State of New Mexico
LEGISLATIVE EDUCATION STUDY COMMITTEE

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December 16, 2015

MEMORANDUM

TO: Legislative Education Study Committee

DC RK

FR: David Craig, Kevin Force, Heidi Macdonald

RE: **STAFF REPORT: *ELEMENTARY AND SECONDARY EDUCATION ACT* (ESEA) REAUTHORIZATION**

Initially passed in 1965, the federal *Elementary and Secondary Education Act* (ESEA), most recently reauthorized in 2001 under the *No Child Left Behind Act* (NCLB), has been the main source of federal funding for public education, seeking to resolve differences in both educational outcomes and funding between disadvantaged students and their more advantaged peers. Content standards, assessments, and school accountability provisions were introduced initially in 1994. Each version of the Act since that time has added new programs, so that ESEA now annually provides about $25.0 billion in educational funding.

The *Every Student Succeeds Act* (ESSA), signed by President Obama on December 10, 2015, is the latest reauthorization of ESEA. The result of extensive bipartisan effort, ESSA greatly expands states' roles in both setting performance goals and accountability standards, as well as deciding on appropriate intervention strategies for their own schools, while simultaneously greatly reducing the part the federal government plays in deciding on these factors. This staff report will offer a review of several overarching areas of concern that have been substantially changed by this most recent iteration of ESEA, including:

- academic standards;
- goals and accountability;
- prohibitions on federal influence;
- transition from ESEA flexibility;
- transparency; and
- changes to the following federal education grant programs:

- Title I – Improving the Academic Achievement of the Disadvantaged;
- Title II – Preparing, Training, and Recruiting High-Quality Teachers, Principals and Other School Leaders;
- Title IV – 21st Century Schools;
- Title VII – Impact Aid; and
- Title IX – Education for the Homeless and Other Laws.

ACADEMIC STANDARDS UNDER ESSA

ESSA will continue to hold all students to high academic standards to prepare them to be ready for career or college. Under ESEA flexibility, many states adopted the Common Core State Standards (CCSS), while ESSA now requires *states*, rather than the federal government, to adopt plans that set challenging academic standards for reading, math, and science that are aligned with career- and college-readiness in their state. However, it prohibits any federal official, including the Secretary of Education, from endorsing, mandating, or even incentivizing states to adopt or maintain any particular set of standards including the CCSS. The federal government is also prevented from directly or indirectly endorsing any curriculum or set of aligned standards. While the US Department of Education (USDE) can reject a state's plan, given "substantial evidence" that "clearly demonstrates" that the plan does not meet the criteria established by ESSA, the Secretary would be required to reject it within 90 days, but cannot mandate specific changes or condition approval of the plan upon a specific set of standards.

Additionally, states may adopt alternative academic achievement standards for students with the most significant cognitive disabilities as long as those standards align with state academic standards and promote access to general education curricula consistent with the requirements of the federal *Individuals with Disabilities Education Act* (IDEA). These alternative standards must still be aligned to ensure that students who meet them are on track to pursue postsecondary education; also, in keeping with setting high standards for all students, including the disabled, ESSA places a participation cap on alternative assessments of 1.0 percent of students with significant cognitive impairment within the state. ESSA also moves accountability for English language proficiency from Title III to Title I, thus emphasizing that states are to focus on the unique needs of students who are learning English, as much as they do on students whose first language is English. Finally, ESSA maintains annual reporting of data disaggregated by subgroups of children, including low-income students, students of color, students with disabilities, and English language learners (ELLs), as well as by migrant status, homeless status, children in foster care, and military-connected children.

ESSA GOALS AND ACCOUNTABILITY

State Plans

Under NCLB, the federal government created a public education system that held all states accountable on two measures — the number of students who tested as "proficient" in math and reading each year (ultimately requiring 100 percent proficiency by school year 2013-2014) and student performance on at least one other academic indicator, such as graduation rates. Schools and districts were required to make Adequate Yearly Progress (AYP) for each of these targets for both the overall student population as well as for individual subgroup populations of high-needs students, including African-American, Asian-American, Latino, White, and Native American students, as well as low-income students, ELLs, and students with disabilities.

ESSA, however, removes references to AYP, replacing it with state-designed and -driven plans to improve states' capacity to identify and support struggling schools.[1] Further, the federal government primarily ensures the accountability of states through the requirement that they submit a Title I state plan to USDE (after meaningful and timely consultation with critical stakeholders, including state Legislatures), in order to ensure that they are consistent with the requirements of ESSA. Further, the new law does not mandate a list of certain goals, as the ESEA flexibility program did. Rather, these state plans would include their own academic accountability requirements, with plan details left up to the states, as follows:

- elementary and middle schools' accountability systems must focus on proficiency, ELL proficiency and one other academic measure that can be broken down by subgroup; and
- high school plans must focus on proficiency, ELL proficiency, and graduation rates, with another nonacademic indicator, such as college- and career-readiness or opportunity-to-learn.

These state-based accountability plans are not as prescriptive as AYP was, though certain state-level requirements must still be included:

- ambitious state-designed long-term goals for all students and each subgroup of students for improved:
  - academic achievement as measured by proficiency on annual assessments;
  - high school graduation rates, including the four-year adjusted cohort graduation rate and, at the state's discretion, the extended year adjusted cohort graduation rate; and
  - percentage of English learners making progress in achieving English language proficiency;
- an expectation that subgroups that are further behind close both achievement and graduation gaps; and
- identification of, and intervention in:
  - schools in the bottom 5.0 percent of performers (identified as "priority schools" under ESEA flexibility) at least every three years;
  - schools where the graduation rate is 67 percent or less (also analogous to "priority schools," although the point at which low graduation rates require targeted intervention under ESEA flexibility is less than 60 percent); and
  - schools where subgroups are "consistently underperforming" (roughly analogous to "focus schools" under flexibility, though there are no explicit definitions or benchmarks for what is to be considered "consistently underperforming); and
- an indicator of school quality and student success, such as:
  - student engagement;
  - educator engagement;
  - student access to advanced coursework;

[1] New Mexico removed state-level requirements for AYP in Laws 2015, Chapter 58, endorsed by the LESC and carried by the Chair.

- postsecondary readiness; or
- school climate and safety.

It should be noted that academic measures are to count "much more" than the nonacademic ones, such as student engagement, though that term remains undefined in ESSA.

States would be left to define what exit criteria would permit a school to be removed from underperforming status, and districts would be the main drivers for interventions and turnaround strategies, although states would be allowed to monitor and intervene in low-performing schools if they fail to improve. To ensure continued support for school and local educational agencies (LEAs) improvement, states must:

- establish statewide exit criteria for schools identified for comprehensive support and improvement that if not satisfied within four years, will result in more rigorous state-determined action and for schools where subgroups of students are not succeeding;
- review resource allocations to support school improvement in schools identified for support; and
- provide technical assistance.

LEAs, in partnership with stakeholders, including principals and other school leaders, teachers, and parents must develop and implement a local plan to improve student outcomes, informed by all the indicators, that:

- includes performance against state-determined long-term goals;
- includes evidence-based interventions;
- is based on a school-level needs assessment;
- identifies resource inequities; and
- is approved by the school, the LEAs, and the SEA.

LEAs may provide all students enrolled in a school identified by the state for improvement with the option to transfer to another public school, if state law permits. Special consideration can be given to any high school that predominately serves students returning to education or who are off-track to meet graduation requirements. If the school serves fewer than 100 students, the LEA may forgo implementing improvement strategies.

State plans must be approved by the USDE Secretary through a written determination, which includes information and rationale supporting the outcome of the decision. The written determination is required to be completed within 120 days of submittal. If a state is preliminarily disapproved by the Secretary, a state will be given notice and an opportunity for a hearing. If a state is found to be in noncompliance that led to the preliminary disapproval, in whole or in part, the Secretary will notify the state of the disapproval, with a description of specific provisions that fail to meet requirements. The state will be afforded an opportunity to revise and resubmit the plan, including any documentation that shows compliance, while the Secretary may request additional information regarding provisions initially found to be noncompliance.

If the state responds to the notification within a 45 day period and resubmits the plan, the Secretary is required to approve the plan unless it is determined not to meet the requirements. However, if the state fails to respond to the notification before the expiration deadline, the plan will be disapproved.

Assessments

The NCLB requirements are retained for standardized tests in third through eighth grades and once in high school and, for science, once each in elementary, middle, and high school. Under ESSA, test participation must still be considered, with schools that have less than 95 percent participation including that in their accountability workbook, although participation is now a standalone factor, separate from consideration of other academic and nonacademic indicators. States have great leeway in determining how to include participation in their accountability systems. States may opt to administer a single, summative test, or break the assessment into smaller components throughout the year. ESSA also allows school districts to use a nationally-recognized high school assessment, such as the SAT, in lieu of a state-developed assessment, as long as the selected test can provide comparable data, and the state permits its use. It should be noted that while states are required to demonstrate 95 percent participation, states are also free to craft their own testing "opt-out" laws.

Special Education Students and English Language Learners

For students in special education, ESSA emphasizes access to the general curriculum for students with even the most significant cognitive disabilities. Certain provisions prevent the overuse and abuse of applying alternate standards and utilizing alternate assessments through a required cap on these alternate assessments of 1 percent at the state level. The cap will help states work with districts to ensure that only the students for whom it is appropriate are placed on a state's alternate academic achievement standard and tested via an alternate assessment. LEAs will determine their own need for alternative assessments, while the state is responsible for monitoring the LEAs to determine the overall state level of participation in the alternate exam. If a state finds it has a participation rate of more than 1.0 percent, it may seek a waiver from USDE.

Finally, for ELLs, states have two options:

- **Option A.** Include English-language learners' test scores in the state's accountability after they have been in the country a year, just like under the current version of ESEA; or
- **Option B.** During the first year, test scores will not be included towards a school's rating, but ELL students would sit for the both the English language arts and math exams and results would have to be reported publicly. In the second year, ELL results for both reading and math would need to be included with some measure of growth, and in the third year, ELL students would have their assessments be included fully, as is the case with non-ELL students.

PROHIBITIONS ON FEDERAL INFLUENCE

In establishing a balance for flexibility to states, civil rights protections, and limited USDE overarching authority, ESSA provides the opportunity for every student to receive a quality education, regardless of race, socioeconomic status, or geographic location. The USDE's Secretary, under Title I of ESSA, is limited in the following ways:

- the secretary shall not have the authority to mandate, direct, control, coerce, or exercise any direction or supervision over any of the challenging academic standards adopted or implemented by the state;

- the secretary is not permitted to promulgate any rule or regulation on the development or implementation of the statewide accountability system that would add new requirements or criteria that are inconsistent with ESSA; and
- the secretary cannot require additional assessment reporting requirements, data elements, or information to be reported unless they are explicitly authorized in ESSA.

Moreover, under Title II of ESSA, there is a prohibition against federal mandates, direction or control over a state, LEA or school's instructional content or materials, curriculum, program of instruction, academic standards, or academic assessments. Title II also precludes the USDE from requiring certain components or elements of a teacher, principal, or other school leader evaluation system. The USDE is barred from requiring a specific definition of teacher, principal, or other school leader effectiveness, professional standards, certification, or licensing.

Lastly, Title VIII of ESSA reveals a prohibition of federal mandates from requiring specific instructional content, academic standards and assessments, curricula, or program of instruction developed to meet the requirements of ESSA. In addition, the federal government is prohibited from:

- mandating that states or subdivisions spend any funds or incur costs not covered in ESSA;
- endorsing any curriculum;
- developing, incentivizing, pilot testing, administering, or distributing any federally sponsored national test in reading, mathematics, or other subject if not specifically and explicitly authorized in ESSA.

TRANSITION FROM ESEA FLEXIBILITY

According to ESSA, those waivers that were granted as part of ESEA Flexibility will remain in effect until August 1, 2016, except that any school or LEA that has been identified as a priority school, focus school, or in need of improvement, corrective action, or restructuring must continue to implement applicable interventions until the new state plan is approved. Thus, states would still be required to support the lowest performing schools and those with the widest achievement gaps until their new accountability plans take effect during the school year 2016-2017.

States must submit a Title I plan to USDE that has been developed with timely and meaningful consultation with governors and legislators, as well as other entities such as LEAs, Indian tribes, teachers, principals and parents. These plans must ensure coordination between programs from a number of federal laws, including:

- the *Individuals with Disabilities Education Act*;
- the *Rehabilitation Act;*
- the *Carl D. Perkins Career and Technical Education Act*;
- the *Workforce Innovation and Opportunity Act*;
- the Child Care and Development Block Grant;
- the *Education Sciences Reform Act*;
- the *Education Technical Assistance Act*;
- the *McKinney-Vento Homeless Assistance Act*; and
- the *Adult Education and Family Literacy Act*

TRANSPARENCY

The remnants of NCLB left one invaluable legacy: creating a framework for the public to see how schools are doing and how to keep them accountable. By requiring states to test in the same subjects and grades as under NCLB, ESSA will continue to ensure transparency of yearly test results and asks states to focus attention on the lowest-performing schools and schools with low-performing subgroups of students. ESSA also continues to require states to disaggregate and report the results for a variety of demographic subgroups, and states must continue to calculate graduation rates using the adjusted cohort graduation rate as established in the 2008 regulations.

In addition, ESSA makes the connection between high school and college by requiring, for the first time, that state report cards include information on the number of high school graduates in the state who enroll in college. By issuing annual school report cards, a variety of disaggregated data on school performance would be accessible online to the general public and allow for the continued transparency under this reauthorization. The report provides a clear and concise description of the state's accountability system, including the long-term goals and measurements of interim progress for all students and subgroups of students, the state's system for meaningfully differentiating all public schools, the number and name of all public schools identified for improvement, and the exit criteria for no longer being identified for improvement. The report card will identify all the indicators, and other factors including the professional qualifications of teachers, per-pupil expenditures, National Assessment of Educational Progress scores, and also, where available and beginning with the 2017 report card, information about postsecondary attainment. Moreover, through the report card, the public would gain a better understanding of the financial resources provided to each school as well as progress toward improved accountability.

Lastly, the ESSA does not allow states to use "supersubgroups", which are a statistical technique used in the NCLB waivers that call for states to combine different groups, which may include students in special education, English language learners, and other minorities, for accountability purposes. States now are required to consider accountability for each subgroup separately, thus allowing each subgroup to stand on its own. This will hold school districts and schools more accountable for all students in the system.

CHANGES TO FEDERAL EDUCATION GRANT PROGRAMS

ESSA changes the structure of many federal education grant programs by creating new programs, reorganizing and reauthorizing existing programs, and eliminating grant programs that were often unfunded under NCLB. ESSA makes extensive changes to the existing framework for federal education grant programs and this staff brief does not include all changes to grant programs. LESC staff will continue to analyze the specific impacts of ESSA to the state. Although ESSA includes language for appropriation amounts, these amounts are subject to available federal appropriations. A key theme of the ESSA is the simplification of many previous grant programs under fewer grant awards that allow grantees increased flexibility in usage. References to fiscal years in this section of the brief are to federal fiscal years.

Title I – Improving the Academic Achievement of the Disadvantaged

The bulk of federal education grant funding comes under this section in the form of grants to LEAs, and the formula remains unchanged in the ESSA. Under ESSA, LEAs can consolidate and use Title I and other federal, state, and local funds for school wide Title I programs in

schools serving low-income students. School wide Title I funds can also be used for preschool programs and dual or concurrent enrollment programs. The ESSA changed provisions related to maintenance of effort (MOE) to indicate that future awards will only be reduced if a state fails to meet the requirement for one or more of the five immediately preceding fiscal years. Current MOE requirements indicate that states must meet 90 percent of the previous fiscal year's Title I funding.

ESSA changed the structure of NCLB's school improvement grant program, removing references to school improvement and replacing it with a school support and improvement activities grant program that increases from 4.0 percent to 7.0 percent the amount that a SEA may retain from the formula grants to LEAs for monitoring and technical assistance. The SEA must distribute 95 percent of the remaining funds through a formula or competitive subgrant award not to exceed four years to schools implementing comprehensive or targeted support and improvement activities. When awarding subgrants, the SEA must prioritize LEAs that serve high numbers, or a high percentage of, schools implementing comprehensive support and improvement plans and that demonstrate the greatest need for such funds and the strongest commitment to using funds for underperforming schools.

The ESSA creates a new section that allows the SEA to retain up to 3.0 percent of Title I awards to LEAs for direct student services awards. Examples of direct student services include: providing academic courses not available at a student's school, including advanced courses and selected career and technical education coursework; credit recovery and academic acceleration courses; postsecondary level instruction and examinations (including Advanced Placement (AP) and International Baccalaureate courses); and components of a personalized learning approach, which may include high-quality academic tutoring. LEAs may also use these funds to offset transportation costs associated with school choice provisions. Funding is also available under this section for parent and family engagement efforts, including professional development, reaching family members at home, disseminating best practices, and collaborating with entities for improving and increasing parent and family engagement.

The ESSA awards state assessment grants under Title I to SEAs to pay the costs of development or administration of assessments and standards adopted in the state's Title I plan, which may also include the costs of working in voluntary partnerships with other states. Examples of administration expenses include ensuring appropriate accommodations to ELLs and children with disabilities; developing or improving assessments for ELLs; and ensuring the continued validity and reliability of state assessments. Another section provides states the option to conduct assessment system audits, including soliciting feedback from stakeholders on assessments.

Under ESSA, the formula for grant programs to assist migrant students was amended to include eligible migrant children who received services in summer or intersession programs. The ESSA also expands coverage under the grant program for neglected and delinquent students to include tribal institutions, adds language regarding the involvement of families and communities to the program's purpose, and adds a requirement that states must establish provisions for, or timely reenrollment of, youth placed in the juvenile justice system, including opportunities to participate in credit-bearing coursework.

Title II – Preparing, Training, and Recruiting High-Quality Teachers, Principals, and Other School Leaders

Changes to the Title II funding formula will eliminate a base funding amount and shift the reliance of the formula on the number of school-aged children and increasing to the percentage of school-aged children in poverty. Under NCLB, states were guaranteed a base Title II amount that was equal to FY 01 allocations. Under ESSA, this provision will be phased out by a percentage each year. The ESSA retains a guarantee states will receive a minimum amount of funds distributed above the base FY 01 allocation. Subgrants to LEAs will be made on the basis of 20 percent of the school-aged children in the area and 80 percent of school-aged children living in poverty in the area served by the LEA.

Funding for national activities is included for the development of new grant programs including teacher and school leader incentive programs and grants, literacy education program and grants (including early reading and K-12 programs), American history and civics education programs, school leader training and recruitment, and state-led science, technology, engineering and mathematics (STEM) master teacher corps programs. The teacher and school leader incentive program is designed to help develop, implement, improve, and expand comprehensive performance-based compensation systems for teachers, principals, or other school leaders. The new literacy education grant program provides state grants to improve student achievement in reading and writing by requiring states to develop, revise, or update comprehensive literacy instruction plans.

Also among the new Title II programs are innovative approaches to literacy awards given to LEAs for developing and enhancing effective school library and other innovative programs. The ESSA includes school leader recruitment and support awards to improve the recruitment, preparation, placement, support, and retention of effective principals and other school leaders in high-need schools, and state-led STEM master teacher corps programs may award grants to support STEM professional development programs in schools through collaboration with school administrators, principals, and STEM educators.

Title IV – 21st Century Schools

The ESSA eliminated many unfunded federal grant programs under NCLB and created a single grant under this title that includes many of the eliminated programs. The new student support and academic enrichment grant program provides formula grants to improve students' academic achievement by providing all students with access to a well-rounded education, improving school conditions for student learning, and improving the use of technology in order to improve the academic achievement and digital literacy of all students. Grants will be awarded to states based on each state's proportionate share of the previous year's Title I allocation and states are guaranteed a minimum distribution.

Subgrants to LEAs that submit an application to SEA are also awarded on the basis of LEA's proportion of the previous year's Title I awards. In their applications, LEAs must use at least 20 percent of Title IV funds to support access to a well-rounded education, including activities such as: guidance programs, music and the arts, STEM programs, and dual credit or AP. An LEAs application must also use at least 20 percent to support one or more activities to support healthy and safe students, including activities related to drug and violence prevention programs, nutritional education and physical education, bullying and school dropout, and reentry programs. Lastly, an LEA must also indicate use a portion of funds received to support the effective use of

technology, provided that no more than 15 percent of funds are used to purchase education technology infrastructure. These activities may include providing professional development, blended learning projects, and providing students in rural areas with digital learning experiences and access to online courses. LEAs receiving these grants must also undertake a comprehensive needs assessment every three years to inform the activities funded.

Title IV also includes funding for grants to support high-quality charter schools by supporting the startup of new charter schools; the replication or expansion of high-quality charter schools; assisting charter schools in accessing credit to acquire renovate facilities for school use; and national activities like evaluating the impact of the charter school program and creating stronger charter school authorizing practices. USDE will set aside 12.5 percent of funding under Title IV for charter school facility assistance and 22.5 percent for carrying out national activities. The remainder will be used to make awards to state charter school entities such as SEA; a state charter school board; a governor of a state; or a charter school support organization. State charter school entities will award subgrants to applicants to open, replicate, or expand new charter schools, provide technical assistance to charter school applicants, and work with chartering agencies to improve authorizing quality, including fiscal oversight.

Title VII - Impact Aid

A number of policy changes were made to the Impact Aid program to reduce subjectivity and increase the timeliness of payments; for example, simplifying the process by which property used in the calculation is within the boundaries of two or more LEAs and eliminating provisions that prevented two or more school districts that consolidated from accessing funding. ESSA also adjusts the Impact Aid basic aid formula to ensure equal proration when appropriations allow a proration calculation and includes a hold harmless provision to provide budget certainty to school districts.

Title IX – Education for the Homeless and Preschool Development Grants

The ESSA amends the *McKinney-Vento Homeless Assistance Act* to require that SEA's receiving awards create a state coordinator for the education of homeless children and youth and LEA liaisons for homeless children and youth. The program includes professional development to help improve the identification of homeless children and youths.

ESSA also includes preschool development grants, a program that previously shared funding from the Fund for the Improvement of Education with at least 25 other programs. Now formalized as its own program in ESSA, preschool development grants are intended to allow states to develop, update, and implement a strategic plan that facilitates collaboration and coordination among existing early childhood care and education programs; encourages partnerships to improve coordination, program quality, and delivery of services; and to maximize parental choice among a mixed delivery system of providers.

Preschool development grants will be awarded on a competitive basis for one year, may be renewed, and there is a 30 percent matching requirement for states from nonfederal funds. States can use the funds to conduct a periodic statewide needs assessment of the availability and quality of existing programs, the number of children being served in existing programs, and the number of children awaiting services; develop a strategic plan; maximize parental choice and knowledge; share best practices; and improve the overall quality of early childhood education programs.

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December 17, 2015

Hanna Skandera
Secretary of Public Education
300 Don Gaspar
Santa Fe, NM 87501

Dear Secretary Skandera:

We are excited about the new *Every Student Succeeds Act* (ESSA) recently passed by Congress and signed by President Obama. The Act requires the New Mexico Public Education Department to submit a Title I plan to the US Department of Education that is developed with timely and meaningful consultation with the governor, legislators, school district and charter school leaders, Indian tribes, educators, and other stakeholders. The limitations the ESSA places on the federal government's role in education places more responsibility on states to develop action plans for improving education. A broad range of input will help to ensure New Mexico's efforts are appropriately targeted to close the achievement gap and ensure all students are able to succeed.

We would like to request the LESC be included in development of New Mexico's Title I plan. The LESC is the legislative body statutorily charged with studying public education issues in New Mexico, and therefore, the most appropriate legislative body to participate in the creation of the state's Title I plan. Members and staff are familiar with a wide range of education issues that affect the achievement and well being of New Mexico students and will bring varying, knowledgeable perspectives to the planning process.

We look forward to working with the department and other stakeholders to that end.

Sincerely,

Representative Dennis J. Roch, Chair

Senator John M. Sapien, Vice Chair