

March 31, 2004

Dr. Raymond Simon, Assistant Secretary
Office of Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-6400

Dear Dr. Simon:

Pursuant to the February 5, 2004 guidance from the U.S. Department of Education regarding the amendment of State accountability plans, the North Dakota Department of Public Instruction hereby submits for consideration and approval amendments to the North Dakota Consolidated State Application Accountability Workbook, dated June 8, 2003.

In an effort to comply with all provisions of the *Elementary and Secondary Education Act* and to provide for a uniform State accountability system, the Department of Public Instruction seeks amendments to the North Dakota accountability plan related to the following issues:

- (1) the incorporation of recent federal guidance regarding the full participation of all students within the State assessment and the restricted omission of certain students with significant medical conditions;
- (2) the redefinition of a full academic year for the purposes of determining adequate yearly progress for student achievement;
- (3) the incorporation of recent federal guidance regarding the assessment of new limited English proficient (LEP) students and the extended classification of LEP students for two years beyond proficiency status for the purposes of determining adequate yearly progress;
- (4) the incorporation of recent federal guidance regarding the election of a local school district to determine adequate yearly progress for a Title I targeted assistance school based solely on the achievement of students who are served by Title I or who are eligible to receive Title I services;
- (5) the restricted extension of a graduation cohort beyond four years, as defined within an individual education program, for students served within provisions of the *Individuals with Disabilities Education Act* or as provided within a LEP service program for specified LEP students;
- (6) the redefinition of "small, rural schools" from that set forth within the Small, Rural Schools Grant to that definition established under previous agreement with the U.S. Department of Education for the alternate method to distribute Title I funds.

The North Dakota Department of Public Instruction agrees to submit to the U.S. Department of Education, following the review and negotiated revision of the elements provided herein, an electronic Workbook with all amended annotations identified. The Department of Public Instruction stipulates to the administration of the State's accountability system in accordance with the amendments provided as follows.

(1) The incorporation of recent federal guidance regarding the full participation of all students within the State assessment and the restricted omission of certain students with significant medical conditions.

On March 26, 2004, the U.S. Department of Education released guidance regarding the calculation of adequate yearly progress based on the participation of at least 95% of students in a State's annual assessment of student achievement, measured by a total school population and by subgroups. Full participation within the Act ensures a valid and reliable means of determining accountability for all schools, districts, and the State.

The Department of Public Instruction stipulates to the administration of all accountability elements of the participation rate provided within the North Dakota Accountability Workbook, dated June 8, 2003; additionally, the Department proposes to amend the State Workbook to incorporate fully the elements of the March 26, 2004 guidance. These amendments include the following:

a. *Multi-year averaging.* In calculating adequate yearly progress for participation rates, the State will access participation data from the current year, a two-year average, and a three-year average. If any of these accessed data points meet or exceed 95%, the specified school, district, or State will be deemed to meet the requirements of adequate yearly progress.

b. *Significant medical conditions.* In calculating adequate yearly progress for participation rates, the State will omit, within restricted conditions, any student who has been prohibited from participating in the State assessment during the entire testing window, including make-up dates, due to a significant medical condition. The Department of Public Instruction will consider only those requests for the omission of a student with a significant medical condition that have been documented by the affected school. The Department reserves the right to monitor the circumstances surrounding any requests for omission. Students must be enrolled within the affected school during the testing window, as evidenced on the pupil membership files retained within the State Online Reporting System. The State will document the receipt of any omission requests, remove the student from the calculation of adequate yearly progress, and record and report aggregate incidence rates of omissions statewide. The State will not report student omission reports that might lead to the identification of an individual student.

The Department respectfully requests that Section 10.2 of the State Accountability Workbook be amended to include this provision.

(2) The redefinition of a full academic year for the purposes of determining adequate yearly progress for student achievement.

The Department of Public Instruction seeks to amend Section 2.2 of the North Dakota Accountability Workbook, regarding the definition of a full academic year. The Department stipulates to the administration of all accountability elements related to the definition of a full academic year as provided within the North Dakota Accountability Workbook, dated June 8, 2003; additionally, the Department proposes to amend the State Workbook to incorporate a new definition of full academic year. This amendment includes the following:

The Department proposes to delete the following definition of a full academic year, as identified on page 25 of the State's Accountability Workbook: "~~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.~~"

In its place the Department proposes to insert the following definition of full academic year: "A 'full academic year' means a student has been enrolled at a school or within an LEA for a period equal to or exceeding 173 instructional days, as provided by State statute and recorded within the school's pupil membership file on the State's Online Reporting System."

The Department seeks this amended definition based on its improved capacity, as captured within its pupil membership file on the State's Online Reporting System, to reliably collect, report and validate student enrollment within each school and each district. This improved capacity in the collection and reporting of student enrollment information was originally identified as a priority goal by the Department in the North Dakota Accountability Workbook, page 25, dated June 8, 2003. The Department has made the technical improvements to ensure a reliable cross-check against these required data points for the purposes of determining adequate yearly progress.

Under the State's accountability plan for schools and districts, only those students who have been under the direct instruction of a school for a full academic year will be included in the determination of adequate yearly progress. Within current North Dakota statute, 173 full instructional days constitutes a full academic year. The evidence of a student's enrollment within a school and district is recorded within the pupil membership file on the State's Online Reporting System. Any time-period between a student's enrollment date within a school or district and the beginning date of the State assessment that results in fewer than 173 days of instruction will be defined as constituting less than a full academic year. Any time-period between a student's enrollment date within a school or district and the beginning date of the State assessment that is equal to or greater than 173 days of instruction will constitute a full academic year within the State's assessment rules.

The Department respectfully requests that Section 2.2 of the State Accountability Workbook be amended to include this provision.

(3) The incorporation of recent federal guidance regarding the assessment of new limited English proficient (LEP) students and the extended classification of LEP students for two years beyond program status for the purposes of determining adequate yearly progress.

On February 20, 2004, the U.S. Department of Education released guidance regarding the assessment of new LEP students and the inclusion of new LEP students within the State's accountability system. This guidance acknowledges that teachers need sufficient time with their students to provide high-quality instruction before it is appropriate to hold a particular school accountable. The amendments sought herein are restricted only to those LEP students who are newly arrived to the United States within the allowance of a full academic year. Any LEP student identified outside this restricted definition of "new" will be covered by provisions of the current State Accountability Workbook.

The Department of Public Instruction stipulates to the administration of all accountability elements of student achievement regarding LEP students provided within the North Dakota Accountability Workbook, dated June 8, 2003; additionally, the Department proposes to amend the State Workbook to incorporate fully the elements of the February 20, 2004 guidance. These amendments include the following:

a. Definition of full academic year. Under the State's accountability plan for schools and districts, only those students who have been under the direct instruction of a school for a full academic year will be included in the determination of adequate yearly progress. A "new" LEP student is understood as any student who has arrived in the United States within a period constituting a full academic year, i.e., 173 full instructional days under North Dakota law. The designation of entry into the United States is recorded within the LEP record of the pupil membership file on the State's Online Reporting System. Any time-period between a LEP student's U.S. entry date and the beginning date of the State assessment that results in fewer than 173 days of instruction will define a "new LEP student." Any time-period between a LEP student's U.S. entry date and the beginning date of the State assessment that extends greater than 173 days of instruction will require the full inclusion of the LEP student within the State's standard assessment rules.

b. Assessing new limited English proficient students. For purposes of participation in the State assessment system, LEP students, during their first year of enrollment in U.S. schools, must take an English proficiency assessment, as provided within Section 1111(b)(7) of the Act, and may participate in the reading/language arts assessment, as provided within Section 1111(b)(3) of the Act. The assessment results of first-year LEP students who take the reading/language arts assessment will not be included in determining adequate yearly progress. New LEP students who take the English language proficiency assessment and/or the reading/language arts assessment, will be counted as participants toward meeting the 95% assessment participation required for adequate yearly progress determinations for reading.

New LEP students will take the State's mathematics assessment, as provided within Section 1111(b)(3) of the Act, with accommodations as necessary; however, the State will not include these new LEP students' assessment results from the mathematics assessments during their first year in U.S. schools. New LEP students who take the mathematics assessment will be counted as participants toward meeting the 95%

assessment participation required for adequate yearly progress determinations for mathematics.

c. Two-year extension of LEP status for accountability reporting. The State will include in the LEP subgroup any student who had previously been considered an LEP student during the past one or two years, to calculate adequate yearly progress for schools, districts, and the State. The determination of when a student has attained English proficiency and is no longer an LEP student will follow the State's method and definition as provided within the State's Consolidated Application. New LEP students will not be included into the base calculation of determining a minimum LEP subgroup size.

The Department of Public Instruction will conduct an independent review of all new LEP student reports, as captured within the State's pupil membership file, and validate all data points used to substantiate the claim of a new LEP student's status.

The Department respectfully requests that Section 5.4 of the State Accountability Workbook be amended to include this provision.

(4) The incorporation of recent federal guidance regarding the election of a local school district to determine adequate yearly progress for a Title I targeted assistance school based solely on the achievement of students who are served by Title I or who are eligible to receive Title I service.

On February 4, 2004, the U.S. Department of Education issued guidance, in response to an inquiry from the North Carolina Department of Education, regarding the determination of adequate yearly progress under Section 1116(b)(1)(D) in schools with a targeted assistance Title I program. This provision is a restricted privilege accorded to Title I targeted assistance schools.

The Department of Public Instruction stipulates to the administration of the determination of adequate yearly progress for all schools, including Title I targeted assistance schools, as provided within the North Dakota Accountability Workbook, dated June 8, 2003; additionally, the Department proposes to amend the State Workbook to incorporate fully the elements of the February 4, 2004 guidance. These amendments include the following:

a. Minimum group size and subgroup accountability. The authority to invoke the provisions of Section 1116(b)(1)(D) of the Act may be exercised only if the number of students served or eligible to be served by Title I services meets the minimum group size of ten students as provided within Sections 5.5 and 5.6 of the North Dakota Accountability Workbook. If, among the targeted assistance students, there are sufficient numbers of students in various subgroups to meet the minimum group size, subgroup accountability will be required. As in other schools, students who are members of subgroups that fall below the minimum group size at the school level will be included in the appropriate subgroups for district and State adequate yearly progress calculations.

b. Separate decisions for reading and mathematics. In the case of a targeted assistance school where Title I services are offered in only one subject, the school will still be held accountable for both reading/language arts and mathematics. An LEA will have the

flexibility to calculate adequate yearly progress based on either of the following conditions:

- The reading and mathematics assessment scores/participation rates of only students served or who are eligible for Title I services; or
- The assessment scores/participation rates of only students served or eligible for Title I services in the subject in which Title I services are provided and of all students in the school for the subject in which Title I services are not provided.

c. Other academic indicators. The LEA may examine the data for the entire school or only those students receiving or eligible to receive Title I services to determine if adequate yearly progress was made for the other indicator. When adequate yearly progress is being calculated based upon only the students receiving or eligible for Title I services, those same students would be used to calculate progress on the other indicator if the LEA wants to take advantage of the safe harbor provisions. If data for the other indicators (i.e., graduation and attendance) cannot be collected on those students receiving or eligible for school regardless of student participation in Title I services, the State will calculate adequate yearly progress based on all students in the school regardless of student participation in Title I services.

d. Including results at the district and state level. When calculating adequate yearly progress for a LEA, the State will review the progress of all students attending schools without Title I programs and with schoolwide Title I programs; in schools operating targeted assistance programs, the State may review the progress of only the students who are served or eligible for Title I services or may review the progress of all students in the school. The calculation of adequate yearly progress decisions for LEAs will be conducted consistent with the USDE guidance of February 4, 2004. The progress of all students, regardless of eligibility for Title I services, will be reviewed in adequate yearly progress calculations for the State. All students must participate in the assessment at the school level, even if the school only uses results from students receiving or eligible for Title I services for accountability purposes.

e. Adequate yearly progress for schools without tested grades. When Title I services are provided in grades that are not assessed, an LEA has several options for determining adequate yearly progress:

- Back-mapping the performance of students in the grade assessed to the grades in which services are provided; or
- Forward-mapping by examining the achievement of students who received services once those students are in the grades where assessments are given; or
- Examining the achievement of the students who would have been eligible for Title I services in the grades assessed.

The Department stipulates that it will actively inform schools of their opportunity to invoke the privilege of this provision, draft procedures regarding the administration of this privilege, require schools to submit a written request indicating their desire to exercise this privilege, provide technical assistance and guidance to each school regarding the administration of this privilege, monitor for the correct application of this privilege according to the guidelines set forth within the February 4, 2004 guidance, and maintain records concerning the use of this privilege. An initial review of past assessment data indicates that a limited number of schools would have benefited from the use of this privilege; therefore, the Department anticipates that schools will actively pursue this

privilege in the future, when it is appropriate according to the guidance. Furthermore, the Department commits itself to develop clear procedures and guidance to schools that encourages and simplifies the determination of adequate yearly progress according to this privilege.

The Department respectfully requests that Section 1.2 of the State Accountability Workbook be amended to include this provision.

(5) The restricted extension of a graduation cohort beyond four years, as defined within an individual education program, for students served within provisions of the Individuals with Disabilities Education Act or as provided within a LEP service program for specified LEP students;

The Department of Public Instruction stipulates within Section 7.1 of the North Dakota Accountability Workbook that it has established the graduation rate of each high school as a component for determining adequate yearly progress, as provided within ESEA section 1111. The graduation rate defined within ESEA section 1111 requires the State to report graduates, retentions, and dropouts, within cohorts, in the aggregate and disaggregated by subgroups. The Department reaffirms its commitment to proceed with the determination of adequate yearly progress based on these elements.

The Department of Public Instruction is also mindful of its responsibility to administer the provisions of the Individuals with Disabilities Education Act. Inherent throughout the Act is the paramount importance of schools to provide appropriate instruction to each student with a disability according to the design of that student's unique individual education program. By definition, a student's individual education program sets the course of study for that student, including curriculum, instructional strategy, assessment, service supports, and educational schedule, including anticipated graduation. Within North Dakota law, services to students with disabilities may extend beyond the traditional twelve years up to the age of 21 inclusive. In such circumstances, a student with a disability may properly graduate, according to the dictates of the student's individual education program, at age 21, several years beyond a traditional graduation that, for a typical student, may be completed within four years of entering high school.

To ensure that schools properly exercise their instructional duties according to a student's individual education program, the Department of Public Instruction monitors school's compliance with the provisions of the IDEA, including the proper development and administration of a student's individual education program. The Department monitors graduation rates of all students with disabilities, including those students whose graduation rates extend to age 21. The State provides oversight on all services provided to students with disabilities, including the proper conclusion of their services and the bestowal of graduation at a time prescribed within the student's individual education program.

Given the high educational standards and service schedules set forth within a student's individual education program and the civil rights granted to students with disabilities to receive the full benefit of these standards and service schedules, it is incumbent on the State to offer every support to schools to provide the full benefit of instruction to all students with disabilities, regardless of the duration of their education. It is likewise incumbent on the State to eliminate any barriers that might impede or otherwise deter

schools from properly administering their duties to all students, regardless of disability status. This concern includes the bestowal of graduation on students with disabilities, whose individual education programs require a high school instruction period that extends beyond the traditional four years. Any policy that places pressures on schools to divert their full attention on the needs of students with disabilities must be reviewed and amended accordingly.

It is to this aim, to eliminate any impediment to the proper delivery of high school instruction to some students with disabilities, that the Department of Public Instruction requests the right to extend the graduation date beyond the traditional four years for students with disabilities whose individual education programs identify such a need. The Department requests this extension to better meet the spirit of the Individuals with Disabilities Education Act and to advance a considered policy that encourages the properly paced delivery of instruction for all students with disabilities.

Based on the above stated principles, but uniquely referenced to limited English proficient students, the Department of Public Instruction additionally requests to apply this extended graduation provision for those LEP students identified by a school's LEP service team as requiring additional time to achieve the full benefit of their high school education. Any extended graduation schedule would need to be documented in a service plan for that student, signed by the members of the LEP team, and submitted to the Department as partial confirmation of the request.

The Department stipulates that this privilege of an extended graduation date must be documented within each student's individual education program or LEP service program and that all programs will be monitored for proper compliance, according to monitoring protocols. The Department will require districts to submit evidence of any extension in order to confirm its proper use. The Department will maintain records regarding incidence rates for any such claims; however, no student identifiable reports will be issued. The Department believes it is in the best interest of the educational enterprise for this policy to be adopted.

The Department respectfully requests that Section 7.1 of the North Dakota Accountability Workbook be amended to include this provision.

(6) The redefinition of "small, rural schools" from that set forth within the Small, Rural Schools Grant to that definition established under previous agreement with the U.S. Department of Education for an alternate method to distribute Title I funds.

Recently, the U.S. Department of Education issued guidance regarding the determination of highly qualified teachers, including the granting of special consideration for small, rural school districts in meeting these highly qualified teacher provisions. The guidance granted an extension of an additional year to small, rural districts, as defined by criteria used within the Small Rural Schools Grant (SRSG) Program, to meet the definition of highly qualified teachers.

In order to extend the granting of an additional year to all deserving small, rural districts in a more equitable manner, the Department of Public Instruction seeks to amend the definition of "small, rural schools," as set forth in the State's alternative method to distribute Title I funds and as approved by the U.S. Department of Education.

Throughout the process of establishing the legitimacy of the State's original accountability plan, especially regarding the application of the binomial distribution as a means of ensuring a reliable accountability system, the Department of Public Instruction submitted extensive documentation regarding North Dakota's small, rural demographics. The Department stipulates to the standing of that documentation. As the State proceeds to meet the requirements of the highly qualified teachers definition, small, rural districts encounter the very challenges outlined in the U.S. Department of Education's guidance findings. The U.S. Department of Education has correctly articulated the nature of this challenge (e.g., multiple course loads, limited local supplies of teachers, the need to extend the time to meet all requirements) and positioned a response that will ease some of the pressures unique to small staffs of teachers.

In an effort to accommodate the needs of small, rural schools, the U.S. Department of Education has granted a time extension of one year for those districts that meet the definition of "small, rural" within the Small, Rural Schools Grant Program. By using an already existing definition, based in part on a set population of 600 and rural codes of 7 or 8, the U.S. Department of Education has proposed a desired solution to meet the needs of small, rural schools. This stated formula is a well-intentioned effort, and the Department of Public Instruction expresses its gratitude for extending this formula as an established definition.

The Department of Public Instruction, however, seeks to amend this SRSG formula, because it introduces inequities among districts in North Dakota. Under the SRSG formula, some of the State's smallest districts will be exempted from a time-extension because of their rural designation as either a 7 or 8. This inequity arises from the misfortune of small districts to be too closely located near larger cities. Placement near a larger city does not remove the inherent challenges of a smaller, rural district.

Additionally, the State has sought and received approval to apply an alternative method to distribute Title I, Part A Basic, Concentration and Targeted Grant funds to LEAs with fewer than 20,000 total residents. This approval was originally granted in 1999 and subsequently renewed in 2002 and 2004. This alternative method has effectively provided an alternative definition of small and rural over the years for the purposes of distributing funds. This definition covers all but five of the State's largest districts. This alternative definition of small and rural has served the State well by providing a meaningful measure of what rural means in North Dakota. As stated within the April 10, 2002 letter from Susan Neuman, Assistant Secretary for OESE, regarding the granting of this alternative definition, "Under section 1124A(b) of the statute, North Dakota qualifies as a "small" State...."

The Department of Public Instruction respectfully requests that the U.S. Department of Education recognize that which has already been approved. The small, rural nature of North Dakota has been well documented within past reviews and accommodated for in past policy decisions. The Department of Public Instruction requests that the definition of small, rural contained within the alternative method of distributing Title I funds be applied for the purposes of offering the time-extension for highly qualified teacher requirements. This extension of the definition will remove inconsistencies and inequities and allow for a more well-balance administration of the Act.

On behalf of the North Dakota Department of Public Instruction and, indeed, all the public school districts within the State, I submit this formal request for the amendment of the North Dakota Accountability Workbook and the definition of small, rural schools. I submit this proposal for your considered review and final approval. The Department makes its staff available to address any questions you might have regarding its provisions. I commend the U.S. Department of Education staff for its dedication and diligence in advancing the administration of the Act and making efforts to provide appropriate expression to its many challenging elements among the many educational settings nationwide. I wish you well and look forward to receiving your approval to these requests in the near future.

Sincerely,

Dr. Wayne G. Sanstead
State Superintendent