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July 10, 2013

MEMORANDUM

TO: Legislative Education Study Committee

FR: Kevin Force 

RE: STAFF BRIEF: WAIVER OF CERTAIN PROVISIONS OF THE *NO CHILD LEFT BEHIND ACT*: BACKGROUND AND UPDATE

BACKGROUND

In September 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* (NCLB). These potential "waivers" would apply to school years 2011-2012 through 2013-2014, after which states would have the option to apply for a one-year extension of the flexibility for school year 2014-2015.

In response to this invitation, New Mexico Secretary-designate of Public Education Hanna Skandera submitted such a request to the US Department of Education (USDE) in November 2011.¹

Thus far, New Mexico's application for, and implementation of, *Elementary and Secondary Education Act* (ESEA) flexibility has followed this timeline:

¹ While USDE granted New Mexico flexibility from certain requirements of ESEA, some of those requirements still exist in state law. For example, see the *Assessment and Accountability Act* (Chapter 22, Article 2C, NMSA 1978), one of the explicit purposes of which is to comply with federal accountability requirements, including AYP.

- 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 ESEA.
- On **November 14, 2011**, Secretary-designate 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, including:
 - concern that plans for transitioning to college- and career-ready standards were not sufficiently developed for full review;
 - concern that plans for developing and implementing teacher and principal evaluation and support systems were also insufficiently developed;
 - the lack of consultation with “diverse stakeholders and communities”;
 - New Mexico’s use of conditional performance standards that adjust school grades based on student demographics; and
 - concern that student subgroups were not identified or used in the proposed accountability and support system.
- On **February 15, 2012**, New Mexico’s amended and improved flexibility request was submitted which was then approved, 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.
- **April 23, 2012**, USDE offered states the opportunity to apply for two additional waivers regarding Adequate Yearly Progress (AYP) reporting and Title I Part A “rank and serve” funding.
- On **April 27, 2012**, the Public Education Department (PED) released a public notice stating its intention to apply for these additional waivers.
- Between **October and November 2012**, USDE conducted the first component of its ESEA flexibility monitoring protocols, Monitoring, Part A, with Parts B and C still to come.
- On **June 18, 2013**, Secretary Duncan offered two additional waivers to help states with implementation of “College- and Career-Ready Transition Flexibility.”²

UPDATE

This staff brief will discuss the issues arising out of the last two events in this timeline:

- ESEA Flexibility Monitoring, Part A; and
- Additional college- and career-readiness flexibility.

² See *Letter to Chief State School Officers on Graduation Rate Data and Race to the Top*, at: <http://www2.ed.gov/policy/elsec/guid/secletter/130618.html>.

ESEA FLEXIBILITY MONITORING, PART A

The USDE has developed a monitoring process designed to:

- ensure that each state implements its flexibility plan fully and effectively, in a manner consistent with its approved request and the requirements of ESEA flexibility; and
- support each State Education Agency (SEA) with technical assistance to help ensure its implementation increases the quality of instruction and improves student.

For school year 2012-2013, USDE divided its monitoring process into three components, designed to align with real-time implementation occurring at the SEA, Local Education Agency (LEA), and school levels:

- Part A:
 - provided a deeper understanding of each state’s goals and approaches to implementing flexibility;
 - ensured that each SEA had the elements of flexibility in place to begin implementation of its plan in school year 2012-2013;
 - was conducted by desk monitoring; and
 - focused primarily on the implementation of the requirements of Principle 2, “State-Developed Differentiated Recognition, Accountability and Support, which in New Mexico was effected primarily by the *A-B-C-D-F School Ratings Act*, and the adoption of its implementing rule; and
- Parts B and C (still being developed) will:
 - include a broader look at each state’s implementation across all three principles, including:
 - its transition to college- and career-ready standards;
 - its process for developing and implementing teacher and principal evaluation and support systems; and
 - follow-up monitoring on the implementation of interventions in priority and focus schools;
 - include a closer examination of the use of Annual Measurable Objectives (AMOs, or in New Mexico, “School Growth Targets” or “SGTs”), graduation rate targets and other measures to drive incentive in Title I schools;
 - address select unwaived Title I requirements and any “next steps” identified in Part A; and
 - will be conducted by a combination of on-site monitoring, desk monitoring, and progress checks.

Monitoring Report, Part A, will be divided into two sections:

- *Highlights of NMPED’s Implementation of ESEA Flexibility*, which will identify key accomplishments in the implementation of flexibility; and

- *Summary of NMPED’s Implementation of ESEA Flexibility and Next Steps*, provides a snapshot of the PED’s progress in implementing each component of ESEA flexibility or unwaived Title-I requirement. When appropriate, this section also includes a set of “next steps,” discussed with PED during its exit conference, to ensure that the state implements the components of ESEA flexibility consistent with the principles and timelines in *ESEA Flexibility* and PED’s approved request.

Highlights of NMPED’s Implementation of ESEA Flexibility

According to USDE, highlights of New Mexico’s implementation of ESEA flexibility include:

- training 1,500 educators across the state, including teachers and principals, in all priority, focus, and strategic schools, to use the New Mexico Educational Plan for Student Success (NM Web EPSS), an online monitoring tool, to develop improvement plans;
- being on schedule for appropriate training and support of the implementation of the Common Core State Standards (CCSS); and
- receiving significant financial support for the implementation of CCSS.

Summary of NMPED’s Implementation of ESEA Flexibility and Next Steps

The summary addresses several key components of Principle 2, as well as one of the assurances (Assurance 7, report to the public lists of reward, priority, and focus schools) made by PED to USDE that is closely related to Principle 2. The report summarized progress for:

- Component 2.A: Develop and implement a system of differentiated, recognition, accountability, and support for all LEAs and their Title I schools;
- Assurance 7: Report to the public lists of reward, priority, and focus schools;
- Component 2.D: Effect dramatic, systemic change in the lowest-performing schools by publicly identifying priority schools and ensuring that LEAs with these schools implement, for three years, meaningful interventions aligned with the turnaround principles in each of those schools;
- Component 2.E: Work to close achievement gaps by identifying as focus schools those Title I schools with the greatest such gaps, or with subgroups that are furthest behind, and ensure that LEAs implement interventions based on reviews of each school’s specific academic needs;
- Component 2.F: Ensure continuous improvement in other Title I schools that are not making progress in improving student achievement and narrowing achievement gaps;
- Component 2.G: Build SEA, LEA, and school capacity to improve student learning in all schools, particularly low-performing schools and those with the largest achievement gaps, through monitoring, holding LEAs accountable for school improvement and ensuring sufficient support for the implementation of interventions in priority, focus, and other Title I schools;
- Use of Funds: The SEA ensures that its LEAs use Title I funds consistent with the state’s approved flexibility request through pertinent waivers, as well as unwaived Title I requirements; and
- Rank Order: The SEA ensures that its Title I-eligible high schools with graduation rates below 60 percent identified as priority schools correctly implement the waiver that allows them to serve these schools out-of-rank order of poverty.

The summaries of progress noted “Next Steps” in New Mexico only for:

- Component 2.D: During Part B monitoring, USDE will revisit the status of implementation interventions aligned with all of the turnaround principles in non-State Improvement Grant priority schools, and review related evidence and timelines; and
- Component 2.G: To ensure that LEAs are held accountable for improving school and student performance, PED will submit to USDE the time frame for giving grades to LEAs, and the list of LEAs and their respective status through the state grading system.³

ADDITIONAL COLLEGE- AND CAREER-READINESS FLEXIBILITY

On June 18, 2013, Secretary Duncan sent a letter to chief state school officers, offering two additional waivers to assist with the transition to higher college- and career-ready standards⁴:

- SEAs that are concerned with the full implementation of teacher and school leader evaluation plans, and the effect such evaluations may have on personnel determinations, may request flexibility from the deadline to use the new evaluation systems to inform personnel decisions. States which request this waiver may delay this implementation up to one additional year, but no later than school year 2016-2017. States wishing to apply for this flexibility must do so through the current ESEA flexibility amendment process by no later than September 30, 2013.
- Certain schools that are “field-testing” new assessments aligned with college- and career-ready standards may be forced by requirements to administer two assessments to their students. USDE will allow states with such schools to request a one-year waiver to allow administration of only one assessment, either the current state assessment or the “field test,” to any individual student.

³ PED staff offer the following information regarding the process by which LEAs shall be awarded grades: *“The [grading] method uses a weighted (by student count) point average of all schools within the district including locally authorized charters. Those points are then used to assign a grade using the same ABCDF framework as for school grades. Unlike school grading there is no detailed report for districts looking at each individual component - it is a GPA of sorts reflecting the district’s schools. We are incorporating much of the information used for district grading into an expanded version of the School District Report Card which is released annually in the spring.”*

⁴ It should be noted that these additional waivers offer flexibility from the requirements of the ESEA flexibility program itself, while the other waivers offer flexibility from various requirements of Title I.