

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: *CS/SB 691a

52nd Legislature, 1st Session, 2015

Tracking Number: .200660.1

Short Title: Standardized Test Participation Rates

Sponsor(s): Senator Howie C. Morales

Analyst: Carlos Contreras

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**SENATE EDUCATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 691**

AS AMENDED

The Senate Public Affairs Committee amendments:

- **strike all the references to a 95 percent participation rate on student assessments, student or parent surveys or any other measures as they relate to the evaluation system or for any other purpose; and**
- **delete the requirement that the Public Education Department use a department-approved alternative measure for grading public schools and evaluating licensed school personnel in the event that the participation rate on student assessments, student or parent surveys, or other measures is too low to be statistically valid.**

Original Bill Summary:

If enacted, CS/SB 691 will add new sections to the *Assessment and Accountability Act*, the *A-B-C-D-F Schools Rating Act*, and the *School Personnel Act*, to prohibit, during school year 2014-2015 and school year 2015-2016, the Public Education Department (PED) from requiring a 95 percent participation rate for:

- evaluating teachers, public schools, and school districts; or
- any other purpose, including student assessments, student or parent surveys or measures employed in the state's grading system.

Among other points, the bill recognizes that there are a number of legitimate reasons why participation in assessments and surveys may fall below 95 percent; and it indicates that imposing adverse consequences for a lower rate on schools (through their assigned grades) or school personnel (through their evaluations) unfairly penalizes schools and personnel for circumstances beyond their control.

CS/SB 691 also provides contingencies in the event that the participation rate in an assessment, survey, or other measure is too low to be statistically valid. In that case:

- for school grading, PED must use a department-approved alternative measure acceptable to the public school or school district instead of the measure in question; and

- for evaluating licensed school employees, PED must use a department-approved alternative measure instead of the measure in question.

Finally, *CS/SB 691 contains an emergency clause.

Fiscal Impact:

CS/SB 691 does not contain an appropriation.

Substantive Issues:

Applying the 95 Percent Rate

As a consequence of the federal *Elementary and Secondary Education Act* (ESEA), also known as the *No Child Left Behind Act of 2001* (NCLB), schools are required to meet a 95 percent student participation rate on standardized assessments for the subject areas of reading and mathematics.

As part of the state’s federal flexibility waiver, PED has extended the 95 percent participation requirement to its implementation of the *A-B-C-D-F Schools Rating Act* and the *Teacher and School Leader Effectiveness* in PED rule for evaluating school personnel and to student and parent surveys that the federal law does not consider (see “Background,” below).

Partnership for Assessment of Readiness for College and Careers (PARCC)

Language in PED’s *Fall 2014 Procedures Manual* relating to New Mexico’s statewide assessment program provides that a student participation rate lower than 95 percent on the Partnership for Assessment of Readiness for College and Careers (PARCC) assessment and the standards-based assessment in science counts against the A-F school grades.

Student and Parent Surveys

While student and parent surveys are a feature of the Effectiveness Evaluation System (EES) implemented through PED rule, the required participation rate of 95 percent is not prescribed in that rule, only in an email. On February 6, 2015, PED staff sent an email to district and charter school leaders indicating that “there is a 95 percent participation requirement for student and parent surveys, this year and moving forward. If the survey responses for a particular teacher don’t meet the 95 percent requirement, then the teacher will lose points equaling one effectiveness rating.”

PED Rule: Teacher and School Leader Effectiveness

PED rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators. Under this system, a licensed school employee will be rated according to one of five ratings:

1. exemplary;
2. highly effective;
3. effective;
4. minimally effective; or
5. ineffective.

Although “multiple measures,” which include parent and student surveys, account for only 25 percent of an employee’s overall evaluation, the February 2015 email from PED quoted above requires a drop of one effectiveness rating if the response rate falls below 95 percent. Reducing the effectiveness rating in this manner seems to give a disproportionate value to the participation rate.

It should be noted that despite the assertion in the PED analysis that the 95 percent participation rate is a “compromise that must be made to allow reasonable absences such as those cited in the bill,” both the federal Office of Management and Budget (OMB) and the National Center for Education Statistics (NCES) recognize that a 95 percent survey response rate as the optimal statistical standard; however, each agency also recognizes that survey responses often fall below that optimum rate and that the data can still be useful (see “Background,” below).

Background:

On the 95 Percent Rule

Enacted in 2001, NCLB required, among its many provisions, that 95 percent of students shall take state standardized assessments in reading and math. The 95 percent requirement was designed to secure a reliable measure to a school’s adequate yearly progress (AYP). If the school failed to meet targets for AYP, the school was subject to a series of adjustments specified in the act. NCLB did not provide any penalties to failed schools; however, it was left to the states whether to penalize underperforming schools.

In 2012, PED obtained a flexibility waiver for some of the demands of NCLB, including AYP provisions; however, the 95 percent rate requirement remained. In 2014, PED obtained another flexibility waiver and again the US Department of Education (USDE) kept the 95 percent rate requirement. Nonetheless, since AYP was linked to the 95 percent rate requirement, the provision may be irrelevant to measure school and teacher effectiveness.

Recommendations from the Office of Management and Budget and the National Center for Education Statistics on Surveys

According to the OMB’s *Standards and Guidelines for Statistical Surveys*, “agencies must design the survey to achieve the highest practical rates of response, commensurate with the importance of survey uses, respondent burden, and data collection costs, to ensure that survey results are representative of the target population so that they can be used with confidence to inform decisions.” The OMB further recommends a “target unit response rate of at least 95 percent” overall and for each major stratum; if the rate falls below 85 percent, the surveyor should “conduct an evaluation of the potential bias” for which OMB offers a formula. OMB’s guidelines offer another formula for calculating non-response bias in the event that the survey response rate falls below 80 percent; if the response rate falls below 70 percent, yet other procedures apply.

Likewise, the NCES document *Statistical Standards* indicates that data collections “must be designed to meet a target unit response rate of at least 95 percent.” The standards further state that a “non-response bias analysis is *recommended* in the case where the response rate is less than 90 percent” (emphasis in the original). The NCES recognizes that lower response rates can be acceptable. The *Statistical Standards* further establishes certain parameters that “represent a balance between recent NCES historical experiences and in some cases design targets that are deemed minimally acceptable,” among them:

- for longitudinal sample surveys, the target school-level unit response rate should be at least 70 percent;
- for household sample surveys, the target rate for respondents should be at least 85 percent; and
- for assessments, the target response rate should be at least 80 percent for schools and at least 85 percent for students.

Finally, with regard to the well-known Schools and Staffing Survey, the *NCES Handbook of Survey Methods* reports the following overall response rates of public school teachers in schools that provided teacher lists for sampling:

- in school year 1993-1994: 83.8 percent;
- in school year 1999-2000: 83.1 percent;
- in school year 2003-2004: 75.7 percent; and
- in school year 2007-2008: 84 percent.

A-B-C-D-F Schools Rating Act

Enacted in 2011, the *A-B-C-D-F Schools Rating Act* created a new public school accountability system that, beginning in school year 2011-2012, was to operate in addition to, and separate from, the AYP system created in state and federal law. Among its provisions, the schools rating act requires that:

- all public schools be graded annually on an A-F scale;
- the rating scale for elementary and middle schools include factors such as student proficiency, including achievement on the New Mexico Standards-Based Assessments, as well as growth of the lowest 25th percentile of students;
- the rating scale for high schools include additional academic indicators such as high school graduation rates and growth in those grades;
- parents of a student in a public school rated F for two of the last four years have the right to transfer the student to any public school in the state or continue schooling through the statewide cyber academy; and
- PED ensure that a local school board or charter school governing body is prioritizing the resources of a public school rated D or F until the school earns a grade of C or better for two consecutive years.

An additional provision in the *A-B-C-D-F Schools Rating Act* specifies that a **standards-based assessment** administered annually pursuant to the *Assessment and Accountability Act* is **to be used for rating schools**.

The Bureau of Indian Education schools, private schools, and home schools are exempt from the school grading requirements.

PED Rule on Teacher and School Leader Effectiveness

Adopted in August 2012 and amended in September 2013, the PED rule, *Teacher and School Leader Effectiveness*, implements an evaluation program for public school teachers and administrators called the Effectiveness Evaluation System (EES).

As noted in its provisions, the department rule establishes uniform procedures for:

- conducting annual evaluations of licensed school employees;
- setting the standards for each effectiveness level;
- measuring and implementing student achievement growth; and
- monitoring each school district’s implementation of its teacher and school leader effectiveness evaluation system.

Partnership for Assessment of Readiness for College and Careers (PARCC)

In September 2010, the USDE announced that two testing consortia – the Partnership for Assessment of Readiness for College and Careers (PARCC) and the Smarter Balanced Assessment Consortium (SBAC) – would receive a total of \$330 million in Race to the Top Assessment Program funding “to develop a new generation of tests” that would be “aligned to the higher standards that were recently developed by governors and chief state school officers.” Although initially a member of the SBAC in 2010, New Mexico joined the PARCC testing consortium in 2011. The PARCC exam is scheduled to be administered for English/language arts and mathematics in school year 2014-2015.

Committee Referrals:

SEC/SPAC

Related Bills:

- SB 196 *Discontinue Common Core Standards*
- SB 217 *Individual Choice on Some School Tests*
- SB 328 *Graduation Standards to School Boards*
- SB 570 *Standards-Based Content Standards & Delay*
- HB 15 *Limit School Days for Statewide Tests*
- CS/CS/HB 144 *Teacher & School Leader Effectiveness Act*
- HB 145 *Graduation Standards to School Boards*
- HB 156a *Innovations in Teaching Act*
- HB 177 *Common Core Implementation Standards*