

# **NCLB SCHOOL IMPROVEMENT PROVISIONS**

**October 4, 2010**

**MASA Fall Conference**

*Presented by*

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*These materials are designed to accompany a presentation and are not intended to be legal advice.*

## **I. NCLB School Improvement Provisions.**

### **A. General Provisions for Failure to Make AYP**

- a local educational agency shall identify for school improvement any elementary school or secondary school served under this part that fails, for 2 consecutive years, to make adequate yearly progress
  - schools identified for school improvement must provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school, that has not been identified for school improvement under this paragraph
- In the case of any school . . . that fails to make adequate yearly progress, . . . by the end of the first full school year after identification under paragraph . . . the local educational agency serving such school--  
**(A)** shall continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency . . . **(B)** shall make supplemental educational services available consistent with subsection **(C)** shall continue to provide technical assistance

### **B. Corrective action.**

After four years of not making AYP (two years in a row of not making AYP and two additional years after that in “needs improvement”) a school is identified for correction action.

- the term “corrective action” means action, consistent with State law, that **(i)** substantially and directly responds to-- **(I)** the consistent academic failure of a school that caused the local educational agency to take such action; and **(II)** any underlying staffing, curriculum, or other problems in the school; and **(III)** is designed to increase substantially the likelihood that each group of students . . . enrolled in the school identified for corrective action will meet or exceed the State's proficient levels of achievement on the State academic assessments. . .
- In the case of any school served by a local educational agency . . . that fails to make adequate yearly progress, . . . by the end of the second full school year after the identification under paragraph (1), the local educational agency shall-- **(i)** continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, . . . **(ii)** continue to provide technical assistance . . . **(iii)** continue to make supplemental educational

services available, . . . to children who remain in the school; and **(iv)** identify the school for corrective action and take at least one of the following corrective actions:

- Replace the school staff who are relevant to the failure to make adequate yearly progress.
- Institute and fully implement a new curriculum, including providing appropriate professional development for all relevant staff, that is based on scientifically based research and offers substantial promise of improving educational achievement for low-achieving students and enabling the school to make adequate yearly progress.
- Significantly decrease management authority at the school level.
- Appoint an outside expert to advise the school on its progress toward making adequate yearly progress, based on its school plan . . .
- Extend the school year or school day for the school.
- Restructure the internal organizational structure of the school.

**C. Restructuring.** If, after 1 full school year of corrective action . . . a school subject to such corrective action continues to fail to make adequate yearly progress, then the local educational agency shall-- **(i)** continue to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, . . . **(ii)** continue to make supplemental educational services available, . . . to children who remain in the school; and **(iii)** prepare a plan and make necessary arrangements to carry out a plan for alternative governance.

Alternative Governance: [T]he local educational agency shall implement one of the following alternative governance arrangements for the school consistent with State law:

- Reopening the school as a public charter school.
- Replacing all or most of the school staff (which may include the principal) who are relevant to the failure to make adequate yearly progress.
- Entering into a contract with an entity, such as a private management company, with a demonstrated record of effectiveness, to operate the public school.

- Turning the operation of the school over to the State educational agency, if permitted under State law and agreed to by the State.
- Any other major restructuring of the school's governance arrangement that makes fundamental reforms, such as significant changes in the school's staffing and governance, to improve student academic achievement in the school and that has substantial promise of enabling the school to make adequate yearly progress . . . In the case of a rural local educational agency with a total of less than 600 students in average daily attendance at the schools that are served by the agency and all of whose schools have a School Locale Code of 7 or 8, as determined by the Secretary, the Secretary shall, at such agency's request, provide technical assistance to such agency for the purpose of implementing this clause.

**D. Potential Limits of NCLB Corrective Actions and Restructuring.** The NCLB specifically provides that: [it] should not be construed to alter or otherwise affect the rights, remedies, and procedures afforded school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employees and their employers. *20 U.S.C. § 6316 (d)*.

The Department of Education under former Secretary Rod Paige provided the following guidance on the impact of NCLB on employee rights:

Section 1116 does not operate to invalidate employee protections that exist under current law and collective bargaining and similar labor agreements. However, it does not exempt state education agencies, local education agencies, and schools from compliance with Title I based on prospective collective bargaining or similar agreements or changes in state or local law. State and local education authorities, as well as state legislatures and local governing boards, need to ensure that changes in state and local laws are consistent with Title I requirements and that any changes to collective bargaining agreements or new agreements are also consistent with Title I.

July 14, 2002 Dear Colleague Letter – from Sec. Paige.

## **II. NCLB In Real Life**

### **A. Restructuring Procedures Overview**

#### Restructuring Designation

- LEA implement plan to implement an alternative government system for the school

- Set aside 20% of the Title I allocation for choice and SES (unless a lesser amount is needed)

#### Minnesota School Quality Reviews

- External Assessment Team Assignment
- School Self Evaluation
- On site visit by assessment team
- MDE quality review report (by site)

#### School Improvement Grant Application

- Site improvement plan(s) submit to MDE
- The Four intervention Models
  - Turnaround
  - School Closure
  - Restart
  - Transformation
- Approval or clarification request by MDE

### **B. Minnesota School Quality Review**

#### External Assessment Team On Site Evaluation

- Cambridge University: Cambridge Education
- Evaluation vs. Research
- Outcome is not evaluation as we know it but discovery research methodology describing what school system organization looks like

#### Ethnographic Research Methodology

- Capture a picture of situation by gathering stakeholder perceptions
- Contrast perceptions across Best Practices categories
- Methodology of interview protocol: specifically scripted query
  - Why do you think that?
  - How do you know that?
  - What data do you have to support that?

#### Organizational Theory Grounding

- School Districts a “living” organization
- Successful change derives from understanding who we are and how well we are implementing or progressing toward meeting Best Practices Standards

### **C. Quality Review Report**

#### Site organization described from stakeholder responses

#### Site description depicted across 3 domains

- Readiness to Learn

- Readiness to Teach
- Readiness to Act

Findings Profile

Site domains illuminated responses contrasted across Best Practices questions:

Red	Unacceptable	No Evidence
Orange	Poor	Minimal Evidence
Yellow	Fair	Present, though limited and/or inconsistent
Green	Acceptable	Evidence Routine & consistent

**D. SIG Intervention Models**

**1. The Four Required Intervention Models**

- Each Tier I and Tier II school must *fully and effectively* implement one of the intervention models:
  - Turnaround
  - Restart
  - School Closure
  - Transformation

**2. Turnaround Model Required Activities**

- Replace the principal and grant the principal sufficient operational flexibility
- Use locally adopted competencies to measure the effectiveness of staff
  - Screen all existing staff and hire no more than 50 percent
  - Select new staff
- Implement strategies like financial incentives, opportunities for promotion and career growth, etc. to recruit and retain staff with needed skills
- Provide staff ongoing, high-quality job-embedded professional development
- Adopt a new governance structure
- Use data to identify and implement an instructional program that is:
  - Research based
  - Vertically aligned
  - State standards aligned
- Promote the continuous use of student data

**3. Restart Model Required Activities**

- Convert or close and reopen a school under:
  - a charter management organization (CMO)
  - an education management organization (EMO)
- CMO or EMO must be selected through a rigorous process
  - Must be able to match the needs of the school
  - Must have a proven track record of success

- Enroll, within the grades it serves, any former student who wishes to attend
- Include in its contract with the CMO or EMO terms to hold it accountable for complying with any grant requirements

#### 4. **School Closure Model Required Activities**

- Close the school and enroll the students in other schools that are higher achieving
- These other schools must be within a reasonable proximity to the closed school and may include (but are not limited to):
  - Charter schools or new schools for which achievement data is not yet available

#### 5. **Transformation Model Required Activities**

- Replace the principal
- Use a rigorous, transparent and equitable evaluation system for teachers and principals that:
  - Takes into account data on student growth
  - Considers multiple observation-based assessments of performance
  - Is designed with teacher and principal input
- Identify and reward school leaders, teachers and other staff who have increased student achievement and high school graduation rates
- Identify and remove those who, after ample opportunities to improve, have not done so.
- Provide staff ongoing, high-quality job embedded professional development
- Implement strategies like financial incentives, opportunities for promotion and career growth, etc. to recruit and retain staff with needed skills

#### 6. **Other Key Grant Requirements**

- Establish annual goals for student achievement on state assessments for:
  - Reading
  - Mathematics
  - and (if identified for graduation rate),
- Establish annual goals for graduation rate
- Measure progress on the leading indicators to monitor funded schools
- If implementing the restart model, include a provision in the contract to hold the external provider accountable to the grant requirements
- Each school must hire at least a .5 FTE Site Administrative Manager (SAM) to assume non-instructional administrative duties
- Report to the SEA on the following leading indicators:
  - Number of minutes within the school year
  - Student participation rate on state assessments

- Graduation rate
- Student attendance rate
- Number and percentage of students completing advanced coursework
- Discipline incidents
- Truants
- Distribution of teachers by performance level of an LEA's teacher evaluation system
- Teacher attendance rate
- Each principal must successfully complete the Minnesota Principal's Academy
- Establish an LEA-based Turnaround Officer(s) or Turnaround Office
- Add at least an hour of additional instruction time per day, or alternative/extended school year
- Provide at least 90 minutes per week for PLCs
- Provide at least 10 days of site-based training as well as a 10 day teacher academy each school year
- Provide training for new teachers joining turnaround schools later in the process

## **E. Lessons Learned**

### Evaluation vs. Discovery Research

- Evaluation tells us what we need to do to be in compliance of corrective action
- Discovery Research tells us what we should look like across Best practices; LEA now can write plan as to how to do this

### Interview Protocol

- Scripted query at site visitation.
- Responses could not include explanations

### Domains and Sub Criteria

- READINESS TO LEARN
  - Safety, Discipline and Engagement
  - Action Against Adversity
  - Close Student-Adult Relationships
- READINESS TO TEACH
  - Shared Responsibility for Achievement
  - Personalization of Instruction
  - Professional Teaching Culture
- READINESS TO ACT
  - Resource Authority
  - Resource Ingenuity
  - Agility in the Face of Turbulence

## NEXT STEPS

- Meaningful Collision: Problematic Issues
- Meaningful Coalesce: Leadership for Organizational Change

### **III. Hurdles to Corrective Action or School Restructuring Under NCLB.**

#### **A. State and Federal Laws**

- Minnesota Teacher Tenure Law (Minn. Stat. § 122A.40)
- Public Employment Labor Relations Act – PELRA (Minn. Stat. § 179A.01 *et. seq.*)
- Q-Comp. (Minn. Stat. § 122A.413)
- State and federal labor standards acts (Minn. Stat. § 177.21 *et. seq.*)
- Minn. Stat. § 123B.51 Subd. 5 (procedures for school closings)
- State and Federal Anti-discrimination laws (when employing targeted strategies to assist sub groups of students)

#### **B. Collective Bargaining Agreements**

- “Just Cause” or disciplinary language
- Transfer and Vacancy articles
- Teacher evaluation provisions
- Work day and work year provisions
- Subcontracting issues/provisions
- Assignment of extra-duties
- Teacher compensation

Some school board associations have developed model language in anticipation of the more significant school improvement provisions of the NCLB. The Oregon School Board Association has suggested the following language for teacher contracts:

No provision of this Agreement shall be construed to prevent or prohibit the Board of District from taking required actions under the NCLB Act of 2002 concerning school improvement, school corrective actions, or school restructuring....

Any timelines, notifications, or other provisions of this Agreement shall be subordinate to, and adjusted by the NCLB Act and its implementing regulations in order to meet the required actions and deadlines of the NCLB Act.

Furthermore, if any of the anticipated NCLB Act actions result in a duty to bargain, bargaining shall commence under the provisions [of state law] and shall be initiated by the parties in a timeframe sufficient to allow

completion of bargaining prior to implementation under the deadlines specified in the Act.

The NEA, on the other hand has suggested language of the following nature:

Without the agreement of the Association, the Employer shall take no action to comply with ESEA, as amended, 20 USC 6301 *et seq.*, (i.e. NCLB) that has an adverse impact on any bargaining member.

### **C. Institutional Barriers**

While school districts will mostly delegate day-to-day operations of the district/schools and pedagogical decisions to administration and teachers, Minnesota law vests certain responsibilities with the school board. According to Minnesota Statute, the school board has the general charge of business of the District. The law specifically provides: "The board must have the general charge of the business of the district, the school houses, and of the interests of the schools thereof. The board's authority to govern, manage, and control the district; to carry out its duties and responsibilities; and to conduct the business of the district includes implied powers in addition to any specific powers granted by the legislature." *Minn. Stat. § 123B.02 Subd. 1*. As one Court has stated: "[n]ecessarily included within the board's discretion is the authority to determine the curriculum that is most suitable for students and the teaching methods that are to be employed, including the educational tools to be used."

### **D. Parent Groups and Students**

Parent groups and individual parents have attempted to bring action under the NCLB. However the courts have uniformly held that there is no private cause of action under the NCLB.

- *Newark Parents Assoc. v. Newark Public Schools*, 547 F.3d 199 (3d Cir. 2008) (Held that parent group could not bring private civil rights action against a school district that failed to meet AYP, failed to notify parents of performance and failed to notify parents of their right to transfer and/or receive supplemental educational services. The Court stated that NCLB is focused on the aggregate and not individual student rights

### **E. Funding**

States and local school districts have attempted to challenge the lack of funding for NCLB requirements in light of specific language in the statute that states: "nothing in this Act shall be construed to ... mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act." One recent decision rejected a Constitutional claim of several

school districts from Michigan, Vermont and Texas that they should not have to utilize their own funds to meet the accountability standards of NCLB. *See School Dist. of the City of Pontiac v. Secretary of the U.S. Dept. of Educ.*, 584 F.3d 253 (6<sup>th</sup> Cir. 2009)