

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number: HB 215a**

**51st Legislature, 1st Session, 2013**

**Tracking Number: .190947.1**

**Short Title: Remove School AYP & Funding Incentives**

**Sponsor(s): Representative Dennis J. Roch and Others**

**Analyst: Kevin Force**

**Date: March 11, 2013**

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**AS AMENDED**

The Senate Education Committee (SEC) amendments identify and strike additional references to Adequate Yearly Progress (AYP) and AYP-related programs in:

- the *Public School Code* sections addressing:
  - “Legislative Findings and Purpose”<sup>1</sup>;
  - “Definitions”<sup>2</sup>; and
  - “Open Enrollment”<sup>3</sup>, in which reference to students enrolled in a school that “needs improvement” or is “subject to corrective action” is changed to refer instead to students enrolled in schools “rated ‘F’ for two of the prior four years, pursuant to the *A-B-C-D-F School Ratings Act*”;
- the *Assessment and Accountability Act*, in reference to:
  - the Supplemental Incentive Funding State Program for Other Achievement, which is now the State Improving Schools Program<sup>4</sup>; and
  - the Schools in Need of Improvement Fund<sup>5</sup>;
- the *A-B-C-D-F School Ratings Act*;
- the *Charter Schools Act*; and
- the *Hispanic Education Act*.

Finally, the SEC amendments repeal Section 22-2C-7, 22-2C-7.1 and Section 22-2C-12 of the *Assessment and Accountability Act*.

**Original Bill Summary:**

HB 215 would amend the *Assessment and Accountability Act* by removing references to Adequate Yearly Progress (AYP) requirements, and accompanying funding incentives, and adding a new section regarding Public Education Department (PED) reports to the Legislature.

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<sup>1</sup> 22-1-1.2(D)(4) NMSA 1978

<sup>2</sup> 22-1-2(B) NMSA 1978

<sup>3</sup> 22-1-4(E)(3)(b) NMSA 1978

<sup>4</sup> 22-2C-8(A)-(B) NMSA 1978

<sup>5</sup> 22-2C-10(A)(-B) NMSA 1978

Specifically, HB 215:

- in Sections 1-5:
  - removes all references to AYP requirements;
  - removes all references to the calculation and distribution of incentive funding for schools making the greatest improvements in AYP; and
  - makes technical changes to now-outdated references to the “state board” and the “state superintendent” by replacing them with “[public education] department” and “secretary of public education,” respectively.
- in Section 6, adds a new section of the *Assessment and Accountability Act*, beginning with the end of 2014 and following each calendar year thereafter, that would require PED to report to the Legislative Education Study Committee (LESC) the department’s recommendations for changes to law to comport with applicable federal requirements; and
- in Section 7, repeals several sections of the act regarding:
  - procedures for schools in need of improvement, based on AYP;
  - procedures for failing schools to be reorganized and opened as state-chartered charter schools; and
  - provisions addressing the creation of the “adequate yearly progress program” and the “state improving schools program.”

### **Fiscal Impact:**

HB 215 does not contain an appropriation.

### **Substantive Issues:**

In the 2011 regular session, the Legislature passed, and the governor signed, the *A-F School Grading Act*<sup>6</sup>, after which PED promulgated rules<sup>7</sup> for the administration of the act. In 2012, the US Department of Education (USDE) offered states the option of flexibility with regard to multiple sections and requirements of the *Elementary and Secondary Education Act* (ESEA)<sup>8</sup> including waivers from provisions:

- requiring states and districts to make AYP determinations for schools and school districts when it would be inconsistent with the state-developed system of differentiated recognition accountability and support under the flexibility program, which in New Mexico is the *A-F School Grading Act*;
- requiring the establishment of annual measurable objectives (AMOs) for determining AYP, so that the state could, instead, develop its own new measures of determining progress for schools, accomplished through the requirements of the *A-F School Grading Act*;
- requiring identification of schools that failed to achieve AYP for two consecutive years as “in need of improvement, corrective action or restructuring”;

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<sup>6</sup> Chapter 22, Article 2E NMSA 1978

<sup>7</sup> Title 6, Chapter 19, Part 8 NMAC

<sup>8</sup> The *No Child Left Behind Act* (NCLB) is the 2001 reauthorization of ESEA.

- requiring states to identify school districts that failed to achieve AYP for two consecutive years as “in need of improvement or corrective action”;
- limiting participation in the Small Rural School Achievement (SRSA) and Rural and Low-Income School (RLIS) programs to those qualifying schools that make AYP;
- requiring states to distribute Title I funds to schools identified as in need of improvement, corrective action or restructuring, so that, instead, the state could distribute these funds to any school identified as “priority” or “focus” schools, as determined by the *A-F School Grading Act* (see “Background,” below); and
- allowing states to award reserve Title I funds to schools that exceeded AYP for two consecutive years, so that, instead, the state might distribute these funds to any schools identified as “reward” schools, under the *A-F School Grading Act*.

With the passage of the *A-F School Grading Act*, and participation in the ESEA flexibility program, New Mexico public schools were subject to two sets of requirements for measuring annual progress: (1) the new A-F system that satisfies new federal requirements, and (2) AYP, under state law in the *Assessment and Accountability Act*.

For school year 2011-2012, it was appropriate that AYP still be calculated, as PED’s rules implementing the A-F system prevented any school from receiving a lower grade than a C if that school had met AYP for that year.

If enacted, HB 215 would repeal the requirements of AYP in state law.

### **Background:**

#### *Assessment and Accountability Act*

Enacted in 2003, the *Assessment and Accountability Act’s* stated purposes included compliance with federal accountability requirements; central to those requirements at the time, was AYP. Among its provisions, the act:

- required the State Board of Education, the predecessor in interest to PED, to adopt content and performance standards for grades 1-12 in:
  - mathematics;
  - reading and language arts;
  - science; and
  - social studies;
- directed the department to measure the performance of every public school in New Mexico, with those schools achieving the greatest improvement being eligible for supplemental funding;
- directed the department to establish a statewide assessment system aligned with state academic content and performance standards;
- required the establishment of a college- and workplace-readiness assessment system;
- directed the department to adopt the process and methodology for calculating AYP, including directives to measure AYP by school and by various demographic subgroups;
- required school boards to approve school-district-developed remediation programs;

- aligned AYP determinations used to identify schools in need of “improvement, corrective action or restructuring” with federal standards, as well as outlining program requirements for the several categories;
- required the department to institute supplemental funding programs for schools showing the greatest improvement;
- created the “incentives for school improvement” and “schools in need of improvement” funds; and
- directed the department to establish an AYP reporting system.

### *ESEA Flexibility*

In September of 2011, US Secretary of Education Arne Duncan published an open letter to all State Chief School Officers, inviting them to request flexibility from the requirements of the *No Child Left Behind Act* (NCLB). New Mexico’s successful application for flexibility proceeded through the following timeline:

- On **September 23, 2011**, Secretary Duncan published a letter to Chief State School Officers offering the opportunity to request flexibility from some of the requirements of ESEA.
- On **November 14, 2011**, Secretary-designate of Public Education Hanna Skandera submitted a formal request for ESEA flexibility on behalf of New Mexico.
- In **December 2011** and **February 2012**, a seven-member peer panel reviewed New Mexico’s flexibility request and drafted notes detailing what they considered to be deficiencies in New Mexico’s request.
- On **December 20, 2011**, Acting Assistant Secretary of Education Michael Yudin responded to New Mexico’s request with a letter that rejected the initial flexibility request, noting a number of concerns expressed in the Peer Panel Review Notes regarding issues that required further development.
- On **February 15, 2012**, New Mexico’s amended and improved flexibility request was submitted which was then approved, and a list of key improvements made by New Mexico to its initial request was published by USDE.
- On **February 22, 2012**, USDE released a letter confirming approval of New Mexico’s request and providing additional information regarding how to implement the request and meet the related obligations.
- On **April 23, 2012**, USDE offered states the opportunity to apply for two additional waivers regarding Adequate Yearly Progress (AYP) reporting and Title I Part A “rank and serve” funding.
- On **April 27, 2012**, the Public Education Department (PED) released a public notice stating its intention to apply for these additional waivers.
- Between **August 20 and October 15, 2013**, the initial phase, of three, of USDE’s flexibility monitoring was to have taken place.

PED was required, like other states participating in the program, to establish its own differentiated system of recognition, accountability, and support, and to set school growth targets<sup>9</sup>, based on educationally sound rationale. PED designated the A-F School Grading Program as New Mexico’s accountability system.

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<sup>9</sup> The US Department of Education’s term for SGTs is annual measurable objectives (AMOs).

Under ESEA flexibility, New Mexico:

- must set ambitious but achievable AMOs in language arts and mathematics<sup>10</sup>;
- must employ the A-F School Grading Program to identify Title I schools that are to be considered “priority,”<sup>11</sup> “focus”<sup>12</sup> and “reward”<sup>13</sup> schools;
- may allow SRSA and RLIS program funds to be used for any authorized purpose by a participating school, whether the school makes AYP, or not;
- may allot funds reserved for schools in need of improvement, corrective action, or restructuring to any priority or focus school;
- may allot funds reserved for schools that have significantly closed the achievement gap between school subgroups or exceeded AYP for two consecutive years to any reward school; and
- may award School Improvement Grant (SIG) funds to any priority school.

**Committee Referrals:**

HEC/HAFC/SEC/SFC

**Related Bills:**

HB 111 *Education Dept. Pays for Standards Tests*  
CS/HB 112 *Data in School Accountability Reports*

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<sup>10</sup> In New Mexico, these are referred to as “school growth targets,” or “SGTs.”

<sup>11</sup> A “priority school” is a school that has been identified as being among the lowest-performing schools in the state. The number of schools identified as priority schools in the state must be equal to at least 5.0 percent of the Title I schools in the state.

<sup>12</sup> A “focus school” is a Title I school in the state that is “contributing to the achievement gap.” The number of schools identified as focus schools must be equal to at least 10 percent of the Title I schools in the state.

<sup>13</sup> “Reward schools” are defined in the waiver provisions as “highest-performing schools” or “high progress schools.”