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State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
PH: (505) 986-4591 FAX: (505) 986-4338  
<http://legis.state.nm.us/lcs/lesc/lescdefault.asp>



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October 17, 2006

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Kathleen Forrer

**RE: STAFF BRIEF: ASSESSMENT AND ACCOUNTABILITY: NCLB AND STATE ASSESSMENT REQUIREMENTS**

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The 2006 Interim Workplan of the Legislative Education Study Committee (LESC) includes a presentation on the similarities and differences between the assessment requirements specified in the *No Child Left Behind Act of 2001* (NCLB) and the assessment requirements specified in state statute and rule.

**Issues:**

- NCLB requires states that receive Title I funds to submit a state plan to the US Secretary of Education for approval. Three of the key requirements for state plans under NCLB are the adoption of:
  - challenging academic standards applicable to all schools and children in the state;
  - a single statewide accountability system, including sanctions and rewards that the state will use to hold school districts and schools accountable for student achievement; and
  - a set of yearly student academic assessments based on the state's academic standards that will be effective in ensuring that all school districts and public schools make adequate yearly progress (AYP) toward enabling all public school students to meet state standards.

- In response both to NCLB and to state legislative initiatives to improve educational accountability, state law was amended in 2003 to change the primary determinant of student achievement from norm-referenced tests, which measure students relative to one another, to criterion-referenced tests (CRTs), which measure each student's proficiency relative to state academic standards. (See Attachment for a side-by-side comparison of federal and state requirements.)
- The basic elements of the State Accountability Plan developed by the Public Education Department (PED) describing how AYP is calculated were approved by the US Department of Education (USDE) in May 2003; and in January 2005, PED received federal approval to amend the plan to allow the state to exercise greater flexibility with regard to whether the assessment scores of first year limited English proficient (LEP) students would be included in the calculation of AYP.
- In July 2005, PED announced that New Mexico had received a one-year waiver from the USDE granting interim flexibility in rating elementary and middle schools and corresponding school districts. The flexibility option allowed PED to use a proxy method to determine the percentage of students with disabilities that was equivalent to 2.0 percent of all students assessed. For school year 2004-2005 only, the proxy was added to the percent of students with disabilities who were proficient. This adjusted percent proficient is what the state was permitted to use to reexamine if the school or district made AYP for school year 2004-2005. According to PED, exercise of this flexibility option by the state affected the AYP designations of fewer than five schools. USDE has not yet issued regulations or guidance regarding future options for states in assessing these students.
- In testimony to the LESC during the 2005 interim, PED explained the implementation schedule for CRTs in grades 3-9 in language arts, reading, math, and science in both English and Spanish and in grade 11 in reading and math.
- On June 22, 2006, USDE informed PED that the status of New Mexico's standards and assessment system is Approval Pending and that the state has been placed under Mandatory Oversight "due to outstanding concerns with the alternate assessment based on alternate achievement standards (the New Mexico Alternate Assessment, or NMALT) and the technical quality of all assessments, in particular the decision accuracy, the consistency and the appropriateness of accommodations." If the state fails to come into compliance by the end of school year 2006-2007, USDE "will initiate proceedings...to withhold 15 percent of New Mexico's fiscal year 2006 Title I, Part A administrative funds, which will then revert to local educational agencies in New Mexico."
- In a letter dated September 19, 2006, the US Secretary of Education reminds chief state school officers that, sometime during school year 2006-2007, every state must have a fully approved assessment system that meets the requirements of NCLB.
- During the last few interims, school district personnel have indicated concern that the number of tests that students must take has an adverse impact on the time available for instruction. In developing the LESC workplan for the 2006 interim, several committee members also expressed concern about the number of tests that school districts must administer due to both NCLB and state requirements.

- At the September 2006 meeting of the LESC, participants in the small group discussions regarding College/Workplace Readiness and High School Redesign agreed that the current 10<sup>th</sup> grade high school competency test is not serving the purposes for which it was originally intended. Among other issues, they noted that the test is administered too late in a student’s career to serve as a diagnostic tool; some students who pass the test still need remediation when they go to a postsecondary institution; once students pass the test and complete graduation requirements, they often “slack off” for the remainder of high school.
- PED has proposed two options for changing the high school competency examination requirements:
  - using the 11<sup>th</sup> grade Standards Based Assessment as part of a “Body of Evidence in which several prescribed elements are combined in the determination of graduation”;
  - or
  - moving the 11<sup>th</sup> grade Standards Based Assessment to the 10<sup>th</sup> grade and requiring all students to take the ACT at state expense.
- In its *School Improvement Framework for 2006-2007*, PED states that a long term goal is “to have statewide short cycle assessment aligned to NM Content Standards and Benchmarks” and to secure state funding “to districts for adoption of meaningful assessments most appropriate for their populations.” The department then indicates that achievement of this goal will impact “between 10 and 100 schools.”
- In testimony to the LESC at its September 2006 meeting, PED’s Deputy Secretary for Learning and Accountability noted that, in order to assist districts to select the short cycle assessments that best fit their needs, PED has compiled a list of approximately 30 such assessments, including the characteristics, strengths, and weaknesses of each. However, because of local autonomy, PED does not require districts to use a particular short cycle assessment, or any short cycle assessment at all, except in the case of a school in the school improvement cycle.

*Federal and State Funding for Assessment Development and Implementation:*

- Over a six-year period beginning in federal fiscal year 2002 (FFY 02), the federal government has appropriated a total of \$27.4 million in NCLB funding to New Mexico for the development and implementation of state assessments:
  - FFY 02 – \$4.5 million (actual)
  - FFY 03 – \$4.5 million (actual)
  - FFY 04 – \$4.6 million (actual)
  - FFY 05 – \$4.6 million (actual)
  - FFY 06 – \$4.6 million (estimated)
  - FFY 07 – \$4.6 million (estimated)

- According to the USDE, the federal funds may be used for the “... development or subsequent implementation of standards-based state academic assessments in reading or language arts, mathematics, and science as required by the authorizing statute. When the state has met all assessment requirements, the funds may be used to improve standards, alignment, reporting, or expanded use of test accommodations.” In testimony to the LESC during the 2005 Interim, PED reported that for the first two years, the federal appropriations were used exclusively for the development of grades 3-9 standards based assessments, but for FY 05, the federal funds were also used to supplement the costs of developing the grade 11 assessment and for related costs such as the Technical Advisory Committee contracts and AYP calculator development.
- For state fiscal years FY 05 through FY 07, the New Mexico Legislature has also appropriated a total of \$15.1 million to PED for various costs associated with test development and implementation:
  - FY 05 – \$810,000 (supplemental/deficiency appropriation for over-obligation of NCLB student testing contracts)
  - FY 05 – \$350,000 (state-level CRT costs)
  - FY 05 – \$385,500 (student assessment)
  - FY 06 – \$7.0 million (assessment and test development)
  - FY 07 – \$6.6 million (assessment and test development/exit examinations)
- In addition to the money appropriated to PED for state level costs, since FY 01 the Legislature has appropriated approximately \$7.4 million to school districts and charter schools through the State Equalization Guarantee for costs associated with test administration<sup>1</sup>:
  - FY 01 – \$1.0 million
  - FY 02 – \$600,000
  - FY 04 – \$2.0 million
  - FY 05 – \$1.8 million
  - FY 06 – \$2.0 million

Assessment Requirements: Federal

- Issued in March 2003 by the USDE, *Standards and Assessments: Non-Regulatory Guidance* provides the following description of a state assessment system:
  - Assessments of Academic Standards
    - By school year 2005-2006, states must have developed and implemented yearly assessments in reading/language arts and mathematics in each of grades 3 through 8 and at least once in the grade span 10-12.
    - By school year 2007-2008, states must develop and implement yearly assessments in science at least once in each of the grade spans 3-5, 6-9, and 10-12.

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<sup>1</sup> No additional funding for test administration was included in the SEG appropriations for FY 03 or FY 07; however, the \$7.4 million already appropriated remains in the base program cost.

- Assessments of English Language Proficiency
  - By school year 2002-2003, local school districts must administer annual assessments of English proficiency to all students with limited English proficiency.
- National Assessment of Educational Progress (NAEP)
  - Local educational agencies that receive Title I funds, if selected as part of the NAEP sample, must participate in the biennial state NAEP assessments in reading and mathematics at grades 4 and 8.
- As delineated in current federal regulation, NCLB provides some flexibility both with regard to assessing students with disabilities and students who are LEP and with regard to the manner in which those students' scores are included in the calculation of AYP:
  - States are permitted to develop modified achievement standards aligned with grade-level content standards for a limited group of students with disabilities. A state's academic assessment system must provide for one or more alternate assessments based on those standards for a child with a disability whose IEP team determines cannot participate in all or part of the state assessments.

In calculating AYP for schools, school districts, and the state, a state must include the scores of all students with disabilities, even those with the most significant cognitive disabilities; but may include the proficient and advanced scores of students with the most significant cognitive disabilities based on the alternate academic achievement standards, provided that the number of those students does not exceed 1.0 percent of all students in the grades assessed in reading/language arts and in mathematics. A state may request an exception permitting it to exceed the 1.0 percent cap on condition that the state can document that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent and can explain why such is the case.

- LEP students must be included in a state's assessment of academic achievement in reading/language arts and mathematics; they must receive appropriate accommodations and, to the extent practicable, native language assessments. LEP students must also be assessed annually for their proficiency in listening, speaking, reading, and writing English. However, a state may exempt a newly arrived LEP student, i.e., a student who has attended school in the United States for less than 12 months, from one administration of the state's reading/language arts assessment. The year in which a student is exempted from the reading/language arts assessment counts as one of the three years in which a student may take the test in his or her native language, and the student's proficiency in English must still be assessed.

If a school district determines, on a case-by-case basis, that after three years a student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English, the district may continue, for no more than two additional consecutive years, to assess the student in his or her native language.

In determining AYP, a state may choose not to include the scores of recently arrived LEP students on the mathematics assessment, the reading/language arts assessment (if administered), or both.

Assessment Requirements: State

- Current state statute [Section 22-2C-4 NMSA 1978] requires PED to “establish a statewide assessment and accountability system that is aligned with the state academic content and performance standards and that measures adequate yearly progress [AYP] for each student, public school and school district.”
- Statute [Section 22-2C-4 NMSA 1978] also specifies that the state assessment program used in the measurement of AYP must consist of the following:
  - for grades three through nine and for grade eleven, standards-based academic performance tests in mathematics, reading and language arts and social studies by the 2005-2006 school year; provided that testing in ninth grade and testing in social studies shall not occur until the legislature has provided funding for test development and implementation;
  - for grades three through nine, standards-based academic performance writing assessment with the writing assessment scoring criteria applied to the extended response writing portions of the language arts criterion-referenced tests by the 2005-2006 school year; and
  - for one of grades three through five and six through nine and for grade eleven, standards-based academic performance tests in science by the 2007-2008 school year.
- In addition, PED is required to “adopt standards for reasonable accommodations in academic testing for students with disabilities and limited English proficiency” [Section 22-2C-4 D NMSA 1978]. Section 22-2C-4 E allows students who are “limited English proficient” to take the standards-based academic test in their primary language with the following proviso: “A student who has attended school for three consecutive years in the United States shall participate in the English language reading test unless granted a waiver by the department based on criteria established by the department. An English language reading test waiver may be granted only for a maximum of two additional years and only on a case-by-case basis.”
- Other sections of statute regarding assessment mandate that:
  - remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability program [Section 22-2C-6 A NMSA 1978];
  - students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills [Section 22-13-1 B NMSA 1978];
  - schools with full-day kindergarten programs [shall] conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate kindergarten [Section 22-13.3.2 B NMSA 1978];

- final examinations shall be administered to all [high school] students in all classes offered for credit [Section 22-13.1.1 H NMSA 1978];
- high school curricula and end-of-course tests shall be aligned with the placement tests administered by two- and four-year public post-secondary educational institutions in New Mexico [Section 22-13.1.2 NMSA 1978]; and
- a student shall not receive a high school diploma who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science [Section 22-13.1.1 I NMSA 1978].

**Background:**

- In general, to meet AYP a school must not only show the prescribed degree of improvement for students overall and for each of the subgroups but also demonstrate that at least 95 percent of the students in each group were tested. Other factors, pursuant to state law, include graduation rates for high schools and attendance rates for elementary and middle schools.
- NCLB requires each state to develop its own definition of AYP, based primarily upon academic indicators, particularly student performance on tests of reading or language arts and math. State law defines AYP as “the measure adopted by the [Public Education Department] based on federal requirements to assess the progress that a student, a public school or school district or the state makes toward improving student achievement.” The PED rule defines AYP as “the percent of students that must be proficient from year to year within a subject area, grade, whole group and subgroup as specified by state defined annual measurable objectives.” This rule further specifies that CRTs are the basis for measuring AYP (effective since school year 2004-2005).

**Presenters:**

Dr. Don E. Watson, Assistant Secretary, Assessment and Accountability Division, PED, will address whether there is a need to fully align state and federal assessment requirements and will provide an update on the status of the various components of the state assessment system, including (1) any planned changes to the high school competency test; (2) PED guidance to school districts regarding short-cycle assessments; and (3) the development of end-of-course tests.

Dr. Rose-Ann McKernan, Director of Research, Development, and Accountability, Albuquerque Public Schools, will discuss the discrepancies between the state and federal assessment requirements from a school district perspective.

**Questions the committee may wish to consider:**

1. By what means and by what date does PED plan to fully comply with the federal requirements for alternate standards and assessment?
2. What potential changes to statute does PED think are necessary with regard to any planned revisions to the state's assessment system?
3. What are PED's current plans with regard to revising or replacing the current high school competency test?
4. How clear are PED directives to school districts with regard to the need for and the selection of short cycle assessments?
5. Does PED plan to develop end-of-course tests? If so, what procedures will the department use and when will the tests be available for use?

New Mexico Assessment Requirements

Assessment	Federal	State Statute	PED Rule/Policy
National Assessment of Educational Progress (NAEP)	NCLB §1111 (c)(2): Required for a sample of students in grades 4 and 8 in some schools <sup>2</sup>		
New Mexico Standards-Based Assessment (CRT)	NCLB §1111(b)(3): --high quality yearly academic assessments aligned with state’s challenging academic content and student achievement standards --in math & reading/ language arts in grades 3-8 and once in grade 10-12 by SY 2005-2006; --in science once in grades 3-5, 6-9, and 10-12 by SY 2007-2008. --limited English proficient students shall be assessed in a “valid and reliable manner” including to the extent practicable, assessments in the language and form most likely to yield accurate data on content areas, until they have achieved English language proficiency (generally within 3 years of arriving in US; on a case-by-case basis up to 5 years)	§22-2C-4: --in math, reading, language arts, & social studies in all grades 3-9 & 11 (grade 9 & social studies contingent on availability of funding). -- writing assessment as part of language arts for grades 3-9. --in science once in grades 3-5, 6-9, and 11 by SY 2007-2008. <sup>3</sup> --students who have been determined to be ELL may take the SBA in their primary language for 3 consecutive years in the US, with up to an additional 2 years by waiver.	§6.19.1.7: --criterion referenced tests in grades 3-9 and 11 in either language will contain reading/language arts, mathematics, and science assessments. §6.19.1.8: --Students will be tested using the criterion referenced tests in Spanish or English or other assessments, when appropriate, as defined by federal guidelines. §6.30.2: --all public school students, with the exceptions noted below shall participate in the NM achievement assessment program which includes...norm-referenced [ <i>sic</i> ] standardized testing in grades 3-9, writing assessment in grades 4 and 6. §6.30.2: --the educational achievement in language arts, mathematics, science and social studies in grades 3-9 for ELL students must be assessed with a standardized test in a language appropriate for each student; if such a test does not exist for a particular language, achievement must be assessed by the teacher.
New Mexico Alternate Assessment	NCLB §1111 incorporates IDEA §612; §602 by reference: --alternate assessment for	§22-2C-4: The department shall adopt standards for reasonable accommodations in academic	§6.30.2: Students with disabilities...shall participate in all statewide and district-

<sup>2</sup> NAEP is a federal requirement in states that receive Title I funding, but only affects a sample of students (from grades 4 and 8) in selected schools, and only tests those students in math and English. All other NAEP testing is voluntary.

<sup>3</sup> Science test developed and implemented for grades 3-9 in school year 2004-2005.

Assessment	Federal	State Statute	PED Rule/Policy
	students with significant cognitive disabilities (NCLB limits to 1.0 percent of student population) --modified assessment for students with persistent academic disabilities (USDOE reg. limits to 2.0 percent of student population)	testing for students with disabilities.	wide assessments of student achievement or in state-approved alternate assessments. ... The IEP shall specify which assessments each student will participate in and what if any accommodations or modifications in administration are needed to enable the student to participate.  [NM modified assessment for 2% group is currently in development]
New Mexico High School Competency Exam  (Graduation Exam)		§22.13.1.1 I: Student shall not graduate who has not passed a state graduation exam in reading, language arts, written composition, math, science, and social studies (including US and NM Constitutions) If within five years after exiting the school system the student takes and passes the exam, student may receive a high school diploma	§6.30.2.10: As required for a diploma, a student must achieve a minimum scale score of 175 on each of the five subtests and a minimum holistic score of three on the writing subtest. §6.30.2: mastery for ELL students exempted from the NMHSCE must be determined by alternate assessment methods implemented by districts. PED Policy: Exam first administered in grade 10, may be taken again until passed.
New Mexico English Language Proficiency Exam  (ELL)	NCLB §1111 (7): State shall provide for annual assessment of English proficiency (measuring oral language, reading and writing skills in English) of all students with limited English proficiency	§22.23-5: Each district shall maintain language proficiency data and update it annually to evaluate bilingual multicultural education program effectiveness and use of funds.	§6.30.2: refers to the local education agency's language assessment instrument. State Accountability Plan indicates starting in Spring 2005, ELL students shall be assessed using the NM English Language Proficiency Assessment.
Dynamic Indicators of Basic Early Literacy Skills  (K-2 Assessment)		§22-13.3.2 B.: PED shall require schools with full-day K to conduct age-appropriate assessments to determine the placement of students at instructional level and the effectiveness of child-centered, developmentally appropriate K.	§6.30.5.12: teachers must administer (A) age-appropriate literacy specific screening and assessment measures to participating students; and (B) literacy based pretests by Sept. 30 and posttests by April 30 of each school year

Assessment	Federal	State Statute	PED Rule/Policy
		§22-13-1 --Students in K and grade 1 shall be screened and monitored for progress in reading and language arts; --Students in grade 2 shall take diagnostic tests on reading and language arts skills.	to assess student performance. (C) Districts having both half-day and full-day K will assess performance of all K students. §6.30.2: All public school students...shall participate in the NM achievement assessment program which includes a reading assessment in grades 1 and 2.
District Testing: EPSS and Academic Improvement Plan requirements		§22-2C-6: Remediation programs, academic improvement programs and promotion policies shall be aligned with alternative school-district-determined assessment results and requirements of the assessment and accountability system.	§6.30.2.9: District EPSS must identify a variety of specific assessment measures that will allow students to demonstrate progress. EPSS must contain a comprehensive assessment system.  PED states that it monitors EPSS in all districts and priority schools to ensure that plans include use of short-cycle assessments.
End of course tests		§22-13.1.1 H: Final examination to all students in all classes offered for credit. §22.13.1.2: Must be aligned with placement tests used in 2- and 4-year public postsecondary institutions.	