UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

ASSISTANT SECRETARY

AUG 31 2009

Honorable Veronica C. Garcia
Secretary of Education
State of New Mexico Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501

Dear Secretary Garcia:

I am writing in response to New Mexico's requests to waive certain statutory and regulatory requirements of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA). After reviewing New Mexico's requests, I am pleased to grant the following waivers:

- 14-day notice requirement. I am granting New Mexico a one-year waiver of the Title I, Part A regulatory requirement for a local educational agency (LEA) to provide parents of eligible students with notice of their public school choice options at least 14 days before the start of the school year (34 C.F.R. § 200.37(b)(4)(iv)). This waiver applies only to the notice provided to parents of eligible children attending schools that are newly identified for improvement for the 2009–10 school year or that made adequate yearly progress (AYP) in the previous year, and so could have possibly exited improvement for the 2009–10 school year, but did not.

- Approving schools and LEAs identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers. I am granting a one-year waiver of 34 C.F.R. § 200.47(b)(1)(iv)(A) and (B) to permit New Mexico to approve a school or LEA identified for improvement, corrective action, or restructuring to serve as an SES provider in the 2009–10 school year.

- Offering SES in addition to public school choice in the first year of improvement and counting the costs of both toward an LEA's 20 percent obligation. I am granting a one-year waiver of ESEA section 1116(b)(10) and 34 C.F.R. § 200.48 to permit an LEA in New Mexico to offer SES in addition to public school choice to eligible students in Title I schools in the first year of school improvement and to count the costs of providing SES to these students toward the LEA's 20 percent obligation under 34 C.F.R. § 200.48.

- Calculation of "set-asides" for Title I, Part A funds. I am granting a one-year waiver to permit an LEA or school, as applicable, in New Mexico to exclude all or part of the Title I, Part A funds it receives through the American Recovery and Reinvestment Act of 2009 (ARRA) when calculating:
  - An LEA's obligation to spend an amount equal to at least 20 percent of its fiscal year (FY) 2009 Title I, Part A funds for public school choice-related transportation and SES (ESEA section 1116(b)(10); 34 C.F.R. § 200.48(a)(2)).
  - An LEA's obligation, if identified for improvement, to spend 10 percent of its FY 2009 Title I, Part A funds for professional development (ESEA section 1116(c)(7)(A)(iii); 34 C.F.R. § 200.52(a)(3)(iii)).

- A school's obligation, if identified for improvement, to spend 10 percent of its FY 2009 Title I, Part A funds for professional development (ESEA section 1116(b)(3)(A)(iii); 34 C.F.R. § 200.41(c)(5)).

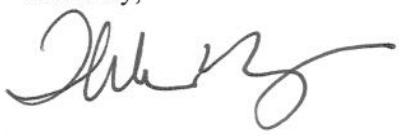
- Calculation of per-pupil amount for SES. I am granting a one-year waiver of ESEA section 1116(e)(6) and 34 C.F.R. § 200.48(c)(1) to permit an LEA in New Mexico to exclude some or all of the Title I, Part A funds it receives through the ARRA in calculating the per-pupil amount for SES.

- Ability to grant LEAs a waiver of the carryover limitation. I am granting New Mexico a two-year waiver of section 1127(b) of the ESEA to allow it to waive the carryover limitation in section 1127(a) of the ESEA more than once every three years for an LEA that needs the additional waiver because of the supplemental Title I, Part A appropriation provided through the ARRA.

These waivers are granted on the condition that New Mexico will satisfy the conditions detailed in the enclosure to this letter, including the requirement to report certain information about the use of each of the waivers to the Department by September 30, 2010. Please be sure to review the enclosure carefully.

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Zollie Stevenson, Director of Student Achievement and School Accountability Programs (SASA) at (202) 260-0826.

Sincerely,



Thelma Meléndez de Santa Ana, Ph.D.

Enclosure

cc: Governor Bill Richardson
Sam Ornelas

CONDITIONS ON TITLE I, PART A WAIVERS

14-Day Notice Requirement (34 C.F.R. § 200.37(b)(4)(iv))

This waiver is granted on the condition that New Mexico will:

- Ensure that each local educational agency (LEA) taking advantage of the waiver provides public school choice notice to parents of students attending schools that cannot exit improvement, corrective action, or restructuring for the 2009–10 school year at least 14 days prior to the start of the 2009–10 school year;
- Ensure that each LEA implementing the waiver complies with the statutory requirement to provide notice of public school choice before the start of the school year (ESEA section 1116(b)(1)(E)(i));
- Encourage all LEAs within the state to provide notice of public school choice as early as possible and, ideally, at least 30 days before the start of the school year;
- Ensure that its assessment schedule and test vendor contract for the 2009–10 school year (and all subsequent school years) will permit LEAs within the state to provide notice of public school choice sufficiently in advance of, but no later than 14 days before, the start of the 2010–11 school year (and all subsequent school years);
- Ensure that its LEAs that offer public school choice earlier to students in some schools than to students in other schools reserve a portion of the available transportation slots for students who receive the later notice *(see* Question D-7 in the Department's Public School Choice Non-Regulatory Guidance, available at: http://www.ed.gov/policy/elsec/guid/schoolchoiceguid.pdf); and
- Submit to the Department, by September 30, 2010, a report that provides:
  - The total number of LEAs within the state that had schools that could have possibly entered or exited improvement, corrective action, or restructuring for the 2009-10 school year; and
  - The total number of LEAs within the state that took advantage of the waiver and provided some parents notice of public school choice less than 14 days before the start of the 2009–10 school year.

Approving schools and LEAs identified for improvement, corrective action, or restructuring as supplemental educational services (SES) providers (34 C.F.R. § 200.47(b)(1)(iv)(A) and (B))

This waiver is granted on the condition that New Mexico will submit to the Department, by September 30, 2010, a report that includes:

- The total number of LEAs identified for improvement or corrective action that were approved to be an SES provider for the 2009–10 school year; and
- The total number of schools identified for improvement, corrective action, or restructuring that were approved to be an SES provider for the 2009–10 school year.

Offering SES in addition to public school choice in the first year of improvement and counting the costs of both toward the 20 percent obligation (ESEA section 1116(b)(10); 34 C.F.R. § 200.48)

This waiver is granted on the condition that New Mexico will:

- Ensure that each LEA taking advantage of the waiver complies with all other statutory and regulatory requirements related to SES for the 2009–10 school year; and
- Submit to the Department, by September 30, 2010, a report that provides the name and NCES District Identification Number for each LEA taking advantage of the waiver.

"Set-aside" calculations — Excluding Title I, Part A ARRA funds from an LEA's 20 percent obligation and from an LEA's professional development obligation (ESEA sections 1116(b)(10), 1116(c)(7)(A)(iii); 34 C.F.R. §§ 200.48(a)(2), 200.52(a)(3)(iii))

Each of these waivers is granted on the condition that New Mexico will:

- Only implement the waiver for an LEA that provides assurances to New Mexico that:
  - The LEA will comply with its statutory and regulatory obligations for the set-aside with respect to its regular Title I, Part A allocation;

- The LEA will use the funds freed up by the waiver to address needs identified based on data;
- The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that "use effective methods and instructional strategies that are based on scientifically based research";
- The LEA will submit an application for Title I, Part A funds (LEA application) or, if necessary, an amendment to its existing LEA application that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs;

- Not approve an LEA's application or amendment to an LEA's application unless or until it determines, based on the LEA's description, that the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies;
- Not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data and evidence;
- If necessary, require an LEA seeking to implement the waiver to amend its application in accordance with the SEA's usual process for changing an LEA's application;
- Comply with its obligation under 34 C.F.R. § 200.47(a)(1)(ii)(B)(*1*) to post on its website the 20 percent obligation for each LEA and ensure that this information accurately reflects each LEA's implementation of the waiver; and
- Submit to the Department, by September 30, 2010, a report that provides:
  - The name and NCES District Identification Number for each LEA implementing each of the waivers; and
  - The name and NCES District Identification Number for each LEA that requested but was denied permission to implement each of the waivers.

"Set-aside" calculation — Excluding Title I, Part A ARRA funds a school's professional development obligation (ESEA section 1116(b)(3)(A)(iii); 34 C.F.R. § 200.41(c)(5))

This waiver is granted on the condition that New Mexico will:

- Only implement the waiver for an LEA that provides assurances to New Mexico that:
  - The LEA will ensure that its schools comply with their statutory and regulatory obligations for the set-aside with respect to the funds that are not "factored out" in accordance with Question C-9 in the Department's Non-Regulatory Guidance on Title I, Part A Waivers (available at: www.ed.gov/programs/titleiparta/title-i-waiver.doc);
  - The LEA will ensure that its schools use the funds freed up by the waiver to address needs identified based on data;
  - The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that "use effective methods and instructional strategies that are based on scientifically based research";
  - The LEA will ensure that its schools will implement the waiver in accordance with Question C-9 in the Department's Non-Regulatory Guidance on Title I, Part A Waivers (available at: www.ed.gov/programs/titleiparta/title-i-waiver.doc); and
- Submit to the Department, by September 30, 2010, a report that provides:
  - The name and NCES District Identification Number for each LEA implementing the waiver with respect to its schools; and
  - The name and NCES District Identification Number for each LEA that requested but was denied permission to implement the waiver.

Calculation of per-pupil amount for SES (ESEA section 1116(e)(6); 34 C.F.R. § 200.48(c)(1))
This waiver is granted on the condition that New Mexico will:

- Only implement the waiver for an LEA that provides assurances to New Mexico that:
  - The LEA will comply with all of the statutory and regulatory requirements regarding the provision of SES with respect to its regular FY 2009 Title I, Part A allocation; and
  - The LEA will comply with all of its other Title I, Part A statutory and regulatory obligations, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that "use effective methods and instructional strategies that are based on scientifically based research";
- Comply with its obligation under 34 C.F.R. § 200.47(a)(1)(ii)(B)(*2*) to post on its website the per-pupil amount for SES for each LEA and ensure that this information accurately reflects each LEA's implementation of the waiver; and
- Submit to the Department, by September 30, 2010, a report that provides the name and NCES District Identification Number for each LEA implementing the waiver.

Waiving the carryover limitation more than once every three years (ESEA section 1127(b))
This waiver is granted on the condition that New Mexico will use its authority granted by this waiver to waive the carryover limitation in section 1127(a) more than once within three years only for an LEA that needs a second (or third) waiver because of its Title I, Part A ARRA funds.