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June 15, 2010

MEMORANDUM

TO: Legislative Education Study Committee

FR: Pamela Herman, J.D.

RE: STAFF REPORT: NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL) UPDATE: REAUTHORIZATION OF THE FEDERAL *ELEMENTARY AND SECONDARY EDUCATION ACT*

Introduction

In 1965, Congress passed the *Elementary and Secondary Education Act* (ESEA). According to the Center for Education Policy (CEP), the act was designed to address educational inequities in the United States by distributing federal funds based on formulas that targeted school districts and schools with large numbers of economically disadvantaged and educationally deprived children. CEP states that over the last half-century, Title I of the ESEA has been the main federal program designed to meet these students' needs.

For several decades, according to CEP, accountability under ESEA focused mainly on whether local districts were using ESEA funds to target the act's intended recipients. Since the mid-1980s, however, concern about educational outcomes and persistent achievement gaps between advantaged and disadvantaged students prompted a series of amendments to ESEA, culminating with the passage by Congress of the *No Child Left Behind Act of 2001* (NCLB). That act imposed a goal that all students become proficient in reading and mathematics by 2014, as shown on standardized tests, and it created a prescriptive set of accountability mechanisms for schools that failed to make required yearly progress (see Attachment 1).

NCLB was scheduled for reauthorization by Congress in 2007. Since then, the terms of reauthorization have been the subject of national debate. During the 2008 interim, the

Legislative Education Study Committee (LESC) heard a presentation by staff of the National Conference of State Legislatures (NCSL) regarding the proposals for reauthorization under discussion at that time. However, although dozens of bills have been filed to reauthorize NCLB, none has reached the President's desk for signature.

In March 2010, the US Department of Education (USDE) under a new administration released a document entitled "A Blueprint for Reform," which described the current federal administration's vision for reauthorizing ESEA.

This report will provide an overview of issues surrounding the reauthorization of ESEA, including:

- aspects of NCLB that have often been criticized;
- key points in the USDE "Blueprint for Reform";
- points of comparison between NCLB and the proposed reauthorization; and
- NCSL's *Education at a Crossroads, A New Path for Federal and State Education Policy*.

Aspects of NCLB That Have Often Been Criticized

NCLB was passed by Congress in 2001 with broad bipartisan support, and since its passage has generated "both passionate support and fiery opposition," according to a 2005 report by the NCSL Task Force on No Child Left Behind. The act and its implementation have been widely studied, analyzed, and criticized. Among the aspects of NCLB that have been praised, according to the Education Commission of the States, are its:

- clear establishment of public education as a high national priority;
- ambitious goals;
- stated aim to eliminate achievement gaps between students who have traditionally fared well in the public education system and those who have not; and
- focus on teacher quality.

However, nine years of experience implementing the act have resulted in widespread recognition of flaws in the statutory scheme. Among often-criticized features of NCLB have been:

- <u>assertion of federal authority into an area traditionally viewed as state responsibility</u>: according to NCSL, the 10th Amendment to the US Constitution reserves to states the powers not delegated to the federal government in the Constitution, and education has long been seen as a state responsibility. The power of Congress to intrude into such areas stems from the spending clause in Article I, which allows the federal government to attach conditions to grants it makes to states;

- <u>inadequate funding</u>: concerned about the cost to states and school districts of meeting the mandates of NCLB, many states, including New Mexico, commissioned cost studies to identify the size of gaps between funds provided and the estimated amount needed to develop new assessments, provide technical assistance to districts, manage data, and other administrative responsibilities. According to the Public Education

Department (PED), in school year 2004-2005 alone New Mexico faced a $26.0 million funding gap to implement NCLB.

In January 2008, a federal district court ruled that an "unfunded mandate" provision in the law did not prevent USDE from requiring states and local school districts to perform the required annual testing; in December 2009 a federal appellate court let that decision stand; and on June 7, 2010, the Supreme Court refused to hear an appeal in the case;

- adequate yearly progress (AYP) as a flawed gauge of which schools have the greatest academic need: according the CEP, among other education policy analysts, not only is the goal of 100 percent student proficiency by 2014 an unattainable one, but it over-identifies failing schools based on "all or nothing" ratings that treat schools missing AYP in just one or two subgroups the same as those with widespread failure; it does nothing to recognize academic growth of individual students; and it does not credit schools for gains, even large ones, made by students above and below the proficient level;

- sanctions-focused accountability system: because the NCLB accountability system is based on performance on once-annual standardized assessments in only two subject areas, and punishes schools for failure without providing any real incentives or support for success through innovation, advocates such as NCSL say that the law;

  - unintentionally rewards lowering of state standards;
  - encourages experienced teachers to leave struggling schools; and
  - tends to promote narrowing of the curriculum to the subjects tested as the expense of the arts and physical education and even social studies and science;

- too much testing: the LESC has heard testimony from teachers and administrators that because of timing and design, the standards-based assessments required under NCLB take many hours away from instruction for tests that are not useful for guiding instruction; and

- lack of alignment between NCLB and the federal *Individuals with Disabilities Education Act* (IDEA): NCSL points out IDEA, a civil rights law that requires individualized learning programs (IEPs) with tailored learning goals and strategies for each student with a disability, often directly conflicts with NCLB, which requires most students with disabilities to meet the same standards and take the same assessments as other students.

Key Points in the USDE Blueprint for Reform

The overarching goal of its "Blueprint for Reform," according to the USDE, is that by 2020, America will once again have the highest proportion of college graduates in the world (see Attachment 2). According to the USDE, this goal includes four subsidiary goals for ESEA reauthorization:

- all kindergarten students arrive ready to learn and remain on track to 4th grade;
- all students enter middle school with foundational skills to tackle advanced subjects;

- all students graduate from high school on time prepared for at least one year of postsecondary education; and
- all graduates have opportunities for success in the 21st Century economy.

Theory of Action

The department outlines its theory of action for the reauthorization of ESEA to include:

- four central reforms, the same as those embodied in the four assurances made by states pursuant to the *American Recovery and Reinvestment of 2009* (ARRA); that is:

    1. raising standards and improving assessments;
    2. recruiting, retaining, and supporting effective teachers and leaders and ensuring their equitable distribution;
    3. building robust data systems that track student progress and improve instructional practice; and
    4. turning around low-achieving schools, with a focus on "dropout factories" and their feeder schools;

- will produce three outcomes:

    1. increased student achievement;
    2. reduced achievement gaps; and
    3. increased graduation and college enrollment rates.

- as a result of six strategies in the Blueprint:

    1. <u>promoting college- and career-readiness</u> by revising the federal accountability system:

        - using growth and progress to measure schools and focus on achievement gaps;
        - gearing the system to respond to the greatest challenges (see "*Revised school accountability*," below);
        - providing flexibility for results in most schools;
        - recognizing and rewarding success in schools making the greatest gains or those meeting all performance targets; and
        - supporting states, districts, and schools to implement one of four models of "dramatic change" with a select number of large grants in each state;

    2. <u>supporting great teachers and great leaders</u> by "treating teachers like the professionals that they are" with performance-based pay and advancement, and time for collaboration and on-the-job learning:

        - shifting the focus to student outcomes by requiring districts to adopt state-approved teacher evaluation system with multiple rating categories that include student achievement results;
        - continuing flexible formula grant funding under ESEA Title II conditional on state and local district improvement in teacher and leader effectiveness and pay;

- strengthening preparation programs through the competitive $950 million Teacher and Leader Innovation Fund and $405 million Teacher and Leader Pathways program; and
- ensuring equitable distribution of effective teachers and leaders among schools through better data, an equity plan, and a requirement that ESEA Title II funds be directed toward improving equity where performance targets are not being met;

3. meeting the needs of diverse learners by maintaining federal support for historically underserved groups:

   - strengthening programs for English language learners (ELLs) by requiring states to put in place key conditions for reform, such as revising current English language proficiency standards linked with the new college- and career-readiness standards, and aligning assessments with those standards;
   - requiring greater transparency of outcomes by better data systems to track ELLs over time;
   - provide competitive grants, research and graduate fellowships to improve instruction of ELLs, and prepare and develop effective teachers of ELLs;
   - adjusting formulas for homeless and migrant programs so they are based on the number of such students in the state;
   - putting in place appropriate strategies to support rural and other high-need districts, including updating the method used to identify rural districts;
   - increasing the number of tribes, rather than districts, eligible to apply for federal funds to educate Native American students;
   - supporting and students with disabilities in the IDEA as well as ESEA;

4. providing for a complete education:

   - supporting high-quality instruction in high-need districts and schools;
   - replacing several fragmented literacy programs with one competitive grant program to support the state in carrying out a comprehensive evidence-based P-12 state strategy to strengthen literacy instruction, align use of resources, and support implementation of college- and career-ready standards;
   - focusing on a complete and well-rounded education, including a competitive grant program to support states in carrying out comprehensive P-12 STEM (science, technology, engineering, and math) instruction;
   - replacing several narrowly targeted grant programs with a larger funding stream to support well-rounded education; and
   - replacing several narrowly-targeted programs focused on college preparation, high school improvement or gifted and talented education with one more flexible program to meet local needs in improving access for low-income students to accelerated and college-level coursework;

5. successful, safe and healthy students by improving regular access to adults who care about students' success:

- making grants to community-based organizations that engage schools, the community and partner organizations to secure sustainable comprehensive programs that combat the effects of poverty from birth to college and careers;
- through the 21st Century Community Learning Center program, give priority to programs that comprehensively redesign the school day or year to increase time and support for academics and enrichment; and
- engaging and empowering families; and

6. fostering innovation and excellence by encouraging systemic reforms by making competitive grants through the Race to the Top program to states and districts to put in place conditions for innovation and reform:

    - expanding and sustaining effective, evidence-based innovations;
    - expanding the range and quality of educational choices, such as charter schools, intra-district choice, magnet schools, online learning, or academic pathways programs; and
    - requiring states and districts to use funds to empower families to make informed choices.

Points of Comparison between NCLB and the Proposed Reauthorization

USDE says that its Blueprint for ESEA addresses several of the often-criticized aspects of NCLB, in that it would:

- raise the bar by focusing on college- and career-readiness, rather than lowering it through perverse incentives that reward low standards under NCLB;
- offer greater flexibility for all but the lowest-performing and highest-achievement gap schools; rather than being too prescriptive for too many schools under NCLB;
- recognize success by rewarding and learning from progress and growth, rather than being too punitive, even where progress is being made under NCLB; and
- foster a well-rounded education, allowing all subjects and funding better tests, rather than narrowing curriculum by focusing on tests just in math and English language arts under NCLB; but
- maintain the focus on achievement gaps and appropriate intervention where needed.

Revised school accountability

Of particular significance, according to USDE, is a proposed revised accountability system for the reauthorization of ESEA. The system would still be based on disaggregated assessment data. The new system would measure the percent of students "on-track," the percent growing, achievement gaps and trends; graduation rates including gaps and trends; and non-assessment data such as measures of school climate, human capital indicators, college enrollment, and after a transition period, college enrollment without remediation. The system would have three steps:

1. *local flexibility* for most schools to develop and implement improvement strategies;
2. *rewards*, such as flexibility with federal funds, eligibility for recognition, and where appropriate, competitive preference for grants, for any school where all subgroups are making "on-track" performance targets and graduation rate targets, and for any school

in the top 10 percent in terms of its upward trend in percent of all students "on-track," percent "growing," and percent in high school graduating; and

3. *response to the greatest challenges*, by identifying the 5.0 percent of persistently lowest-performing schools in terms of percent of students "on-track," percent "growing," and percent of high school students graduation; the next-lowest 5.0 percent based on the same measures; and at least 5.0 percent of schools with the largest and most stagnant achievement gaps.

Funding proposals

USDE also contrasts its funding recommendations for ESEA with the amounts appropriated in prior years. For federal FY 11, USDE has requested a $3.0 billion increase from Congress for programs under ESEA, plus an additional $1.0 billion contingent on successful reauthorization —the largest increase proposed since the passage of ESEA in 1965. The department says that its proposed reauthorization focuses on maximizing impact by flexibility in approach, emphasizing competitive funding, accountability for outcomes, and evidence of results. The proposed funding increase is all in the area of competitive grants, which would increase from approximately $4.2 billion to $7.8 billion; formula funds to states under ESEA would actually decrease slightly, from $20.8 billion in FY 10 to $20.3 billion in FY 11.[1]

NCSL's Education at a Crossroads: A New Path for Federal and State Education *Policy*

In June 2008, as a follow up to the 2005 report from the NCSL Task Force on No Child Left Behind entitled *Delivering the Promise: State Recommendations for Improving No Child Left Behind*, NCSL formed a follow-up Task Force on Federal Education Policy to focus on describing a productive and effective role for the federal government in reforming the state and locally funded and administered K-12 education system. That task force issued its report in February 2010.

The task force first organized its work by examining the following:

- the state and federal constitutional and statutory authority for education policy;
- the history of direct federal involvement in public education; and
- federal contributions to financing public education; and the impact of NCLB, the dominant federal education policy.

Based on that review, the report includes:

- a brief summary of widely applied and recent K-12 reform elements that the task force considers proven and effective;
- an evaluation of whether federal policy has focused on those initiatives and whether the federal attention has been a help or hindrance; and
- identification of examples of highly innovate state approaches that precede or supersede federal action and that subsequently are often at risk of being preempted by federal policy actions, including:

[1] FY 10 amounts do not include formula funds awarded to states under ARRA.

- standards-based reform;
- test-based accountability and consequences;
- high expectations/common academic standards;
- school finance reforms;
- teacher issues;
- systemic governance and/or comprehensive reforms; and
- systemic and appropriate use of data.

The report concludes with five broad recommendations to readjust and balance the state-federal relationship in the public education arena:

1. Concentrate available federal funding on populations most at-risk, using a research-based formula that helps the neediest students, rather than trying to leverage system-wide reform with the 7.0 percent federal contribution.

2. Provide full funding for special education at the promised cost levels. Research indicates that the actual excess cost for educating a special needs student is not the 17 percent provided by federal IDEA funds, nor the 40 percent promised, but more than 90 percent above the average for education students without disabilities. This unfunded mandate has led to spiraling state and local taxes and redirection of state funds away from systemic school reforms.

3. Make permanent the federal changes to the tax credit provisions of bonding laws that apply to school construction.

4. Revitalize the federal focus on research and reporting on what works and why without picking or mandating how and when particular strategies should be required by law or encouraged by withholding federal resources.

5. Use any remaining funding to reward true innovation, not conformity with others or compliance with a checklist of preferred reforms, but actual progress toward performance gains.

ATTACHMENT 1

The Federal *No Child Left Behind Act of 2001* (NCLB)

Signed into law in January 2002, NCLB significantly expanded the federal role in education by establishing new requirements for states and districts to receive funding under Title I of the act. Among its provisions, NCLB requires states that accept Title I funding to develop and follow a plan that includes the following:

State Assessments	States must implement annual state assessments in reading/language arts and mathematics in grades 3 through 8 and at least once in high school, aligned with challenging state content and academic achievement standards. By school year 2007-2008, students must also be tested once in elementary school, in middle school, and in high school in science. States must also assess the English proficiency of English language learners (ELLs) annually and administer the National Assessment of Educational Progress (NAEP) to a sample of students in grades 4 and 8 in alternate years in reading and mathematics.
Students with Disabilities	Students with disabilities must be assessed at grade level, with appropriate accommodations, with the following two exceptions: up to 1.0 percent of all students may be counted as proficient based on an alternative state assessment for students with the most significant cognitive disabilities; and an additional 2.0 percent, who are not expected to reach grade-level standards on the same time frame as other students, may be counted as proficient if the state has federally approved assessments that measure grade level content standards but modified achievement standards.
English Language Learners (ELLs)	States must assess ELLs in language arts, mathematics, and science, using appropriate accommodations, including, to the extent practicable, assessments in the student's first language. However, the student must take the required state language arts assessment in English after being in a US school for three years. On a case-by-case basis, a school district may extend the period for language arts testing in a language other than English for an additional two years.
Adequate Yearly Progress (AYP)	AYP has three components for each school: the percentage of students who demonstrate proficiency on state assessments; the percentage who participate in the assessments; and one other indicator—graduation rates in the case of high schools, and attendance in the case of elementary and middle schools. States must set annual targets that lead to the goal of all students' reaching proficiency in reading and mathematics by school year 2013-2014. Each year, 95 percent of all students and subgroups must take the test, and each subgroup (major ethic/racial groups, low-income students, students with disabilities, and ELLs) is measured against the same annual target; if any group or subgroup of students does not reach the target, the school does not make AYP. An exception to this rule is the "safe harbor" provision, which allows schools to count subgroups as making AYP when they show at least a 10 percent reduction in the number of non-proficient students from the prior year.
Schools Identified for Improvement	Title I schools and districts that do not make AYP for two consecutive years are identified for improvement and are to receive technical assistance to help them improve. Those that miss AYP for additional years are identified for successive stages of interventions, including corrective action and restructuring. To leave the school improvement cycle, a school or district must make AYP for two consecutive years.
Public School Choice	Districts must offer all students in identified Title I schools the option to transfer to a non-identified school with transportation provided by the district.
Supplemental Educational Services	Title I schools that miss AYP for a third year, districts must also offer low-income students the option of supplemental educational services from a state-approved provider.
Corrective Action	Title I schools that miss AYP for a fourth year, districts also must implement at least one of the following corrective actions: replace school staff members who are relevant to the failure to make AYP; implement a new curriculum; decrease management authority at the school level; appoint an outside expert to advise the school; extend the school day or year; or restructure the internal organization of the school.
Restructuring	Title I schools that miss AYP for a fifth year, districts also must begin planning to implement at least one of the following restructuring interventions: reopen the school as a charter school; replace all or most of the school staff; contract with a private entity to manage the school; turn over operation of the school to the state; or adopt some other major restructuring of school governance. Districts must spend a year planning for restructuring and implement the plan the following year.
Highly Qualified Teachers	All teachers of core academic subjects must be highly qualified as defined by NCLB and the state. To be highly qualified, teachers must have a bachelor's degree, full state certification, and have demonstrated competence in each core academic subject that they teach. Subject-matter competency may be demonstrated by passing a rigorous state test, completing a college major or coursework equivalent, or (for veteran teachers) meeting standards established by the state under a "high, objective uniform state standard of evaluation."
Reporting	States, districts, and individual schools must annually publish a report card that, among other information, reports the number and percent of students who demonstrate proficiency. The results must be disaggregated for subgroups including major racial and ethnic groups, major income groups, students with disabilities, and students with limited English proficiency.

LESC, June 15, 2010

Adapted from National Assessment of Title I Final Report (USDE, 2007)

ATTACHMENT 1