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State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
Phone: (505) 986-4591 Fax: (505) 986-4338  
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August 22, 2012

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Kevin Force, JD

**RE: STAFF BRIEF: HIGHLY QUALIFIED TEACHERS, CURRENT REQUIREMENTS AND *ELEMENTARY AND SECONDARY EDUCATION ACT* (ESEA) FLEXIBILITY**

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**INTRODUCTION**

In response to a legislative inquiry, Legislative Education Study Committee (LESC) staff submitted a query to the United States Department of Education (USDE) seeking clarity regarding;

- the requirements in law for highly qualified teacher (HQT) programs; and
- how these requirements were affected by USDE’s flexibility package.

The staff response, notes that HQT basic requirements under the *No Child Left Behind Act of 2001* (NCLB), “Qualifications for Teachers and Paraprofessionals”<sup>1</sup> remain unaffected by any waiver in the flexibility package. When asked for further clarification, USDE staff responded that the only change imposed on HQT requirements by ESEA flexibility was the waiver of the provisions detailing requirements for “Technical Assistance and Accountability.”<sup>2</sup>

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<sup>1</sup> *Elementary and Secondary Education Act of 1964* (ESEA) Title I, Improving the Academic Achievement of the Disadvantaged, Part A, Improving Basic Programs Operated by Local Educational Agencies, Section 1119

<sup>2</sup> ESEA, Title II, Preparing, Training and Recruiting High Quality Teachers and Principals, Part A, Teacher and Principal Training and Recruiting Fund, Section 2141

Specifically, USDE staff noted that, even under ESEA flexibility, states are still required to:

1. collect and report on HQT data for schools, local educational agencies (LEAs) and the state, in both annual report cards and the Consolidated State Performance Report (CSPR);
2. ensure that parents in Title I Schools are notified when their children are taught by non-HQTs;
3. ensure that federal funds are not used to pay salaries of non-HQTs; and
4. ensure that teachers who teach in programs supported by ESEA Title I are highly qualified at the time of hire.

This staff brief will review current provisions regarding HQTs under:

- federal HQT provisions (focusing on the four issues enumerated by USDE staff);
- HQT provisions in state law and regulation; and
- HQTs under ESEA flexibility.

### **FEDERAL HIGHLY QUALIFIED TEACHER PROVISIONS**

The first of the still-applicable HQT requirements specified by USDE staff, **the collection and reporting of data for schools, LEAs and the state in both annual report cards and the CSPR** is addressed in:

- Title I, Part A, in the section on state plans,<sup>3</sup> which mandates:
  - the dissemination of concise, understandable annual report cards that include information on:
    - the professional qualifications of teachers in the State;
    - the percentage of such teachers teaching with emergency or provisional credentials; and
    - the percentage of classes in the State not taught by highly qualified teachers, in the aggregate *and* disaggregated by high-poverty compared to low-poverty schools (schools in the top quartile of poverty and the bottom quartile of poverty in the state); and
  - the submission of annual state reports to the US Secretary of Education, which must include information on the quality of teachers and the percentage of classes being taught by highly qualified teachers in the state, LEAs, and schools;
- Title I, Part A, in the section on qualifications for teachers and paraprofessionals,<sup>4</sup> which mandates:

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<sup>3</sup> ESEA, Title I, Improving the Academic Achievement of the Disadvantaged, Part A, Improving Basic Programs Operated by Local Educational Agencies, Section 1111(h)

<sup>4</sup> Id., Section 1119(b)

- as part of the state educational plan, annual increases in the percentage of highly qualified teachers at each LEA and school, and the percentage of teachers receiving high-quality professional development with the goal of becoming highly qualified teachers;
  - annual local reports to the public detailing the progress of the LEA as a whole, and of each school served by the LEA, in meeting these mandated annual increases; and
  - annual state reports to USDE detailing the progress of the state in meeting these mandated annual increases; and
- Title IX, Part C, in the section on consolidated reporting,<sup>5</sup> which allows for the submission of a consolidated annual state report that includes information about the specific programs in the report and the state’s performance under those programs, and which replaces individual annual reports to USDE on those programs.

Next, **the notification of parents when their children are taught by non-HQTs** is addressed in Title I, Part A, in the section on state plans,<sup>6</sup> which details information parents are entitled to receive from the state, including:

- whether a teacher has met state qualifications and licensing criteria for the grade-level and subject matter taught by that teacher;
- whether the state licensing criteria have been waived under emergency or other provisional status;
- the baccalaureate major of the teacher, and any other certification or degree held by that teacher and its field of discipline; and
- timely notice that a parent’s child has been assigned, or has been taught by for more than four consecutive weeks, a teacher who is not highly qualified.

The requirement that states **ensure that federal funds are not used to pay salaries of non-HQTs** is addressed in:

- Title I, Part A, in the section on qualifications for teachers and paraprofessionals,<sup>7</sup> which requires any LEA receiving Title I funds to ensure that all teachers hired after the enactment of ESEA be highly qualified; and
- Title II, Part A, in the section on the local use of funds,<sup>8</sup> which details uses to which an LEA shall put Title II funds, including:
  - developing and implementing mechanisms to assist schools in effectively retaining HQTs;
  - developing and implementing initiatives to help recruit and hire HQTs (especially ones that have been effective in retaining HQTs) who will be assigned teaching positions within their fields, including recruiting and hiring HQTs to reduce class size, particularly in the early grades; and

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<sup>5</sup> ESEA Title IX, Part C, Coordination of Programs, Consolidated State and Local Plans and Applications, Section 9303

<sup>6</sup> ESEA Title I, Part A, Section 1111(h)(6)

<sup>7</sup> Id., Section 1119(a)

<sup>8</sup> ESEA Title II, Preparing, Training, and Recruiting High Quality Teachers and Principals, Part A, Teacher and Principal Training and Recruiting Fund, Section 2123

- hiring HQTs, including teachers who become highly qualified through alternative routes to certification, and special education teachers, in order to reduce class size, particularly in the early grades.

Finally, the requirement that the state **ensure that teachers who teach in programs supported by ESEA Title I are highly qualified at the time of hire** is directly addressed in Title I, Part A, in the section on qualifications for teachers and paraprofessionals,<sup>9</sup> which mandates just that.

## HIGHLY QUALIFIED TEACHER PROVISIONS IN STATE LAW AND REGULATION

While numerous administrative rules, especially those dealing with licensure, address the subject of HQTs, it arises only three times in state law:

- the *Statewide Cyber Academy Act*,<sup>10</sup> which requires the New Mexico Cyber Academy to:
  - ensure that all distant learning courses offered by course providers are taught by HQTs; and
  - give first priority for distance learning courses for credit to students in greatest need due to location, school district financial restraints or lack of HQTs.
- the *Indian Education Act*,<sup>11</sup> which requires the Assistant Secretary for Indian Education, in conjunction with the Indian Education Advisory Council, to seek funds to develop and implement culturally relevant support services to increase the number of tribal teachers and provide continued professional development for teachers serving tribal students, including recruitment and retention of highly qualified teachers and administrators; and

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<sup>9</sup> Id., Title I, Part A, Section 1119(a)

<sup>10</sup> Section 22-3-5 NMSA 1978

<sup>11</sup> Section 22-23A-5 NMSA 1978. It should be noted that until the statute was amended in 2007, the pertinent subsection read: “The Indian education division shall . . . seek funds to establish, develop and implement *the following support services* for the purposes of increasing the number of American Indian teachers, administrators and principals and providing continued professional development for educational assistants, teachers and principals serving American Indian students, in conjunction with the Indian education advisory council: (a) recruitment and retention of highly qualified teachers and administrators . . .” etc. (Emphasis added.)

In contrast, the 2007 amendments (Laws 2007, Chapters 295 and 296) changed the wording so that the subsection now reads: “In accordance with the rules of the department and after consulting with the Indian education advisory council and determining the resources available within the department, the assistant secretary shall . . . seek funds to establish, develop and implement *culturally relevant support services* for the purposes of increasing the number of tribal teachers, administrators and principals and providing continued professional development for educational assistants, teachers and principals serving tribal students, in conjunction with the Indian education advisory council:

(a) recruitment and retention of highly qualified teachers and administrators . . .” etc. (Emphasis added.)

Those amendments inadvertently rendered the inclusion of the list that concludes that subsection nonsensical. The committee may wish to consider amending the statute to address this issue.

- one section of the *Public School Code*<sup>12</sup> dealing with special education, which requires that all agreements between school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must provide for an educational program for each qualified student that meets state standards for special education programs, except that teachers employed by these private schools are not required to be highly qualified.

In the *New Mexico Administrative Code*, the subject of HQTs arises in a number of different rules:

- 6.30.8, “Educational Standards – General Requirements – Distance Learning, which requires that the New Mexico Statewide Cyber Academy use only teachers who are:
  - public post-secondary faculty members; or
  - meet the highly qualified teacher requirements of ESEA (see Attachment, *ESEA Definition of “Highly Qualified Teacher”*);
- 6.31.2, “Special Education – Children with Disabilities/Gifted Children,” which exempts private school teachers who teach children with Individualized Education Programs from the requirement that they be “highly qualified”;
- 6.34.2, “Rural Education – Flexibility for Rural School Districts,” which:
  - gave teachers already employed in rural districts until school year 2006-2007 to become “highly qualified” in each academic subject that they teach
  - gives newly hired rural teachers three years from their date of hire to become highly qualified in each core academic subject they teach; and
  - required rural districts choosing to exercise this flexibility to:
    - ensure that all teachers of core academic subjects are highly qualified in at least one core academic subject that they teach;
    - provide high quality professional development to increase teachers’ content knowledge in the additional subjects that they teach; and
    - provide mentoring or intensive supervision and ongoing support to teachers so that they can become highly qualified in the additional core academic subjects that they teach;
- 6.60.3, “General Provisions – Alternative Licensure,” which defines “highly qualified teachers” and outlines requirements for alternative licensure of HQTs in such a way that they conform with the requirements of ESEA;
- 6.60.5, “General Provisions – Competency Testing for Licensure,” which:
  - defines HQTs as those teachers of core academic subjects who meet all license or endorsement requirements and is not teaching under a waiver; and

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<sup>12</sup> Section 22-13-8 NMSA 1978

- explicitly states that, in order to maintain consistency with the requirements of and definitions of the NCLB, PED will not issue one-year licenses in core academic subjects after school year June 30, 2006;
- throughout Title 6, “Primary and Secondary Education,” Chapter 61, “Specific Licensure Requirements for Instructors,” where definitions and required competencies of HQTs in all grade levels are consistent with the requirements of ESEA;
- 6.64.10, “School Personnel – Competencies for Licensure – Competencies for Entry-level Bilingual Education Teachers,” which allows a three-year intern license to be issued to persons who are enrolled in a PED-approved bilingual education or endorsement program, or a similar program in another state, and who are “highly qualified” in the core academic subjects that they teach;
- 6.69.4, “School Personnel – Performance – Performance Evaluation System Requirements for Teachers,” which:
  - defines HQTs, for the purposes of this rule, in such a way that it conforms to the requirements of ESEA;
  - allows three additional years from date of hire for rural teachers to fulfill the annual evaluation requirements of this rule, so long as they are highly qualified in at least one of the core academic subjects that they teach at the time they are hired;
  - allows two additional years from the date of hire for special education teachers to fulfill the annual evaluation requirements of this rule, so long as they are highly qualified in either language arts, mathematics, or science at the time they are hired; and
  - outlines requirements for demonstrating that a teaching license candidate is “highly qualified” through coursework and portfolio, including observation by a local panel of HQTs;
- 6.69.5, “School Personnel – Performance – Performance Evaluation System Requirements for Librarian-Teachers,” which notes that the great diversity of New Mexico students makes the ability of a highly qualified librarian-teacher to address the needs of all New Mexico students, including those who learn differently as a result of disability, culture, language, or socioeconomic status, the framework of the New Mexico librarian-teacher competencies for licensure assessment criteria; and
- 6.75.2, “Instructional Materials and Technology – Relating to the Public Education Department Instructional Material Bureau,” which defines “review,” “second review” and “special review” as a process examining instructional material to determine alignment with the requirements of the instructional material law conducted by a panel of three highly qualified teachers.

## **HIGHLY QUALIFIED TEACHERS UNDER ESEA FLEXIBILITY**

The ESEA flexibility package includes Waiver 8, which waives the requirements of ESEA Section 2141(a), (b), and (c) for an LEA and states to comply with certain requirements for improvement plans regarding HQTs. This waiver allows the state and LEAs to focus on developing and implementing more meaningful evaluation and support systems.

Under ESEA, each state educational agency (SEA) is required to have included in the state educational plan, measures to ensure that all teachers in core academic subjects were highly qualified by the end of school year 2005-2006. This plan:

- was to include an annual increase in the percentage of highly qualified teachers at each local educational agency and school, to ensure that all teachers teaching in core academic subjects in each public elementary school and secondary school were highly qualified by the end of school year 2005-2006;
- was to include an annual increase in the percentage of teachers who were receiving high-quality professional development to enable such teachers to become highly qualified and successful classroom teachers; and
- may have included such other measures as the SEA deemed appropriate to increase teacher qualifications.

Likewise, under ESEA, all LEAs were required to have developed and included in the local plan measures to ensure that all teachers within the school district were highly qualified by the end of school year 2005-2006. If the SEA determined, based on required reports, that an LEA had failed to make progress toward meeting the HQT annual goals for two consecutive years, the LEA was to have developed an improvement plan to help the LEA meet the HQT goals, with the SEA providing technical assistance throughout implementation of the improvement plan.

If after year three of a state plan (including one year under the improvement plan) the LEA had still failed to progress, the state was to have entered into an agreement with the LEA regarding the LEA's use of Title, I Part A funds. Under this agreement, the SEA was to have:

- developed professional development strategies based on scientifically based research and required the LEA to employ them; and
- generally prohibited the use of Title, I Part A funds for the hiring of paraprofessionals, with certain exceptions.

Under the waiver, however:

- an LEA that did not meet its HQT targets would no longer have to develop an improvement plan and would have flexibility in how it uses its funds;
- an SEA would be exempt from requirements regarding its role in the implementation of these improvement plans, including:
  - that it enter into agreements with LEAs on the uses of funds; and
  - that it provide technical assistance to LEAs on their plan; and
- SEAs and LEAs would be able to focus on developing and implementing more meaningful evaluation and support systems.

**ELEMENTARY AND SECONDARY EDUCATION ACT**

**Title IX – General Provisions**

**Part A – Definitions**

**SEC. 9101. DEFINITIONS.**

Except as otherwise provided, in this Act:

(23) HIGHLY QUALIFIED- The term highly qualified' —

(A) when used with respect to any public elementary school or secondary school teacher teaching in a State, means that —

(i) the teacher has obtained full State certification as a teacher (including certification obtained through alternative routes to certification) or passed the State teacher licensing examination, and holds a license to teach in such State, except that when used with respect to any teacher teaching in a public charter school, the term means that the teacher meets the requirements set forth in the State's public charter school law; and

(ii) the teacher has not had certification or licensure requirements waived on an emergency, temporary, or provisional basis;

(B) when used with respect to —

(i) an elementary school teacher who is new to the profession, means that the teacher —

(I) holds at least a bachelor's degree; and

(II) has demonstrated, by passing a rigorous State test, subject knowledge and teaching skills in reading, writing, mathematics, and other areas of the basic elementary

school curriculum (which may consist of passing a State-required certification or licensing test or tests in reading, writing, mathematics, and other areas of the basic elementary school curriculum); or

(ii) a middle or secondary school teacher who is new to the profession, means that the teacher holds at least a bachelor's degree and has demonstrated a high level of competency in each of the academic subjects in which the teacher teaches by —

(I) passing a rigorous State academic subject test in each of the academic subjects in which the teacher teaches (which may consist of a passing level of performance on a State-required certification or licensing test or tests in each of the academic subjects in which the teacher teaches); or

(II) successful completion, in each of the academic subjects in which the teacher teaches, of an academic major, a graduate degree, coursework equivalent to an undergraduate academic major, or advanced certification or credentialing; and

(C) when used with respect to an elementary, middle, or secondary school teacher who is not new to the profession, means that the teacher holds at least a bachelor's degree and —

(i) has met the applicable standard in clause (i) or (ii) of subparagraph (B), which includes an option for a test; or

(ii) demonstrates competence in all the academic subjects in which the teacher teaches based on a high objective uniform State standard of evaluation that —

(I) is set by the State for both grade appropriate academic subject matter knowledge and teaching skills;

(II) is aligned with challenging State academic content and student academic achievement standards and developed in

consultation with core content specialists, teachers, principals, and school administrators;

(III) provides objective, coherent information about the teacher's attainment of core content knowledge in the academic subjects in which a teacher teaches;

(IV) is applied uniformly to all teachers in the same academic subject and the same grade level throughout the State;

(V) takes into consideration, but not be based primarily on, the time the teacher has been teaching in the academic subject;

(VI) is made available to the public upon request; and

(VII) may involve multiple, objective measures of teacher competency.