validity. The Department of Public Instruction has contracted with CTB/McGraw-Hill to develop and administer an augmented, multiple measures assessment at each respective grade level. These assessments meet high technical specifications to assure validity, reliability, and comparability, thereby offering confidence in the application of any information gained through the use of the assessments.

Refer to **Appendix V: North Dakota State Assessment, Test Specifications** for a summary review of the technical specifications incorporated within the State Assessment. This summary identifies a variety of factors that impact test validity and the appropriate use of acquired information. Refer to pages 1-11 of **Appendix W: North Dakota State Assessment, 2002 Preliminary Technical Report**, for actual impact data supporting the overall validity of the North Dakota State Assessment.

(c) Related assessment validity.

An inherent consideration confirming the validity of any assessment is how well it correlates with other assessment tools of comparable quality. To quantify comparability among differing assessment tools requires an ability to directly link individual student achievement among different assessment tools. To do

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so requires a data analysis and reporting tool capable of managing such linkages among different databases.

The State of North Dakota has never possessed the ability to track the performance of individual student or system performance levels in a meaningful manner based on quality disaggregated data analysis. The State has never owned, developed, or accessed a single, statewide student data system. This absence of a statewide data system has resulted in an inability to access accurate, meaningful information regarding student demographics, student achievement levels, school performance, teacher quality indicators, systemic improvements, or statewide systems monitoring. In the area of assessment, this absence of a statewide data system has resulted in an inability to sufficiently study correlations of student achievement among assessment tools or instructional methods of varying quality.

To eliminate these deficiencies and to advance meaningful school improvement measures, the Department of Public Instruction has contracted with TetraData Corporation, in October 2002, to develop and administer a statewide data analysis and reporting system. This data analysis and reporting system will allow for the linkage of various databases in order to track individual student, staff, and institutional achievement levels, including the correlation of student achievement across different assessment tools.

Included in this capability, is the capacity of the State to compile, compare, and validate student achievement on all grade-level State assessments and to compare these with other assessment tools or classroom grading. Official student files will be linked to State Assessment files that will, in turn, be linked to other assessment tools and classroom grading in order to conduct correlation studies. This will offer the State an auditing capability that will approach 100% accuracy, thereby ensuring a high degree of confidence in any correlation study. Refer to **Appendix R: TetraData Data Analysis and Reporting System Summary** for an overview of the project. The system will be functional statewide by March 2003.

With the development of this statewide data analysis and reporting system, the State will be able to monitor and confirm the contextual validity of its State Assessment.

(d) Consequential validity.

The fundamental purpose for the administration of any assessment is to learn how well individual students and populations of students perform against a standard. The intended consequence of such learning is to apply this knowledge to the improvement of instruction for each student individually and for all students collectively and by subgroup. Consequential validity means that the State Assessment is designed in such a manner as to accomplish this aim with end users. Does the assessment lend itself to reaching correct conclusions from the data?

North Dakota has never conducted follow up studies to record the application of its assessments to enhance instruction. This analysis has never been attempted because of the difficulty in accurately measuring the effort of schools to integrate assessment data into school improvement or, more importantly, measuring the effect of such improvement efforts on students' achievement. Beginning with the 2001-02 baseline data generated through the first administration of the standards-based North Dakota State Assessment, the State of North Dakota will begin a process of confirming the contextual validity of its State Assessment.

The Department of Public Instruction has contracted with TetraData Corporation, in October 2002, to develop and administer a statewide data analysis and reporting system. This data analysis and reporting system will allow for the linkage of various databases in order to track individual student, staff, and institutional achievement levels, including the correlation of student achievement across different assessment tools. Additionally, the Department of Public Instruction will contract with an independent, outside contractor to conduct a study of how well schools use the data from the State Assessment to improve standards-based instruction.

This study will use survey tools with teachers and administrators to assess the degree that data from the state assessment are used for overall school improvement, especially instruction. This study will also

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survey the efforts of school personnel to reform instructional practices. Finally, this study will use the data linkage and analysis functions within the TetraData application to measure actual student achievement. Because student cohorts can be linked to teachers and schools that engage in reform activities, meaningful measurements can be derived on the effects of these efforts. Specific attention can be made to track the broad effects of using State Assessment data to improve instructional areas identified as deficient in the data.

The State seeks to implement a valid assessment and accountability system. Evidence of such an effort will be marked by the State's ability to monitor the alignment of its assessment to State content standards, to assure high technical specification in the development of its State Assessment, to correlate the State Assessment with other outside assessments and classroom grading, and to assure the meaningful application of the assessment for school reform.

e) AYP Identification Method.

Principle 9.1 identifies the State's method of identifying schools and LEAs for program improvement. This Principle carefully balances the need to protect the interests of schools and LEAs from misidentification with the public interest of knowing the overall performance of their schools. Refer to Principle 9.1 for a thorough analysis of this issue.

f) Automatic Appeals.

Any school or district that has been identified through the AYP determination process will automatically receive an appeal to clarify and correct information within the determination process and to present extenuating information that may have bearing on the validity or reliability of the foundational information or the determination process itself. In the case of AYP decisions regarding schools, the school district must consider the appeal, with the assistance of the State, and render a final decision within 30 days, after the submission date of the appeal. In the event of a district identification, if a district appeals a decision regarding AYP, the Department of Public Instruction must make a final determination within 30 days of the date of the appeal. The State Superintendent will determine all appeals regarding AYP identification.

The Department of Public Instruction will provide ongoing technical assistance to districts and schools regarding the AYP determination process, all program improvement and corrective action activities, including appeals regarding AYP decisions.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
9.3 How has the State planned for incorporating into its definition of AYP anticipated changes in assessments?	<p>State has a plan to maintain continuity in AYP decisions necessary for validity through planned assessment changes, and other changes necessary to comply fully with NCLB.¹¹</p> <p>State has a plan for including new public schools in the State Accountability System.</p> <p>State has a plan for periodically reviewing its State Accountability System, so that unforeseen changes can be quickly addressed.</p>	<p>State's transition plan interrupts annual determination of AYP.</p> <p>State does not have a plan for handling changes: e.g., to its assessment system, or the addition of new public schools.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has developed a long-term plan to advance assessment system improvements, assessment system expansion, and enhancements to the State's accountability system.

I. Assessment System Improvements

(a) Assessment development procedural improvements.

The State Superintendent instituted a state-level advisory committee consisting of LEA and SEA representatives, titled the *Standards, Assessment, Learning and Teaching (SALT) Team*, and authorized this committee to advise the Department of Public Instruction on standards and assessment development committee work. North Dakota's assessment development protocols currently are being revised by the Department of Public Instruction with the advise of the SALT Team to incorporate improvements into the assessment development process and to accommodate the expansion of current assessments (grades 4, 8, and 12) into grades 3, 5, 6, and 7 and in science in grades 3-8 and 12. Refer to **Appendix Y: North Dakota Standards and Assessment Development Protocols** regarding the procedures to be followed for the development and improvement of state assessments. Completion of the revised State Assessment Protocols is expected by May 2003.

Department of Public Instruction has adopted certain improvements in the development of assessment RFPs. These improvements are identified within the white paper, *Model Contractor Standards and State Responsibilities for State Testing Programs*, Education Leaders Council, 2002. Additionally, the

¹¹ Several events may occur which necessitate such a plan. For example, (1) the State may need to include additional assessments in grades 3-8 by 2005-2006; (2) the State may revise content and/or academic achievement standards; (3) the State may need to recalculate the starting point with the addition of new assessments; or (4) the State may need to incorporate the graduation rate or other indicators into its State Accountability System. These events may require new calculations of validity and reliability.

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Department is considering for adoption several innovations identified by other States and developed within the white paper, *State Innovation Priorities for Testing*, Education Leaders Council. The Department is expected to submit a comprehensive list of assessment procedure improvements and potential innovations to the State Superintendent by May 2003.

The State Superintendent, by State law, is responsible for the oversight of all assessment development and administration duties (refer to **Appendix B: North Dakota Century Code, Assessment Statutes** regarding the delineation of State Assessment oversight responsibilities). The State Superintendent has commissioned the SALT Team as the primary advisory committee. The State will contract with an outside consultant to conduct an independent, systematic review of the State Assessment system and to issue recommendations to the State Superintendent on the improvement of the system. The Department contracts with CTB/McGraw-Hill to conduct the development and improvement of the State's Assessment.

(b) Ongoing assessment refinement.

The Department of Public Instruction is developing a long-term plan for the ongoing replacement of test items with additional selective- and constructive-response test items. This replacement plan will be written into the next generation of RFP documents that are scheduled for release in May 2003. The Department has identified, as a high priority, (1) the administration of an independent audit of the current State Assessment's breadth and depth of standards coverage, (2) the expansion of high-quality constructive-response test items, and (3) the advancement of discussions with other States to collaborate in the development of high quality test items and other assessment strategies.

(1) *Test item rigor analysis.* The Department of Public Instruction will conduct a thorough analysis of the current North Dakota State Assessment regarding its rigor of higher order thinking skills and understanding. The Department will contract with an independent, outside facilitator to conduct this analysis. The RFP has not yet been drafted. The depth and breadth analysis will be conducted in early 2003 as a baseline evaluation of the current State Assessment in anticipation of its enhancement with future replacement items and the future development of other grade-level assessments. It is anticipated that the project will convene educators from across the State, including classroom teachers, administrators, content specialists, and university professors, to conduct an audit of the current State Assessment in terms of an agreed upon evaluation criteria. This effort would evaluate the State Assessment against five levels of increasing difficulty: (1) identity and recall; (2) use of concepts; (3) explanation and reasoning; (4) evaluation and extension; and (5) integration and performance.

(2) *Item replacement policy.* It is the long-term commitment of the Department of Public Instruction to employ an item-replacement model that steadily increases the number and quality of constructive-response test items, including greater use of extended constructive-response items. Future RFPs for the North Dakota State Assessment will include a schedule for the improved quality of constructive-response test items. The Department has adopted a policy requiring future RFPs to incorporate the recommendations of the Education Leaders Council, *Model Contractor Standards & State Responsibilities for State Testing Programs, 2002* (refer to page 19 within **Appendix Y: North Dakota Standards and Assessment Development Protocols** or reference the following web site, <http://www.dpi.state.nd.us/standard/content/toc.pdf>).

(3) *State consortium efforts.* Following the selection of the State's next assessment vendor following an RFP selection process, the Department of Public Instruction will explore with the State's next approved vendor the prospects of initiating a series of discussions with other States who contract with the approved vendor to establish a consortium of States committed to assessment improvement. This consortium of States would share the costs and advance the development of high quality test items, specifically constructive-response and extended-response test items. By convening States that share a common vendor, there are greater opportunities to achieve successes by unifying efforts, maximizing gains, and minimizing copyright impediments. The State will begin discussions with interested States beginning in July 2003.

(c) Assessment innovations.

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The Department is drafting a series of recommendations regarding the possible adoption of several innovations identified by other States and developed within the white paper, *State Innovation Priorities for Testing*, Education Leaders Council. The Department is expected to submit a comprehensive list of assessment procedural improvements and potential innovations to the State Superintendent by July 2003.

In addition to this anticipated list of improvements and innovations, the Department is considering the integration of two established products into the current State Assessment: (1) test item task banks developed by previous development work, and (2) a web-based scoring application for extended-response test items.

II. Expansion of the State Assessment System

North Dakota, through an agreement with the U.S. Department of Education, has established an assessment waiver plan to bring the State into full compliance with ESEA, Section 1111(b)(1) requirements. This waiver plan, approved through August 2003, is enclosed as **Appendix A: North Dakota State Assessment Waiver Agreement Plan** and can be accessed at the following web site: <http://www.dpi.state.nd.us/testing/assess/plan.pdf>. During the 2001-02 school year, North Dakota administered its state assessment and is on schedule to meet fully all provisions set forth within the waiver plan.

State assessments have been developed and adopted thus far in mathematics and reading/language arts at grades 4, 8, and 12 in accordance with North Dakota's approved assessment waiver agreement and the *North Dakota Standards and Assessment Development Protocols* (<http://www.dpi.state.nd.us/standard/content/toc.pdf>). North Dakota will proceed to develop state assessments in mathematics and reading/language arts at additional grades (grades 3, 5, 6, and 7) by 2005-2006 in accordance with State protocols and section 1111(b)(1) requirements. North Dakota will proceed to develop state assessments in science at grades 4, 8, and 12 by 2007-2008 in accordance with State protocols and section 1111(b)(1) requirements. Additionally, North Dakota will expand its science assessment, voluntarily, at grades 3, 5, 6, and 7 by 2007-2008 in accordance with State protocols and section 1111(b)(1) standards.

North Dakota has submitted its plan to expand the development of grade specific assessments to meet the requirements of NCLBA. This submission was an element of the State's Consolidated Application for ESEA funding, dated June 2002. Refer to **Appendix H: North Dakota State ESEA Consolidated Application**, pages 7-10, or refer to the following web site: <http://www.dpi.state.nd.us/grants/DOEapp.pdf>. The North Dakota State Consolidated Application has since been approved by the U.S. Department of Education.

The North Dakota Assessment System provides for a single, unified, statewide assessment that measures the performance of all students in terms of the State's challenging content and achievement standards.

III. Enhancement to the State's Accountability System

The Department of Public Instruction will develop a state-level advisory committee that will advise the State Superintendent on the development and review of all State AYP policies and submit recommendations to the State Superintendent. The State Superintendent will review and approve the disposition of all recommendations. The Department of Public Instruction anticipates the development of this advisory committee by July 2003.

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PRINCIPLE 10. In order for a public school or LEA to make AYP, the State ensures that it assessed at least 95% of the students enrolled in each subgroup.

CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
10.1 What is the State's method for calculating participation rates in the State assessments for use in AYP determinations?	<p>State has a procedure to determine the number of absent or untested students (by subgroup and aggregate).</p> <p>State has a procedure to determine the denominator (total enrollment) for the 95% calculation (by subgroup and aggregate).</p> <p>Public schools and LEAs are held accountable for reaching the 95% assessed goal.</p>	<p>The state does not have a procedure for determining the rate of students participating in statewide assessments.</p> <p>Public schools and LEAs are not held accountable for testing at least 95% of their students.</p>
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota requires all students enrolled in public schools within North Dakota to participate in the State Assessment system. Refer to **Appendix B: North Dakota Century Code citations** or reference the North Dakota Century Code at the following web site, <http://www.state.nd.us/lr/cencode/T151C21.pdf>). All students, regardless of their enrollment status, participate in the State Assessment. This total inclusion policy includes those students who may have enrolled in a district or school after the beginning of a school year. Any student who may have been enrolled in a school or district after the beginning of a school year is identified on their assessment demographic sheet. Students or school personnel mark a special code on the assessment demographic sheet that identifies their late enrollment status. This code is used to identify the student and to remove them from the school's student roll for AYP identification purposes. Refer to page 29 for codes "R" and "S" of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for the enrollment code identification fields. A student who has not been enrolled in a school for the entire year but has been enrolled in the district for the entire year will not be included into AYP consideration for the school but will be included into AYP consideration for the district.

All students must be accounted for regarding their enrollment status. This is a required entry on the demographic sheet of all students. Student participation rates will be compared to the school's and district's Average Daily Membership student count used to reimburse school's and district's for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates. Student participation rates may be identified within the aggregate and disaggregated by subgroup.

Refer to page 29 for codes "R" and "S" of **Appendix Q: North Dakota State Assessment, Test Coordinator's Manual 2002-03** for the enrollment code identification fields. Student participation rates will be compared to the school's and district's Average Daily Membership student count used to

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reimburse school's and district's for their State foundation aid. Therefore, the State references reimbursement census data to confirm student participation rates.

Participation rates on the North Dakota State Assessment are calculated as follows:

$$\frac{\text{\# of students with test results}}{\text{\# of students enrolled at the time of test administration}}$$

Students participating in the alternate assessment are included in the numerator and denominator.

The State is developing a statewide student data analysis and reporting system to aid the State in monitoring the enrollment patterns and participation rates of students. The TetraData application will allow the State to link district enrollment files with the State's assessment participation files in order to assure that all enrolled students are accounted for in the State Assessment system files. Refer to **Appendix R: TetraData Data Analysis and Reporting System Summary** for an overview of the TetraData system's purpose and design.

The State currently is reviewing its ESEA and accreditation monitoring policies. The State is pursuing an amendment to its monitoring requirements that would mandate districts to produce evidence regarding the enrollment dates of all students. Monitors would check for any students who had enrolled after the beginning of a school year and cross-check their participation status in the State Assessment data file. Any failures to include such students would be identified as a compliance violation of the school's and district's ESEA compliance agreement. Refer to **Appendix S: Consolidated Application Certification and Assurances** for the State assessment requirement for receipt of federal ESEA funding. A school or district may be sanctioned for any compliance violation of their ESEA assurances agreement.

It is the expressed policy of the State of North Dakota to include all students within the North Dakota State Assessment.

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CRITICAL ELEMENT	EXAMPLES FOR MEETING REQUIREMENTS	EXAMPLES OF NOT MEETING REQUIREMENTS
10.2 What is the State's policy for determining when the 95% assessed requirement should be applied?	State has a policy that implements the regulation regarding the use of 95% allowance when the group is statistically significant according to State rules.	State does not have a procedure for making this determination.
STATE RESPONSE AND STATE ACTIVITIES FOR MEETING REQUIREMENTS		

The State of North Dakota has established a definition for the minimum number of students for both reporting and accountability purposes. This definition is consistent with the minimum number identified within Principle 9. The State has established a test of statistical significance for the method of determining a minimum number within a given population and referenced to the established measurable objective. Refer to Principle 9.1 for a detailed overview of this method of statistical significance.

Lacosta Rickford
Operator's Signature

10/15/03
Date

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Appendix A

Required Data Elements for State Report Card

1111(h)(1)(C)

1. Information, in the aggregate, on student achievement at each proficiency level on the State academic assessments (disaggregated by race, ethnicity, gender, disability status, migrant status, English proficiency, and status as economically disadvantaged, except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.
2. Information that provides a comparison between the actual achievement levels of each student subgroup and the State's annual measurable objectives for each such group of students on each of the academic assessments.
3. The percentage of students not tested (disaggregated by the student subgroups), except that such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.
4. The most recent 2-year trend in student achievement in each subject area, and for each grade level, for the required assessments.
5. Aggregate information on any other indicators used by the State to determine the adequate yearly progress of students in achieving State academic achievement standards disaggregated by student subgroups.
6. Graduation rates for secondary school students disaggregated by student subgroups.
7. Information on the performance of local educational agencies in the State regarding making adequate yearly progress, including the number and names of each school identified for school improvement under section 1116.
8. The professional qualifications of teachers in the State, the percentage of such teachers teaching with emergency or provisional credentials, and the percentage of classes in the State not taught by highly qualified teachers, in the aggregate and disaggregated by high-poverty compared to low-poverty schools which (for this purpose) means schools in the top quartile of poverty and the bottom quartile of poverty in the State.

The State of North Dakota stipulates that it will include all data elements provided within ESEA section 1111 within the State Report Card and Profile. Refer to **Appendix O: North Dakota State Report Card and Profile**. The State will include attendance rate for elementary and middle schools.

NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

Table of Appendices

- A. North Dakota State Assessment Waiver Agreement Plan**
- B. North Dakota Century Code**
- C. North Dakota Standards and Assessment Development Protocols**
- D. North Dakota Mathematics Content Standards**
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- F. North Dakota English Language Arts Content Standards**
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- H. North Dakota State ESEA Consolidated Application**
- I. Schools Falling Outside Assessment System Grade Span**
- J. North Dakota State Assessment, Bookmark Standards Setting Technical Report, 2002**
- K. State Superintendent's Approval Notification of North Dakota State Assessment Cut Scores**
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- N. North Dakota State Assessment, Student Achievement Reports**
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- Q. North Dakota State Assessment, Test Coordinator's Manual, 2002-03**
- R. TetraData Data Analysis and Reporting System Summary**
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NORTH DAKOTA CONSOLIDATED STATE APPLICATION ACCOUNTABILITY WORKBOOK

- U. Individualized Education Program Planning Process
- V. North Dakota State Assessment, Test Specifications
- W. North Dakota State Assessment, 2002 Preliminary Technical Report

**TESTIMONY ON REENGROSSED SB 2065
HOUSE EDUCATION COMMITTEE**

March 12, 2003

**By Greg Gallagher, Education Improvement Director
Department of Public Instruction
328-1838**

Madam Chairperson and Members of the House Education Committee:

I am Greg Gallagher, Education Improvement Director within the Department of Public Instruction. I am here to support Reengrossed SB 2065 conditionally, to offer several amendments, to report on its fiscal note, and to report on background information regarding the State's assessment and accountability system.

Reengrossed SB 2065 amends NDCC 15.1-21-08, at the request of the Department, to expand the administration of North Dakota state assessments in reading, mathematics, and science to public school students statewide to meet the requirements of the *Elementary and Secondary Education Act (ESEA)*, section 1111. Reengrossed SB 2065 also attaches several undesirable provisions that threaten the development and limit the administration and reporting of the State's assessments. The Department seeks to remove these undesirable provisions with the attached amendments.

In 2001, the 57th Legislative Assembly enacted law (NDCC 15.1-21-08, 15.1-21-09, 15.1-21-10, 15.1-21-11, 15.1-21-12, 15.1-21-13, and 15.1-21-14) that mandates the administration of assessments that are aligned to the State's content and achievement standards in reading and mathematics for all public school students in three elementary, middle, and high school grades. This State law further requires the disaggregated reporting of results, the publication of these results, the provision of technical assistance to schools regarding the meaning and use of these results, the right of the public to review the state assessments, the submission of district professional development reports, and the public's right to access a district's translated standards and curricula.

During the 2001-02 school year, the Department of Public Instruction and all public schools across the State administered these state assessments for the first time. Results from this first test administration are attached for reference (Appendix A). Although assessments may be used for a variety of purposes, assessments are most meaningful when they are used to identify the level of student performance against clear expectations and when these results are used to improve the quality of curriculum and

Reengrossed SB 2065
Department of Public Instruction

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March 12, 2003

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Instruction. Additionally, these first-year results constitute baseline data for future accountability measurements.

The ESEA requires States that accept Title I funds to expand their state assessment programs to include additional student assessments in:

- (1) reading/language arts and mathematics at grades 3, 5, 6, 7, by 2005-06; and
- (2) science in at least one grade level selected within each of the following grade spans by 2007-08:
 - (a) grades three through five;
 - (b) grades six through nine; and
 - (c) grades ten through twelve.

The Department of Public Instruction has proposed a development plan within its Consolidated Application for ESEA funding that would institute the expanded reading/language arts and mathematics assessments one year in advance, by 2004-05, and the science assessments one year in advance, by 2006-07.

Schools historically have supported the State's efforts to expand its assessment program in order to provide better, more reliable assessment results for school improvement.

North Dakota's ESEA program approval is contingent on the State enacting legislation that evidences a commitment to develop and administer these new assessments and a statewide accountability system. Such program approval is required for the State to receive its full Title I allocation, beginning 2005-06. The Department of Public Instruction has proposed sections 1 and 2 of Reengrossed SB 2065 to ensure the full participation of public schools statewide.

The ESEA provides sufficient funding to assure the development and administration of these assessments. The fiscal note for Reengrossed SB 2065 overviews the expansion activity supported by ESEA Title VI funding. This fiscal note is predicated on the adoption of the Department of Public Instruction's operations budget for statewide assessments contained within Engrossed SB 2013.

The Department recommends that several amendments be made to eliminate selected provisions within Reengrossed SB 2065 that weaken the State's administrative and reporting requirements. These amendments are identified at the end of this testimony and address the following issues.

- (1) *Reinstate twelfth grade testing.* The first two proposed amendments would reinstate the current practice of assessing twelfth grade students. Appendix B summarizes the arguments supporting the practice of assessing twelfth grade students.
- (2) *Broaden the test administration window.* The third amendment would remove the restrictive language within Reengrossed SB 2065 that requires a set time period for the administration of the high school assessment. This provision is ill-advised and constitutes poor legislative micro-management. The Department has stated its interest in moving all assessments to a fall administration cycle by 2004, thereby improving the scoring schedule and assuring the proper and timely reporting of results to schools and districts. Reengrossed SB 2065 has arbitrarily set a November deadline for the assessments' administration. This should be removed in order to offer the State sufficient latitude for setting test administration and scoring schedules.
- (3) *Ensure the security, validity, and reliability of the state assessments.* The fourth amendment would eliminate the provision within Reengrossed SB 2065 that requires a public hearing on state assessments prior to their administration, according to provisions within SB 2418. Student achievement assessments by their design are secured to ensure their validity and reliability. Any public preview or hearing process that places the secured nature of these assessments in jeopardy also threatens the fundamental validity and reliability of the assessments required under ESEA law. This provision within Reengrossed SB 2065, in addition to being undesirable, is unnecessary. NDCC 15.1-21-14, enacted by the 57th Legislative Assembly, currently accommodates the public's right to preview the assessments. NDCC 15.1-21-11 requires that the State's test development activity provide sufficient protections to the public regarding the adoption of certain types of test questions. Additionally, ESEA section 1111 requires that States adopt valid and reliable tests to secure the integrity of the assessment enterprise. The development of valid and reliable tests is a complex matter that requires a high level of expertise. The State contracts with reputable assessment vendors who adhere to strict industry standards regarding the development, administration, and scoring of tests. NDCC 15.1-21-10 requires an annual report by the State's assessment vendors to the Legislative Council regarding

all aspects of the State's assessment system. The Department and CTB/McGraw-Hill, the State's testing vendor, submitted summative reports to the Legislative Council in a public hearing on October 10, 2002. This reporting activity is reasonable, responsible, and conducted annually as required by law. The Department already abides by the requirements of a proper hearing on the State assessment system. Any further efforts to open the State's assessment development and scoring within a public hearing setting goes contrary to test development protocols and threatens the integrity of the State's secured assessments.

- (4) *Maintain the State's four levels of student achievement.* The fourth amendment restores the current four levels of student achievement that have been the state reference for student achievement since 1997. These four levels constitute the categories by which student achievement is reported in terms of the State's approved achievement standards. In October 2002 and again in March 2003, the State's four levels of student achievement have been approved by federal peer reviewers as meeting the requirements of ESEA section 1111, regarding the proper reporting of student performance. The State's four levels are legal, approved as fulfilling the requirements of federal regulations, and instructionally sound. Nothing is gained by eliminating the current four levels of achievement; indeed, the State will lose its ability to measure the upward movement of our lower achieving students. Such a measurement is critical to our collective efforts to assure the proper instruction and achievement of all our students, including our lower performing students. To reduce the current four levels to three simply makes no instructional sense. The proposed fourth amendment should be adopted and the respective provisions of Reengrossed SB 2065 must be removed.

The State is simultaneously transitioning to a new assessment system and a new accountability system based on state standards. Arguably, this transition to a new system has moved our State's public education system as no other factor in history. This is new ground, unfamiliar and unprecedented. It is difficult to address the issues surrounding Reengrossed SB 2065 without also addressing the broader issues of the State's development and administrative protocols, the State's content and achievement standards, the State's public reporting requirements, the State's emerging accountability system and its definition of adequate yearly progress, and so much more. For this

reason, the Department seeks to present a clear and systematic overview of the State's efforts to establish a valid and reliable accountability system.

The Department respectfully submits additional supporting evidence that demonstrates a fair, balanced and systematic manner of measuring and reporting student achievement for the purposes of public accountability and the improvement of instruction in all schools. The Department submits the State's plan for a statewide accountability system, title *North Dakota Consolidated State Application Accountability Workbook* and its *Amendments*. This plan and its accompanying twenty-eight supporting appendices, presented to the Chair, recently underwent a peer review by the U.S. Department of Education (USDE). This peer review began a period of extended negotiation with the USDE to ensure the validity and reliability of the State's accountability system. The Department is prepared to present to the Committee the various elements of this accountability plan.

The State has made substantial progress since the 57th Legislative Assembly to assess students in terms of our expectations for them and reporting these results to students, parents, and the wider community. For the first time, the State has established a statewide accountability system to measure students' and schools' improvement efforts based on credible, reliable criteria. Reengrossed SB 2065, when amended as proposed herein, extends the State's ability to measure student progress in core learning areas, to establish a highly reliable accountability system, and to ensure future federal funding for program improvement.

Madam Chairperson, this completes my testimony. I am available to answer any questions from the committee.

Proposed Amendments to Reengrossed SB 2065

- Page 1, line 15 after "and", delete "eleven" and replace with "at least one grade level selected between ten through twelve."
- Page 1, line 21 delete "grade eleven", and replace with "at least one grade level selected between ten through twelve."

Reengrossed SB 2065
Department of Public Instruction

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Page 1, line 21 beginning with "The superintendent", delete lines 21 and 22.

Page 2, line 1 delete lines 1 through 6 inclusive.

Reengrossed SB 2065
Department of Public Instruction

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Appendix A

North Dakota Assessment System

Student Achievement Results 2001-02

Reading			
Performance Level	Grade Level		
	4	8	12
Advanced: Demonstrates exemplary understanding and exceeds expected level of performance.	21%	16%	19%
Proficient: Demonstrates understanding and meets expected level of performance.	53%	50%	31%
Partially Proficient: Demonstrates an emerging or developing level of performance.	18%	20%	26%
Novice: Attempt made; lack of understanding evident.	8%	13%	22%

Mathematics			
Performance Level	Grade Level		
	4	8	12
Advanced: Demonstrates exemplary understanding and exceeds expected level of performance.	19%	10%	13%
Proficient: Demonstrates understanding and meets expected level of performance.	38%	32%	20%
Partially Proficient: Demonstrates an emerging or developing level of performance.	29%	45%	41%
Novice: Attempt made; lack of understanding evident.	14%	12%	25%

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Department of Public Instruction

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Appendix B

Amendment to Restore Twelfth Grade Test Administration Option

The Department requests that the House Education Committee adopt the proposed amendments to restore the twelfth grade test administration option. The following outlines our position.

- *The twelfth-grade assessment was recommended by an advisory committee to the State Superintendent. The Standards, Assessment, Learning and Teaching (SALT) Team, an advisory committee to the State Superintendent consisting of teachers, administrators, and Department staff, recommended to the State Superintendent that a twelfth-grade assessment be administered within North Dakota. This recommendation came after extensive deliberation, spanning months, to define the components of a balanced and comprehensive assessment system.*
- *A twelfth-grade assessment offers a superior perspective on the effects of our K-12 educational system. Until the State recently initiated a twelfth-grade assessment, the State had suffered from a fundamental blindness regarding the effects of our education system. We simply have never had a summative assessment of student achievement. If we define standards for what a student should know and be able to do by the time they graduate, then we must assess students as deep into their high school grade years as practicable. An eleventh-grade assessment is inadequate, especially in light of the growing interest to expand core course requirements for all our students throughout all their years in high school.*
- *A twelfth-grade assessment links K-12 and higher education into a more unified effort and defines remediation criteria. We know that approximately 75-80% of our high school graduates enter into the higher education system. We also know that approximately 21% of these students are found to be in need of remedial courses, courses that require more time and money on the part of the student and courses that do not count toward the student's core credits.*

Until now, the University System's campuses have set the criteria by which incoming students are identified for remediation courses. Now, the Office of the Chancellor of the North Dakota University System has identified the benefit in using the twelfth-grade assessments as an appropriate indicator of a student's achievement toward proficiency and the fairest criteria for identifying possible remediation courses. An eleventh-grade assessment does not offer a close enough proximity to graduation to serve the purposes of higher education. A twelfth-grade assessment applies a steady expectation on schools to maintain their efforts, as measured by state standards, in assuring that all students graduate fully prepared to resume their advanced studies, as measured by state standards.

- *A twelfth-grade assessment, when its incentives are communicated, will motivate students.* It has been observed that twelfth grade students are not sufficiently motivated to perform well on a standardized test. One should not be deluded into assuming that a tenth or eleventh grader is any more motivated than a twelfth grader to participate in a standardized assessment. Standardized assessments, by their nature, do not move the souls of students. However, at the twelfth grade, unique incentives exist that can motivate students. These incentives have been endorsed by the national Council on Economic Development, a clearinghouse of industry leaders who advocate for the improvement of the nation's workforce.

For college-bound students, the prospect of saving time and money by passing out of remedial courses is a powerful incentive for students. For students transitioning immediately into the workforce, the growing prospect of future employers seeking evidence of basic skills on achievement tests rather than on GPAs, offers an incentive for students to demonstrate optimal performance. The use of achievement test results for college remediation and future employment is only now beginning to emerge. These incentives should be given a chance to work. Students will respond positively if they know that these results will be used.

What is important is for schools to communicate these incentives to students. The Department is aware that some schools are not currently communicating this to students. These incentives have not been sufficiently communicated. They must be given a chance.

- *Schools have ample tools to identify the need for remediation; schools have no reliable means to recognize summative results.* It has been stated that an eleventh grade assessment will afford schools the opportunity to measure for remediation, while a twelfth grade assessment will occur too late. This concentration on remediation misses the assessment's central purpose.

Schools practice remediation assessment on a daily basis. Classroom instruction is designed to carefully monitor student achievement gains and deficiencies. Schools can, as many have done voluntarily over the years, supplement these observations with additional standardized assessment tools. The Department endorses such practices. Assessing for re-teaching is a critical component within instruction. It is important that schools perform this activity daily.

However, schools and the State have no other reliable means to assess students' overall achievement in terms of state standards, except with the state assessment. There simply must be some means to monitor overall student achievement toward the close of their tenure in K-12. No other assessment measures--not the ACT, not the SAT, nothing--can measure such performance, except the State twelfth grade assessment.

It is in the State's overriding interest to adopt the twelfth grade assessment as a summative assessment. No single assessment will do more to drive systemic improvements than a twelfth grade assessment.

- *With a transfer to the eleventh grade in 2003-04, the State will bypass assessing the 2003-04 twelfth grade.* The Department of Public Instruction has conferred

with the U.S. Department of Education regarding the effect of ESEA law regarding the exclusion of the 2003-04 twelfth grade from ever being assessed. The issue entails provisions within ESEA that (1) require a State's assessment and accountability system to be inclusive of all students and (2) allow States the privilege to select their grade levels. The U.S. Department of Education has instructed us that nothing in ESEA law would require the State to test the twelfth grade in 2003-04 during this transition. The State may transition to another grade level as it chooses. The House Education Committee should be aware that with this transition, our 2003-04 twelfth grade students will not have been assessed in terms of their achievement against standards anytime during high school.

The Department did not arrive at the need for a twelfth grade assessment lightly. Great care has gone into crafting a system that (1) offers the State and schools the best insight into the achievement of students at the close of their K-12 tenure, in terms of the State's standards; (2) unifies the K-12 and university systems in terms of expectations; (3) supports a meaningful measure of achievement for transitions into college and the workforce; and (4) offers meaningful incentives for students.

The Department respectfully requests that the House Education Committee remove all amendments related to eleventh grade assessments and return to the original language that allowed twelfth grade testing. Thank you for your attention to the issues within this summary.

Reengrossed SB 2065
Department of Public Instruction

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March 12, 2003

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**Assessment Calibration:
North Dakota NAEP Results
vs.
ND State Assessment Results**

Mathematics

Performance Level*	ND NAEP Results		ND State Assessment Results, 2002
	1996	2000	
Advanced	2%	2%	20%
Proficient	22%	23%	37%
Partially Proficient	49%	48%	27%
Novice	27%	27%	15%

Performance Level*	ND NAEP Results		ND State Assessment Results, 2002
	1996	2000	
Advanced	4%	4%	10%
Proficient	29%	27%	31%
Partially Proficient	40%	42%	46%
Novice	27%	27%	12%

* Performance Level descriptors for NAEP and the ND State Assessment are comparable but not identical.

** Numbers may not add to 100%, or to the exact percentage at or above performance levels, due to rounding.

**Assessment Calibration:
North Dakota NAEP Results
vs.
ND State Assessment Results**

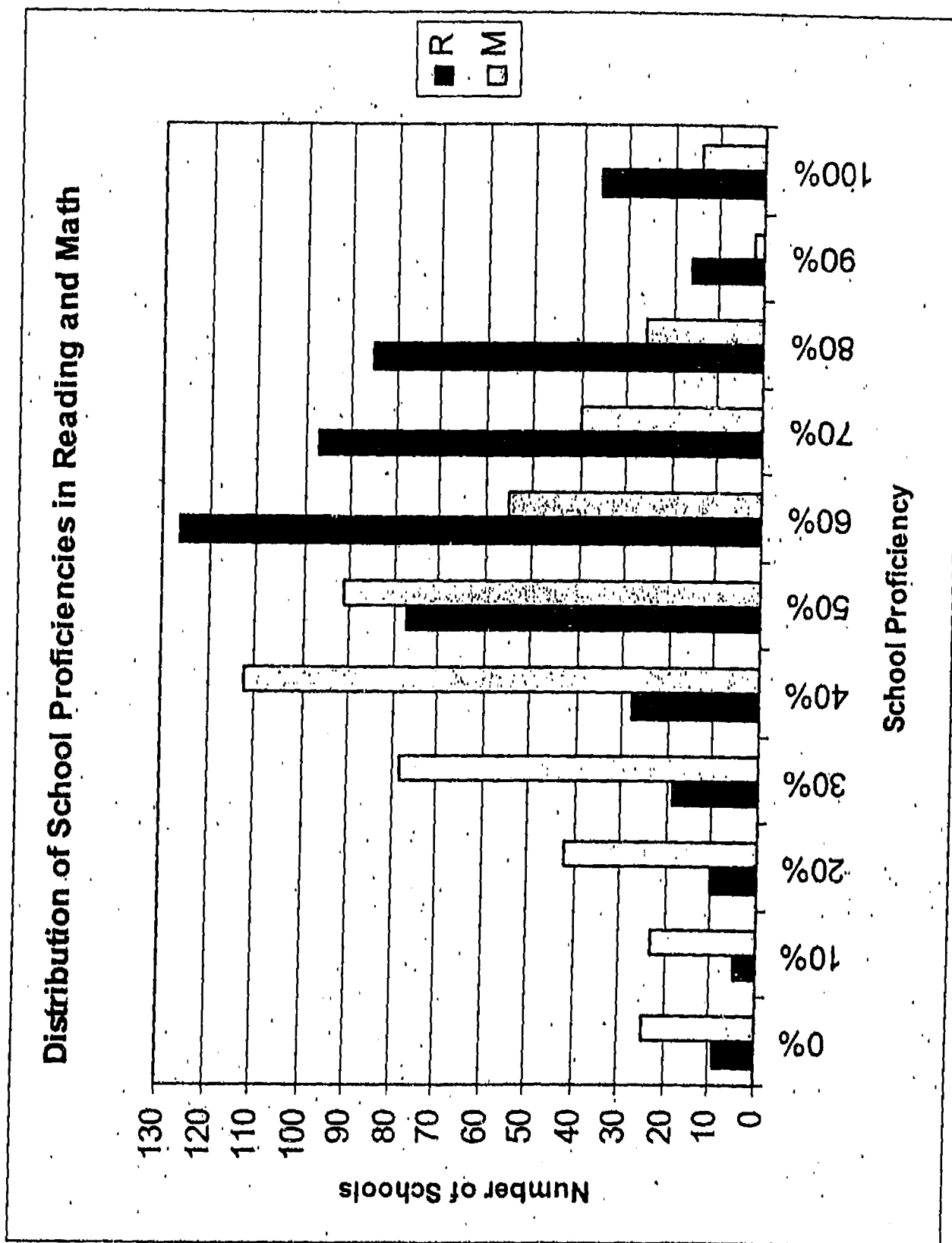
Reading

Performance Level*	ND NAEP Results		ND State Assessment Results, 2002
	1994	2000	
Advanced	8%	2%	21%
Proficient	30%	23%	53%
Partially Proficient	35%	50%	18%
Novice	27%	25%	8%

* Performance Level descriptors for NAEP and the ND State Assessment are comparable but not identical.

** Numbers may not add to 100%, or to the exact percentage at or above performance levels, due to rounding.

All Students



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**North Dakota
State Assessment**

**Bookmark
Standard Setting
Technical Report 2002**

for

**Grades 4, 8, and 12
Reading & Mathematics**

Submitted to
North Dakota Department of Public Instruction
September 2002



CTB

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North Dakota
BOOKMARK STANDARD SETTING EVALUATION RESULTS - READING GROUPS (N=72)

PART I: About the Conference

Please consider the statements below and circle the level of agreement or disagreement you have with each statement. A 5-point rating scale ranging from Strongly Disagree (SD) to Strongly Agree (SA) has been provided. Please select only 1 of the 5 options for each statement.

	Rating Scale				
	1=Strongly Disagree (SD)	2=Disagree (D)	3=Neutral (N)	4=Agree (A)	5=Strongly Agree (SA)
	SD	D	N	A	SA
1. The Bookmark Standard Setting Procedure was well described.	0%	1%	8%	57%	33%
2. The goals for this procedure were clear.	0%	7%	10%	43%	40%
3. I felt that this procedure was fair.	0%	3%	17%	39%	41%
4. Participating in the Bookmark Standard Setting Procedure increased my understanding of the test.	0%	3%	3%	25%	69%
5. The conference was well organized.	0%	0%	9%	36%	56%
BOOKMARK TRAINING AND PLACEMENT					
6. The training materials were helpful.	0%	3%	15%	49%	33%
7. The training on Bookmark placement made the task clear to me.	0%	0%	14%	56%	30%
8. Reviewing the Target Student helped me place my bookmark.	0%	7%	8%	54%	31%
9. Taking the test helped me place my bookmark.	1%	4%	11%	28%	55%
10. During Round 1, I placed my bookmark without consulting other participants.	1%	1%	0%	18%	79%
11. I understood how to place my bookmark.	0%	1%	7%	38%	54%
12. I learned how to do the Bookmark placement as I went along, so my later ones may not be comparable to my earlier ones.	13%	24%	13%	34%	17%
13. Overall, I was satisfied with my group's final bookmark.	0%	7%	10%	35%	49%
14. I would defend the cut scores against criticism that they were too high.	0%	6%	11%	31%	52%
15. I would defend the cut scores against criticism that they were too low.	0%	9%	17%	34%	41%
16. I considered the North Dakota Performance Standards when I placed my bookmarks.	0%	0%	3%	39%	58%

(PLEASE CONTINUE ON NEXT PAGE)

	SD	D	N	A	SA
17. Overall, I believe that my opinions were considered and valued by my group.	0%	0%	3%	35%	63%
18. I am confident that the Bookmark Procedure produced valid standards.	0%	4%	9%	52%	35%
19. The ordering of the items in the ordered item booklet agreed with my perception of the relative difficulty of the items.	6%	35%	23%	34%	3%
20. Overall, my table's discussions were open and honest.	0%	0%	1%	21%	78%
PROFESSIONAL DEVELOPMENT					
21. Overall, I valued the conference as a professional development experience.	0%	0%	1%	24%	75%
22. This experience will help me target instruction for the students in my classroom.	0%	1%	4%	28%	67%

Part III: About You

Please tell us about yourself. This information will be used to better understand the Bookmark Procedure.

23. What is your occupation?

92% Classroom Teacher 8% Education (non-teacher) 0% Non-Education Professional

24. If you are a classroom teacher, what grade(s) do you teach? range: K-12, mean: 7.53, sd: 3.03

25. How many years have you worked in your current profession? range: 1-38, mean: 18.9, sd: 8.71

26. Which content area did you work on during this standard setting? 100% Reading 0% Math

27. Which grade did you work on during this standard setting? 35% 4 33% 8 32% 12

28. What is your education level? 57% Bachelor's Degree 43% Master's Degree 0% Doctorate

29. What is your sex? 94% Female 6% Male

30. What is your racial/ethnic status? (Please check a single box)

American Indian	4%
Asian/Pacific Islander	0%
African American	0%
Hispanic	0%
White	96%
Other (please specify)	0%

F1-2

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31. Do you have experience working in special programs (please check all that apply)?

Special Education	46%*
ELL/ESL	19%*
Vocational Education	12%*
Alternative Education	19%*
Adult Education	15%*
Other (please specify)	39%*

* These percentages are based upon the 26 respondents to Question 31, each of whom may have indicated experience in one or more special programs.

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North Dakota
BOOKMARK STANDARD SETTING EVALUATION RESULTS – MATHEMATICS GROUPS (N=71)

ART I: About the Conference

Please consider the statements below and circle the level of agreement or disagreement you have with each statement. A 5-point rating scale ranging from Strongly Disagree (SD) to Strongly Agree (SA) has been provided. Please select only 1 of the 5 options for each statement.

Rating Scale

	1=Strongly Disagree (SD)	2=Disagree (D)	3=Neutral (N)	4=Agree (A)	5=Strongly Agree (SA)
	SD	D	N	A	SA
The Bookmark Standard Setting Procedure was well described.	0%	3%	9%	63%	25%
The goals for this procedure were clear.	0%	6%	4%	68%	23%
I felt that this procedure was fair.	0%	3%	13%	59%	25%
Participating in the Bookmark Standard Setting Procedure increased my understanding of the test.	0%	0%	3%	20%	77%
The conference was well organized.	0%	1%	10%	38%	51%
BOOKMARK TRAINING AND PLACEMENT					
The training materials were helpful.	0%	3%	13%	61%	24%
The training on Bookmark placement made the task clear to me.	1%	7%	14%	46%	31%
Reviewing the Target Student helped me place my bookmark.	0%	6%	27%	41%	26%
Taking the test helped me place my bookmark.	1%	4%	14%	31%	49%
During Round 1, I placed my bookmark without consulting other participants.	1%	3%	3%	18%	75%
I understood how to place my bookmark.	0%	6%	1%	41%	52%
I learned how to do the Bookmark placement as I went along, so my later ones may not be comparable to my earlier ones.	18%	20%	17%	28%	17%
Overall, I was satisfied with my group's final bookmark.	0%	4%	4%	55%	37%
I would defend the cut scores against criticism that they were too high.	0%	4%	11%	47%	38%
I would defend the cut scores against criticism that they were too low.	3%	10%	10%	45%	32%
I considered the North Dakota Performance Standards when I placed my bookmarks.	0%	1%	1%	44%	53%

(PLEASE CONTINUE ON NEXT PAGE)

P2-1

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SD D N A SA

Overall, I believe that my opinions were considered and valued by my group.

0% 1% 4% 39% 56%

I am confident that the Bookmark Procedure produced valid standards.

1% 3% 9% 52% 35%

The ordering of the items in the ordered item booklet agreed with my perception of the relative difficulty of the items.

3% 20% 20% 52% 4%

Overall, my table's discussions were open and honest.

0% 0% 0% 21% 79%

PROFESSIONAL DEVELOPMENT

Overall, I valued the conference as a professional development experience.

0% 0% 1% 20% 79%

This experience will help me target instruction for the students in my classroom.

1% 1% 4% 24% 69%

Part III: About You

Please tell us about yourself. This information will be used to better understand the Bookmark Procedure.

What is your occupation?

90% Classroom Teacher 10% Education (non-teacher) 0% Non-Education Professional

If you are a classroom teacher, what grade(s) do you teach? range: 1-12, mean: 7.52, sd: 3.03

How many years have you worked in your current profession? range: 2-39, mean: 19.5, sd: 8.74

Which content area did you work on during this standard setting? 0% Reading 100% Math

Which grade did you work on during this standard setting? 32% 4 35% 8 33% 12

What is your education level? 50% Bachelor's Degree 47% Master's Degree 3% Doctorate

What is your sex? 67% Female 33% Male

What is your racial/ethnic status? (Please check a single box)

American Indian	0%
Asian/ Pacific Islander	0%
African American	0%
Hispanic	0%
White	98%
Other (please specify)	2%

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31. Do you have experience working in special programs (please check all that apply)?

Special Education	54%*
ELL/ESL	13%*
Vocational Education	17%*
Alternative Education	17%*
Adult Education	13%*
Other (please specify)	29%*

* These percentages are based upon the 24 respondents to Question 31, each of whom may have indicated experience in one or more special programs.

F2-3

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Number of Proficient Students Needed to Avoid Identification (at a 99.9% Confidence Level)
 NDDPI 02/12/2003

Total AYP Goals:

Students	25%	30%	35%	40%	45%	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	3
4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	4
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	6
7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	8
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	9
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10
12	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12
14	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	14
16	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	16
18	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	18
20	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	20
25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	25
30	1	2	3	4	5	7	8	10	11	13	15	17	19	21	24	30
35	2	3	4	6	7	9	10	12	14	16	18	20	22	25	28	35
40	2	4	5	7	9	10	12	14	16	19	21	24	26	29	33	40
50	4	6	8	10	12	14	17	19	22	25	27	31	34	37	42	50
60	6	8	10	13	15	18	21	24	27	31	34	38	42	46	51	60
70	7	10	13	16	19	22	26	29	33	37	41	45	49	54	60	70
80	9	12	15	19	23	26	30	34	39	43	47	52	57	63	69	80
90	11	14	18	22	26	30	35	39	44	49	54	60	65	71	78	90
100	12	17	21	25	30	35	40	45	50	55	61	67	73	80	87	100
150	22	28	35	42	49	56	64	71	79	87	95	104	113	123	133	150
200	32	41	50	59	68	78	88	98	109	119	130	142	153	166	179	200
300	53	66	80	94	109	123	138	154	169	185	201	218	235	253	272	300
400	74	92	111	130	149	169	189	209	230	251	273	294	317	340	365	400
500	96	119	143	166	191	215	241	266	292	318	344	372	399	428	459	500

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students should know and be able to do at developmentally appropriate levels or grade levels. A statement that clearly specifies and itemizes the content of a standard at a specific grade level.

- **Proficiency Descriptor.** A definition of what a student knows and can do to demonstrate proficiency for each benchmark expectation.

The standards, topics, and benchmark expectations will be numbered (coded) for purposes of reference, and not necessarily in importance of rank. See M below.

ACHIEVEMENT STANDARDS DEFINITIONS

- **Achievement Standard.** A description of what a student knows and can do to demonstrate proficiency on a content standard. An achievement standard is also known as a performance standard. Descriptors for achievement are set at four levels and are defined as follows:
 1. **Advanced Proficient.** Demonstrates exemplary understanding and exceeds expected level of performance.
 2. **Proficient.** Demonstrates understanding and meets expected level of performance.
 3. **Partially Proficient.** Demonstrates an emerging or developing level of understanding and performance.
 4. **Novice.** Attempt made; however, lack of understanding and performance evident.
- **Exemplars.** Examples of student work that illustrate the range of performance in a content area within each performance level.
- **Cut Scores.** Scale score points on an assessment that separate one level of achievement from another.

L. Standards Listing.

All standards documents should present a summary listing of the standards developed in the document, without reference to benchmark expectations. This listing should appear following the definitions and prior

**COMMUNICATIONS ON REENGROSSED SB 2065
HOUSE EDUCATION COMMITTEE
By Greg Gallagher
Department of Public Instruction
March 17, 2003**

On March 12, 2003 the House Education Committee conducted a hearing on Reengrossed SB 2065. Following the Department's presentation, several individuals presented testimony that raised issue with the Department's position. I write to correct several assertions made within the testimony of these individuals.

1. Using the State Assessments to remediate schools, not students.

It is the clear intent of the *Elementary and Secondary Education Act*, section 1111, that composite student achievement results from the State Assessments be used to identify *schools* for remediation. The purpose for conducting adequate yearly progress reviews on school achievement results is to identify schools for program improvement when those schools evidence a pattern of low performance. Program improvement is to remediate schools that demonstrate lower student achievement levels.

The purpose of state assessments is to offer *summative* reports on the academic progress of a school. Although these results may offer a secondary benefit by validating a student's progress, it is ill-advised to place an inordinate emphasis on using the State Assessment results primarily for remediation of individual students. Schools routinely conduct student remediation checks throughout the school year in a more thorough fashion than any standardized test could offer. The Committee should resist efforts to reduce the state assessments to the remediation of students. State assessments are primarily for the remediation of schools, not students.

As stated in our testimony, the Department and the University System Chancellor's Office propose to use the twelfth-grade State Assessment as an indicator for possible remediation of students entering higher education. It is a reliable indicator of a student's performance on academic standards and offers a meaningful motivation for twelfth-graders to perform well. The Department is mindful, however, that the high school assessment results are to be used primarily for the identification of lower performing schools.

Because the State seeks to identify and remediate lower performing high schools, a twelfth-grade fall assessment offers the best time to assess students'

Communications on
Reengrossed SB 2065

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March 17, 2003

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cumulative exposure to academic standards. To administer the assessment earlier will limit the State's ability to monitor the full effect of students' academic experience statewide. The State must keep its eye on the ultimate goal: remediating high schools and assuring students that they are afforded the full opportunity to a quality, standards-based education.

2. The ACT is not aligned to State standards and, therefore, not an appropriate State Assessment.

Several individuals testified that the ACT would offer an appropriate replacement for the twelfth grade assessment. This is completely unfounded. The ACT is not designed to be a summative achievement assessment; instead, it probes a student for evidence of preparedness for college. In discussions between the Department and ACT representatives, ACT has stated that they have not and have no intention to align their assessments to any State's standards. The ACT is simply not designed to measure student achievement in terms of North Dakota academic standards. In separate discussions between the Department and staff within the U.S. Department of Education (USDE), USDE representatives stated that the current ACT would not be recognized as a legitimate State Assessment since it could not be demonstrated to align to a State's academic standards.

3. State law should offer latitude for future assessment strategies.

The Council of Educational Leaders stated the Department was inconsistent by advancing a twelfth grade strategy while advancing amendments that offer assessments anytime between the tenth through the twelfth grade.

The Department is clear on its preference for twelfth-grade assessments administered in the fall. Nevertheless, the Department believes that language within State law should offer the State latitude for administering assessments at another grade level in the event that unforeseen circumstances require a change. In the event of such an unforeseen circumstance, a change in law would be required. State law should never be drafted with such restrictive language, unless it is essential. The Department offers this amended language to offer the State ample latitude in the future without further amending the law. This is not inconsistent reasoning. This is responsible draftsmanship.

4. Protecting the integrity and security of the State Assessments.

The Council of Educational Leaders stated the Department was exercising circular logic by endorsing the practice of previewing the State Assessments, as provided under current law, while objecting to the preview of the State Assessment in public hearing, as provided within Reengrossed SB 2065. Our reasoning is consistent and sound.

The Committee should adopt the Department's amendments to eliminate the preview of the State Assessments in a public hearing setting. The State Assessments are secure instruments by design to protect their validity and reliability. We place the validity and reliability of the State Assessments at risk by openly previewing them within a public hearing setting. Such a practice threatens the integrity of the assessment enterprise. Public hearings by their nature are open and uncontrollable. Secure documents, such as the State Assessments, require protection.

NDCC 15.1-21-12, enacted by the 57th Legislative Assembly, currently accommodates the public's right to preview the State Assessments at any time. Such a preview is conducted within a controlled setting to protect the security and integrity of the instruments. The public's right to preview the instruments is protected; the security and integrity of the instruments is also protected. This is a desirable balance between openness and protection.

State law currently accommodates the preview of the State Assessments. The Committee should adopt the Department's amendments to eliminate the risk of public disclosures that cannot be controlled and that effectively destroy the secure nature of our State Assessments. Current State law has achieved the proper balance.

5. Cut score teachers were well qualified and represented the breadth of educational settings.

The Council of Educational Leaders stated that the Department deliberately selected the best teachers in the State and, as such, these teachers, by their high qualifications, overstated the cut scores. Such a statement is unfounded.

The Department fully supports the qualifications and work of the teachers who participated in the cut score standards setting in July 2002. These teachers indeed are among the best in the State, no doubt. Principals nominated these teachers for their knowledge, skills, and experience as teachers to all types of students. These teachers instruct all types of learners: "highly motivated", "average", "special education", "Title I",

or any other applicable category. These teachers based their cut scores on their breadth of experience and exposure to all types of learners. These teachers debated the effects of the emerging cut scores, based on real impact data, on all types of learners. These teachers actively, sometimes vehemently, debated the cut scores until a consensus emerged. The Department presented evidence of these teachers' observations during testimony. The Department stands by the integrity of the standards setting process and the qualifications of these teachers.

6. It is a mistake to equate norm-referenced achievement data with standards-based achievement data.

Several presenters attempted to discredit the cut-score standards setting by illustrating the failure of the 2001-02 State Assessment data to align well with historical norm-referenced data. Such a statement misrepresents the issue. This statement demonstrates a fundamental misunderstanding of norm-referenced achievement data, ignores credible historical evidence, and underscores a fundamental disregard for reporting to meaningful achievement standards. This statement, however, illuminates the core of the opposition to the State Assessment.

The State's historical 65th percentile ranking against a national norm must be compared and reconciled with the consistently lower achievement scores from the NAEP, arguably the most highly funded and researched assessment instrument in existence. This disparity between norm-referenced and standards-referenced reporting is not new; indeed, it has existed for over a decade. Some educators have summarily dismissed NAEP as unimportant or irrelevant. And now, when presented with the State Assessment data, some educators are demonstrating a similar strategy of dismissing the State Assessment. Such a dismissal is unwarranted.

This issue is complex and begs simplistic explanations. To build comparisons, we have used statements, such as, "We may be the top of the heap, but the heap isn't that high." Others have stated, "With norm-references we have historically compared ourselves to a sub-standard standard." By whatever metaphor seems appropriate, our historical achievement scores must be viewed with an eye to standards, not norms. The Committee should be cautious to adopt references to a norm as the foundation for evidencing credibility. It would be inappropriate and overly simplistic to do so. If the Committee requires further explanation, with references to the State's historical database or NAEP data, the Department is prepared to present this to the Committee.

As the Committee discusses the Department's proposed amendments, we are available to discuss further any questions and to clarify our recommendations, as the Committee desires. We ask that this communications document be appended to our March 12 testimony on Reengrossed SB 2065.

Communications on
Reengrossed SB 2065

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March 17, 2003

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10/15/03



Department of Public Instruction

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(701) 328-2260 Fax - (701) 328-2461
<http://www.dpi.state.nd.us>

Dr. Wayne G. Sanstead
State Superintendent

February 17, 2003

Honorable Wayne Stenehjem
Attorney General
1st Floor, State Capital
600 E. Boulevard
Bismarck, ND 58505

Dear Attorney General Stenehjem:

I seek your opinion regarding Engrossed Senate Bill No. 2065 and Senate Bill No. 2418 currently under consideration by the Fifty-eighth Legislative Assembly.

Specifically I ask whether these bills, if enacted, will

1. violate the separation of powers doctrine;
2. create an unconstitutional delegation of legislative power;
3. impermissibly intrude into the core functions of a state constitutional officer;
4. vest legislative agents or members of the legislature with executive power;
5. impermissibly delegate governmental authority to a private entity; or
6. violate any other constitutional provisions.

I am asking that you expedite your opinion on this matter so that the legislature will have time to consider your advice before it finalizes its action on these legislative measures.

Sincerely,

Dr. Wayne G. Sanstead
State Superintendent

School for the Deaf
Devils Lake, ND
(701) 682-9000

School for the Blind
Grand Forks, ND
(701) 785-2700

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Wayne Stenehjem
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

STATE CAPITOL
600 E BOULEVARD AVE DEPT 126
BISMARCK, ND 58505-0040
(701) 328-2210 FAX (701) 328-2226

LETTER OPINION
2003-L-21

March 26, 2003

Honorable Wayne G. Sanstead
Superintendent of Public Instruction
600 East Boulevard Avenue, Dept. 201
Bismarck, ND 58505-0440

Dear Dr. Sanstead:

Thank you for your letter asking if 2003 Senate Bills 2065 and 2418 are constitutionally infirm because they affect your administration of education matters related to federal law compliance and testing by requiring oversight and approval by a legislative investigating committee.

It is presumed when construing a statute that the Legislature intended to comply with the constitutions of North Dakota and of the United States and any doubt must be resolved in favor of a statute's validity. Haney v. North Dakota Workers Compensation Bureau, 518 N.W.2d 195, 197 (N.D. 1994); Snortland v. Crawford, 306 N.W.2d 614, 626 (N.D. 1981); State ex rel. Johnson v. Baker, 21 N.W.2d 355, 359 (N.D. 1945); N.D.C.C. § 1-02-38(1). This presumption is conclusive unless the statute clearly contravenes the state or federal constitutions. State v. Hegg, 410 N.W.2d 152, 154 (N.D. 1987); State ex rel. Lesmeister v. Olson, 354 N.W.2d 690, 694 (N.D. 1984). Also, a statute will only be found unconstitutional upon concurrence of four of the five justices of the North Dakota Supreme Court. N.D. Const. art. VI, § 4. "One who attacks a statute on constitutional grounds, defended as that statute is by a strong presumption of constitutionality, should bring up his heavy artillery or forego the attack entirely." S. Valley Grain Dealers Ass'n v. Bd. of County Comm'rs of Richland County, 257 N.W.2d 425, 434 (N.D. 1977). Because it is the Attorney General's role to defend statutory enactments from constitutional attacks, this office has been reluctant to issue an opinion questioning the constitutionality of a statutory enactment. Accordingly, absent controlling case law to the contrary, this office will not declare that a bill, if enacted, would be unconstitutional. In this case, the bills have been amended since you requested my opinion to remove the language that you questioned.

Senate Bill 2418, as introduced, created a legislative investigating committee to review the No Child Left Behind Act of 2001 (NCLBA), 20 U.S.C. § 6301 et seq., and its implementation, and would have allowed the committee to approve or disapprove rules

LETTER OPINION 2003-L-21

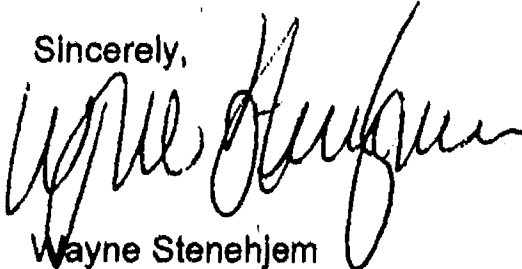
March 26, 2003

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implementing NCLBA. This provision was removed. Subsection 5 of the bill now states that no rule or guideline to implement the NCLBA applies to any North Dakota school district until the investigating committee holds a public hearing on it. Engrossed S.B. 2418, 2003 N.D. Leg. As originally introduced, Senate Bill 2065 did not contain any restrictions on rulemaking. Senate Bill 2065 originally addressed statewide testing, but it was amended to require a public hearing before the investigating committee created by Senate Bill 2418 before a test required by that section could be administered. Amendments in the House have removed this provision. 2nd Engrossed S.B. 2065, 2003 N.D. Leg.

Senate Bills 2065 and 2418, as amended, no longer provide for a legislative committee to approve or void your rules or actions on the subjects at issue. Senate Bill 2418 still allows for a hearing before a rule or guideline becomes effective, while Senate Bill 2065 does not. It is my opinion that the bills, in their present form, do not constitute an impermissible legislative intrusion into executive functions and are, therefore, facially constitutional.¹

Sincerely,



Wayne Stenehjem
Attorney General

pg

¹ A statute may be constitutional on its face, but yet be unconstitutional when applied to specific circumstances. See Traynor v. Leclerc, 561 N.W.2d 644, 646 (N.D. 1997); Glaspie v. Little, 564 N.W.2d 651, 654 (N.D. 1997); Quist v. Best Western Intern., Inc., 354 N.W.2d 656, 665 (N.D. 1984). Even though Senate Bill 2418 is not facially unconstitutional, it appears its application could cause unconstitutional results. Traynor, 561 N.W.2d at 646. Because Senate Bill 2418 does not provide a specific time within which the investigative committee created must meet and act upon your activities by holding its public hearing and because your activities are not effective until the committee holds the public hearing, application of the bills could produce an unconstitutional effect if committee inaction allowed the rules or tests to be "vetoed" by allowing them to languish. State ex rel. Meadows v. Hechler, 462 S.E.2d 586, 589 (W. Va. 1995).