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## Review of Repealed Statutory School Improvement Framework

In 2002, Congress passed the federal No Child Left Behind Act (NCLB), a reauthorization of the Elementary and Secondary Education Act (ESEA) that focused on holding schools accountable for setting high standards and improving student performance. NCLB required states to set a baseline student proficiency level in 2002 and create benchmarks of adequate yearly progress (AYP) toward a goal of 100 percent of students proficient by the spring of 2014. Schools that failed to meet annual proficiency targets pursuant to AYP for at least two consecutive years would be required to develop school improvement plans describing how they would address student underperformance. It became clear within a number of years that states would not meet that ambitious goal; the Obama administration granted waivers on certain provisions of NCLB to many states, including New Mexico, that showed some growth but continuously struggled to meet AYP.

In 2015, NCLB was replaced with the Every Student Succeeds Act (ESSA), a reauthorization of ESEA that holds states accountable for setting high standards, but gives states more control over how progress toward those goals are measured. Under ESSA, states are no longer required to use only student proficiency to show progress, but may use any number of metrics within a state-developed accountability system to identify schools for support and improvement. Similar to NCLB, ESSA requires schools that continuously underperform to develop a plan describing how the school will address the underperformance.

Though ESSA still requires schools in need of improvement to develop plans to address student performance, the New Mexico Legislature recently eliminated the Public Education Department's (PED's) statutory authority to require and enforce school improvement plans. Laws 2015, Chapter 58 (House Bill 165), which was endorsed by LESC and unanimously supported throughout the legislative process, eliminated a section of law that provided for school improvement plans required by NCLB. Laws 2015, Chapter 58 repealed Section 22-2C-7 NMSA 1978, which contained statutory authority for schools and school districts to develop school improvement plans and for PED to enforce those plans. See **Attachment 1, Section 22-2C-7 NMSA 1978, Repealed by Laws 2015, Chapter 58**. Section 22-2C-7 NMSA 1978 outlined processes by which schools would be identified as schools in need of improvement and could apply for financial and technical assistance from PED. The repealed statute also defined corrective actions PED was authorized to take in schools that failed to

Under NCLB, states were responsible for developing criteria that would constitute adequate yearly progress, or AYP. AYP included annual proficiency targets on the statewide academic assessment, as well as a measurement of graduation rates for high schools and an additional indicator of the state's choosing for elementary and middle schools. Additionally, a school had to test 95 percent of its students to meet AYP.

Because states were required to show progress toward a goal of 100 percent proficiency, AYP was criticized for offering an incentive to states to set lower standards to increase proficiency rates. AYP was eliminated with the adoption of ESSA.

PED identified the following schools for more rigorous interventions to begin in the 2018-2019 school year:

*Albuquerque Public Schools:*

- Hawthorne Elementary School
- Los Padillas Elementary School
- Whittier Elementary School

*Dulce Independent School District:*

- Dulce Elementary School

improve as a result of the plans, including provisions for replacing staff, extending the school day or year, and changing the school's internal organizational structure.

In the absence of a statutory framework for school improvement plans, PED relied on New Mexico's ESSA state plan, which states "PED will consider school performance in the 2016-2017 school year in making determinations about the immediate application of more rigorous interventions" as the basis for requiring four schools to submit plans for more rigorous interventions for the 2018-2019 school year. However, the PED-authored ESSA state plan is not law; it is a description of how New Mexico intends to comply with federal statutes to continue to receive Title I funding.

In February 2018, PED issued a request for applications for federal school improvement funding to the four schools designated for more rigorous interventions, asking the schools to provide detailed plans and budgets explaining how they would improve school leadership, staff hiring and professional development, and school curricula and instruction. PED rejected all four plans initially and sent a series of letters containing new guidance and consequences for noncompliance that were not present in the initial request for applications nor based on any statutory authority. During the May LESC meeting, Albuquerque Public Schools staff explained the school district's frustrations with amending the plans to meet PED requirements which continued to change significantly with each subsequent letter from the department.

Without a legal framework to authorize certain department action, PED can require school districts to complete plans as a matter of compliance for federal school improvement grants, but the department does not appear to have the statutory authority to intervene in schools or mandate the schools to take any specific action. To create a consistent set of expectations for schools, school districts, and PED, the Legislature should consider reinstating a framework for school improvement plans that complies with the requirements of ESSA. A review of Section 22-2C-7 NMSA 1978 shows the repealed statute contains multiple requirements that remain relevant and could lay a foundation for a new school improvement law.

## School Improvement Plans as Provided by Law, 2003 to 2015

***Identification of Schools in Need of Improvement.*** The repealed Section 22-2C-7 NMSA 1978 was designed to closely mirror the requirements of NCLB; schools that failed to meet AYP for two or more consecutive years were identified as schools in need of improvement and required to submit school improvement plans and offer additional programs and student supports. The repealed law classified schools in need of improvement in one of five categories based on how many consecutive years the school failed to meet AYP:

- School Improvement 1 after two years failing to meet AYP;
- School Improvement 2 after three years failing to meet AYP;
- Corrective Action after four years failing to meet AYP;
- Restructuring 1 after five years failing to meet AYP; and
- Restructuring 2 after six years failing to meet AYP.



Each tier of intervention contained a group of supports designed to address a school's performance that increased in rigor and severity if the school continued to fail to meet AYP. A school in School Improvement 1 that failed to meet AYP would move to School Improvement 2, and would continue to escalate in tiers of intervention until the school could meet AYP for two consecutive years. If it could not do so, the school would be completely restructured by PED and the school district. If a school in need of improvement met AYP, it would not change classification for one year, and if it met AYP a second consecutive year, it would exit school improvement status.

***School Improvement Plans.*** Under the repealed law, schools and school districts were required to collaborate and submit a school improvement plan to PED within 90 days of being notified a school was in need of improvement. The local school board was required to approve the school improvement plan before submission to PED, and the department was required to approve the plan within 30 days of its submission. School improvement plans were required to contain:

In developing a school improvement plan, the school and school district were required to hold a public meeting to consult with parents and the public about strategies to improve the public school.

- Documentation of the performance measures in which the school failed to meet AYP;
- Measurable objectives to indicate the action that will be taken to address the failed measures;
- Benchmarks used to indicate progress in meeting academic content and performance standards;
- An estimate of the time and resources needed to achieve each objective in the plan;
- The support services that shall be provided to students;
- Any applications that have been made for federal and state funds; and
- Any other information that the school, the superintendent, the local school board, or PED deemed necessary.

### **Supports for Schools in Need of Improvement as Provided by Law, 2003 to 2015**

In addition to the submission and execution of a school improvement plan, the repealed Section 22-2C-7 NMSA 1978 included additional interventions required by NCLB for schools in need of improvement. The supports and interventions authorized by the repealed law closely mirrored the requirements of the federal law and were designed to gradually increase PED's authority to intervene in a failing school if the school showed a sustained need for improvement.

While school improvement plans were designed and implemented locally, the repealed statute gave PED increasingly more control over the staff, curricula, and structure of schools in Corrective Action and Restructuring.

***Financial and Technical Assistance.*** The repealed law contained a clear intent to support schools in need of improvement with financial and technical assistance as they implemented their school improvement plans. Under the repealed law, a school completing a school improvement plan was authorized to apply to PED for financial and other assistance to execute its plan. PED was responsible for evaluating applications and could recommend changes to applications and school improvement plans. PED was also responsible for considering innovative methods to assist schools in need of improvement in implementing their plans, including using PED staff to serve as "mobile assistance teams" to provide administrative, classroom, human resource, and other assistance.

Under the repealed law, PED had discretion to require schools in School Improvement 1 or 2 to also employ any of the corrective actions listed in the Corrective Action tier of support.

**School Improvement 1 and 2.** Schools that failed to meet AYP for two consecutive years were placed in School Improvement 1. In addition to completing a school improvement plan, School Improvement 1 required schools to provide or pay for the transportation of students who chose to enroll in a higher ranked public school. After a third consecutive year failing to meet AYP, NCLB required schools to offer “supplemental educational services” to students. The repealed law classified these schools in School Improvement 2, requiring the school to also provide after-school programs, tutoring, and summer services, within available funding.

**Corrective Action.** Schools that failed to meet AYP for four consecutive years were placed in Corrective Action. The specific actions defined in the repealed law gave PED more authority to assist a school district in making structural changes to a school in Corrective Action. School districts and PED were required to take one or more of the following actions:

The school district and PED were prohibited from entering into contracts with private entities for the management of any of a school’s corrective actions.

- Replace staff as allowed by law;
- Implement a new curriculum;
- Decrease management authority of the public school;
- Appoint an outside expert to advise the public school;
- Extend the school day or year; or
- Change the public school’s internal organizational structure.

Section 22-2C-7.1 NMSA 1978, also repealed by Laws 2015, Chapter 58, included procedures by which a school district could recommend reopening a school as a state-chartered charter school.

**Restructuring 1 and 2.** After its fifth consecutive year failing to meet AYP, a school in need of improvement was required to begin planning for restructuring. After its sixth year of failing to meet AYP, consistent with the federal law, the repealed statute required the school district and PED to take one or more of the following actions:

- Recommend reopening the school as a state-chartered charter school as provided by law;
- Replace all or most of the staff as allowed by law;
- Turn over management of the school to PED; or
- Make other governance changes.

## Support and Intervention Required by ESSA

To continue to receive Title I funding, ESSA still requires identification and support of schools in need of improvement. Unlike NCLB, which required states to use AYP and proficiency on the statewide assessment to identify schools in need of improvement, ESSA allows states to use their own accountability system to identify two types of schools:

ESSA states a school that fails to exit CSI status after a state-determined number of years will become subject to “more rigorous state-determined action, such as the implementation of interventions,” but the federal law itself does not contemplate a third tier of support and intervention.

- Targeted support and improvement (TSI), or schools with at least one subgroup of students that consistently underperforms. Local education agencies (LEAs) must independently develop and monitor a turnaround plan with little intervention from the state education agency (SEA); and
- Comprehensive support and improvement (CSI), or schools that underperform overall. LEAs are required to develop a school turnaround



plan to improve student outcomes, and the SEA is required to approve and periodically monitor the plan and provide technical assistance and financial support for the duration of the plan's implementation.

Instead of using the longevity of a school's need for improvement, e.g. repeated years of failing to meet AYP, ESSA identifies schools for support using the pervasiveness of a school's need for improvement, e.g. whether one subgroup is underperforming or whether the school is underperforming overall. The Legislature may wish to consider a school improvement framework to mirror the federal framework, allowing local control where appropriate but requiring more rigorous supports in schools that have systemic student performance issues. This type of framework is currently contemplated in New Mexico's ESSA state plan, but is not codified in statute, which has led to issues in PED's authority to require and enforce school improvement plans.

### New Mexico's ESSA State Plan

Pursuant to New Mexico's ESSA state plan, PED will designate schools for TSI or CSI once every three years using overall points scored in the school grading system. For the three year period from FY19 through FY21, PED identified 111 TSI schools with one student subgroup scoring below 26.6 overall points in the school grading system, and 86 CSI schools, 34 of which were in the lowest 5 percent of Title I schools and 52 high schools with a graduation rate below 67 percent.

PED can amend New Mexico's ESSA state plan at any time and submit changes to the United States Department of Education for approval.

The supports listed in New Mexico's ESSA state plan are similar to those required in the repealed school improvement law. TSI schools, at the lowest tier of support, are required to work with their school district to submit a New Mexico Data Accountability, Sustainability, and High Achievement (NM DASH) 90-day plan. If the underperforming subgroup shows a sustained need for improvement after three years of targeted support, the school will move into CSI. CSI schools can choose from four supports with more intervention from PED: NM DASH Plus, state-sponsored school-based interventions like principals pursuing excellence (PPE), an application for a competitive Title I grant for school improvement, or a high school transformation partnership with PED.

The CSI options indicated in the state plan are not as drastic as the corrective actions included in the repealed law. Namely, CSI schools are not automatically subject to staff replacement, new curricula, or organizational restructuring. However, it is possible for a school to be placed directly in CSI without first being in TSI, meaning immediate drastic measures may not be appropriate at CSI schools.

New Mexico's ESSA state plan only briefly contemplates a third tier of support for schools requiring "more rigorous interventions." If a school fails to improve after three years as a CSI school, it will become subject to more rigorous interventions, a tier of intervention that includes closure of the school, restarting the school as a charter school, championing and providing choice to the students at the school, or significantly restructuring and redesigning the school. These interventions represent a combination of the repealed law's Corrective Action and Restructuring tiers of support.

## Examples of School Improvement Laws in Other States

***School Improvement in Tennessee.*** The Tennessee Code authorizes the state to intervene in and support the lowest performing 5 percent of schools and all high schools failing to graduate one third of their students, which the state calls "priority

Section 49-1-602 of the Tennessee Code also authorizes school districts to create “innovation zones” within the school district. Upon approval of the Tennessee commissioner of education, school districts can create a plan to allow schools maximum autonomy over financial, programmatic, and staffing decisions under the oversight of a district-appointed innovation leader.

Mississippi signed into law a similar Achievement School District in 2016, where schools that receive an F rating for two years become a part of a statewide district controlled by the state superintendent of education.

The North Carolina school improvement law states “it is the intent of the General Assembly that parents, along with teachers, have a substantial role in developing school improvement plans. To this end, school improvement team meetings shall be held at a convenient time to assure substantial parent participation.”

schools.” The statute also gives the Tennessee Department of Education (TDOE) general authority to require and enforce “aggressive plans for corrective action.”

The Tennessee ESSA state plan describes how the state will place priority schools on one of several tracks based on the longevity of the school in priority status. Priority schools are placed on one of several school turnaround “tracks” with increasing levels of state intervention. After one year of poor performance, schools are placed on Delta track and become responsible for creating a plan containing district-led evidence-based interventions. If schools are identified as priority schools twice but show some evidence of improvement, they are placed on the Beta track, and work in tandem with TDOE to develop personalized supports. Schools can move from the Beta track to the highest tier of support, the Alpha track, or can be placed directly in the highest tier after two years of being ranked among the highest priority schools. The highest priority schools on the Alpha track will be transitioned to a statewide school district known as the “Achievement School District” (ASD). Schools in ASD are controlled by proven school operators, most of which run successful charter schools in the state. The head administrator of ASD is authorized to take drastic actions to improve school performance, including making staffing decisions at the schools and issuing waivers for any laws that the administrator believes have prevented the school from demonstrating high achievement.

***School Improvement in North Carolina.*** State laws in North Carolina require schools that receive a single year of a D or F school grade to author a school improvement plan and post it publicly on the school’s website. North Carolina requires local boards of education to verify that each school earning a D or F has created a “school improvement team,” made up of the principal and representation of assistant principals, teachers, instructional support personnel, and parents. The law defines the responsibilities of each member of a school improvement team, then continues to list required strategies the plan must address, including school safety and student discipline practices, budget flexibility, effective instruction, instructional planning time for all teachers, elimination of reporting requirements, and streamlined school systems. School improvement plans remain in effect for no more than two years, at which point they must be revised and reapproved if the school continues to earn a D or F in subsequent years. North Carolina statutes also include a framework for holding school districts accountable if the majority of a school district’s schools earn a D or F. These school districts would become responsible for authoring a strategic plan to improve these schools’ performance at the district governance level.

## Elements of a Framework for School Improvement

Upon staff examination of the repealed framework for school improvement and the requirements of ESSA, common elements of a strong framework for school improvement emerge. At a minimum, LESC may wish to consider a framework for school improvement that includes the following criteria.



***Clear Metrics for the Identification of Schools in Need of Support.*** ESSA requires states to develop an accountability system to identify TSI and CSI schools, but gives states broad deference in how the accountability system accomplishes this. New Mexico’s ESSA state plan explains that schools with a subgroup of students scoring below a point threshold equal to the lowest performing 5 percent of schools will be identified as TSI, and schools that score below that same point threshold overall will be identified as CSI schools. Schools that show a sustained need for improvement after three years of TSI will move to CSI, and schools that continue to need improvement after three years of CSI will be subject to more rigorous interventions. However, the basis for this identification is not codified in law; a statutory framework for school improvement plans should contain consistent indicators of school underperformance.

Without clear and consistent statutory metrics for identifying schools in need of improvement, PED made an arbitrary determination based on New Mexico’s ESSA state plan to designate four schools with five to six consecutive school grades of F for more rigorous interventions in the 2018-2019 school year.

***A Hierarchy of Support with Increasing State Control.*** Some schools require more support than others; there are several factors that should be considered to determine how resources are allocated to these schools. NCLB and the repealed state law considered the longevity of a school’s need for improvement to determine how much support the school needed, and while ESSA makes some mention of longevity for the application of more rigorous interventions, it primarily considers the pervasiveness of the underperformance of the school to determine how much support the school needs. ESSA also notes persistent underperformance after several years of support should lead to “more rigorous state-determined action.” The Legislature may wish to consider a hierarchy of support that considers both the longevity and the pervasiveness of a school’s underperformance. The tiers should define TSI and CSI schools at a minimum to remain compliant with ESSA, but are not prohibited from including additional tiers or sub-tiers of support like the more rigorous interventions contemplated in the ESSA state plan.

***Types of Support to Be Offered.*** If schools in need of improvement are to be identified based on how much support they need, the types of support offered to schools in each tier should be appropriate for that tier. Both the repealed state law and ESSA seem to promote local control during the early stages of intervention with the state agency gaining more control after sustained underperformance. The repealed law allowed PED and school districts to take corrective action to require staffing or instructional changes after four years in need of improvement, while New Mexico’s ESSA state plan appears combine the Corrective Action and Restructuring tiers as “significantly restructuring and redesigning” the school as a more rigorous intervention after at least three years of support. To provide schools and school districts with consistent expectations, the law should clearly delineate types of support and intervention to be offered at each tier, including the authority of PED to close a school.

New Mexico’s ESSA state plan does not go into detail about what types of supports will be given to schools in need of more rigorous interventions and the lack of a legal framework for more rigorous interventions has caused complications throughout the development of plans for the four schools identified for more rigorous

***Exit Criteria.*** Finally, the framework should identify how a school can exit school improvement status if its performance improves. The repealed law allowed a school to exit from school improvement status after two consecutive years of meeting AYP. New Mexico’s ESSA state plan states schools will exit TSI and CSI at the end of their

three-year period of support if the schools elevate their performance above the cutoff for the lowest 5 percent of Title I schools. However, the exit criteria given to the four schools undergoing more rigorous interventions is inconsistent with TSI and CSI schools; according to correspondence between the four schools and PED, if those schools receive a school grade of C for three consecutive years, schools will be able to exit more rigorous interventions. A legal framework should create consistent exit criteria for all schools undergoing interventions to better communicate the expectations for schools in need of improvement.



**22-2C-7. Adequate yearly progress; school improvement plans; corrective action; restructuring.**

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be identified as a school in need of improvement. A school in need of improvement shall be ranked as:

- (1) school improvement 1;
- (2) school improvement 2;
- (3) corrective action;
- (4) restructuring 1; or
- (5) restructuring 2.

B. Within ninety days of being notified that a public school within the school district has been identified as a public school in need of improvement, the school district shall submit an improvement plan for that public school to the department. In developing the improvement plan, the local superintendent, the president of the local school board and the school principal of the public school in need of improvement shall hold a public meeting to inform parents and the public of the public school's rank. The meeting shall be used to elicit suggestions from parents and the public on how to improve the public school. After the public meeting, the school district shall develop the public school's improvement plan, and the local school board shall approve the improvement plan before it is submitted to the department. The improvement plan shall be approved by the department within thirty days of its submission.

C. The improvement plan shall include:

- (1) documentation of performance measures in which the public school failed to make adequate yearly progress;
- (2) measurable objectives to indicate the action that will be taken to address failed measures;
- (3) benchmarks to be used to indicate progress in meeting academic content and performance standards;
- (4) an estimate of the time and the resources needed to achieve each objective in the improvement plan;
- (5) the support services that shall be provided to students;
- (6) applications that have been made for federal and state funds; and
- (7) any other information that the public school that needs improvement, the local superintendent, the local school board or the department deems necessary.

D. A public school in need of improvement may apply to the department for financial or

other assistance in accordance with the improvement plan. The public school shall make application for assistance substantially in the form required by the department. The department shall evaluate applications for assistance and may recommend changes to an application or to an improvement plan if warranted by the final application. The department shall consider innovative methods to assist the public school in meeting its improvement plan, including department or other school employees serving as a mobile assistance team to provide administrative, classroom, human resource and other assistance to the public school that needs improvement as needed and as provided in applications approved by the department.

E. If a public school has failed to make adequate yearly progress for two consecutive school years, it shall be placed in school improvement 1 and shall provide transportation or pay the cost of transportation, within available funds, for students who choose to enroll in a higher ranked public school.

F. If a public school has failed to make adequate yearly progress for three consecutive school years, it shall be placed in school improvement 2 and shall provide supplemental services, including after-school programs, tutoring and summer services to its Title I-eligible students, within available funds.

G. The department shall adopt rules that govern the priority for students for whom supplemental services shall be provided and for students for whom transportation costs are paid. The rules shall include the adoption of a sliding-fee schedule based on the educational level of tutors in New Mexico and the establishment of a range of rates that providers may charge and the rules shall require that providers use a pre- and post-assessment instrument approved by the department to measure the gains that students achieve through supplemental services.

H. The department shall also adopt rules requiring that in its application, each provider of supplemental educational services include documentation, as prescribed by the department, that the tutoring services to be offered are consistent with the instructional program offered by the school district or charter school whose students the provider intends to serve. The department may consult with the school district or charter school to determine whether an applicant has met this requirement.

I. If a public school has failed to make adequate yearly progress for four consecutive school years, it shall be placed in corrective action and the school district, in conjunction with the department, shall take one or more of the following actions in addition to earlier improvements:

- (1) replace staff as allowed by law;
- (2) implement a new curriculum;
- (3) decrease management authority of the public school;
- (4) appoint an outside expert to advise the public school;
- (5) extend the school day or year; or
- (6) change the public school's internal organizational structure.

J. If a public school has failed to make adequate yearly progress for five consecutive school years, it shall be placed in restructuring 1 and shall continue the improvement measures implemented pursuant to Subsections B through I of this section and begin planning for restructuring of the public school if it fails to make adequate yearly progress in the sixth year.

K. If a public school has failed to make adequate yearly progress for six consecutive years, it shall be placed in restructuring 2. The school district, in conjunction with the department, shall take one or more of the following actions in addition to other improvements:

- (1) recommend reopening the public school as a state-chartered charter school as provided in Section 22-2C-7.1 NMSA 1978;
- (2) replace all or most of the staff as allowed by law;
- (3) turn over the management of the public school to the department; or
- (4) make other governance changes.

L. A school district that has failed to make adequate yearly progress for two consecutive school years may be subject to the same requirements as a public school subject to corrective action, as determined by the department. A school district that fails to make adequate yearly progress for four consecutive school years shall be subject to corrective action.

M. The state, a school district or a charter school shall not enter into management contracts with private entities for the management of a public school or a school district subject to corrective action.

N. If a public school that is identified as a school in need of improvement makes adequate yearly progress in the year that it has been placed in school improvement 1, school improvement 2, corrective action or restructuring 1, it shall not move to the next school improvement rank for one year. If the public school makes adequate yearly progress for a second consecutive year, it shall be removed from the ranks of schools in need of improvement.

O. Nothing in this section shall be construed to restrict the powers and duties of the secretary or the department under the Public School Code.

History: 1978 Comp., § 22-2A-7, enacted by Laws 2003, ch. 153, § 16; 2006, ch. 83, § 1; 2007, ch. 309, § 5; 2011, ch. 32, § 1.