



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

AUG 04 2010

ASSISTANT SECRETARY

The Honorable Susanna Murphy
Designate Secretary of Education
State of New Mexico
Public Education Department
300 Don Gaspar
Santa Fe, New Mexico 87501-2786

Dear Secretary Murphy:

I am writing in response to the New Mexico's August 3, 2010 request for a waiver of the 92 percent attendance rate as the additional indicator for adequate yearly progress (AYP) determinations for school year 2009-2010 as required by Section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act (ESEA) and 34 C.F.R. § 200.19(a)(1)(A)-(B). New Mexico seeks this waiver to address concerns about the impact of the H1N1 flu virus on the ability of schools and local educational agencies (LEAs) in the State to make AYP under the other academic indicator — attendance rate. After reviewing the New Mexico's request, I am pleased to grant the following waiver:

- ESEA Section 1111(b)(2)(C)(vi) and 34 C.F.R. § 200.19(a)(1)(A)-(B) is waived for one year to the extent that New Mexico will allow a school or LEA that misses AYP solely due to a failure to make attendance rate and that can document the absences were due to H1N1 or other H1N1-like illnesses to use 90 percent as its attendance rate for the 2009-2010 school year.

A school or LEA that meets the requirements set forth above may request permission from the state of New Mexico Public Education Department to implement this waiver. Prior to permitting a school or LEA to implement the waiver, New Mexico must review the school's or LEA's attendance and AYP data to verify that, in fact, the school or LEA meets the requirements set forth above and is able to properly document it. In particular, the Department expects New Mexico to ensure that the only reason a school or LEA seeking to implement the waiver failed to make AYP was the failure to make the 90 percent attendance rate requirement.

This one-year waiver is being granted on the condition that New Mexico will implement this waiver as set forth above, and will report to the Department by September 30, 2010 the name and NCES identification number of each school and LEA that it approved to implement the waiver.

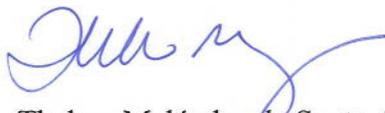
400 MARYLAND AVE., S.W. WASHINGTON, D.C. 20202
www.ed.gov

Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Page 2 ~ The Honorable Susanna Murphy

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 regarding this waiver, 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.

cc: Tom Dauphinee
Sheila Hyde
Sam Ornelas
Cindy Gregory