

**LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS**

Bill Number: HB 165

52nd Legislature, 1st Session, 2015

Tracking Number: .198340.1

Short Title: Remove AYP References in School Code

Sponsor(s): Representative Dennis J. Roch and Others

Analyst: Kevin Force

Date: January 28, 2015

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

Bill Summary:

HB 165 would amend multiple sections of law by removing references to adequate yearly progress (AYP) requirements and adding a new section regarding Public Education Department (PED) reports to the Legislature.

Specifically, HB 165:

- in **Sections 1-3**, removes references to AYP and AYP-related programs in the *Public School Code* sections addressing:
 - “Legislative Findings and Purpose”;¹
 - “Definitions”;² and
 - “Open Enrollment,”³ in which reference to students enrolled in a school that “needs improvement” or is “subject to corrective action” is changed to refer instead to students enrolled in schools “rated ‘F’ for two of the prior four years, pursuant to the *A-B-C-D-F School Ratings Act*”;
- in **Section 4**, adds a new section to the *Assessment and Accountability Act*, beginning at the end of 2015 and following each calendar year thereafter, that would require PED to report to the Legislative Education Study Committee (LESC) the department’s recommendations for changes to law to comport with applicable federal requirements;
- in **Sections 5-14**, removes references to AYP and AYP-related programs in:
 - the *Assessment and Accountability Act*;
 - the *Charter School District Act of 2005*;
 - the *School Personnel Act*; and
 - the *Hispanic Education Act*;

¹ 22-1-1.2(D)(4) NMSA 1978

² 22-1-2(B) NMSA 1978

³ 22-1-4(E)(3)(b) NMSA 1978

- in **Section 11**, changes references to “general educational development certificate” to “high school equivalency credential,” reflecting statutory changes accomplished by Laws 2014, Chapter 31, Section 2;⁴ and
- in **Section 15**, repeals several sections of the *Assessment and Accountability Act*,⁵ regarding:
 - procedures for schools in need of improvement, based on AYP;
 - procedures for failing schools to be reorganized and opened as state-chartered charter schools; and
 - provisions addressing the creation of the “Alternative School Accountability System Pilot Project.”

Further, HB 165:

- makes technical changes throughout by replacing outdated references to the “state board” and “state superintendent with references to the “[public education] department” and “secretary of public education” respectively; and
- removes an outdated reference to standards-based assessments in social studies.

Fiscal Impact:

HB 165 does not contain an appropriation.

Substantive Issues:

In the 2011 regular session, the Legislature passed, and the Governor signed, the *A-B-C-D-F School Rating Act*,⁶ after which PED promulgated rules⁷ for the administration of the Act. In 2012, the US Department of Education (USDE) offered states the option of flexibility with regard to multiple sections and requirements of the *Elementary and Secondary Education Act* (ESEA)⁸ including waivers from provisions:

- requiring states and districts to make AYP determinations for schools and school districts when it would be inconsistent with the state-developed system of differentiated recognition accountability and support under the flexibility program, which in New Mexico is the *A-B-C-D-F School Rating Act*;
- requiring the establishment of annual measurable objectives (AMOs) for determining AYP, so that the state could, instead, develop its own new measures of determining progress for schools, accomplished through the requirements of the *A-B-C-D-F School Rating Act*;
- requiring identification of schools that failed to achieve AYP for two consecutive years as “in need of improvement, corrective action, or restructuring”;
- requiring states to identify school districts that failed to achieve AYP for two consecutive years as “in need of improvement or corrective action”;

⁴ Laws 2014, Chapter 31, Section 2 was a temporary provision mandating that all references in law to a number of cited terms, including “general educational development certificate,” be deemed to mean “high school equivalency credential.”

⁵ §§ 22-2C-7, 22-2C-7.1 and 22-2C-12

⁶ Chapter 22, Article 2E NMSA 1978

⁷ Title 6, Chapter 19, Part 8 NMAC

⁸ The *No Child Left Behind Act* of 2001 (NCLB) is the 2001 reauthorization of ESEA.

- limiting participation in the Small Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs to those qualifying schools that make AYP;
- requiring states to distribute Title I funds to schools identified as in need of improvement, corrective action, or restructuring, so that, instead, the state could distribute these funds to any school identified as “priority”⁹ or “focus”¹⁰ schools, as determined by the *A-B-C-D-F School Rating Act* (see “Background,” below); and
- allowing states to award reserve Title I funds to schools that exceeded AYP for two consecutive years, so that, instead, the state might distribute these funds to any schools identified as “reward” schools, under the *A-B-C-D-F School Rating Act*.

With the passage of the *A-B-C-D-F School Rating Act*, and participation in the ESEA flexibility program, New Mexico public schools were subject to two sets of requirements for measuring annual progress: (1) the new A-F system that satisfies new federal requirements, and (2) AYP, under state law in the *Assessment and Accountability Act*.

For school year 2011-2012, it was appropriate that AYP still be calculated, as PED’s rules implementing the A-F system prevented any school from receiving a lower grade than a “C” if that school had met AYP for that year.

If enacted, HB 165 would repeal the requirements of AYP in state law.

Background:

Enacted in 2003, the *Assessment and Accountability Act’s* stated purposes included compliance with federal accountability requirements; central to those requirements at the time was AYP. Among its provisions, the act:

- required the State Board of Education, the predecessor in interest to PED, to adopt content and performance standards for grades 1-12 in:
 - mathematics;
 - reading and language arts;
 - science; and
 - social studies;
- directed the department to measure the performance of every public school in New Mexico, with those schools achieving the greatest improvement being eligible for supplemental funding;
- directed the department to establish a statewide assessment system aligned with state academic content and performance standards;
- required the establishment of a college- and workplace-readiness assessment system;
- directed the department to adopt the process and methodology for calculating AYP, including directives to measure AYP by school and by various demographic subgroups;
- required school boards to approve school-district-developed remediation programs;

⁹ A “priority school” is a school that has been identified as being among the lowest-performing schools in the state. The number of schools identified as priority schools in the state must be equal to at least 5.0 percent of the Title I schools in the state.

¹⁰ A “focus school” is a Title I school in the state that is “contributing to the achievement gap.” The number of schools identified as focus schools must be equal to at least 10 percent of the Title I schools in the state.

- aligned AYP determinations used to identify schools in need of “improvement, corrective action, or restructuring” with federal standards, as well as outlining program requirements for the several categories;
- required the department to institute supplemental funding programs for schools showing the greatest improvement;
- created the “Incentives for School Improvement” and “Schools in Need of Improvement” funds; and
- directed the department to establish an AYP reporting system.

ESEA Flexibility

In September of 2011, US Secretary of Education Arne Duncan published an open letter to all State Chief School Officers, inviting them to request flexibility from the requirements of the *No Child Left Behind Act of 2001* (NCLB). New Mexico’s successful application for flexibility proceeded through the following timeline:

- on **September 23, 2011**, Secretary Duncan published a letter to Chief State School Officers offering the opportunity to request flexibility from some of the requirements of the ESEA;
- on **November 14, 2011**, Secretary-designate of Public Education Hanna Skandera submitted a formal request for ESEA flexibility on behalf of New Mexico;
- in **December 2011** and **February 2012**, a seven-member peer panel reviewed New Mexico’s flexibility request and drafted notes detailing what they considered to be deficiencies in New Mexico’s request;
- on **December 20, 2011**, Acting Assistant Secretary of Education Michael Yudin responded to New Mexico’s request with a letter that rejected the initial flexibility request, noting a number of concerns expressed in the Peer Panel Review Notes regarding issues that required further development;
- on **February 15, 2012**, New Mexico’s amended and improved flexibility request was submitted, and a list of key improvements made by New Mexico to its initial request was published by USDE;
- on **February 22, 2012**, USDE released a letter confirming approval of New Mexico’s request and providing additional information regarding how to implement the request and meet the related obligations;
- on **April 23, 2012**, USDE offered states the opportunity to apply for two additional waivers regarding AYP reporting and Title I Part A “rank and serve” funding;
- on **April 27, 2012**, PED released a public notice stating its intention to apply for these additional waivers;
- on **June 15, 2012**, USDE approved New Mexico’s request for these two waivers;
- during **October 2012**, Part A of New Mexico’s Monitoring Report was conducted, wherein most of New Mexico’s work to implement most of the requirements of ESEA flexibility vis-à-vis AYP and school grading was approved, although “Next Steps” were required for:
 - monitoring priority schools that were not under School Improvement Grants (SIGs); and
 - PED holding local educational agencies (LEAs) accountable for improving school and student performance and turning around priority schools by submitting to USDE the time frame for identification of relevant LEAs, as well as their respective status;

- on **February 26, 2013**, New Mexico submitted to USDE amendments to the Principal 3 component of the state flexibility request (Teacher and School Leader Evaluation);
- during **November 2013**, Part B of New Mexico’s Monitoring Report was conducted, where “Next Steps” were required for a number of elements of New Mexico’s flexibility, but all of which were resolvable by the submission to USDE of an amended flexibility request, updating the methods and responses New Mexico proposed to employ in order to satisfy program element; and
- **November 14, 2014**, New Mexico amended its flexibility request to reflect updated elements of Principal 3 requirements.

Like other states participating in the program, New Mexico was required to establish its own differentiated system of recognition, accountability, and support, and to set school growth targets,¹¹ based on educationally sound rationale. PED designated the A-F School Grading Program as New Mexico’s accountability system.

Under ESEA flexibility, New Mexico:

- must set ambitious but achievable AMOs in language arts and mathematics;¹²
- must employ the A-F School Grading Program to identify Title I schools that are to be considered “priority,” “focus,” and “reward” schools;¹³
- may allow SRSA and RLIS program funds to be used for any authorized purpose by a participating school, whether the school makes AYP or not;
- may allot funds reserved for schools in need of improvement, corrective action, or restructuring to any priority or focus school;
- may allot funds reserved for schools that have significantly closed the achievement gap between school subgroups or exceeded AYP for two consecutive years to any reward school; and
- may award School Improvement Grant funds to any priority school.

Committee Referrals:

HEC

Related Bills:

- HB 15 *Limit School Days for Statewide Tests*
- HB 129 *Clarify School Test Individual Choice*
- HB 144 *Teacher & School Leader Effectiveness Act*
- SB 127 *Development of End-of-Course Tests by Teacher*
- SB 196 *Discontinue Common Core Standards*
- SB 203 *Certain Students Tested in Native Language*
- SB 205 *Delay Use of Certain Test in Teacher Evals*

¹¹ The USDE’s term for “school growth targets,” or SGTs is annual measurable objectives or AMOs.

¹² In New Mexico, “AMOs” are referred to as SGTs.

¹³ “Reward schools” are defined in the waiver provisions as “highest-performing schools” or “high progress schools.”