

# **COMPARISON OF PROVISIONS OF THE NO CHILD LEFT BEHIND ACT OF 2001 WITH ESEA FLEXIBILITY PROVISIONS**

## **WAIVER 1 DESCRIPTION**

*The requirements in ESEA section 1111(b)(2)(E)-(H) that prescribe how a State Educational Authority (SEA) must establish annual measurable objectives (AMOs) for determining adequate yearly progress (AYP) to ensure that all students meet or exceed the State's proficient level of academic achievement on the State's assessments in reading/language arts and mathematics no later than the end of the 2013-2014 school year. The SEA requests this waiver to develop new ambitious but achievable AMOs in reading/language arts and mathematics in order to provide meaningful goals that are used to guide support and improvement efforts for the State, Local Educational Authorities (LEAs), schools, and student subgroups.*

### **NCLB STATUTORY REQUIREMENTS**

- The SEA must set AMOs, initially using data from school year 2001-2002, for measuring the percentage of students meeting or exceeding proficiency, the starting point must be based on:
  - the higher of the percentage of students in the lowest achieving group of students (economically disadvantaged, major ethnic groups, students with disabilities and English language learners); or
  - the school at the 20<sup>th</sup> percentile based on enrollment, among all schools ranked by percentage of students at the proficient level.
- These AMOs:
  - shall be set separately for the assessments of mathematics and reading or language arts;
  - shall be the same for all schools and LEAs in the State;
  - shall identify a single minimum percentage of students who are required to meet or exceed the proficient level on the academic assessments that applies separately to each subgroup;
  - shall ensure that all students, including those in each of the lowest achieving subgroups, meet or exceed proficiency by school year 2013-2014; and
  - may be the same for more than one year, so long as they increase in equal increments, the first of which must have been by school year 2003-2004, with following increases every three years thereafter.

## FLEXIBILITY WAIVER PROVISIONS

- SEA may set AMOs in at least reading/language arts and math that are “ambitious but achievable,” and provide meaningful goals used to guide support and improvement efforts for SEA, LEAs, schools and subgroups.
- PED has chosen Option C, of three<sup>1</sup>, to reset its AMOs (or School Growth Targets [SGTs]) by using “another method that is educationally sound and results in ambitious but achievable goals for all groups and subgroups,” under which the, SEA must:
  - Provide its rationale; and
  - Submit evidence that its method is educationally sound and results in AMOs that:
    1. are ambitious but achievable; and
    2. require schools and subgroups that are further behind to make greater rates of annual progress than other schools and subgroups. (For example, an SEA might set AMOs that require all schools to make as much progress as the school at the 90<sup>th</sup> percentile when all schools in the State are ranked by rate of progress, if the SEA provides sufficient evidence that such AMOs are educationally sound and ambitious but achievable.)
- For an SEA that chooses Option C, its proposed AMOs and supporting evidence, will be peer reviewed.
- When evaluating whether the State-determined method results in AMOs that are ambitious but achievable, the peer reviewers may compare the AMOs set by an SEA pursuant to this option to what the State’s AMOs would have been under options A and B.

## PED ACTIONS UNDER THE WAIVER

- Using the A-F Grading System as a basis, PED:
  - based each school’s School Growth Targets (SGTs, or (New Mexico’s version of AMOs) on its grade;
  - will target the recommended 90<sup>th</sup> percentile of current performance;
  - will set SGTs equally for all subgroups, that do *not* impact school grades, but *do* drive intervention;
  - cut the achievement gap between the lowest-performing 25 percent of students and the other 75 percent of students in half in seven years;
  - requires all schools to increase their proficiency rate to the current 90<sup>th</sup> percentile of school performance in equal annual increments over 10 years;

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<sup>1</sup> **Option A:** Set AMOs in annual equal increments toward a goal of reducing by half the percentage of students in the “all students” group and in each subgroup who are not proficient within six years. The SEA must use current proficiency rates based on assessments administered in school year 2010–2011 as the starting point for setting its AMOs. Provide the new AMOs and an explanation of the method used to set these AMOs.

**Option B:** Set AMOs that increase in annual equal increments and result in 100 percent of students achieving proficiency no later than the end of school year 2019–2020. The SEA must use the average statewide proficiency based on assessments administered in school year 2010–2011 as the starting point for setting its AMOs. Provide the new AMOs and an explanation of the method used to set these AMOs.

- set SGTs that would require students who are already proficient to make at least one year's growth; and
  - set SGTs for Quartile 1<sup>2</sup> at approximately four points so that Q1 can close achievement gap in three years, as opposed to nine years at the current rate of improvement;
- New Mexico created two sets of performance targets (for Q1 and Q3<sup>3</sup>) that would apply to all students statewide.
  - Its proficiency targets would:
    - cut the achievement gap between the lowest-performing 25 percent of students and the other 75 percent of students in half in seven years;
    - require all schools to increase their proficiency rate to the current 90<sup>th</sup> percentile of school performance in equal annual increments over 10 years; and
    - require students who are already proficient to make at least one year's growth, while students who are further behind would have to make enough growth to significantly close achievement gaps.

### LEA ACTIONS UNDER THE WAIVER

None.

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<sup>2</sup> Quartile 1 (Q1) = Lowest Quartile.

<sup>3</sup> Quartile 3 (Q3) = Highest-Performing Three Quartiles

## WAIVER 2 DESCRIPTION

*The requirements in ESEA section 1116(b) for an LEA to identify for improvement, corrective action, or restructuring, as appropriate, a Title I<sup>4</sup> school that fails, for two consecutive years or more, to make AYP, and for a school so identified and its LEA to take certain improvement actions. The SEA requests this waiver so that an LEA and its Title I schools need not comply with these requirements. (However, an SEA may still require or permit an LEA to take such actions.)*

### NCLB STATUTORY REQUIREMENTS

- To be identified as a school in need of improvement, the school must:
  - fail AYP for two consecutive years; and
  - be identified before beginning of next school year.
- Students in the school must be given an opportunity to transfer, with priority given to lowest achieving kids from low income families.
- LEA must give the school an opportunity for review of determination and presentation of supporting evidence.
- The school must create a plan for a two-year period to incorporate scientifically based research to strengthen core subjects and address specific issues, such as:
  - adopting policies and practices that have the greatest likelihood of ensuring low performing subgroups on time (by school year 2013-2014);
  - assuring that school will spend no less than 10 percent of Title I §1113 funds on improvement (see Waiver 13, p. 29);
  - specifying how funds will be used to remove from the school improvement status;
  - setting specific AMOs for proficiency by school year 2013-2014 deadline;
  - providing written notice to parents;
  - specifying responsibilities of the school, LEA, and SEA;
  - creating strategies to promote parental involvement;
  - incorporating appropriate activities outside school day, and year; and
  - establishing teacher mentoring program.

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<sup>4</sup> Title I: Improving the Academic Achievement of the Disadvantaged

- When the school meets AYP for two consecutive years it shall no longer be subject the requirements of the schools improvement plan.
- LEA must implement plan expeditiously but at least by beginning of the next full year.
- LEA shall provide technical assistance to the school in need of improvement.
- If a school continues to fail AYP, the LEA shall:
  - continue to offer opportunity to transfer to students;
  - make supplemental educational services (SES) available to students;
  - continue to provide technical assistance;
  - send an Explanatory Notice to parents; and
  - take corrective action, including at least one of the following:
    - replace the school staff who are relevant to the failure to make AYP;
    - implement a new curriculum, including providing appropriate professional development, that is based on scientifically based research and offers substantial promise of improving educational achievement for low-achieving students and enabling the school to make adequate yearly progress;
    - significantly decrease management authority at the school level;
    - appoint an outside expert to advise the school on its progress toward making AYP, based on its school plan;
    - extend the school year or school day; or
    - restructure the internal organization of the school.
- If, after one full school year of corrective action a school continues to fail to make AYP, then the LEA shall:
  - continue to provide students enrolled with the option to transfer to another public school served by LEA;
  - continue to make SES available to students who remain in the school; and
  - prepare a plan and make necessary arrangements to implement, no later than the beginning of the year after corrective action, one of the following alternate governance arrangements at the school:
    - reopen the school as a public charter;
    - replace all or most of school staff relevant to the failure, including the principal, if appropriate;
    - contract with a an entity, such as a private management firm with a record of effectiveness, to operate the school;
    - turn operation of the school over to the SEA, if permitted by state law and SEA agrees; or
    - implement other major restructuring resulting in fundamental reforms.

- In any case where a student opts to attend another public school, the LEA will provide for transportation to the student’s new public school.
- Unless a lesser amount is needed to provide for students’ transportation to a new public school, and to satisfy all requests for supplemental educational services under subsection, an LEA shall spend an amount equal to 20 percent of its allocation, from which the agency shall spend:
  - five percent of its allocation provide, or pay for, transportation;
  - five percent of its allocation provide supplemental educational services; and
  - ten percent of its allocation for transportation, supplemental educational services, or both, as the agency determines.
- A school in need of improvement must provide an assurance that the school will spend at least 10 percent of the Title I building allocation for each fiscal year it is in school improvement status to providing to the school’s teachers and principal high-quality professional development that directly addresses the academic achievement problem that caused the school to be identified for school improvement;

### FLEXIBILITY WAIVER PROVISIONS

- Because LEAs do not need to identify schools in need of improvement, schools and LEAs do not need to take required steps that accompany that identification, including:
  - developing and implementing a school improvement plan;
  - reserving funds for professional development;
  - providing public school choice and supplemental educational services (SES);
  - spending the requisite amount of funds on these activities; and
  - reporting the improvement status of schools on State and local report cards;
- LEAs need not assure that they will spend 20 percent of Title, I Part A<sup>5</sup> funds on transportation choice and SES.
- Schools in need of improvement need not assure that 10 percent of its building allocation will be spent on professional development.
- LEAs may spend money on any activity allowable under Title, I Part A that is designed to improve student achievement or teacher/leader effectiveness, including:
  - interventions in priority and focus schools;
  - high quality expanded learning time; and
  - other inventions under the state differentiation and support plan (A-F Grading System).

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<sup>5</sup> Title I, Part A: Improving Basic Programs Offered by Local Educational Agencies

LEAs must ensure sufficient support for implementation of interventions in priority schools, focus schools, and other Title I schools identified under the SEA's differentiated recognition, accountability, and support system by leveraging the funds it would otherwise be obligated to spend for choice-related transportation and SES.

## **PED ACTIONS UNDER THE WAIVER**

PED will use the A-F Grading System to identify priority and focus schools, using criteria aligned with flexibility requirements.

### **PRIORITY SCHOOLS**

There are currently 624 Title I schools in New Mexico, of which 5.0 percent, or 31, must be designated “priority.”<sup>6</sup>

There are three categories of priority schools:

1. Currently served Tier I School Improvement Grant (SIG) schools (14) (see pp. 22-23 for definitions of Tier I and Tier II);
2. All poorest performing schools (rated ‘F’) with graduation rates of 60 percent or less (10); and
3. All poorest performing schools (rated ‘F’) not classified in one of the other two categories (7).

TOTAL Priority Schools = 31

- The *A-F School Grading Act* requires aligning funds toward proven programs linked to student achievement.
- PED will work with districts and charters during budget review to support alignment with proven strategies.
- PED will collaborate with districts and charters to develop interventions focused on the seven turnaround principles (see p. 9 for explanation of the seven turnaround principles).
- Interventions will be based on data, and encourage systematic measurable change.
- Priority schools must complete Reading & Numeracy Review Checklists designed for K-8.
- High schools must have both math and language arts reviews for grades 9-12.
- PED will evaluate for “implementation fidelity.”
- Priority schools will have opportunity for training on the seven turnaround principles.
- If student achievement is not increasing, priority schools must realign use of funds towards proven programs and strategies (consistent with the *A-F School Grading Act*).

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<sup>6</sup> A priority school is a school that has been identified as among the lowest-performing five percent of Title I schools in the state over the past three years.

- Priority schools must follow cycle of improvement:

- identification as a priority school;
- select subgroup-based interventions;
- ensure fidelity of implementation;
- measure the impact on student achievement; and
- increase student achievement.

According to PED, to exit priority status:

- Current Tier I SIG schools must score “C” or better for two consecutive years.<sup>7</sup>
- Schools with low graduation rates must score “C” or better for two consecutive years and demonstrate graduation rate growth (based on three years’ data) of at least 5.0 percent.
- Non-SIG priority schools must score “C” or better for two consecutive years.

Note that even after exiting priority status, such schools must continue to implement full interventions for a full third year, and interventions focusing on four of the seven principles for a fourth year.

### **FOCUS SCHOOLS**

Of the 624 Title I schools in NM, 10 percent, or 62, must be designated “focus.” There are three categories of focus schools:

1. Non-priority schools with a grade of “D” and graduation rate of less than 60 percent (12);
2. Schools with graduation rates of less than 60 percent, not already identified as “priority” or “focus” (7); and
3. Schools with Q1 to Q3 state gap in the lowest quartile of all Q1 to Q3 state gap, and Q1 growth rate of “D” or “F” (43).

TOTAL Focus Schools = 62

PED will require:

- each focus school to select four of the seven turnaround principles that address the subgroups that are not progressing;
- districts to approve the selected principles based on applicable subgroups;

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<sup>7</sup> PED web materials indicate that SIG schools and low-performing non-SIG schools must score an overall grade of “C” or better for two consecutive years, *and* achieve a Q1 growth rate of “B” or higher for two consecutive years, while the flexibility application indicates that the Q1 growth rate score is merely a component of the overall grade of “C” or better.

- districts to assure PED that selected principles are aligned with reasons why schools were designated “focus”;
- all focus schools to “using data to inform instruction” (Turnaround Principle 5, see p. 9).

PED will not approve a focus school budget unless it sets asides funds that target subgroups not progressing.

Web Educational Plans for Student Success (WebEPSS), submitted via PED’s website, will also be used to support alignment of interventions in focus schools.

Focus schools must follow same cycle of improvement as priority schools:

- identification as a focus school;
- select subgroup-based interventions;
- ensure fidelity of implementation;
- measure the impact on student achievement; and
- increase student achievement.

## LEA ACTIONS UNDER THE WAIVER

For **priority schools**, LEAs must implement school improvement interventions consistent with the **seven turnaround principles**:

1. Provide strong leadership by:
  - a. reviewing the performance of the current principal; and
  - b. either replacing the principal if necessary, or demonstrating to PED principal has record of improving achievement.
2. Ensure effective teachers able to improve instruction, by:
  - a. reviewing staff and retaining only staff determined to be effective and succeed in turnaround;
  - b. preventing ineffective teachers from transferring to these schools; and
  - c. providing job-embedded, ongoing professional development informed by teacher evaluation system and tied to teacher and student needs.
3. Redesign the school day, week, or year to include additional time for student learning and teacher collaboration.
4. Strengthen the school’s instructional program based on student needs and ensure program is research-based, rigorous, aligned with state standards.
5. Use data to inform instruction including providing time for collaboration on data use.

6. Establish a school environment that improves safety and address other non-academic factors like students' social, emotional and health needs.
7. Engage families/ communities.

For **focus schools**, LEAs must approve school-selected interventions based on four of the seven turnaround principles, and assure the SEA that the selected principles are aligned with the reason why school was so designated.

WAIVER 2

## WAIVER 3 DESCRIPTION

*The requirements in ESEA section 1116(c) for an SEA to identify for improvement or corrective action, as appropriate, an LEA that, for two consecutive years or more, fails to make AYP, and for an LEA so identified and its SEA to take certain improvement actions. The SEA requests this waiver so that it need not comply with these requirements with respect to its LEAs. This flexibility parallels that offered in Waiver 2.*

### NCLB STATUTORY REQUIREMENTS

- Generally, an SEA must:
  - review annually the progress of each LEA to determine whether schools receiving Title I funds are making AYP, publicize and disseminate results of the review; and
  - identify those LEAs in need of improvement or corrective action.
- An SEA MAY reward LEAs that exceed AYP for two consecutive years.

Other provisions include requirements for:

- an opportunity for LEA to review data leading to its designation and present evidence if it believes the designation is erroneous;
- the SEA to notify parents regarding designation and review;
- the SEA to provide technical assistance to LEAs if requested;
- an LEA to revise its plan, including:
  - incorporating science-based strategies to strengthen core academic programs;
  - identifying actions most likely to improve student achievement;
  - addressing the professional development needs of the instructional staff serving the agency by committing to spend not less than 10 percent of certain funds received by the local educational agency under the Act;
  - including specific measurable achievement goals and targets for economically disadvantaged students, students from major racial and ethnic groups, students with disabilities; and students with limited English proficiency;

- addressing the fundamental teaching and learning needs in its schools, and the specific academic problems of low-achieving students, including why the LEA's prior plan failed;
- incorporating activities before school, after school, during the summer, and during an extension of the school year;
- specifying the responsibilities of the SEA and LEA under the plan, including the technical assistance to be provided by the SEA; and
- including strategies to promote effective parental involvement in the school.

- the SEA to offer LEAs technical assistance;
- the SEA to implement a system of corrective action, including:
  - deferring program funds or reducing admin funds;
  - implementing a new curriculum;
  - replacing LEA personnel most relevant to the failure to achieve AYP;
  - removing certain schools from the LEA and establishing alternate governance;
  - appointing a receiver or trustee to administer the affairs of the LEA;
  - abolishing or restructuring the LEA; and
  - authorizing students to transfer to a school under another LEA.

### FLEXIBILITY WAIVER PROVISIONS

SEAs no longer need to identify LEAs in need of improvement or corrective action, and therefore need not take any of the other steps required under NCLB.

Similarly, LEAs need not take any of the corrective actions mandated if they are identified in need of improvement or corrective action.

### PED ACTIONS UNDER THE WAIVER

None, but see Waiver 2, pp. 4-9.

### LEA ACTIONS UNDER THE WAIVER

None, but see Waiver 2, pp. 4-9.

## WAIVER 4 DESCRIPTION

*The requirements in ESEA sections 6213(b) and 6224(e) that limit participation in, and use of funds under the Small, Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs based on whether an LEA has made AYP and is complying with the requirements in ESEA section 1116. The SEA requests this waiver so that an LEA that receives SRSA or RLIS funds may use those funds for any authorized purpose regardless of whether the LEA makes AYP. (The LEA that would otherwise have been identified as in improvement status would no longer be required to use those funds only for activities under 1116; however, the Department encourages LEAs to use these funds for needs identified under the SEA's differentiated recognition, accountability, and support system, including supporting priority and focus schools.)*

### NCLB STATUTORY REQUIREMENTS

- After the third year that an LEA participates in an SRSA or RLIS program, the SEA must:
  - determine whether that LEA has made AYP;
  - allow only participating that made AYP to continue to participate; and
  - permit participating LEAs that failed to make AYP to continue to participate only if those LEAs use SRSA funds to effect school improvement provisions contained in ESEA section 1116 (see Waiver 2, pp. 4-9).

### FLEXIBILITY WAIVER PROVISIONS

An LEA that participates in the SRSA or RLIS programs may use those funds for any authorized purpose, not just for school improvement, regardless of the LEA's AYP status.

### PED ACTIONS UNDER THE WAIVER

None.

### LEA ACTIONS UNDER THE WAIVER

None.

## WAIVER 5 DESCRIPTION

*The requirement in ESEA section 1114(a)(1) that a school have a poverty percentage of 40 percent or more in order to operate a schoolwide program. The SEA requests this waiver so that an LEA may implement interventions consistent with the turnaround principles or interventions that are based on the needs of the students in the school and designed to enhance the entire educational program in a school in any of its priority and focus schools, as appropriate, even if those schools do not have a poverty percentage of 40 percent or more.*

### NCLB STATUTORY REQUIREMENTS

An LEA may consolidate and use Title I, Part A funds together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school in a school attendance area where at least 40 percent of the children are from low-income families, or at least 40 percent of the children enrolled in the school are from such families.

### FLEXIBILITY WAIVER PROVISIONS

An LEA would be permitted to operate a school-wide program in a Title I school that does not meet the 40 percent poverty threshold if the school has been identified by the SEA as a priority or focus school, and the LEA is implementing interventions consistent with the seven turnaround principles or that are based on the needs of the students in the school and designed to enhance the entire educational program in the school.

### PED ACTIONS UNDER THE WAIVER

An SEA may permit an LEA to operate a school-wide program in any priority or focus school where the LEA is implementing interventions aligned with the seven turnaround principles or an intervention that is based on the needs of the students in the school and designed to enhance the entire educational program in that school.

## LEA ACTIONS UNDER THE WAIVER

- Many priority and focus schools may already be operating a school-wide program and thus be able to implement the kind of whole-school interventions required as part of this flexibility.
- If a priority or focus school is operating a *targeted* assistance program, the LEA:
  - may wish to convert that program to a school-wide program in order to carry out whole-school interventions;
  - would be required to convert that program to a school-wide program in order to use Title I, Part A funds to implement such an intervention; and
  - may not implement a school-wide intervention program with Title I, Part A funds in the absence of this waiver.

## WAIVER 6 DESCRIPTION

*The requirement in ESEA section 1003(a) for an SEA to distribute funds reserved under that section only to LEAs with schools identified for improvement, corrective action, or restructuring. The SEA requests this waiver so that it may allocate section 1003(a) funds to its LEAs in order to serve any of the State's priority and focus schools.*

### NCLB STATUTORY REQUIREMENTS

Each state shall:

- reserve 4.0 percent of the amount received under Title, I Part A for school improvement; and
- distribute at least 95 percent of those funds directly to LEAs for schools identified for improvement, corrective action, or restructuring.

### FLEXIBILITY WAIVER PROVISIONS

The SEA may distribute these funds to LEAs to serve any priority or focus school.

### PED ACTIONS UNDER THE WAIVER

Because PED will not be identifying schools for improvement, corrective action, or restructuring, PED may distribute these funds to any LEA with priority or focus schools that it determines are most in need of support.

### LEA ACTIONS UNDER THE WAIVER

An LEA may use any of these funds for improvement in its priority or focus schools.

## WAIVER 7 DESCRIPTION

*The provision in ESEA section 1117(c)(2)(A) that authorizes an SEA to reserve Title I, Part A funds to reward a Title I school that (1) significantly closed the achievement gap between subgroups in the school; or (2) has exceeded AYP for two or more consecutive years. The SEA requests this waiver so that it may use funds reserved under ESEA section 1117(c)(2)(A) for any of the State's reward schools.*

### NCLB STATUTORY REQUIREMENTS

In order to carry out the state academic achievement awards program, an SEA that receives Title I funds may reserve up to 5.0 percent of the amount by which the state's Title I allocation in a fiscal year exceeds the amount of the state's allocation for the preceding fiscal year for recognition and awards to schools that:

- significantly closed the achievement gap between subgroups; or
- exceeded AYP for two consecutive years.

### FLEXIBILITY WAIVER PROVISIONS

While it is likely that most reward schools would meet one of the NCLB-prescribed criteria, if an SEA determines a reward school is most appropriate for financial rewards, the SEA would have flexibility to use funds reserved under an academic achievement award program to provide financial rewards to any such reward school, regardless of whether the school met those criteria.

### PED ACTIONS UNDER THE WAIVER

Using the A-F Grading System to designate reward schools, PED will provide financial rewards and incentives to those reward schools it determines are most appropriate.

### LEA ACTIONS UNDER THE WAIVER

None.

## WAIVER 8 DESCRIPTION

*The requirements in ESEA section 2141(a), (b), and (c) for an LEA and SEA to comply with certain requirements for improvement plans regarding highly qualified teachers (HQTs). The SEA requests this waiver to allow the SEA and its LEAs to focus on developing and implementing more meaningful evaluation and support systems.*

### NCLB STATUTORY REQUIREMENTS

- Under ESEA, each 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:
  - shall 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;
  - shall include an annual increase in the percentage of teachers who are receiving high-quality professional development to enable such teachers to become highly qualified and successful classroom teachers; and
  - may include such other measures as the State educational agency determines to be 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 SEA determines, based on required reports, that an LEA has failed to make progress toward meeting the HQT annual goals for two consecutive years, the LEA must develop an improvement plan to help the LEA meet the HQT goals.
- SEA shall provide technical assistance throughout implementation of the LEA's improvement plan.
- If after year three of state plan (including one year under the improvement plan) the LEA still fails to progress, the SEA shall enter into an agreement with the LEA regarding the LEA's use of Title, I Part A funds.
- The SEA shall:
  - develop professional development strategies based on scientifically based research and require the LEA to employ them; and
  - generally prohibit the use of Title, I Part A funds for the hiring of paraprofessionals, with certain exceptions.

## FLEXIBILITY WAIVER PROVISIONS

- An LEA that does 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.
- This flexibility would allow SEAs and LEAs to focus on developing and implementing more meaningful evaluation and support systems.
- An SEA would not be exempt from the requirement that it ensure poor and minority students are not taught at higher rates than other children by inexperienced, unqualified, or out-of-field teachers. However, once more meaningful evaluation and support systems are in place in accordance with Principle 3<sup>8</sup> an SEA may use the results of such systems to meet this requirement.

## PED ACTIONS UNDER THE WAIVER

According to its flexibility request, PED intends to finalize and employ its system of teacher and school leader evaluation to reformulate the compensation system to reflect this new evaluation system and enhance the recruitment and retention of highly effective teachers to serve in high-need, low-income schools.

## LEA ACTIONS UNDER THE WAIVER

According to the recently proposed teacher and school leader effectiveness rules, all school districts shall:

- as soon as possible but not later than the beginning of school year 2013-2014, develop and submit to the department for approval and for implementation during school year 2013-2014, an effectiveness evaluation system for measuring performance of licensed school employees; and
- report annually to the department the results of its effectiveness evaluations of its licensed school employees and the alignment of its effectiveness evaluation system with the three-tiered licensure system.

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<sup>8</sup> PRINCIPLE 3: Supporting Effective Instruction and Leadership

## WAIVER 9 DESCRIPTION

*The limitations in ESEA section 6123 that limit the amount of funds an SEA or LEA may transfer from certain ESEA programs to other ESEA programs. The SEA requests this waiver so that it and its LEAs may transfer up to 100 percent of the funds it receives under the authorized programs among those programs and into Title I, Part A. (Moreover, to minimize burden at the State and local levels, the SEA would not be required to notify the Department and its participating LEAs would not be required to notify the SEA prior to transferring funds.)*

### NCLB STATUTORY REQUIREMENTS

ESEA allows an SEA to transfer up to 50 percent of the non-administrative funds available for State-level activities in a given fiscal year from the following programs into its Title, I Part A allocation, or any of the following programs:

- Improving Teacher Quality State Grants, which include:
  - reforming teacher and principal certification (including recertification) or licensing requirements to ensure that teachers have the knowledge, skill necessary to help students, and principals have the knowledge and skills to help teachers and students, and that certification and licensure requirements align with state standards;
  - carrying out programs that provide support to teachers or principals, including support for teachers and principals new to their profession, such as programs that:
    - provide teacher mentoring, team teaching, reduced class schedules, and intensive professional development; and
    - use standards or assessments for guiding beginning teachers that are consistent with challenging State standards and with the requirements for professional development activities under ESEA; and
  - carrying out programs that establish, expand, or improve alternative routes for State certification of teachers and principals, especially in the areas of mathematics and science, for highly qualified individuals with a baccalaureate or master's degree.

- Educational Technology State Grants, which include:
  - establishing or supporting public-private initiatives (such as interest-free or reduced-cost loans) for the acquisition of educational technology for high-need LEAs and students attending schools served by those LEAs;
  - developing performance measurement systems to determine the effectiveness of educational technology programs particularly in determining the extent to which they are effective in integrating technology into curricula and instruction, increasing the ability of teachers to teach, and enabling students to meet State academic content and student academic achievement standards; and
  - collaborating with other State educational agencies on distance learning, including making specialized or rigorous academic courses and curricula available to students in areas that would not otherwise have access to such courses and curricula;
  
- 21<sup>st</sup> Century Community Learning Centers (21<sup>st</sup> CCLC), which include:
  - monitoring and evaluation of programs and activities assisted under this program;
  - providing capacity building, training, and technical assistance under this program; and
  - comprehensive evaluation (directly, or through a grant or contract) of the effectiveness of programs and activities assisted under this program.
  
- Innovative Programs, which include:
  - support for the design and implementation of high-quality yearly student assessments;
  - support for implementation of challenging State and local academic achievement standards; and
  - support for the planning, design, and initial implementation of charter schools.

ESEA allows LEAs to transfer up to 50 percent of the non-administrative funds available for State-level activities in a given fiscal year from the following programs into its Title, I Part A allocation, or any of the following programs:

- Educational Technology State Grants, which include:
  - professional development in new technologies;
  - establishing or expanding initiatives, designed to increase access to technology for students and teachers;
  - adapting or expanding existing and new applications of technology to enable teachers to increase student academic achievement;
  - acquiring proven and effective courses and curricula that include integrated technology and are designed to help students meet challenging State and student academic achievement standards; and
  - preparing one or more teachers in elementary schools and secondary schools as technology leaders.

- Safe and Drug-Free Schools and Community Grants, which include:
  - anti-drug and -violence programs;
  - anti-prejudice and -ntolerance programs;
  - activities to promote students' sense of individual responsibility;
  - professional development to related to drug and violence prevention;

An LEA that is identified for improvement may transfer only up to 30 percent of its funds under an eligible program and must use those funds for improvement activities. An LEA identified for corrective action may not transfer any funds.

### **FLEXIBILITY WAIVER PROVISIONS**

Under this flexibility, SEAs and LEAs may transfer up to 100 percent of its non-administrative funds from one or more of the appropriate identified programs and to Title I, Part A and the identified programs, but may not transfer funds out of Title I, Part A.

### **PED ACTIONS UNDER THE WAIVER**

None.

### **LEA ACTIONS UNDER THE WAIVER**

None.



# WAIVER 10 DESCRIPTION

*The requirements in ESEA section 1003(g)(4) and the definition of a Tier I school in Section I.A.3 of the School Improvement Grants (SIG) final requirements. The SEA requests this waiver so that it may award SIG funds to an LEA to implement one of the four SIG models in any of the State's priority schools.*

## NCLB STATUTORY REQUIREMENTS

ESEA requires an SEA to reserve 4.0 percent of the Title I, Part A funds the State receives in a given fiscal year for school improvement activities and to distribute at least 95 percent of those funds to LEAs for use in schools identified for improvement, corrective action, or restructuring.

The SIG Final Requirements include:

### **Tier I schools:**

- (i) A Tier I school is a Title I school in improvement, corrective action, or restructuring that is identified by the SEA under paragraph (a)(1) of the definition of “persistently lowest-achieving schools.”
- (ii) At its option, an SEA may also identify as a Tier I school an elementary school that is eligible for Title I, Part A funds that:
  - (A)(1) has not made AYP for at least two consecutive years; or
  - (2) is in the State's lowest quintile of performance based on proficiency rates on the State's assessments in reading/language arts and mathematics combined; and
  - (B) is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(1)(i) of the definition of “persistently lowest achieving schools.”

### **Tier II schools:**

- (i) A Tier II school is a secondary school that is eligible for, but does not receive, Title I, Part A funds and is identified by the SEA under paragraph (a)(2) of the definition of “persistently lowest-achieving schools.”
- (ii) At its option, an SEA may also identify as a Tier II school a secondary school that is eligible for Title I, Part A funds that:
  - (A)(1) Has not made adequate yearly progress for at least two consecutive years; or

- (2) Is in the state’s lowest quintile of performance based on proficiency rates on the State’s assessments under section 1111(b)(3)<sup>9</sup> of the ESEA in reading/language arts and mathematics combined; and
- (B)(1) Is no higher achieving than the highest-achieving school identified by the SEA under paragraph (a)(2)(i) of the definition of “persistently lowest achieving schools;” or
- (2) Is a high school that has had a graduation rate that is less than 60 percent over a number of years.

**Persistently lowest-achieving schools** means, as determined by the State:

- (a)(1) Any Title I school in improvement, corrective action, or restructuring that:
- (i) is among the lowest-achieving 5.0 percent of Title I schools in improvement, corrective action, or restructuring, or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or
  - (ii) Is a high school that has had a graduation rate that is less than 60 percent over a number of years; and
- (2) Any secondary school that is eligible for, but does not receive, Title I funds that:
- (i) Is among the lowest-achieving 5.0 percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or
  - (ii) Is a high school that has had a graduation rate that is less than 60 percent over a number of years.
- (b) To identify the lowest-achieving schools, a State must take into account both:
- (i) The academic achievement of the “all students” group in a school in terms of proficiency on the State’s assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and
  - (ii) The school’s lack of progress on those assessments over a number of years in the “all students” group.

## FLEXIBILITY WAIVER PROVISIONS

Under this flexibility:

- An LEA is eligible to apply for SIG funds to implement one of the four school intervention models defined in the SIG final requirements in a priority school even if that school is not in improvement, which under ESEA would render the LEA ineligible for SIG funds. The four SIG intervention models are:
  - the “turnaround model,” in which the LEA replaces the principal and rehires no more than 50 percent of the staff, gives the principal greater autonomy, and implements other prescribed and recommended strategies;

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<sup>9</sup> Section 1111(b)(3): (State Plans: Academic Standards, Academic Assessments, and Accountability): Academic Assessments establishes the requirements for the implementation of academic assessments in state plans.

- the “restart mode,]” in which the LEA converts or closes and reopens a school under a charter school operator, charter management organization, or education management organization; and
  - the “school closure model” in which the LEA closes the school and enrolls the students in other schools in LEAs that are higher achieving; and
  - the “transformation model” in which the LEA replaces the principal (with certain exceptions), implements a rigorous staff evaluation and development system, institutes comprehensive instructional reform, increases learning time and applies community-oriented school strategies, and provides greater operational flexibility and support for the school.
- An SEA may allocate the LEA share of these funds to LEAs with priority or focus schools because the SEA will not be identifying schools for improvement, corrective action, or restructuring.

### PED ACTIONS UNDER THE WAIVER

PED uses the A-F Grading System to identify priority schools, and may distribute SIG funds to LEAs serving those schools, so that the LEAs may implement one of the four SIG turnaround models.

### LEA ACTIONS UNDER THE WAIVER

An LEA that serves priority schools may award SIG funds awarded to it by PED to its priority schools so that the schools may implement one of the four SIG turnaround models.

## WAIVER 11 (OPTIONAL) DESCRIPTION

*The requirements in ESEA sections 4201(b)(1)(A) and 4204(b)(2)(A) that restrict the activities provided by a community learning center under the Twenty-First Century Community Learning Centers (21st CCLC) program to activities provided only during non-school hours or periods when school is not in session (i.e., before and after school or during summer recess). The SEA requests this waiver so that 21st CCLC funds may be used to support expanded learning time during the school day in addition to activities during non-school hours or periods when school is not in session.*

### NCLB STATUTORY REQUIREMENTS

ESEA limits, by both *definition* and program requirements, a 21<sup>st</sup> CCLC to offering enhanced and extracurricular programs during nonschool hours or when school is not in session:

- The term “community learning center” means an entity that :
  - assists students in meeting state and local academic achievement standards in core academic subjects, such as reading and mathematics, by providing the students with opportunities for academic enrichment activities and a broad array of other activities (such as drug and violence prevention, counseling, art, music, recreation, technology, and character education programs) *during nonschool hours or periods when school is not in session (such as before and after school or during summer recess)* that reinforce and complement the regular academic programs of the schools attended by the students served; and
  - offers families of students served by such center opportunities for literacy and related educational development. (Emphasis added.)
- Each application [for a local competitive grant under the 21<sup>st</sup> CCLC Program] shall include a description of the *before and after school or summer recess activities* to be funded, including:
  - an assurance that the program will take place in a safe and easily accessible facility;
  - a description of how students participating in the program carried out by the community learning center will travel safely to and from the center and home; and
  - a description of how the eligible entity will disseminate information about the community learning center (including its location) to the community in a manner that is understandable and accessible.

## FLEXIBILITY WAIVER PROVISIONS

Under this waiver:

- An SEA may have flexibility to permit an eligible entity to use funds under the 21<sup>st</sup> CCLC program to provide activities that support high-quality expanded learning time during an expanded school day, week, or year in addition to activities during nonschool hours or periods when school is not in session.
- Expanded learning time is the time that an LEA or school extends its normal school day, week, or year to provide additional instruction or educational programs for all students beyond the state-mandated requirements for the minimum number of hours in a school day, days in a school week, or days or weeks in a school year.
- An eligible entity in a State that receives a waiver must comply with all other 21<sup>st</sup> CCLC requirements.
- ESEA flexibility would not affect current 21<sup>st</sup> CCLC sub-grantees; rather, this flexibility would take effect for local grant competitions conducted after an SEA receives ESEA flexibility.

## PED ACTIONS UNDER THE WAIVER

When PED next initiates its Request for Proposal process for the 21<sup>st</sup> CCLC program, it may accept applications from eligible entities that support high-quality expanded learning time *during* an expanded school day, week or year, while school is in session.

## LEA ACTIONS UNDER THE WAIVER

None.

## WAIVER 12 (OPTIONAL) DESCRIPTION

*The requirements in ESEA Sections 1116(a)(1)(A)-(B) and 1116(c)(1)(A) that require LEAs and SEAs to make determinations of AYP for schools and LEAs, respectively. The SEA requests this waiver because continuing to determine whether an LEA and its schools make AYP is inconsistent with the SEA's State-developed differentiated recognition, accountability, and support system included in its ESEA flexibility request. The SEA and its LEAs must report on their report cards performance against the AMOs for all subgroups identified in ESEA Section 1111(b)(2)(C)(v), and use performance against the AMOs to support continuous improvement in Title I schools that are not reward schools, priority schools, or focus schools.*

### NCLB STATUTORY REQUIREMENTS

LEAs receiving Title I funds must:

- use the state's standards-based assessment annually to review schools' progress in making AYP;
- at the LEA's discretion, use any academic assessments or any other academic indicators described in the LEA's plan to review annually the progress of each school served under this part to determine whether the school is making AYP.

The SEA shall annually review the progress of LEAs in making AYP.

### FLEXIBILITY WAIVER PROVISIONS

- An SEA that receives ESEA flexibility may continue to make AYP determinations for its LEAs, and its LEAs may continue to make AYP determinations for their schools, based on the SEA's new AMOs, and include these determinations on State and local report cards.
- However, determining and reporting AYP might no longer be essential for meaningful accountability under a state's new assessment and accountability system.
- Instead, an SEA and its LEAs would report on their report cards, for the "all students" group and for all subgroups in each LEA and school, respectively, achievement at each proficiency level, performance against the AMOs, participation rate, and graduation rate for high schools or the other academic indicator for elementary and middle schools.
- Any element of ESEA flexibility that is linked to making AYP would instead be linked to meeting the State's AMOs, the 95 percent participation rate requirement, and the graduation rate goal or targets for high schools or the other academic indicator for elementary and middle schools.

- An SEA that receives this optional waiver would need to modify how it implements certain existing provisions that apply to AYP determinations to comply with the new assessment and accountability system.
- The provisions that apply to AYP determinations would instead apply to the reporting of performance against the new AMOs, participation rate, graduation rate, and the other academic indicators.

## **PED ACTIONS UNDER THE WAIVER**

PED will modify provisions that apply to AYP determinations to instead apply to New Mexico's new AMOs or School Growth Target (SGTs). For example:

- report participation rate separately, and a subgroup would not make its AMO without 95 percent participation;
- performance would be reported for all students, not just those that were in attendance for a full academic year;
- measure student growth against the SGTs rather than AYP; and
- no longer apply "safe harbor" provisions (a school is considered to have made AYP if the percentage of students not proficient decreases by 10 percent from the previous year) because they are too closely tied to the AYP determination.

## **LEA ACTIONS UNDER THE WAIVER**

LEAs will modify provisions that apply to AYP determinations to instead apply to New Mexico's new AMOs or School Growth Target (SGTs). For example:

- report participation rate separately, and a subgroup would not make its AMO without 95 percent participation;
- performance would be reported for all students, not just those that were in attendance for a full academic year; and
- measure student growth against the SGTs rather than AYP.

## WAIVER 13 (OPTIONAL) DESCRIPTION

*The requirements in ESEA Section 1113(a)(3)-(4) and (c)(1) that require an LEA to serve eligible schools under Title I in rank order of poverty and to allocate Title I, Part A funds based on that rank ordering. The SEA requests this waiver in order to permit its LEAs to serve a Title I-eligible high school with a graduation rate below 60 percent that the SEA has identified as a priority school even if that school does not rank sufficiently high to be served.*

### NCLB STATUTORY REQUIREMENTS

- LEAs shall allocate Title I funds to eligible schools in rank order, by the total number of children from low-income families in each area or school.
- If an LEA's Title I funds are insufficient to serve all eligible attendance areas, the LEA shall:
  - annually rank, without regard to grade spans, the LEA's eligible school attendance areas where the percentage of children from low-income families exceeds 75 percent, from highest to lowest, according to the percentage of children from low-income families; and
  - serve such eligible school attendance areas in rank order.
- If funds are left over, an LEA shall:
  - annually rank the LEA's remaining eligible attendance areas from highest to lowest either by grade span or for the entire LEA according to the percentage of children from low-income families; and
  - serve such eligible school attendance areas in rank order.

### FLEXIBILITY WAIVER PROVISIONS

LEAs may allocate Title, I Part A funds to a high school that has a graduation rate below 60 percent, so long as it is identified as a "priority school," according to the state's system of differentiated recognition, accountability and support, even if its poverty ranking would not otherwise be high enough to serve.

## PED ACTIONS UNDER THE WAIVER

None.

## LEA ACTIONS UNDER THE WAIVER

LEAs may choose to award Title I funds to high schools that have been identified as “priority” according to the A-F Grading System, regardless of poverty ranking.

# WAIVER 13