



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

The Honorable Hanna Skandera  
Secretary of Public Education  
New Mexico Public Education Department  
Jerry Apodaca Education Building  
300 Don Gaspar  
Santa Fe, New Mexico 87501

Dear Secretary Skandera:

Congratulations on receiving approval of New Mexico's request for ESEA flexibility. Submitting a request that meets the four ESEA flexibility principles is a significant accomplishment; you and your staff should be proud of the work you have done and that you plan to do to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction in New Mexico. Full and effective implementation of your request for ESEA flexibility will be critically important to accomplishing these goals. Therefore, the U.S. Department of Education (Department) is committed to working with New Mexico to ensure full and effective implementation, including by providing technical assistance and monitoring the progress of implementation toward the goals set for your schools and students.

The purpose of this letter is to provide some additional information about how to implement your approved request and how to meet certain obligations related to the approval of your request.

### Waivers in ESEA Flexibility

The waivers that comprise ESEA flexibility have been granted pursuant to the Secretary's authority under section 9401 of the ESEA. Consistent with that authority, only the statutory requirements listed in the table enclosed with Secretary Duncan's letter approving your request, and the related regulatory requirements, have been waived through ESEA flexibility. New Mexico and its local educational agencies (LEAs) remain obligated to comply with all other requirements of the ESEA, including, for example, the fiscal requirements in ESEA section 1120A, the regulatory requirements for calculating graduation rates, the caps on the number of proficient and advanced scores of students with disabilities who take an alternate assessment based on alternate or modified academic achievement standards that may be included in accountability determinations, and the requirements related to equitable services.

In addition, the waivers that are included in the table enclosed with Secretary Duncan's letter include waivers that permit New Mexico or LEAs in New Mexico to: operate a schoolwide program in a priority or focus school that does not meet the 40 percent poverty threshold; provide funds reserved under ESEA section 1003(a) to any priority or focus school; provide

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funds reserved under ESEA section 1117(c)(2)(A) to any reward school; and provide funds under ESEA section 1003(g) to any priority school that will implement one of the four school improvement grant (SIG) school intervention models. Please note that these waivers apply only to Title I schools, Tier II schools served under the SIG program, and Title I-eligible high schools with a graduation rate below 60 percent. In other words, if New Mexico identifies other non-Title I schools as reward, priority, or focus schools, these waivers would not be relevant to those additional schools. Moreover, approval of your request for ESEA flexibility does not waive any other requirements related to schoolwide programs, the reservation under ESEA section 1003(a), the provision of funds under ESEA section 1117(c)(2)(A), or the allocation of SIG funds, respectively; they merely modify the universe of schools to which those respective provisions apply.

#### Waivers of Requirements to Provide Supplemental Educational Services (SES) and Transportation for Public School Choice

Under New Mexico's approved ESEA flexibility request, LEAs in the State will no longer be required by Federal law to offer SES or public school choice. As is noted in the document titled *ESEA Flexibility*, a State educational agency (SEA) may require its LEAs to continue to provide SES and/or public school choice, or its LEAs may choose to continue to do so. If these options are not exercised, however, an LEA may begin implementing this waiver of SES and public school choice in the 2012–2013 school year. That means that LEAs must continue to provide SES and transportation for public school choice through the end of the 2011–2012 school year.

Further, if the options to continue offering public school choice and SES are not exercised, the Department expects that New Mexico will provide, or will ensure that its LEAs provide, parents with information to explain why SES and transportation for public school choice will no longer be offered beginning in the 2012–2013 school year, explain the interventions, incentives, and supports that will replace those options, and provide other relevant details regarding the termination of the existing services. This information should be provided as early as feasible so that parents may plan accordingly, and should be provided in a language and format that is understandable to parents. The Department also expects that similar information about the status of SES will be provided to all SES providers in the State.

Please note that, although LEAs will no longer be obligated by Federal law to provide transportation for public school choice, under ESEA section 1116(b)(13), which ESEA flexibility does not waive, a student who is already taking advantage of public school choice must be permitted to remain at his or her school of choice until he or she has completed the highest grade in that school. This right should be clearly explained to parents in the information that is provided regarding the changes being made with respect to the provision of SES and public school choice. To enable parents to exercise this right, we encourage LEAs to consider providing transportation to these schools of choice beyond the end of the 2011–2012 school year.

### Accountability Workbooks

The Department recognizes that, in light of New Mexico's approved ESEA flexibility request, some elements of New Mexico's Accountability Workbook do not reflect New Mexico's new system of differentiated recognition, accountability, and support. We are currently working on a process for reconciling these documents in a way that ensures consistency and transparency while at the same time minimizing the burden on SEAs. We will be in touch with you to discuss this process as soon as it is finalized.

### Amendments to New Mexico's ESEA Flexibility Request

The Department encourages New Mexico to continuously evaluate the effectiveness of the plans and other elements of its ESEA flexibility request as it proceeds with implementation, and to make necessary changes to address any challenges that it identifies. As a result of this process of continuous improvement, the Department anticipates that New Mexico might want or need to make changes to its ESEA flexibility request.

If New Mexico wishes to make changes to its ESEA flexibility request, New Mexico must submit those changes to the Department as early as feasible for the Department's review and approval. Upon receipt of the proposed changes, the Department will determine whether the changes require additional peer review. New Mexico may not implement any changes to its approved request until those changes have been approved by the Department. The Department will provide additional information regarding the format and process for an SEA to submit a request to amend its ESEA flexibility request in the coming months. Please note that the Department does not anticipate approving any amendment that would result in a State's no longer meeting the required timelines for implementation of ESEA flexibility.

In addition to submitting information on amendments to its request, New Mexico must submit for peer review its guidelines for its teacher and principal evaluation and support systems, in accordance with Principle 3 of ESEA flexibility, once they are developed and adopted. The Department will provide you with information regarding the schedule for this submission and peer review shortly. An SEA that updates its lists of priority, focus, and reward schools using new assessment data must also submit those lists to the Department by August 1, 2012.

### Continuing Consultation

Meaningfully engaging and soliciting input from teachers and their representatives, and other diverse stakeholders, was an important part of developing New Mexico's ESEA flexibility request. Such consultation will be equally important as you proceed with implementing your ESEA flexibility request. We encourage New Mexico to work with stakeholders in the State on the implementation of its ESEA flexibility request and to fully include educators, community and tribal leaders, and parents to ensure successful implementation of New Mexico's plans.

### Submission of Reports, Data, and Evidence

ESEA Section 9401(e)(2) requires an SEA receiving a waiver under section 9401 to report such information as the Secretary may require. In accordance with that provision and as it assured in its request, New Mexico must provide the Department certain reports, data, and evidence regarding its progress in implementing the plans and other elements of its approved request. The Department anticipates that an SEA will be able to meet this requirement primarily by providing information to the Department through ED*Facts*/Consolidated State Performance Report (CSPR) (much of which is part of current collections), and by providing information required for the Department's monitoring of New Mexico's ESEA flexibility implementation.

### Monitoring

The Department plans to monitor SEAs to ensure full and effective implementation of approved ESEA flexibility requests. The Department will track New Mexico's progress and success in implementing the plans and other elements of its approved ESEA flexibility request, including alignment with the four principles and the required timelines listed in the document titled *ESEA Flexibility*. In particular, the Department will closely monitor New Mexico's implementation of ESEA flexibility to ensure that schools and LEAs continue to provide appropriate supports and interventions for all subgroups, and that the State's grading system appropriately identifies schools in which ESEA subgroups and the "bottom 25 percent" subgroup fail to improve their academic achievement. The Department expects to begin monitoring States' implementation of ESEA flexibility before the start of the 2012–2013 school year and will provide additional information on its monitoring plans in the coming months.

Please note that as States' implementation of ESEA flexibility proceeds, the Department may adjust the reports, data, and evidence it needs to track implementation, as appropriate. We will keep you apprised of any modifications.

### Secretary's Right to Terminate Waivers

Under ESEA section 9401(f), the Secretary must terminate a waiver if the Secretary determines, after notice and an opportunity for a hearing, that the performance of the entity affected by the waiver has been inadequate to justify a continuation of the waiver or if the waiver is no longer necessary to achieve its original purpose. Accordingly, the Secretary may terminate the waivers granted through ESEA flexibility if New Mexico or a significant number of its LEAs do not implement New Mexico's request as approved by the Department, if New Mexico fails to submit in a timely manner the required reports, data, and evidence, fails to submit in a timely manner its guidelines for teacher and principal evaluation and support systems, or fails to submit in a timely manner updated lists of priority, focus, and reward schools. If the waivers are terminated, New Mexico and its LEAs must immediately resume complying with the requirements of current law.

I hope you find this information helpful. Congratulations again on receiving approval of New Mexico's request for ESEA flexibility. I look forward to working with you and your staff as you implement this flexibility and as you continue working to improve education in New Mexico.

Sincerely,

/s/

Michael Yudin  
Acting Assistant Secretary

cc: Leighann Lenti, Director of Policy