

# New Mexico Consolidated Performance Review Report FY 2023

**Commendations**  
**0**

**Met Requirements**  
**15**

**Recommendations**  
**8**

**Action Required**  
**60**

*Final Report*  
*3/18/2024*



U.S. Department of Education  
Office of Elementary and Secondary Education  
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Washington, DC 20202

# Table of Contents

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SECTION I.....	6
OVERVIEW OF VISIT.....	6
SECTION II.....	10
SUMMARY STATUS OF FISCAL & PROGRAM MONITORING INDICATORS.....	10
SECTION III.....	14
ACTION REQUIRED.....	14
<i>Financial Management and Crosscutting.....</i>	<i>14</i>
<b>ACCOUNTING SYSTEMS AND FISCAL CONTROLS .....</b>	<b>14</b>
<b>PERIOD OF AVAILABILITY AND CARRYOVER.....</b>	<b>16</b>
<b>INTERNAL CONTROLS .....</b>	<b>18</b>
<b>EQUIPMENT AND SUPPLIES MANAGEMENT .....</b>	<b>20</b>
<b>RISK ASSESSMENT (EXTERNAL).....</b>	<b>22</b>
<b>SUBRECIPIENT MONITORING .....</b>	<b>23</b>
<i>SSA Cross-cutting Financial and Programmatic .....</i>	<i>25</i>
<b>ALLOCATIONS.....</b>	<b>25</b>
<b>MAINTENANCE OF EFFORT .....</b>	<b>26</b>
<b>EQUITABLE SERVICES.....</b>	<b>27</b>
<b>EQUITABLE SERVICES.....</b>	<b>28</b>
<b>EQUITABLE SERVICES.....</b>	<b>30</b>
<b>DATA QUALITY: INTERNAL CONTROLS AND DATA REVIEW PROCESS .....</b>	<b>31</b>
<b>DATA QUALITY:.....</b>	<b>33</b>
<b>U.S. DEPARTMENT OF EDUCATION FEEDBACK PROCESS.....</b>	<b>33</b>
<i>Title I, Part A.....</i>	<i>34</i>
<b>STATE ASSESSMENT REQUIREMENTS .....</b>	<b>34</b>
<b>STATEWIDE ACCOUNTABILITY SYSTEM .....</b>	<b>35</b>
<b>IDENTIFICATION OF SCHOOLS .....</b>	<b>40</b>
<b>SUPPORT FOR SCHOOL IMPROVEMENT .....</b>	<b>42</b>
<b>1003 SCHOOL IMPROVEMENT .....</b>	<b>46</b>
<b>STATE AND LOCAL REPORT CARDS.....</b>	<b>48</b>
<b>SCHOOLWIDE PROGRAMS – CONSOLIDATION OF FUNDS.....</b>	<b>52</b>
<b>SCHOOLWIDE PROGRAMS.....</b>	<b>53</b>
<b>TARGETED ASSISTANCE PROGRAMS .....</b>	<b>55</b>
<b>PARENT AND FAMILY ENGAGEMENT.....</b>	<b>58</b>
<b>TITLE I-SPECIFIC FISCAL REQUIREMENTS.....</b>	<b>59</b>
<b>OTHER TITLE I REQUIREMENTS –.....</b>	<b>61</b>
<b>SCHOOL CONDITIONS.....</b>	<b>61</b>
<b>OTHER TITLE I REQUIREMENTS –.....</b>	<b>63</b>
<b>SCHOOL TRANSITIONS .....</b>	<b>63</b>
<b>OTHER TITLE I REQUIREMENTS – EARLY CHILDHOOD EDUCATION SUPPORT AND COORDINATION.....</b>	<b>65</b>
<b>OTHER TITLE I REQUIREMENTS –.....</b>	<b>66</b>
<b>COMMITTEE OF PRACTITIONERS.....</b>	<b>66</b>
<b>OTHER TITLE I REQUIREMENTS – EDUCATOR EQUITY.....</b>	<b>67</b>
<b>EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – LEA TRANSPORTATION PROCEDURES .....</b>	<b>69</b>
<b>EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – SUBRECIPIENT MONITORING.....</b>	<b>70</b>
<i>Title I, Part C.....</i>	<i>71</i>
<b>ALLOCATIONS – STATE ADMINISTRATION.....</b>	<b>71</b>
<b>SUPPLEMENT, NOT SUPPLANT AND UTILIZATION OF OTHER AVAILABLE SERVICES.....</b>	<b>73</b>
<b>SUBRECIPIENT MONITORING .....</b>	<b>74</b>
<b>IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: TRAINING .....</b>	<b>76</b>

IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: SUPERVISION, REVIEW, AND EVALUATION OF INDIVIDUAL RECRUITERS .....	77
IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: PROCESS FOR RESOLVING ELIGIBILITY QUESTIONS .....	78
SERVICE DELIVERY PLAN AND PRIORITY FOR SERVICES .....	79
MIGRANT STUDENT INFORMATION EXCHANGE DATA SUBMISSION – INCOMPLETE DATA .....	81
<i>Title II, Part A</i> .....	84
PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: SEA-LEVEL FUNDS.....	84
PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: SEA-LEVEL FUNDS.....	85
PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS.....	86
PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS.....	87
PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS.....	88
<i>Title III, Part A</i> .....	89
STANDARDIZED STATEWIDE ENTRANCE AND EXIT PROCEDURES, ENGLISH LEARNER IDENTIFICATION .....	89
STANDARDIZED STATEWIDE ENTRANCE AND EXIT PROCEDURES .....	93
USE OF FUNDS .....	95
ACTIVITIES BY AGENCIES EXPERIENCING SIGNIFICANT INCREASES IN IMMIGRANT CHILDREN AND YOUTH .....	96
ACTIVITIES BY AGENCIES EXPERIENCING SIGNIFICANT INCREASES IN IMMIGRANT CHILDREN AND YOUTH .....	97
SUPPLEMENT NOT SUPPLANT.....	98
PARENT NOTIFICATION .....	100
PARENT PARTICIPATION .....	102
DATA QUALITY.....	103
<i>Title V, Part B – Rural and Low-Income School (RLIS)</i> .....	105
SEA FINANCIAL MANAGEMENT.....	105
SUBGRANTEE USE OF RLIS FUNDS .....	107
RLIS SUBGRANTEE MONITORING.....	108
<i>ESSER and ARP ESSER</i> .....	109
ALLOCATIONS/SUB-AWARD PROCESS .....	109
RISK ASSESSMENT.....	110
SUBRECIPIENT MONITORING .....	111
SECTION IV .....	113
MET REQUIREMENTS WITH RECOMMENDATION .....	113
<i>Fiscal Crosscutting</i> .....	113
CHARTER SCHOOL AUTHORIZATION AND OVERSIGHT .....	113
<i>SSA Cross Cutting</i> .....	115
EQUITABLE SERVICES.....	115
EQUITABLE SERVICES.....	116
<i>Title I, Part A</i> .....	118
EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – SEA COLLABORATION WITH CHILD WELFARE AGENCY .....	118
<i>Title I, Part C</i> .....	119
IDENTIFICATION AND RECRUITMENT – EXAMINATION OF EACH CERTIFICATE OF ELIGIBILITY .....	119
<i>Title V, Part B – Rural and Low-Income School (RLIS)</i> .....	120
RLIS PROGRAM OBJECTIVES AND OUTCOMES .....	120
PROGRAM ADMINISTRATION.....	121
<i>ESSER and ARP ESSER</i> .....	122
CARES ACT/TRANSPARENCY ACT REPORTING.....	122

## GENERAL INFORMATION

### OVERVIEW OF THE CONSOLIDATED PERFORMANCE REVIEW

The U.S. Department of Education's (Department's) Office of Elementary and Secondary Education (OESE) established the consolidated performance review process to conduct oversight of and aid State educational agencies (SEAs) as they administer K-12 formula grant programs. The goals of the consolidated performance review process are to conduct a review of key programs through a single, streamlined process that results in improved and strengthened partnerships between the Department and States and encourage States to develop and effectively implement integrated and coherent consolidated State plans. To accomplish these goals, the consolidated performance review process is organized into crosscutting sections that review fiscal and programmatic requirements across OESE programs and other ESEA-related programs, and program-specific sections that consider how the SEA implements specific programs.

This Consolidated Performance Review Report summarizes the findings from the review of the New Mexico Public Education Department (NMPED) that occurred on September 18- October 3, 2023. The review covered:

- Financial Management and Crosscutting;
- School Support and Accountability (SSA) Crosscutting Financial and Programmatic;
- Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), Improving Basic Programs Operated by Local Educational Agencies (LEAs);
- Title I, Part C of the ESEA, Migrant Education;
- Title II, Part A of the ESEA, Effective Instruction State Grants;
- Title III, Part A of the ESEA, the State Formula Grant Program for English Language Acquisition and Language Enhancement;
- Title IV, Part A of the ESEA, Student Support and Academic Enrichment (SSAE) Program<sup>1</sup>;
- Title V, Part B, Subpart 2 of the ESEA, Rural and Low-Income Schools; and
- Elementary and Secondary School Emergency Relief Fund (ESSER I, II, & ARP ESSER) and Emergency Assistance to Non-Public Schools (EANS)

This report is based on information provided through the review process and other relevant qualitative and quantitative data. The primary goal of this review was to ensure that implementation of the programs is consistent with the fiscal, administrative, and program requirements contained in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance: 2 Code of Federal Regulations (C.F.R.) Part 200), the Education Department General Administrative Requirements (EDGAR), and the ESEA. The review addressed the administration of fiscal and programmatic components through two domains: (1) financial management and crosscutting requirements and (2) program-specific requirements.

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<sup>1</sup> Title IV, Part A was included as a part of the Financial Management and Crosscutting section of the review.

## **NAVIGATING THE CONSOLIDATED PERFORMANCE REVIEW REPORT**

This report contains four sections. Section I contains a snapshot of information pertinent to the grant activities for the respective State. Section II is a summary of the State's performance on each indicator reviewed for each covered program. For each indicator, the Department assigns one of four ratings: (1) Met Requirements with Commendation indicates high-quality implementation where the grantee is exceeding expectations; (2) Met Requirements indicates that no instances of noncompliance were identified; (3) Met Requirements with Recommendations indicates there are quality implementation concerns and some improvements could be made to ensure the grantee continues to meet expectations; and (4) Action Required indicates there are significant compliance or quality concerns that require attention by the SEA and will be revisited until the SEA has remedied the issue.

Section III identifies those areas where the Department has significant compliance and quality concerns and for which corrective action is required. For those issues, the report outlines the current practice, the nature of noncompliance, and the required action.

Section IV identifies those areas where the SEA has met the requirements but where the Department has concerns related to the SEA's implementation of the grant administration or fiscal management (*i.e.*, those areas categorized as quality concerns, "met requirements with recommendations"). In these instances, the Department determined that the SEA is complying with requirements but that improvements could be made to improve the efficiency or effectiveness of operations. Identified issues are grouped according to relevant area and requirement, with citations provided. For each issue listed, the Department will provide a recommendation for improvement but is not requiring the SEA to take any further action.

## Overview of Visit



### COVERED GRANT PROGRAMS OF THIS REVIEW

Title I, Part A; Title I, Part C; Title II, Part A; Title III, Part A; Title V, Part B, Subpart 2; as well as ESSER, ARP ESSER, and EANS



### FEDERAL FUNDING<sup>2</sup>

Title I, Part A	\$135,700,229
Title I, Part C	\$ 1,292,319
Title II, Part A	\$103,068,305
Title III, Part A	\$5,477,703
Title IV, Part A	\$9,821,962
Title V, Part B, Subpart 2	\$1,974,566
ESSER I	\$ 108,574,786 <sup>3</sup>
ESSER II	\$ 435,938,638 <sup>4</sup>
ARP ESSER	\$ 979,761,933 <sup>5</sup>
EANS	\$ 34,708,268 <sup>6 7</sup>

### Dates of Review

SEA: September 18 - 20, 2023

Subrecipients: September 21, 2023 – October 3, 2023

<sup>2</sup> FY 2022 funds (<https://www2.ed.gov/about/overview/budget/statetables/index.html>) are from OESE-administered programs that allocate funds to States using a statutory formula. The totals do not reflect all Department funds awarded to a State. In addition to other formula funds awarded to each State, States and other entities may also receive funds from grants that are awarded on a competitive basis.

<sup>3</sup> [ESSER-Fund-State-Allocations-Table.pdf \(ed.gov\)](#)

<sup>4</sup> [Final ESSERII Methodology Table 1.5.21.pdf \(ed.gov\)](#)

<sup>5</sup> [Revised-ARP-ESSER-Methodology-and-Allocation-Table\\_6.25.21\\_FINAL.pdf](#)

<sup>6</sup> [Final ARP-EANS-Methodology-and-Table-3.16.21.pdf \(ed.gov\)](#)

<sup>7</sup> [FINAL GEERII EANS-Methodology Table 1.8.21.pdf \(ed.gov\)](#)

## ED Reviewers

Erin Hudson (Management Support Office)  
 Artrice Hardin (Management Support Office)  
 Stephanie Choroser (Office of School Support and Accountability)  
 Fariba Hamedani (Office of English Language Acquisition)  
 Scott Richardson (Office of School Support and Accountability)  
 Melissa Siry (Office of School Support and Accountability)  
 Evan Skloot (Office of School Support and Accountability)  
 Bryan Thurmond (Office of School Support and Accountability)  
 Elizabeth Witt (Office of School Support and Accountability)  
 Leticia Braga (Office of English Language Acquisition )  
 Katrina Ballard (Office of Migrant Education)  
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 Patricia Meyertholen (Office of Migrant Education)  
 Justin Tabor (Office of Rural, Insular & Native Achievement Programs)  
 Eric Schultz (Office of Rural, Insular & Native Achievement Programs)  
 Diane Rentner (Office of State and Grantee Relations)  
 Gaby Tanner (Office of State and Grantee Relations)

## Subrecipients Participating in the Desk Review

Albuquerque Public Schools  
 Cesar Chavez Charter School  
 Deming Public Schools  
 Roswell Independent School District

## Current Grant Conditions

- |                 |   |
|-----------------|---|
| Title I, Part A | <p>NMPED did not identify schools for CSI, TSI, and ATSI using data from the 2021-2022 school year or post State and local report cards in a timely manner. As a result, a condition was placed on NMPED’s fiscal year (FY) 2023 Title I, Part A grant award. To satisfy the condition, NMPED must:</p> <ol style="list-style-type: none"> <li>1. By no later than October 1, 2023, submit evidence that NMPED required all schools that were identified based on data from the 2021-2022 school year to begin implementation of support and improvement plans in the 2023-2024 school year consistent with ESEA section 1111(d) (i.e., the schools are not permitted to have a planning year in the 2023-2024 school year).</li> <li>2. By no later than November 15, 2023, submit evidence that NMPED implemented its accountability system for the 2022-2023 school year and identified schools for TSI in fall 2023.</li> <li>3. By no later than January 15, 2024, submit evidence that NMPED published State and</li> </ol> |
|-----------------|---|

local report cards for the 2022-2023 school year.

4. By February 21, 2024, submit NMPED's required *EDFacts* school year 2023-2024 accountability data.

If NMPED fails to meet these requirements, the Department may take additional enforcement action.

In addition, NMPED has conditions related to: assessment peer review of the reading/language arts, mathematics, and science standards and assessment; assessment peer review of the English language proficiency; and science assessment results on State and local report cards.

Title I, Part C	None
Title II, Part A	None
Title III, Part A	None
Title V, Part B	<p>NMPED failed to make RLIS subgrant awards for FYs 2020, 2021, and 2022 until March 13, 2023, and failed to make any FY 2019 carryover funds available to local educational agencies (LEAs) after June 30, 2020. As a result, a condition was placed on NMPED's fiscal year (FY) 2022 RLIS grant award. Before the Department will lift the condition, NMPED must provide to the Department:</p> <ol style="list-style-type: none"> <li>1. Within 15 days of receipt of this letter, a detailed plan for how NMPED will support its LEAs in using their FYs 2020, 2021, and 2022 RLIS subgrants for allowable purposes, including a plan for technical assistance and program monitoring, to ensure that LEAs are able to obligate the funds for allowable purposes in the limited period of availability.</li> <li>2. Within 90 days of receipt of this letter, evidence that NMPED has revised its policies and procedures so that, beginning with FY 2023 RLIS subgrants, NMPED will allow LEAs the full 27 months to obligate RLIS funds, with a subsequent 120 days for liquidation of the obligations.</li> <li>3. Within 90 days of receipt of this letter, evidence that NMPED has communicated these changes in its subgranting policies and procedures to its LEAs.</li> <li>4. On a monthly basis, written updates on the amounts of FYs 2020, 2021, and 2022 RLIS funds that have been obligated and liquidated.</li> </ol>



In addition, the Department will monitor NMPED's implementation of FYs 2020, 2021, and 2022 RLIS grants and timely issuance of FY 2023 RLIS subgrants during program monitoring. If NMPED does not provide the evidence listed above, the Department will consider designating NMPED a high-risk grantee under Title V, Part B of the ESEA or taking other enforcement action, as appropriate.

ESSER/ARP  
ESSER

New Mexico has fifteen conditions and five assurances on its ESSER grant awards. Conditions 1-7, 11, 12 and 15 are related to allocations and period of availability. Condition 8 relates to allowable uses. Conditions 9 and 10 relate to SEA assurances to meet the maintenance of effort and maintenance of equity requirements, respectively. Conditions 13 and 14 outline reporting requirements. New Mexico also has 5 assurances and certifications. Assurance 1 relates to compliance with OMB Standard Forms 424B and D. Assurance 2 relates to restrictions and disclosures regarding lobbying. Assurances 3 and 4 relate to the General Education Provisions Act (GEPA). Assurance 5 relates to Uniform Guidance. There are also considerations for grant funds spent on conferences and meetings. Finally, there are cash management requirements and FAQs for grantees and subgrantees.

**SECTION II**

# Summary Status of Fiscal & Program Monitoring Indicators

**STATUS KEY**



**Met requirements with commendation**

High quality implementation & compliance



**Met requirements**

No instances of noncompliance identified



**Met requirements with recommendation**

Satisfactory compliance with quality concerns



**Action required**

Significant compliance & quality concerns

**FINANCIAL MANAGEMENT & CROSSCUTTING**

Topic	Status
Accounting Systems and Fiscal Controls	● ○ ○ ○
Cash Management and Payment Systems	● ● ● ○
Period of Availability and Carryover	● ○ ○ ○
Internal Controls	● ○ ○ ○
Audit Requirements	● ● ● ○
Records and Information Management	● ● ● ○
Equipment and Supplies Management	● ○ ○ ○
Personnel	● ● ● ○
Procurement	● ● ● ○
Indirect Costs	● ● ● ○
Charter School Authorization and Oversight	● ● ○ ○
Local Applications and Plans	● ● ● ○
Risk Assessment	● ○ ○ ○
Subrecipient Monitoring	● ○ ○ ○

**CROSS-CUTTING FINANCIAL AND PROGRAMMATIC**

Topic	Status
Allocations	● ○ ○ ○
Maintenance of Effort (MOE)	● ○ ○ ○
Equitable Services	● ○ ○ ○
Equitable Services	● ○ ○ ○
Equitable Services	● ○ ○ ○

Equitable Services	● ● ○ ○
Equitable Services	● ● ○ ○
Data Quality: Internal Controls and Data Review Process	● ○ ○ ○
Data Quality: U.S. Department of Education Feedback Process	● ○ ○ ○

### TITLE I, PART A & TITLE I, PART B

Topic	Status
State Assessment Requirements	● ○ ○ ○
Statewide Accountability System	● ○ ○ ○
Identification of Schools	● ○ ○ ○
Support for School Improvement	● ○ ○ ○
1003 School Improvement	● ○ ○ ○
State and Local Report Cards	● ○ ○ ○
Schoolwide Programs – Consolidation of Funds	● ○ ○ ○
Schoolwide Programs	● ○ ○ ○
Targeted Assistance Programs	● ○ ○ ○
Parent and Family Engagement	● ○ ○ ○
Title I – Specific Fiscal Requirements	● ○ ○ ○
Other Title I Requirements – School Conditions	● ○ ○ ○
Other Title I Requirements – School Transitions	● ○ ○ ○
Other Title I Requirements – State Administration: Eliminating or Modifying Fiscal Barriers	● ● ● ○
Other Title I Requirements – Early Childhood Education, Support and Coordination	● ○ ○ ○
Other Title I Requirements – Committee of Practitioners	● ○ ○ ○
Other Title I Requirements – Educator Equity	● ○ ○ ○
Educational Stability for Students in Foster Care – SEA Collaboration with Child Welfare Agency	● ● ○ ○
Educational Stability for Students in Foster Care – LEA Transportation Procedures	● ○ ○ ○
Educational Stability for Students in Foster Care – Subrecipient Monitoring	● ○ ○ ○

### TITLE I, PART C

Topic	Status
Allocations – State Administration	● ○ ○ ○
Supplement, Not Supplant and Utilization of Other Available Services	● ○ ○ ○
Subrecipient Monitoring	● ○ ○ ○
Identification and Recruitment – Quality Control: Training	● ○ ○ ○
Identification and Recruitment – Quality Control: Supervision, Review, and Evaluation of Individual Recruiters	● ○ ○ ○
Identification and Recruitment – Quality Control: Process for Resolving Eligibility Questions	● ○ ○ ○

Service Delivery Plan and Priority for Services	● ○ ○ ○
Program Evaluation	● ● ● ○
Migrant Student Information Exchange Data Submission – Incomplete Data	● ○ ○ ○
Identification and Recruitment – Examination of Each Certificate of Eligibility	● ● ● ○

### TITLE II, PART A

Topic	Status
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders: SEA-Level Funds	● ○ ○ ○
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders: SEA-Level Funds	● ○ ○ ○
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders: LEA-Level Funds	● ○ ○ ○
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders: LEA-Level Funds	● ○ ○ ○
Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders: LEA-Level Funds	● ○ ○ ○

### TITLE III, PART A

Topic	Status
Standardized Statewide Entrance and Exit Procedures, English Learner Identification	● ○ ○ ○
Standardized Statewide Entrance and Exit Procedures, Timeline for EL Identification	● ○ ○ ○
Standardized Statewide Entrance and Exit Procedures	● ○ ○ ○
Use of Funds	● ○ ○ ○
Activities by Agencies Experiencing Significant Increases in Immigrant Children and Youth	● ○ ○ ○
Activities by Agencies Experiencing Significant Increases in Immigrant Children and Youth	● ○ ○ ○
Supplement Not Supplant	● ○ ○ ○
Parent Notification	● ○ ○ ○
Parent Participation	● ○ ○ ○
Data Quality	● ○ ○ ○

### TITLE V, PART B, SUBPART 2

Topic	Status
RLIS Program Objectives and Outcomes	● ● ● ○
SEA Financial Management	● ○ ○ ○
Subgrantee Use of RLIS Funds	● ○ ○ ○
Program Administration	● ● ● ○
RLIS Subgrantee Monitoring	● ○ ○ ○

**ESSER & ARP ESSER**

<b>Topic</b>	<b>Status</b>
Budgeting of the State Reserve and Subawards	● ● ● ○
Allocations / Sub-Award Process	● ○ ○ ○
CARES Act/Transparency Act Reporting	● ● ○ ○
Risk Assessment	● ○ ○ ○
Subrecipient Monitoring	● ○ ○ ○
Maintenance of Effort	● ● ● ○
Maintenance of Equity	● ● ● ○
Equitable Services	● ● ● ○

**EANS**

<b>Topic</b>	<b>Status</b>
Emergency Assistance to Non-public Schools (EANS)- Governor's Office	● ● ● ○
Emergency Assistance to Non-public Schools (EANS)- State Education Agency (SEA)	● ● ● ○

## Action Required

### Financial Management and Crosscutting

#### ACCOUNTING SYSTEMS AND FISCAL CONTROLS

#### REQUIREMENT SUMMARY

Description: An SEA and its subgrantees must use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. In general, an SEA must expend and account for Federal funds in accordance with State laws and procedures for expending and accounting for State funds. In addition, State and LEA accounting systems must satisfy Federal requirements regarding the ability to track the use of funds and permit the disclosure of financial results. SEAs and LEAs also must have written procedures for determining cost allowability and must maintain effective control over all funds.

EDGAR  
34 C.F.R. 76.702

Uniform Guidance  
2 C.F.R. 200.302

#### ISSUE

Pursuant to 2 C.F.R. § 200.302(b)(7), the financial management system of each non-Federal entity must provide written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

2 C.F.R. §§ 200.402 through 200.411 address 55 items of cost that receive clarification regarding allowability, in general, for using Federal funds. It is not an exhaustive or minutely detailed list but provides guidance on basic considerations to apply to all costs, listed or not listed.

Written procedures are not a reiteration of the Federal requirements or the policies or goals. Rather, procedures are the step-by-step process that is used to obtain the goal or the steps that are necessary to meet the Federal requirement. Written procedures on allowable costs must address how the subrecipient is ensuring that costs apply to the Federal grant, and ultimately claimed, are allowed under the individual Federal program and in accordance with the cost principles established in the Uniform Grant Guidance. NMPED failed to provide the Department written procedures for determining the allowability of costs in accordance with 2 C.F.R. § 200.302(b)(7) and 2 C.F.R. §§ 200.402 through 200.411.

During interviews, NMPED stated that when an LEA submits a request for reimbursement (RfR), the request is reviewed to determine if the expense was identified in the application before processing the RfR. However, this process does not include a written guide for the LEA to make that determination before submitting the RfR.

During discussions with the LEAs, one stated that the SEA denied reimbursement of an RfR for a Title I expense that the SEA determined was allowable in prior years but not allowable in that RfR. The LEA further stated that after meeting with the SEA, it still did not understand why the expense was unallowable. A second LEA stated that the SEA has a general email box to request information on whether a potential LEA or school use of funds would be allowable. The LEA further stated that the normal response time for that email is two to three days, but some LEA expenditures require faster submissions. A third LEA interviewed stated that some NMPED managers of programs covered in this review provide trainings and guidance on allowability and others do not. The LEA further suggested the SEA provide more information or trainings that subrecipients could watch on their own time.

2 C.F.R. § 200.302(b)(7) requires SEAs provide written procedures for determining the allowability of costs. 2 C.F.R. §§ 200.402 through 200.411 provides guidance on basic considerations to apply to costs. Based on our review, NMPED did not meet these requirements.

#### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit to the Department written guidance for LEAs for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award as required by 2 C.F.R. § 200.302(b)(7) and 2 C.F.R. §§ 200.402 through 200.411.

#### **RECOMMENDATION**

We recommend NMPED require all NMPED managers of programs covered in this review provide trainings and guidance to its LEAs for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award as required by 2 C.F.R. § 200.302(b)(7) and 2 C.F.R. §§ 200.402 through 200.411.

## PERIOD OF AVAILABILITY AND CARRYOVER

## REQUIREMENT SUMMARY

Description: The SEA may only charge a grant program for allowable costs incurred during the period of availability and any pre-award costs that have been authorized by the Department. Unless the Department authorizes an extension, the SEA shall liquidate all obligation incurred under the award not later than 120 calendar days after the end date of the performance period. If the SEA fails to obligate all funds by the end of the award year, it can “carryover” the remaining funds for a period of one additional fiscal year. Any funds not obligated by the end of the carryover period shall be returned by the SEA to the Federal government as an unobligated balance.

Uniform Guidance

2 C.F.R. §200.309 and §200.344(b)

EDGAR

34 C.F.R. §76.707 and §76.709

## ISSUE

If an SEA or LEA does not obligate all available funds during the first year of availability, the entity may obligate any remaining funds during a carryover period of one additional fiscal year. (34 C.F.R. § 76.709). An SEA must liquidate all obligations incurred under the Federal award not later than 120 calendar days after the end date of the period of availability (2 C.F.R. § 200.344(b)). Under § 412(b) of the General Education Provisions Act (GEPA), also known as the Tydings amendment, grants issued for a fiscal year may be made available for obligation on the basis of an academic or school basis. (20 U.S.C. 1225b). As a result of these requirements, many Federal programs – including programs covered in this review – have a total period of availability of 27 months (from July 1st of the award year to September 30th of the carryover year) and a subsequent liquidation period of 120 days.

NMPED stated during our interview that it posts key dates of availability on its website and that the funds are available for LEAs during the entire 27-month period, but that LEAs must reestablish the budget for each year. NMPED further stated that, although it issues carryover letters, there is no stoppage of spending.

However, documentation and conversations with LEAs during the review indicated that NMPED utilizes an initial period of availability that totals 12 months rather than the full 27 months allowed under section 412(b) of GEPA. See also 34 C.F.R. § 76.709(a). For instance:

- NMPED submitted a document titled Title III: Supplemental Support for EL Programs and Services. In the “Duration of the Title III Subgrant” section, it states that LEAs cannot have access to the Tydings period without a carryover letter.
- Participating LEAs expressed concerns that current procedures placed an extra burden on using Federal funds, especially between July 1 and September 30 of the carryover year.



- One LEA stated that NMPED calculates the carryover amount and issues a carryover letter. However, because the LEA is unaware of the amount until it receives the carryover letter, it does not budget for the carryover until the carryover letter is received. The LEA further explained that the carryover letter usually comes in February. However, it has come as late as April which makes planning and budgeting difficult. For instance, the LEA stated that it takes approximately 45 days to complete its internal budget approval process plus an additional 30 days for a procurement budget item. At that point, the schools have dismissed for the school year which makes it difficult to expend the funds in a timely manner. A second LEA also stated that the date the carryover letter is issued poses a challenge meeting the deadline to expend its funds. The LEA explained that on one occasion it did not receive an award letter for Title V, Part B for an entire year. Then, the SEA issued the LEA a carryover letter with two months to expend the entire amount. A third LEA stated that it tries not to have carryover funds because it is unsure if the SEA is going to issue a carryover letter.

Federal regulations require an SEA ensure that LEAs have the full 27 months of availability and carryover plus an additional 120 days to obligate or encumber program funds from the covered programs. Based on our analysis, we determined that NMPED's current process for period of availability and carryover has programmatic implications for programs covered in this review and places an undue burden on LEAs to maximize spending and prevent the return of unobligated balances.

#### **REQUIRED ACTION**

Within 60 business days of receipt of this report, NMPED must provide the Department with evidence that it has:

1. Updated its policies and procedures to allow LEAs the full 27 months of the period of availability for covered programs for both current awards and future awards, with a subsequent 120 days allowed for liquidation of the obligations. These updated policies should allow LEAs to access the full 27-month period of availability and subsequent 120-day liquidation period without having to request additional time after the initial 12 months.
2. Communicated this change to its LEAs.

## INTERNAL CONTROLS

## REQUIREMENT SUMMARY

Description: An SEA and its LEAs must establish and maintain a system of effective internal controls over Federal awards that provides reasonable assurance that the SEA is managing Federal awards in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards. These internal controls should be in accordance with guidance stated in the "Standards of Internal Control in the Federal Government" (GAO Green Book) or the "Internal Controls Integrated Framework" (Treadway Commission).

Uniform Guidance  
2 C.F.R. 200.303

## ISSUE

Pursuant to 2 C.F.R. § 200.113 Mandatory Disclosures – the non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to the System for Award Management (SAM). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 C.F.R. part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Pursuant to Title IX, Section 9203. Preventing Improper Use of Taxpayer Funds – Every Student Succeeds Act – to address the misuse of taxpayer funds, the Secretary of Education shall (1) require that each recipient of a grant or subgrant under the Elementary and Secondary Education Act of 1965 display, in a public place, the hotline contact information of the Office of Inspector General of the Department of Education so that any individual who observes, detects, or suspects improper use of taxpayer funds can easily report such improper use; (2) annually notify employees of the Department of Education of their responsibility to report fraud; and (3) require any applicant for a grant under such Act to provide an assurance to the Secretary and the entity awarding the subgrant that any information submitted when applying for such grant and responding to monitoring and compliance reviews is truthful and accurate.

The U.S. Department of Education Office of Inspector General (OIG) conducts audits, investigations, and inspections of educational programs and operations, and has criminal investigators nationwide who conduct investigations of fraudulent schemes targeting the Department's funds and/or programs. OIG is responsible for protecting the integrity of Federal education programs administered by the Department, ensuring vital funds are used for allowable and intended purposes and in accordance with all applicable requirements. Title IX, Section 9203 of Every Student Succeeds Act requires the Department's OIG hotline contact information be publicly posted so that any individual who observes, detects, or suspects improper use of taxpayer funds can easily report such improper use.

NMPED reported that it was aware of the State auditor's toll-free number to report fraud, waste, and abuse; however, NMPED could not direct us to information posted online that would provide stakeholders and employees with information to report fraud, waste, and abuse to the Department's OIG as required by Title IX, Section 9203 of Every Student Succeeds Act. The Department's OIG relies on entities that participate in the Department's programs and their auditors to be alert to opportunities for fraud involving those programs. Without its contact information posted, individuals would not be able to alert the Department's OIG and opportunities could be missed to identify potential fraud, waste, or abuse.

### **REQUIRED ACTION**

Within 60 business days of receipt of this report, NMPED must provide to the Department evidence of information posted on its website that would guide stakeholders and employees to report fraud, waste, and abuse to the Department's Office of Inspector General (OIG) as required by Title IX, Section 9203 of Every Student Succeeds Act.

Additionally, within 60 business days of receipt of this report, NMPED must provide to the Department evidence of:

1. Policies and procedures that:
  - a. Require each recipient of a grant or subgrant under the ESEA to display in a public place the hotline contact information of the Department's OIG so that any individual who observes, detects, or suspects improper use of taxpayer funds can easily report such improper use.
  - b. Annually notify employees of their responsibility to report fraud.
  - c. Require any applicant for a grant under the ESEA to provide an assurance to the Secretary and entity awarding the subgrant that any information submitted when applying for such grant and responding to monitoring and compliance reviews is truthful and accurate.
  - d. Verification that the SEA and its subrecipients have publicly posted the Department's OIG fraud reporting contact information as required by Title IX, Section 9203 of Every Student Succeeds Act.

## EQUIPMENT AND SUPPLIES MANAGEMENT

## REQUIREMENT SUMMARY

Description: An SEA shall use, manage, and dispose of equipment and supplies purchased using Federal funds in accordance with all relevant State laws and procedures. SEAs shall also ensure that equipment and supplies are used only for authorized purposes of the project during the period of performance (or until no longer needed).

Uniform Guidance  
2 C.F.R. 200.313  
2 C.F.R. 200.314

Government Accountability Office's "Standards for Internal Control in the Federal Government" (GAO Green Book)  
Principle 10.03

## ISSUE

Pursuant to 2 C.F.R. § 200.313(d)(1) *Management requirements* procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, require that property records be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

Pursuant to 2 C.F.R. § 200.332(d), all pass-through entities must monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

Of the three LEAs reviewed for Equipment and Supplies Management, one LEA did not submit inventory records and a second LEA submitted a copy of its "Capital Asset Rollforward" records which did not contain all of the Federally required elements.

Based on our review of the LEAs' property records, we determined that NMPED failed to establish policies and procedures to maintain property records that include Federal required information and to monitor the LEAs for this covered activity as required by 2 C.F.R. §§ 200.313(d)(1) and 200.332(d).

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide the Department with evidence that it has updated its policies and procedures to monitor the LEAs' property records policies and procedures as required by 2 C.F.R. § 200.332(d) to ensure the records for property purchased with Federal funds include a description of the property, a serial number or other identification number, the

source of funding for the property (including the FAIN), who holds title, the acquisition date, cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property as required by 2 C.F.R. § 200.313(d)(1).

## RISK ASSESSMENT (EXTERNAL)

## REQUIREMENT SUMMARY

Description: In order to determine the appropriate method and level of subrecipient monitoring, an SEA shall evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward.

Uniform Guidance  
2 C.F.R. 200.332(b)

### ISSUE

Pursuant to 2 C.F.R. § 200.332(b), (d), and (e), depending upon NMPED's assessment of risk, NMPED must monitor the activities of its subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

NMPED submitted a risk assessment protocol and accompanying subrecipient monitoring tools which outline the risk factors to be evaluated per 2 C.F.R. § 200.332(d) and (e). However, NMPED did not demonstrate that it used the results of its risk assessment to inform its plan for all Federal programs, including pandemic response programs, subrecipient monitoring and support to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved as required by to 2 C.F.R. § 200.332(b).

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department documentation demonstrating that it has completed implementation of its risk assessment process and used the results of its assessment to inform its plan for all subrecipient monitoring and support for Federal programs, including pandemic response programs.

## SUBRECIPIENT MONITORING

## REQUIREMENT SUMMARY

Description: An SEA shall monitor LEAs and any other entities, including external providers, receiving federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards. Uniform Guidance

Uniform Guidance  
2 C.F.R. 200.332(d)

### ISSUE

Pursuant to 2 C.F.R. § 200.332(d) all pass-through entities must monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- Reviewing financial and performance reports required by the pass-through entity.
- Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and written confirmation from the subrecipient, highlighting the status of actions planned or taken to address single audit findings related to the particular subaward.
- Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521.

The pass-through entity is responsible for resolving audit findings specifically related to the subaward and not responsible for resolving crosscutting findings. If a subrecipient has a current single audit report posted in the Federal Audit Clearinghouse and has not otherwise been excluded from receipt of Federal funding (*e.g.*, has been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant audit agency or cognizant oversight agency to perform audit follow-up and make management decisions related to cross-cutting findings in accordance with section. 2 C.F.R. § 200.513(a)(3)(vii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

NMPED is implementing a tiered subrecipient monitoring process, which is slated to begin in school year 2024-2025. As a result, we evaluated NMPED's current subrecipient monitoring process.

NMPED reported that its staff conducts monitoring of LEA's flowthrough programs through desktop reviews as part of the RfR process.<sup>8</sup> As a part of OESE's onsite desk review, we asked NMPED to provide consolidated monitoring reports and to clarify how findings are communicated to LEAs. NMPED responded that it could not provide an example of finalized reports. We also asked NMPED how it responds when LEAs cannot provide requested evidence. NMPED responded that it has not completed any comprehensive or consolidated monitoring of subrecipients, but that it reaches out to LEAs to communicate corrective actions and timelines. As a result, we determined that NMPED's current subrecipient monitoring process does not ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit to the Department its new tiered subrecipient monitoring process and ensure that it includes policies and procedures consistent with 2 C.F.R. § 200.332(d).

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<sup>8</sup> The RfR review process involves a review of expenditures against the approved application and general allowability requirements.



# SSA Cross-cutting Financial and Programmatic

## ALLOCATIONS

## REQUIREMENT SUMMARY

Description: SEAs shall ensure that, when subawarding funds to LEAs or other subrecipients, it makes subawards in accordance with applicable statutory requirements (including requirements related to the process for subawarding funds and the amounts to be subawarded to individual subrecipients).

ESEA

§§ 1003, 1003A, 1004(a)(1), 1113, 1124, 1124A, 1125, 1125A, 1126(b), 1201, 1202, 1203, 2101, 2102, 3111, 3114, 3115, 5221(b)(3), 5222, 8201, 8203, 8305

Title I Regulations

34 C.F.R §§ 200.72-200.75 and § 200.100

EDGAR

34 C.F.R. §§ 76.50-51, § 76.300, and § 76.789

Uniform Guidance

2 C.F.R. § 200.332(a)

## ISSUE

[34 C.F.R. § 200.73\(c\)](#) requires NMPED under each Title I-A formula to implement the hold harmless provisions in 34 C.F.R. § 200.73 by ratably reducing the allocations of LEAs that are above their hold harmless levels to increase the allocations of LEAs that are below their hold harmless level to these levels, as part of adjusting the Title I-A allocations calculated by the Department. Although NMPED correctly applies the hold harmless on a formula-by-formula basis, it does not ratably reduce the allocations of LEAs that are above their hold harmless level such that the ratio between LEAs that are reduced during this step differs before and after the reduction. For example, in the document, “2022-2023 Title I Award Calc Wkbk FINAL postaudit 04.20.23”:

- Prior to the hold harmless step, the ratio between the Basic grant allocations of Alamogordo Public Schools and Artesia Public Schools was 2.509.
- After the hold harmless step, the ratio between the Basic grant allocations of Alamogordo Public Schools and Artesia Public Schools was 2.510.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide the Department with evidence that it has revised its procedures to use ratable reductions in applying the hold harmless requirements in 34 C.F.R. § 200.73 and that NMPED has implemented these procedures by recalculating its adjustments to the Federal fiscal year 2023 (school year 2023-2024) Title I-A allocations calculated by the Department.

## MAINTENANCE OF EFFORT

## REQUIREMENT SUMMARY

Description: An SEA shall ensure that each LEA's expenditures for free public education in the preceding fiscal year were not less than 90% of its expenditures for free public education in the second preceding fiscal year.

ESEA  
§ 8521

EDGAR  
34 C.F.R. § 299.5

## ISSUE

34 C.F.R. § 299.5(d) requires each State, in determining an LEA's compliance with the ESEA's maintenance of effort (MOE) requirements, to consider only the LEA's expenditures from State and local funds for free public education. These include expenditures for administration, instruction, attendance and health services, pupil transportation services, operation and maintenance of plant, fixed charges, and net expenditures to cover deficits for food services and student body activities. An SEA may not consider expenditures for community services, capital outlay, debt service or supplemental expenses made as a result of a Presidentially declared disaster, and any expenditures made from Federal funds. Based on the information provided by NMPED, the Department was unable to confirm that NMPED is including the correct categories. Specifically, NMPED submitted a screenshot of an MOE report in its Operating Budget Management System (OBMS) system that appeared to be related to the MOE requirement for the Individuals with Disabilities Education Act (IDEA). Further, the report did not explicitly state which expenditure categories were included and excluded. NMPED was unable to provide evidence demonstrating that its MOE procedures include and exclude expenditure categories consistent with the requirements in [34 C.F.R. § 299.5\(d\)](#).

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit evidence (e.g., updated procedures or language in an MOE report) that its process to determine LEA compliance with ESEA MOE requirements includes and excludes expenditure categories consistent with the requirements in [34 C.F.R. § 299.5\(d\)](#).

## EQUITABLE SERVICES

## REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA  
 §§ 1117; 8501

Regulations  
 34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR  
 34 C.F.R. § 76.661

## ISSUE

ESEA section 8501 requires States to provide equitable Title II, Part A services to ensure that teachers, principals, and other school leaders in participating private schools participate on an equitable basis. This requirement applies not only to Title II, Part A funds that are allocated to LEAs, but also to the program funds that the SEA retains at the State level to carry out activities under ESEA section 2101(c)(4). NMPED provided no evidence that it is providing equitable services with State-level Title II, Part A funds.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline detailing how, when using State-level Title II, Part A funds, it will ensure full compliance with all requirements in section 8501 of the ESEA, including consultation, for the provision of services for eligible nonpublic school educators.

## EQUITABLE SERVICES

## REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA  
§§ 1117; 8501

Regulations  
34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR  
34 C.F.R. § 76.661

### ISSUE

During the monitoring review, NMPED acknowledged that, beyond reviewing some equitable services provisions in the course of reviewing LEAs' applications for program funds, it is not monitoring equitable services provisions, either for Title I or for program covered by Title VIII of the ESEA. As a result, NMPED is not ensuring that LEAs are carrying out equitable services provisions, as required.

#### Issue 1

Sections 1117(b) and 8501(c) of the ESEA require SEAs to ensure that LEAs engage in “timely and meaningful consultation” with private school officials about the provision of Title I, Part A (Title I); Title II, Part A (Title II); and Title III, Part A (Title III) equitable services. NMPED provided insufficient evidence to show that it is ensuring that required consultation is occurring.

Regarding Titles I and III, NMPED provided documentation showing that it collects consultation forms as part of the application process but also indicated that it does not otherwise monitor equitable services consultation requirements to ensure that information provided in the consultation form is accurate and that the consultation provided fully meets the needs of private school students who are eligible for Title I or Title III services.

Regarding Title II, NMPED acknowledged both that it does not collect consultation forms as part of the review of Title II applications and that it does not monitor LEAs as whether the LEAs engage in adequate consultation with private schools on the provision of Title II equitable services.

#### Issue 2

During the monitoring review, NMPED indicated that it does not always require LEAs to describe equitable services activities in their applications for Federal funds and further acknowledged that it does not monitor the provision of equitable services to ensure that only allowable activities are carried out and that the activities benefit only eligible students, or, in the case of Title II, eligible educators.

### **Issue 3**

NMPED acknowledged during the monitoring review that it does not monitor LEAs to ensure that equipment and supplies purchased for the purposes of providing equitable services to eligible private school students and teachers are tracked and remain in the control of the LEA.

### **Issue 4**

LEAs provide relevant counts of students participating in equitable services as part of their applications for funds under Title I; Title II; and Title III. These counts determine how much money the LEA must set aside for each program for the provision of equitable services. NMPED acknowledged in the monitoring review that it does not monitor LEAs to verify the equitable services counts used in the applications to calculate dollar amounts the LEA must set aside to provide equitable services are accurate. As a result, it is unclear that private schools are receiving proper amounts of equitable services from LEAs.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline detailing how it will ensure that LEAs in New Mexico carry out equitable services for Title I, Title II, and Title III in a manner compliant with statutory requirements. The plan provided must, at minimum, address how the SEA will ensure that the following occur for all three programs:

- LEAs consult with private school officials about the provision of equitable services in a manner that complies with statutory requirements.
- LEAs ensure that funds made available for the provision of equitable services are used only for allowable purposes.
- LEAs ensure that supplies and equipment purchased as part of the provision of equitable services are tracked and remain in the control of the LEA.
- LEA counts of students participating in equitable services used to calculate amounts the LEA must make available for are verified and accurate, and that LEAs make the correct amount of funds available for the provisions of equitable services.

### **RECOMMENDATION**

The Department strongly recommends that NMPED include compliance with equitable services requirements as part of its subgrantee monitoring processes as a way to ensure that LEAs are meeting the equitable services requirements described above.

## EQUITABLE SERVICES

## REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA  
 §§ 1117; 8501

Regulations  
 34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR  
 34 C.F.R. § 76.661

## ISSUE

Section 1117(a)(4)(C) of the ESEA requires the SEA to provide timely notice to private school officials about amounts of Title I funds that LEAs have determined they will make available for equitable services. Similarly, section 8501(a)(4)(C) of the ESEA requires the SEA to provide notice in a timely manner to private school officials of the allocation of funds for educational services and other benefits for each ESEA program covered by Title VIII equitable services requirements (including Titles II, Part A and Title III, Part A) that an LEA has determined are available for eligible private school children and educators. NMPED acknowledged during the monitoring review that it does not carry out either of these requirements.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline detailing how it will ensure that it meets the requirements in sections 1117(a)(4)(C) and 8501(a)(4)(C) of the ESEA to provide timely notice to private school officials about amounts of Title I, Title II, and Title III funds that LEAs have determined they will make available for equitable services.

## DATA QUALITY: INTERNAL CONTROLS AND DATA REVIEW PROCESS

## REQUIREMENT SUMMARY

Description: An SEA is required to have appropriate procedures in place to ensure that the data reported to the public and the U.S. Department of Education are high quality (i.e., timely, complete, accurate, valid, and reliable).

ESEA

§§ 1111(h) (5), 8101(23) and (25), 8303, 8304(a) (6) (A)

EDGAR

34 CFR §§ 76.720 and 76.770

GAO Green Book

Uniform Guidance

2 CFR §§ 200.303 and 200.329(b)

## ISSUE

LEAs submit data to NMPED multiple times during the year via a student information system and the State has a multi-step process across LEAs and NMPED to certify the data for accuracy. NMPED shares expectations and supports for LEAs regarding its data collections through various channels, including through email communications, technical manuals, and ad-hoc technical assistance. NMPED also creates validations and reports to help identify issues in the data before submitting it to the Department. However, during the last two years NMPED submitted multiple *EDFacts* files to the Department that were late, incomplete, and/or potentially inaccurate. For example, regarding data inaccuracy, for the school year 2021-2022 *EDFacts* data submissions, NMPED reported that nearly 14 percent of English learners (ELs) did not participate in the annual English language proficiency assessment (FS137-English Language Proficiency Test). In response to this inquiry, as part of the performance review, the State indicated that “PED Assessment conducted desktop and onsite monitoring during the spring 2022 assessment window; the rates reported into *EDFacts* do not seem to align with the Assessment Bureau monitoring during the window. We estimated that at least 95 [percent] of ELs participated in the [S]tate’s ELP assessment.”

Due to school identification and previous *EDFacts* data issues, NMPED’s fiscal year 2023 Title I, Part A grant includes multiple conditions, including that by February 21, 2024, NMPED will submit its required *EDFacts* school year 2023-2024 accountability data (i.e., school year 2022-2023 data in FS199- Graduation Rate Indicator Status, 200- Academic Achievement Indicator Status, 201- Other Academic Indicator Status, 202- School Quality or Student Success Indicator Status, 205- Progress Achieving English Language Proficiency Indicator Status, 206- School Support and Improvement, and 212- Identification School Support and Improvement that inform school year 2023-2024 accountability determinations).

NMPED stated that its recently launched data system (NOVA) is intended to help SEA data reviewers to access the most recent and accurate data. For example, NOVA will include automated data checks that

would flag issues before the data were sent from the LEA to the SEA and it will include more checks on the data after they were sent to the SEA. Because of the recency of the launch of NOVA, the Department has not yet received evidence that NOVA will enable NMPED to submit timely, complete, and accurate *EDFacts* and Consolidated State Performance Report (CSPR) data to the Department.

#### **REQUIRED ACTION**

Within 60 business days of receipt of this report, NMPED must provide evidence that it has a process and procedures for ensuring timely, complete, and accurate *EDFacts* and CSPR data submissions beginning with school year 2022-2023 data.



## DATA QUALITY:

### U.S. DEPARTMENT OF EDUCATION FEEDBACK PROCESS

## REQUIREMENT SUMMARY

Description: An SEA is required to have appropriate procedures in place to ensure that the data reported to the public and the U.S. Department of Education are high quality (i.e., timely, complete, accurate, valid, and reliable).

ESEA

§§ 1111(h) (5), 8101(23) and (25), 8303, 8304(a) (6) (A)

EDGAR

34 CFR §§ 76.720 and 76.770

GAO Green Book

Uniform Guidance

2 CFR §§ 200.303 and 200.329(b)

## ISSUE

NMPED stated that, depending upon the content of the Department’s data quality feedback inquiries, either NMPED’s *EDFacts* Coordinator or the NMPED staff who created the submission file responds to the Department. However, during the Department’s annual data quality feedback process for school year 2021-2022 data, NMPED did not respond to multiple outreach efforts from the Department seeking to clarify whether *EDFacts* data submitted by NMPED to the Department were complete or accurate (e.g., the Department’s inquiries regarding FS137 (English Language Proficiency Test); FS175, 178, and 179 (Academic Achievement in Mathematics, Reading/Language Arts, and Science, respectively); and FS185, 188, and 189 (Assessment Participation in Mathematics, Reading/Language Arts, and Science, respectively)). During the performance review, NMPED explained that it faced challenges in replying to the Department’s outreach because it was unable to obtain responses from the relevant SEA staff due to recent staff turnover. It is critical that NMPED have documented processes and procedures in place for SEA staff, including those to enable timely coordination among *EDFacts* and program staff within the SEA to respond to the Department’s data quality inquiries, to ensure continuity of operations within the SEA, especially when there is staff turnover.

## REQUIRED ACTION

Within 60 business days of receipt of this report, NMPED must, beginning with school year 2022-2023 data:

1. Provide fulsome and complete data notes explaining why any and all business rules are triggered as NMPED submits its data.
2. Respond to any and all data quality feedback from the Department (e.g., Partner Support Center tickets, metadata outreach, etc.) in timely manner.

## Title I, Part A

### STATE ASSESSMENT REQUIREMENTS

### REQUIREMENT SUMMARY

Description: An SEA must administer required statewide assessments and report on participation and achievement for those assessments. An SEA must also use State Assessment Grant funds only for allowable uses of funds consistent with sections 1201(a)(1) and (a)(2).

ESEA  
§1201(a), §1111(b)(2)(B)

EDGAR  
34 C.F.R. §§200.1-200.10

### ISSUE

ESEA section 1111(b)(2)(C) allows a State to exempt an eighth-grade student who takes the State's high school mathematics end-of-course assessment from the mathematics assessment typically administered in eighth grade under ESEA section 1111(b)(2)(B)(v)(I)(aa). NMPED indicated that it does not use the eighth-grade mathematics exception. In [NMPED's original ESEA consolidated State plan](#), it indicated on page 53 that it does use the eighth-grade mathematics exception. In its [current approved ESEA consolidated State plan](#) (amended in 2019), the section on assessment is inadvertently missing. Therefore, NMPED must update its ESEA consolidated State plan to include the relevant assessment requirements, including that it is no longer using the eighth-grade mathematics exception.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit an amendment to its approved ESEA consolidated State plan to include all assessment requirements, including that it does not use the eighth-grade mathematics exception.

## STATEWIDE ACCOUNTABILITY SYSTEM

## REQUIREMENT SUMMARY

Description: An SEA must measure, on an annual basis, all required indicators for all students and each subgroup of students. For purposes of the academic achievement indicator, the SEA must ensure that at least 95 percent of all students and each subgroup of students are assessed annually on the State's reading/language arts and mathematics assessments. A State must establish a system of annual, meaningful differentiation of all public schools in the State based on all indicators in the State's accountability system for all students and for each subgroup of students.

ESEA

§§ 1111(b) (3); 1111(c) (4) (A)–(C); 1111(c) (4) (E); 1111(c) (4) (F); 8101(23); 8101(25)

## ISSUE

### Calculating the adjusted cohort graduation rate (ACGR) and graduation rate indicator

The New Mexico Diploma of Excellence is NMPED's regular high school diploma. It is comprised of coursework and competency requirements. Coursework requirements include the content areas of mathematics, reading, writing, science, and social studies. Competency requirements can be met by passing an assessment or a competency-based alternative. Individualized Education Programs (IEPs) for students with disabilities specify the assessments in which the student participates and any needed accommodations.

NMPED's *Graduation Options for Students with Disabilities Technical Assistance Manual* states that there are multiple pathways, which NMPED calls options, through which students can graduate. According to the manual, the four options for the New Mexico Diploma of Excellence are:

- Standard option: "A program of study based upon meeting or exceeding all requirements for graduation as identified in the New Mexico Statutes and Rules, with or without reasonable accommodations."
- Modified option: "An alternative program of study meant to develop the student's career interest as it relates to the career clusters. The student's program of study must address the New Mexico Public Education Department's (PED) content standards with benchmarks and performance standards."
- Ability option: "An alternative program of study based upon meeting or surpassing IEP goals and objectives, with or without reasonable modification of delivery and assessment methods, referencing skill attainment at a student's ability level, which may lead to meaningful employment."
- Conditional certificate of completion: "IEP teams may use a conditional certificate of transition in the form of a continuing and transition IEP when a student has completed the high school

portion of his or her education, and is on track for graduation, but the student still has transition or academic needs that must be addressed by school staff and adult service providers.”

NMPED stated that students who graduate via the conditional certificate of completion option are included only in the denominator of NMPED’s adjusted cohort graduation rate (ACGR) calculation (i.e., that NMPED considers these students to NOT have earned a high school diploma). NMPED also stated that students who graduate via the modified and ability options are included in the numerator and denominator of NMPED’s ACGR calculation (i.e., that NMPED considers these students to have earned a high school diploma).

First, the ESEA requires that *all* students, including children with disabilities, be held to the same challenging State academic standards, which must include the same knowledge, skills, and levels of achievement expected of all public school students in a State for the grade in which a student is enrolled. (ESEA section 1111(b)(1)(B)). A “regular high school diploma” is the standard high school diploma awarded to the preponderance of students in a State; it must be fully aligned with State standards or be a higher diploma, may not be aligned with alternate academic achievement standards for children with the most significant cognitive disabilities, and may not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential. (ESEA section 8101(43)). Thus, to be counted as having received a regular high school diploma for purposes of the ACGR, children with disabilities may be awarded the standard high school diploma awarded to the preponderance of students in the State only if they have met the same State standards with respect to graduation requirements as their non-disabled peers.

Accordingly, a high school diploma based on attainment of IEP goals (i.e., the “ability” or “conditional” options outlined above) may be considered a regular high school diploma only if an SEA can demonstrate that a diploma based on meeting those goals is “fully aligned with State standards.” (ESEA section 8101(43)(A)). That is, an SEA must be able demonstrate that meeting IEP goals holds children with disabilities to the same standards that non-disabled students must meet to obtain a regular high school diploma, including with respect to the credits, coursework, and other State-determined requirements necessary to obtain a diploma. It is unlikely that meeting IEP goals alone would be sufficient to demonstrate that a diploma is fully aligned with State standards for graduation. NMPED is unable to demonstrate that the modified, ability, or condition certificate of transition options hold students to the same challenging State academic standards as the standard graduation option does.

Second, a pathway to earning a regular high school diploma, which NMPED calls an option, must be aligned with requirements for the standard diploma awarded to the preponderance of students in the State. A State may not include in the numerator when calculating the ACRG (and graduation rate indicator in its accountability system) any student who receives a diploma via a pathway that is clearly less rigorous than the pathway most students follow, such as a pathway that would allow a less rigorous mathematics course to substitute for an Algebra I course, a pathway that allows a lower level of achievement for some students, or a pathway that allows for a student to be exempt from meeting some of the State requirements. Similarly, a pathway with lesser criteria specific to a particular subgroup of students (e.g., children with disabilities) is not allowable. A State also may not include pathways that are equivalent to a general equivalency diploma, certificate of completion, certificate of attendance or a similar lesser credential. (ESEA section 8101(43)). The modified, ability, and conditional certificate of transition options are less rigorous than the standard graduation option and hold students to a lower level of achievement than does the standard graduation option. As previously stated, NMPED’s *Graduation Options for Students with Disabilities Technical Assistance Manual* describes only the standard option

as the option that, “means a program of study based upon meeting or exceeding all requirements for graduation as identified in the New Mexico Statutes and Rules, with or without reasonable accommodations.”

We note that NMPED does not include a student who receives the conditional certificate of completion in the numerator when calculating the ACGR, which is correct. However, NMPED does include a student who graduates via the modified or ability option in the numerator and denominator when calculating the ACGR, which is inconsistent with statutory requirements. A student who graduates via the modified or ability option may only be included in the denominator when calculating the ACGR because these options/pathways are not aligned with requirements for the standard diploma awarded to the preponderance of students in the State. NMPED is not calculating its ACGR in compliance with the ESEA. All students must be included in the denominator, but only those students that graduate with the standard option may be included in the numerator.

#### Student inclusion in the adjusted cohort based on snapshot days

NMPED uses a shared accountability unit (SAU) model to calculate the ACGR. Schools take four student enrollment snapshots per year, and schools are responsible for the proportion of the ACGR outcome that is equivalent to the proportion of enrollment snapshots that a student has at a given school.

However, NMPED requires a student to be enrolled in a school for two snapshot days to be included in the school-level ACGR. NMPED’s procedures do not meet the statutory requirements in ESEA section 8101(23) and (25). As defined in ESEA section 8101(25), the four-year adjusted cohort is based on first-time students in 9th grade enrolled in a high school no later than the date by which student membership data is collected annually by the SEA for submission to the Department’s National Center for Educational Statistics (i.e., on or about October 1), adjusted by adding into the cohort any student who transfers in later during grade 9 or during the next three years and subtracting any student from the cohort who transfers out, emigrates to another country, transfers to a prison or juvenile facility, or dies during that same period. ESEA section 8101(28) defines a high school as a secondary school that grants a diploma, as defined by the State, and includes, at least, a grade 12.

NMPED may not select a specific point or points in time to determine cohort membership. If at any point a student is enrolled in the cohort, that student must be included in the school’s adjusted cohort, unless the student meets one of the exceptions noted in the paragraph above in ESEA section 8101(25).

#### Additional concerns regarding student removal from the adjusted cohort

NMPED described how most of its student high school withdrawal codes aligned with the ESEA. NMPED has not provided information for three withdrawal codes (W2, absent 10 consecutive days; W9, not immunized; and WC, completed required coursework but did not pass relevant special education assessment) to determine if they are consistent with the ESEA requirements for removing a student from a graduating cohort.

After the review, NMPED clarified that students under W2 (absent 10 consecutive days) and WC (completed coursework but did not pass relevant special education assessment) are included in the denominator of the graduating cohort, but are not included in the numerator. In addition, W9 (not immunized) has been retired. This is consistent with statutory requirements. Therefore, no further action is necessary.

## **Annual Meaningful Differentiation**

### Partial Attendance

NMPED includes a student in its system of annual meaningful differentiation (i.e., in the calculation of its accountability indicators) if the student has attended more than ten days of school in a given school year. This practice does not align with the partial attendance requirement in ESEA section 1111(c)(4)(F), which requires an SEA to include, in each indicator except graduation rate, only a student who has attended a school for at least half of a school year.

### Alternate Methodology

NMPED's approved ESEA consolidated State plan includes an alternate methodology (page 91) that indicates students in all grades are assessed. Specifically, NMPED chooses to administer a reading/language arts (R/LA) assessment in kindergarten through grade 2 (but does not administer a mathematics assessment in those grades) and uses those results for the Academic Achievement indicator for those schools. As a result, NMPED doubles the R/LA score for these grades to balance the lack of a mathematics score when calculating the Academic Achievement indicator. However, during the performance review, NMPED stated that K-2 schools only receive points for the Academic Achievement, Regular Attendance, and Progress in Achieving English Language Proficiency indicators (i.e., NMPED does not calculate the Other Academic indicator for K-2 schools). NMPED's approved ESEA consolidated State plan does not state that there are any additional differences between how K-2 schools and all other schools are awarded points in the accountability model besides the points in the Academic Achievement indicator.

## **REQUIRED ACTION**

### **Calculating the ACGR and Graduation Rate indicator**

Within 60 days business days of receiving this report, NMPED must submit to the Department the following information:

1. Updated business rules for calculating the ACGR and the Graduation Rate indicator consistent with the statutory requirements (i.e., to include students who graduate high school via the modified, ability, or condition certificate of transition options in the denominator of the ACGR calculation, but do not include students who graduate high school via any of those options in the numerator of the ACGR calculation; and rules that require a student to be present for only one snapshot day to be included in the adjusted cohort at the school, district, and State levels) to be used beginning with ACGR and Graduation Rate indicator calculations for the 2023-2024 school year.
2. Evidence that the updated rules for calculating the ACGR and Graduation Rate indicator consistent with statutory requirements have been communicated with LEAs.

### **Partial attendance**

Within 60 days business days of receiving this report, NMPED must submit to the Department the following information:

1. Updated business rules for calculating the accountability indicators based on school year 2022-2023 data in its system of annual meaningful differentiation consistent with the statutory requirements (i.e., rules that require an SEA to include, in each indicator except graduation rate, only a student who has attended a school for at least half of a school year).
2. Evidence that the updated rules for calculating the accountability indicators consistent with statutory requirements have been communicated with LEAs.

**Alternate methodology**

Within 60 business days of receiving this report, NMPED must submit an amendment to its approved ESEA consolidated State plan to ensure it reflects NMPED's current practices regarding schools which cannot be included in the regular system of annual meaningful differentiation (e.g., K-2 schools that utilize a different statewide assessment and for which the Other Academic indicator is not calculated).

## IDENTIFICATION OF SCHOOLS

## REQUIREMENT SUMMARY

Description: An SEA shall identify schools for comprehensive or targeted support and improvement. With respect to schools identified for comprehensive support and improvement, identification shall occur at least once every three years and must result in the identification of a subset of schools that receive Comprehensive support, as required by the statute. The schools identified for comprehensive support and improvement must include: 1) not less than the lowest-performing 5 percent of schools receiving Title I, Part A funds, 2) all high schools with a graduation rate below 67 percent, and 3) schools that receive Title I, Part A funds that were previously identified for additional targeted support and have not exited such status after a State-determined number of years. In addition, an SEA must annually identify schools requiring targeted support and improvement based on having one or more consistently underperforming subgroups of students, as determined by the State. Finally, an SEA must identify all schools requiring additional targeted support based on having one or more subgroups performing as poorly as the all students group in the lowest-performing 5 percent of schools receiving Title I, Part A funds, and the frequency of identification of which is determined by the SEA. An SEA may also identify, in its discretion, additional statewide categories of schools.

### ESEA

§§ 1111I(4)(D), 1111I(4)I(iii), 1111(d)(2)I-(D), 1111(d)(3)(A)(i)(II)

## ISSUE

ESEA section 1111(c)(4)(D)(i)(II) requires each public high school in the State failing to graduate one-third or more of its students to be identified for comprehensive support and improvement (CSI).

NMPED's business rules for school support and improvement identification state that only a Title I school can be identified for CSI (page 6) and that a Title I school is identified for CSI based on low graduation rate if the school, "has a four-year graduation rate less than or equal 66.7 percent for two of the past three years" (page 1).

The methodology outlined in NMPED's business rules is not compliant with ESEA section 1111(c)(4)(D)(i)(II). NMPED's methodology only identifies Title I schools, instead of all public high schools, for CSI based on low graduation rate. Additionally, NMPED's business rules are inconsistent with the statute because schools are only identified if they have a four-year graduate rate less than or equal to 66.7 percent for multiple years. While the ESEA permits a State to average data over multiple years, the State may not limit identification to multiple years of being below the threshold. Finally, NMPED's business rules do not align with the methodology in NMPED's approved ESEA consolidated State plan. NMPED's approved ESEA consolidated State plan describes using an average of three years



of four-year ACGR data to identify all public high schools for CSI based on low graduation rate (page 94).

NMPED submitted additional information to the Department in March 2024 which the Department will review as it works with NMPED to resolve its required actions.

### **REQUIRED ACTION**

Within 60 days business days of receiving this report, NMPED must submit to the Department the following information:

1. Updated business rules for identifying schools for CSI based on low graduation rate consistent with the statutory requirements and its approved ESEA consolidated State plan (i.e., rules that use an average of three years of four-year ACGR data to identify all public high schools for CSI based on low graduation rate) to be used beginning with school identifications based on data from the 2023-2024 school year.
2. Evidence that the updated rules for identifying schools for CSI based on low graduation rate consistent with statutory requirements and NMPED's approved ESEA consolidated State plan have been communicated with LEAs.

## SUPPORT FOR SCHOOL IMPROVEMENT

## REQUIREMENT SUMMARY

Description: Upon receiving notification from the State, an LEA shall, for each school identified by the State and in partnership with stakeholders, develop and implement a comprehensive support and improvement plan. The SEA shall notify an LEA of any school served by the LEA that is identified for targeted support and improvement, and the LEA shall notify such identified schools. An SEA must establish statewide exit criteria for schools identified for comprehensive support and improvement and additional targeted support and improvement. Periodically, an SEA must review resource allocation to support school improvement in each LEA serving a significant number or a significant percentage of schools identified for Comprehensive or Targeted support and improvement and must provide technical assistance to each LEA serving a significant number of schools identified for Comprehensive or Targeted support and improvement.

ESEA

§§ 1003(b)-(f); 1111(d)(1)-(2); 1111(d)(3)(A)

## ISSUE

### Exit Criteria

ESEA section 1111(d)(3)(A)(i) requires each State to establish statewide exit criteria for schools identified for CSI and additional targeted support and improvement (ATSI), respectively, that ensure continued progress to improve academic achievement and school success in the State. A school identified for CSI that does not satisfy such criteria within a State-determined number of years must be subject to more rigorous State-determined action. A school identified for ATSI that does not satisfy such criteria within a State-determined number of years must be identified for CSI.

In its approved COVID-19 State plan addendum, NMPED indicated that previously identified schools will continue to be supported and will be eligible to exit following 2022-2023 accountability. Therefore, no identified schools besides CSI – Low Graduation Rate (i.e., schools identified for CSI based on low graduation rate) schools were eligible to exit status or be identified as either CSI if it was previously identified for ATSI, or subject to more rigorous interventions (i.e., called “MRI” in New Mexico) if it was previously identified for CSI following 2021-2022 accountability in June 2023.

In its approved State plan addendum, for a CSI or ATSI school that was identified in 2018-2019 to exit status in the 2022-2023 school year, NMPED was required to examine the relative ranking of the school’s assessment proficiency rates between school years 2018-2019 and 2022-2023 and the change in proficiency rates for the school between school years 2021-2022 and 2022-2023. If both of those measures increase, the school will be eligible to exit status. The State proposed this methodology because it changed statewide summative assessments multiple times since the schools were originally identified in 2018-2019 and could not directly measure progress to improve academic achievement between 2018-2019 and 2022-2023.

NMPED indicated that despite its approved COVID-19 State plan addendum stipulating that no identified schools besides schools identified for CSI – Low Graduation Rate would exit, NMPED exited some CSI and ATSI schools in June 2023 based only on the relative ranking of the school’s assessment proficiency rates between school years 2018-2019 and 2021-2022, which meant that some schools without improved academic achievement were exited. Additionally, some CSI and ATSI schools did not exit based on the relative ranking of the school’s assessment proficiency rates between school years 2018-2019 and 2021-2022 data and were identified as CSI – More Rigorous Interventions (MRI) or CSI schools, respectively, in June 2023.

Based on the July 13, 2023, letter from the Department to NMPED and corresponding condition on its FY 2023 Title I, Part A grant award, NMPED was required to implement its school year 2022-2023 accountability system and identify new schools no later than November 15, 2023. NMPED submitted evidence that it identified schools on November 15, 2023. Specifically, NMPED submitted an example of a memorandum sent to an LEA outlining its school support and improvement designations for school year 2022-2023, as well as a list of schools with their respective school support and improvement designations for school years 2022-2023, 2021-2022, and 2018-2019. While the submitted evidence met the requirement in the July 13, 2023, letter, it was not clear whether the issue described in the preceding paragraph was resolved (i.e., there was no indication in the Excel file which schools were reidentified based on failure to meet the approved exit criteria in the preceding school year).

#### Support and Improvement Plan Development

ESEA sections 1111(d)(1)(B) and (d)(2)(B) require each school identified for CSI, targeted support and improvement (TSI), or ATSI, including public charter schools, to develop a support and improvement plan. NMPED has not required public charter schools identified for support and improvement to develop a support and improvement plan. NMPED did not demonstrate that all public charter schools must meet these requirements. NMPED submitted additional information to the Department in March 2024 which the Department will review as it works with NMPED to resolve its required actions.

NMPED uses its DASH plan process, which is how LEAs and schools meet schoolwide program plan requirements, to meet CSI, TSI, or ATSI plan requirements in ESEA sections 1111(d)(1)(B) and (d)(2)(B). Generally, NMPED has not provided communication or guidance explicitly tying the DASH plan to CSI, TSI, or ATSI plan requirements. NMPED stated that its future plan templates, communication, and monitoring efforts will address this issue. NMPED stated that it is currently developing a new DASH plan template, monitoring tools, and review processes for identified schools, with a goal of completion by November 2023.

ESEA section 1111(d)(1)(B)(i) and (d)(2)(B)(i) requires each school identified for CSI, TSI, or ATSI to develop a support and improvement plan that is informed by all indicators in the State’s accountability system. NMPED lists several data points related to indicators as options for schools to review, but does not explicitly require each CSI, TSI, or ATSI plan to be informed by its Other Academic indicators, Progress in Achieving English Language Proficiency (ELP) indicator, and its School Quality and Student Success (SQSS) indicators (i.e., attendance, opportunity-to-learn, science achievement, and chronic absenteeism). Further, while data from the Academic Achievement indicator is required for elementary and secondary schools that are not high schools, high schools are given an option to consider either data from the Academic Achievement indicator or the Graduation Rate indicator.

ESEA section 1111(d)(1)(B)(4) and (d)(2)(C) requires each school identified for CSI and ATSI to develop a plan that identifies resource inequities to be addressed through implementation of the plan. NMPED indicated that although related conversations occur during the development of the plan, it does not ensure that each CSI and ATSI school meets this requirement.

ESEA section 1111(d)(1)(B)(ii) and 1111(d)(2)(B)(ii) requires each school identified for CSI, TSI, or ATSI to develop a plan that includes evidence-based interventions. NMPED indicated that while it is currently developing a monitoring tool to address this topic, there is no process at this time for ensuring that each plan includes evidence-based interventions.

### Oversight of Support and Improvement Plans

ESEA section 1111(d)(2)(B) and (C) requires each school identified for TSI or ATSI to develop a support and improvement plan that must be approved and monitored by the LEA. Although NMPED trains LEA reviewers to approve TSI and ATSI plans, NMPED did not demonstrate that it confirms that this review and approval occurs. Further, NMPED does not ensure that each LEA monitor implementation of TSI and ATSI plans.

ESEA section 1111(d)(2)(B)(v) requires an LEA to take additional action following unsuccessful implementation of a TSI plan after a number of years determined by the LEA. NMPED indicated that it does not ensure that such action is taken.

### Resource Allocation Review

ESEA section 1111(d)(3)(A)(ii) requires each SEA to periodically review resource allocation to support school improvement in each LEA in the State serving a significant number of CSI, TSI, and ATSI schools. NMPED indicated that it has not conducted such a review.

## **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit evidence that:

1. Any ATSI or CSI – Lowest Performing 5 percent school that erroneously exited status, following the 2021-2022 school year was either re-identified if it did not meet approved exit criteria as described in NMPED’s approved State plan addendum, or that such a school met approved exit criteria.
2. The State modified its policies so that public charter schools identified for CSI, TSI, or ATSI must develop support and improvement plan consistent with statutory requirements (e.g., revised guidance, frequently asked questions, or DASH plan template).
3. NMPED explicitly ties the DASH plan process to CSI, TSI, and ATSI plan requirements (e.g., revised DASH plan, guidance, communication to LEAs).
4. NMPED revised its DASH plan template for CSI, TSI, and ATSI schools to be informed by all indicators in the State’s ESEA accountability system to include outcomes for the Academic Achievement, Graduation Rate, Other Academic, Progress in Achieving ELP, and SQSS indicators.

5. The DASH plan template for CSI and ATSI schools includes the requirement to identify resource inequities to be addressed through implementation of the plan.
6. NMPED ensures that each LEA review, approve, and monitor targeted support and improvement plans before approval (e.g., revised monitoring protocol and communication to LEAs).
7. NMPED ensures that LEAs take additional action following unsuccessful implementation of a targeted support and improvement plan (i.e., for schools identified for targeted or non-Title I additional targeted support and improvement) after a number of years determined by the LEA (e.g., guidance, training, monitoring protocols).

In addition, within 60 business days NMPED must provide:

1. A timeline and a plan for ensuring that the SEA completes the resource allocation review of each LEA serving a significant number of CSI or TSI schools resulting in the completion of at least one resource allocation review no later than December 2024. The plan should include procedures for periodically conducting resource allocation reviews in the future, including how NMPED will determine which LEAs serve a significant number of CSI schools and schools implementing targeted support and improvement plans (i.e., TSI and ATSI schools) and its general process for conducting these reviews (e.g., draft resource allocation protocol).
2. Evidence of a completed resource allocation review.

## 1003 SCHOOL IMPROVEMENT

## REQUIREMENT SUMMARY

Description: An SEA shall allocate and oversee the administration of 1003 school improvement subgrants so that LEAs and schools can effectively develop and implement comprehensive support and improvement and targeted support and improvement plans. The SEA must also conduct a rigorous review of 1003(a) subgrant applications to ensure that LEAs include all required elements.

ESEA

§§ 1003(a)-(f), 1111(d)(1)-(2)

### ISSUE

ESEA section 1003(b) requires each State to use section 1003 school improvement funds to support schools identified for CSI, TSI, and ATSI only.

ESEA section 1003 requires each State to allocate not less than 95 percent of the amount it reserves to make grants to LEAs, on a formula or competitive basis, to serve schools implementing comprehensive or targeted support and improvement activities under ESEA section 1111(d). Under ESEA section 1003(b)(2), a State may set aside up to five percent of its section 1003 funds to carry out its responsibilities with respect to those funds. Those responsibilities are:

- Establishing the method the State will use to allocate funds to LEAs, including ensuring that the LEAs receiving a subgrant under ESEA section 1003 represent the geographic diversity of the State and the subgrants are of sufficient size to enable an LEA to effectively implement the selected strategies;
- Monitoring and evaluating the use of funds by LEAs receiving section 1003 subgrants; and,
- As appropriate, reducing barriers and providing operational flexibility for schools implementing comprehensive or targeted support and improvement plans under ESEA section 1111(d).

Under ESEA section 1003(e), an LEA must submit an application to the SEA that describes how the LEA will:

1. Develop comprehensive support and improvement plans under section 1111(d)(1) for schools receiving funds;
2. Support schools developing or implementing targeted support and improvement plans under section 1111(d)(2), if applicable;
3. Monitor schools receiving funds;
4. Use a rigorous review process to recruit, screen, select, and evaluate any external partners with whom the LEA will partner;

5. Align other Federal, State, and local resources to carry out the activities supported with funds; and
6. As appropriate, modify practices and policies to provide operational flexibility that enables full and effective implementation of the plans.

NMPED indicated that it does not currently have a section 1003 award process or application and did not make subgrants to LEAs between fiscal years (FY) 2021 and 2023. Therefore, it did not submit any evidence regarding its implementation of these requirements. NMPED is currently developing a new process for awarding section 1003 funds with the goal of publishing applications by November 15, 2023.

Additionally, NMPED indicated that it had previously used its set-aside funds under ESEA section 1003(b)(2) to pay for leadership development for principals and teachers across the State (regardless of whether they were from an identified school). The leadership development activities did not appear to be related to school improvement or targeted specifically to improving CSI, TSI, or ATSI schools, as required.

Finally, NMPED awarded “initial implementation funding” to newly identified schools in spring 2023, which consisted of FY 20 section 1003 funds that expired on September 30, 2023. While NMPED required certain information from identified schools, including describing alignment with the support and improvement plan, NMPED did not require an LEA application consistent with section 1003(e). Further, all LEAs that participated in this review indicated that the timeline to apply for and spend these funds was insufficient for meaningful activities.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit:

1. Evidence (e.g., guidance, award notice) that it has developed a process for awarding section 1003 subgrants consistent with ESEA section 1003(a)-(i).
2. An LEA application for section 1003 funds consistent with ESEA section 1003(e).
3. Evidence that it has revised its written procedures (e.g., internal control processes, checks for allowable uses of funds) to ensure that activities paid for using the ESEA section 1003 State set-aside funds are consistent with ESEA section 1003(b)(2), and that any activities funded by ESEA section 1003 support only schools that meet statutory requirements for the identification of CSI, TSI, and ATSI schools under ESEA section 1111(c) and 1111(d)(2)(C). This includes any activities paid for with its FY 2022 and 2023 section 1003 state set-aside funds (i.e., the State must ensure that its FY 2022 and FY 2023 state set-aside funds are used for allowable activities).

## STATE AND LOCAL REPORT CARDS

## REQUIREMENT SUMMARY

Description: An SEA and its LEAs are required to prepare and annually disseminate report cards that include all required elements to the public in a timely manner. In preparing and disseminating report cards, an SEA and its LEAs must also follow student subgroup disaggregation reporting requirements.

ESEA  
§§ 1003(i), 1111(h)

EDGAR  
34 C.F.R. § 200.11

## ISSUE

NMPED is responsible for ensuring that its State and local report cards<sup>9</sup> meet all statutory and regulatory requirements. NMPED publishes its State and local report cards on [www.nmvistas.org](http://www.nmvistas.org). NMPED's school year 2021-2022 State and local report cards were posted in June 2023. Therefore, the State did not publicly post State and local report cards from the 2021-2022 school year in a timely manner. States are required to annually post key information—including statewide assessment, accountability, and school identification status—on State and local report cards. The Department previously placed a condition on NMPED's Title I, Part A grant award requiring that the State, no later than January 15, 2024, must submit evidence that it published State and local report cards for the 2022-2023 school year. As of mid-January 2024, NMPED indicated that it anticipated needing an additional two weeks beyond January 15, 2024, to post State and local report cards for school year 2022-2023. NMPED's State and local report cards self-assessment was submitted after the deadline and was incomplete. It indicated that for school year 2021-2022 report cards some required report card elements were posted, some were forthcoming, and others were posted elsewhere on NMPED's website.

Given that NMPED submitted its State and local report cards self-assessment after the deadline, the Department was unable to review State and local report cards in their entirety at the time of writing its performance report. However, upon cursory review, NMPED's school year 2021-2022 State and local report cards appeared to be missing the following information, in part or in whole, at the time of writing this performance report:

1. ESEA section 1111(h)(1)(C)(ix) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): The number and percentage of:
  - Inexperienced teachers, principals, and other school leaders
  - Teachers with emergency/provisional credentials

<sup>9</sup> For local report cards, the ESEA requires that an LEA report all information for the LEA as a whole and for each school served by the LEA. Thus, although individual school report cards are not required, information about each school is required to be included on the local report card. In practice, a majority of States, including New Mexico, meet the local report card requirements by publishing separate LEA and school report cards.



- Teachers not teaching in their subject/field of certification/licensure
2. ESEA section 1003(i) (for the State report card): Information on school improvement funds under ESEA section 1003 by LEA and school including: names of LEAs and schools receiving school improvement funds, amount of funds received by each school, and types of strategies implemented in each school.
  3. 34 C.F.R. § 200.6(i)(1)(iii) (for State and local report cards for the LEA overall and for each school in the LEA): As applicable, the number of recently arrived English learners exempted from one administration of the reading/language arts assessments or whose results are excluded from certain State accountability system indicators.
  4. ESEA section 1111(h)(1)(C)(i)(I)-(IV) and (h)(2)(C) (for local report cards for the LEA overall and for each school in the LEA): A clear and concise description of State accountability system including:
    - Minimum number of students (i.e., n-size) for use in accountability system
    - Long-term goals
    - Measurements of interim progress
    - Indicators to meaningfully differentiate all public schools in the State
    - System for meaningful differentiation among schools
    - Specific weight of the accountability indicators
    - Method of identifying schools as consistently underperforming, including time period the State uses to determine consistent underperformance
    - Method of identifying schools for comprehensive support and improvement
  5. ESEA section 1111(h)(1)(C)(viii)(II) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): Other CRDC indicators:
    - Number of students enrolled in preschool programs
    - Number and percentage of students enrolled in accelerated coursework (e.g., Advanced Placement and International Baccalaureate)
  6. ESEA section 1111(h)(1)(C)(xii) and (h)(2)(C) (for State and local report cards for the LEA overall): State performance on the National Assessment of Educational Progress (NAEP) at each achievement level for mathematics and reading, for grades 4 and 8, compared to the national average of such results; statewide NAEP participation rates for children with disabilities and English learners.
  7. ESEA section 1111(h)(1)(C)(vii) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): Percentages of students assessed and not assessed in each subject (i.e., participation rates).

8. ESEA section 1111(h)(1)(C)(x) and (h)(2)(C) (for each school in the LEA): Per-pupil expenditures – including actual personnel and actual non-personnel expenditures, in the aggregate and disaggregated by Federal and State/local funds.
9. ESEA section 1111(h)(1)(C)(ii) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): Student achievement data (i.e., the number and percentage of students at each level of achievement on the State mathematics, reading/ language arts, and science assessments)
  - For LEAs: Including how achievement in the LEA compares to the State as a whole.
  - For schools: Including how achievement in the school compares to the LEA and the State as a whole.
10. ESEA section 1111(h)(1)(C)(iv) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): English language proficiency of English learners (i.e., number and percentage of English learners achieving English language proficiency as measured by the State’s English language proficiency assessment)
11. ESEA section 1111(h)(1)(C)(i)(VI) and (h)(2)(C) (for local report cards for the LEA overall and for each school in the LEA): Exit criteria established by the State for:
  - Schools identified for comprehensive support and improvement
  - Schools identified for additional targeted support and improvement, including the number of years after which, if the exit criteria are not satisfied, in the case of Title I schools, such schools will be identified for comprehensive support and improvement
12. ESEA section 1111(h)(1)(C)(xi) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): Extent of use of alternate assessment aligned with alternate academic achievement standards (AA-AAAS) for students with the most significant cognitive disabilities (i.e., number and percentage of students assessed on AAAA-AS, by grade and subject).
13. ESEA section 1111(h)(1)(C)(vi) and (h)(2)(C) (for local report cards for the LEA overall and for each school in the LEA): Progress toward State-designed long-term goals, including measurements of interim progress, for academic achievement, graduation rate, and progress toward achieving English language proficiency.
14. ESEA section 1111(h)(1)(C)(xiii) and (h)(2)(C) (for State and local report cards for the LEA overall and for each school in the LEA): Postsecondary enrollment rates for each high school (if available) for:
  - Public postsecondary institutions
  - Private postsecondary institutions
  - Out-of-state postsecondary institutions

NMPED posts additional assessment performance data on this website, which is not linked directly from the State or local report cards: <https://webnew.ped.state.nm.us/bureaus/accountability/achievement-data/>.

These data are available for download in an Excel file by subject. The files seem to include the participation rates and number and percentage of students achieving proficiency, disaggregated by the required student subgroups, at the LEA and State levels. However, these data do not appear to meet the following requirements:

1. Posted on report cards;
2. Disaggregated by grade;
3. Available at the school level;
4. Including the number and percentage of students at each achievement level;
5. For LEAs: including how achievement in the LEA compares to the State as a whole; and
6. For schools: including how achievement in the school compares to the LEA and the State as a whole.

It is difficult to interpret the data in these files because of the acronyms and formatting used.

Finally, there is no indication that State and local report cards information is provided in a format and, to the extent practicable, in a language that can be understood by parents and family members with disabilities, limited English proficiency, or of migratory children. (ESEA section 1111(h)(1)(B) and (h)(2)(B), 28 C.F.R. § 35.160, and 34 C.F.R. § 104.4(b)(1)(iii)).

### **REQUIRED ACTION**

Within 60 business days of receiving this report NMPED must provide:

1. Evidence that its State and local report cards for the LEA overall and for each school in the LEA for the 2021-2022 school year include all required reporting elements consistent with ESEA section 1111(h) and related provisions (e.g., by providing links to published report cards, screenshots, etc.), including a completed performance review self-assessment that includes links to each requirement in ESEA section 1111(h).
2. Evidence that its State and local report cards are presented, to the extent practicable, in a language that parents and family members can understand (e.g., if it is not practicable to provide a written translation, it should be provided orally to a family member upon request).
3. Evidence that its State and local report cards are available to be provided in an alternative format accessible to parents with disabilities and individuals with disabilities (e.g., publicly available information on the State's website, internal policies and procedures).

## SCHOOLWIDE PROGRAMS – CONSOLIDATION OF FUNDS

## REQUIREMENT SUMMARY

Description: Each State receiving Title I funds must eliminate or modify State and local fiscal accounting requirements in order to facilitate the ability of schools to consolidate funds under schoolwide programs.

ESEA  
§ 1603(a)(1)(C)

### ISSUE

Under ESEA section 1114(a)(1)(A), an LEA may consolidate and use Title I funds, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school that serves an eligible school attendance area in which not less than 40 percent of the children are from low-income families, or not less than 40 percent of the children enrolled in the school are from such families. Additionally, under ESEA section 1603(a)(1)(C), each State receiving Title I funds must eliminate or modify State and local fiscal accounting requirements in order to facilitate the ability of schools to consolidate funds under schoolwide programs. Finally, under ESEA section 1111(g)(2)(E), each SEA must ensure that it will modify or eliminate State fiscal and accounting barriers so that schools can easily consolidate funds from other Federal, State, and local sources to improve educational opportunities and reduce unnecessary fiscal and accounting requirements.

During the performance review, NMPED indicated that it has not provided any information to LEAs regarding consolidated of funds in a schoolwide program or modified State and local fiscal accounting requirements in order to facilitate the ability of schools to consolidate funds under schoolwide programs.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide a plan and a timeline to develop procedures and communicate the option for Title I schools operating schoolwide programs to consolidate and use Title I funds, together with other Federal, State, and local funds, in order to upgrade the entire educational program of a school as required by the assurance in ESEA section 1111(g)(2)(E) to modify or eliminate State fiscal and accounting barriers to enable schoolwide program schools to consolidate funds (e.g., updating its preexisting guidance to discuss consolidation, adding links to the Department's resources on consolidation (<https://oese.ed.gov/files/2020/02/essaswpguidance9192016.pdf>), and highlighting the options to consolidate funds in a schoolwide program in its presentations to its LEAs).

## SCHOOLWIDE PROGRAMS

## REQUIREMENT SUMMARY

Description: A Title I schoolwide program is a comprehensive reform strategy designed to upgrade the educational program of a Title I school in order to improve the achievement of the lowest-achieving students. An LEA may operate a schoolwide program in a Title I school with 40 percent or more of its students living in poverty. In addition, an SEA has discretion to grant a waiver to allow an LEA to operate a schoolwide program without meeting the 40 percent poverty threshold if the SEA has determined that a schoolwide program will best serve the needs of low-achieving students in the school. A school implementing a Title I schoolwide program must conduct a comprehensive needs assessment of the entire school, prepare a comprehensive schoolwide plan, and regularly review the schoolwide plan. To better leverage all available funding, a schoolwide program school has the flexibility to consolidate funds from Title I and other Federal educational programs with State and local funds. To support the effective implementation of schoolwide programs, States must eliminate or modify State and local fiscal accounting requirements so that LEAs can consolidate funds under schoolwide programs.

ESEA

§ 1114; § 1603(a); §1111(g)

Title I Regulations

34 C.F.R. §§ 200.25-200.29

## ISSUE

ESEA section 1114(b)(2) requires each school operating a schoolwide program to develop a schoolwide plan with the involvement of parents and other members of the community to be served and individuals who will carry out such plan, and other stakeholders. While NMPED communicated in its guidance documents that parents are a required stakeholder, neither schoolwide program plan submitted for this review included parents as a stakeholder. NMPED indicated that there is a related assurance in the Title I application but was unable to demonstrate how it ensures that LEAs schoolwide program schools involve parents in the development of schoolwide plans.

ESEA section 1114(b)(4) requires each school operating a schoolwide program to make its schoolwide plan available to parents and the public, including how the information contained in the plan is understandable, in a uniform format, and to the extent practicable, in a language that parents can understand. Although NMPED conducts random sampling to see if some schoolwide plans are available to parents and the public, it does not have a systematic approach or include this check as part of its plan review or monitoring efforts.

ESEA sections 1114(d) and 1115(h) allows the services of a schoolwide program and targeted assistance program, respectively, to be delivered by nonprofit or for-profit external providers with expertise in using evidence-based or other effective strategies to improve student achievement. ESEA section 1114(e) allows a secondary school operating a schoolwide program to operate dual or concurrent enrollment programs that address the needs of low-achieving secondary school students and those at risk of not meeting the challenging State academic standards. NMPED does not provide information or guidance related to these requirements. Further, NMPED does not have guidance or an internal checklist it uses during reviews (e.g., monitoring, requests for reimbursement) that would ensure that such providers have expertise in using evidence-based or other effective strategies to improve student achievement.

ESEA section 1111(g)(2)(J) requires each State to ensure that LEAs and schools ensure that all teachers and paraprofessionals working in a Title I program (i.e., schoolwide or targeted assistance program) meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification. While NMPED collects teacher licensure data for all schools three times a year to meet this requirement, it was unable to demonstrate how it ensures that paraprofessionals meet applicable State certification and licensure requirements.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit evidence that it ensures that:

1. Schoolwide plans are developed with the involvement of parents (e.g., updated monitoring protocols, revised plan template).
2. Schoolwide program schools make such plan available to parents and the public, including how the information contained in the plan is understandable, in a uniform format, and to the extent practicable, in a language that parents can understand (e.g., updated monitoring protocols, revised plan template).
3. LEAs and schools receive information about the option for schools operating a schoolwide program to deliver services using an external provider with expertise in using evidence-based strategies to improve student achievement (e.g., guidance, sample emails).
4. Each LEA or school that uses external providers to deliver services in a schoolwide program or targeted assistance program ensure that such providers have expertise in using evidence-based or other effective strategies to improve student achievement (e.g., updated monitoring protocols, revised plan template, request for reimbursement guidance).
5. LEAs and schools receive information about the option for schools operating a schoolwide program to operate dual or concurrent enrollment programs that address the needs of low-achieving secondary school students and those at risk of not meeting the challenging State academic standards (e.g., guidance, email samples).
6. All paraprofessionals working in a Title I program (i.e., schoolwide or targeted assistance program) meet applicable State certification and licensure requirements.

## TARGETED ASSISTANCE PROGRAMS

## REQUIREMENT SUMMARY

Description: A Title I targeted assistance program is a strategy in schools receiving funding under Title I Part A that serve eligible children identified as having the greatest need for special assistance in order for those children to meet the challenging State academic standards. A school implementing a Title I targeted assistance program must serve participating students by using resources to help eligible children meet the challenging State academic standards, use methods to strengthen the academic program to the school, and coordinate with and support the regular education program.

ESEA  
§ 1115

## ISSUE

ESEA section 1115(b)(1) and (2)(A) require each school operating a targeted assistance program to determine eligible students to be served and to use Title I, Part A resources to help eligible children meet the challenging State academic standards. NMPED describes the relevant statutory requirements in its *2023-2024 SSFS Bureau Guide* but does not provide any guidance on how to meet such requirements when completing the DASH plan or the Title I application or ensure that such requirements are met. NMPED was unable to provide monitoring documents that explicitly include targeted assistance program requirements.

ESEA section 1115(b)(2)(G) requires a school operating a targeted assistance program to provide to the LEA assurances that it will:

- Help provide an accelerated, high-quality curriculum;
- Minimize the removal of children from the regular classroom during regular school hours for instruction provided under the targeted assistance program; and
- On an on-going basis, review the progress of eligible children and revise the targeted assistance program under this section, if necessary, to provide additional assistance to enable such children to meet the challenging State academic standards.

NMPED indicated that Module 5 of its Title I application includes information about the targeted assistance program, and that it evaluates requests for reimbursements (RFRs) to ensure schools are spending money appropriately. However, NMPED indicated after the review that it does not have an internal checklist or other tool to use when reviewing applications or RFRs to ensure that each schools operating a targeted assistance program provides the assurances to LEAs as required under ESEA section 1115(b)(2)(G).

ESEA section 1115(c)(1)(B) requires an LEA supporting a school operating a targeted assistance program to establish multiple, educationally related, objective criteria to identify children in grades 3 and above as failing or most at-risk of failing to meet the challenging State academic standards and criteria, including objective criteria, to identify children from preschool through grade 2. NMPED indicated that it does not currently ensure that each LEA with a targeted assistance school meets this requirement.

In a school operating a Title I targeted assistance program, the staff paid with Title I funds should primarily be providing services to eligible students. ESEA section 1115(d)(2) authorizes the staff in the Title I targeted assistance school who are paid with Title I funds to assume limited duties beyond classroom instruction or that do not benefit participating children that are assigned to similar personnel, provided the time Title I staff spend on such duties is the same proportion of total work time assigned to similar non-Title I staff. NMPED indicated that it does not currently ensure that each school operating a targeted assistance program meets this requirement.

Finally, under ESEA section 1115(e)(2), if health, nutrition, and other social services are not otherwise available to eligible children in a targeted assistance school and such school, if appropriate, has engaged in a comprehensive needs assessment and established a collaborative partnership with local service providers; and funds are not reasonably available from other public or private sources to provide such services, then a portion of the funds provided under this part may be used as a last resort to provide such services, including:

- The provision of basic medical equipment, such as eyeglasses and hearing aids;
- Compensation of a coordinator;
- Family support and engagement services;
- Integrated student supports; and
- Professional development necessary to assist teachers, specialized instructional support personnel, other staff, and parents in identifying and meeting the comprehensive needs of eligible children.

NMPED describes this requirement in its SSFS Bureau Guide. However, it does not currently monitor for compliance with this provision because schools operating targeted assistance programs have not utilized this option in the past.

See above Schoolwide Programs section for issues related to external providers and paraprofessional requirements for both schoolwide and targeted programs.

## **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit evidence that it ensures that:

1. Targeted assistance program schools identify eligible children consistent with ESEA section 1115(b)(1) and uses Title I, Part A resources to help eligible children to meet the challenging State academic standards (e.g., updated monitoring protocol, DASH plan review process materials).



2. LEAs and schools receive information on how to identify eligible children for targeted assistance programs (e.g., communication to LEAs, updated DASH plan guidance).
3. Targeted assistance program schools implement the assurances listed in ESEA section 1115(b)(2)(G) (e.g., updated monitoring protocol, internal checklists for other review processes).
4. LEAs supporting a targeted assistance program school establish criteria for eligibility consistent with ESEA section 1115(c)(1)(B) (e.g., updated monitoring protocol, DASH plan review process materials).
5. Targeted assistance program schools meet the requirement around assumption of limited duties beyond classroom instruction consistent with ESEA section 1115(d)(2) (e.g., updated monitoring protocol).

See required actions #4 and #6 in Schoolwide Programs section above for required actions related to external providers and paraprofessional requirements for both schoolwide and targeted programs.

#### **RECOMMENDATION**

The Department recommends NMPED updates its monitoring protocol to include the provisions under ESEA section 1115(e)(2) (e.g., use of funds for health, nutrition, and other social services).

## PARENT AND FAMILY ENGAGEMENT

## REQUIREMENT SUMMARY

Description: An LEA that receives Title I, Part A funds must notify parents that they may request information on teacher and paraprofessional qualifications. Additionally, an LEA must provide parents with information regarding student academic achievement and growth, testing transparency, information regarding the State or LEA policy for student participation in any assessments and additional information. An LEA receiving Title I funds must also conduct outreach to parents and family members and implement parent and family programs and activities, which must be planned and implemented in consultation with parents. An SEA must collect and disseminate to LEAs effective parent and family engagement strategies.

ESEA

§1111(g)(2)(F); §1112(e); §1116; and §8101(39)

## ISSUE

ESEA section 1116 describes several requirements for parent and family engagement, including the requirements for LEA and school parent and family engagement policies in ESEA section 1116(a)(2) and (b). NMPED's consolidated LEA application includes a prompt regarding the LEA's intended use of Title I parent and family engagement funds, and NMPED staff review an LEA's intended use of these funds through its request for reimbursement process, as required in ESEA section 1116(a)(3)(D). Through review of the LEA's application NMPED also ensures that the LEA with a Title I allocation that exceeds \$500,000 reserves at least 1 percent of its allocation to assist schools to carry out parent and family engagement activities, as required in ESEA section 1116(a)(3)(A). NMPED also provides guidance to LEAs regarding requirements for parent and family engagement policies and practices.

However, ESEA section 1116(h) explicitly requires an SEA to review an LEA's parent and family engagement policies and practices to determine if the policies and practices meet requirements in ESEA section 1116. The only requirements in ESEA section 1116 that NMPED provided sufficient evidence that it reviews for an LEA are the requirements in ESEA section 1116(a)(3)(A) and (D). Therefore, NMPED did not provide sufficient evidence that it reviews an LEA's parent and family engagement policies and practices as required by ESEA section 1116(h).

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit evidence that it has policies and/or procedures to review an LEA's parent and family engagement policies and practices to ensure they meet the requirements in ESEA section 1116, including by reviewing LEA and school parent and family engagement policies that ESEA section 1116(a)(2) and (b) requires (e.g., through its monitoring protocol).

## TITLE I-SPECIFIC FISCAL REQUIREMENTS

## REQUIREMENT SUMMARY

Description: An SEA may only provide Title I, Part A funds to an LEA if State and local funds will be used in schools served by Title I funds to provide services that, on the whole, are at least comparable to services in schools that are not receiving Title I funds. An SEA and its subgrantees shall ensure that funds from the Title I, Part A program are used to supplement not supplant State and local funds. An SEA shall ensure that, when subawarding funds to LEAs or other subrecipients, it makes subawards in accordance with applicable statutory requirements (including requirements related to the process for subawarding funds and the amounts to be subawarded to individual subrecipients).

ESEA

§§ 1113, 1114, 1115, 1116(a) (3), 1117(a), 1118(b), 1118(c), and 4306

Title I Regulations

34 C.F.R §§ 200.64, 200.77, and 200.78

EDGAR

34 C.F.R. §§ 76.50-51, § 76.300, § 76.789, and § 76.792

Uniform Guidance

2 C.F.R. § 200.332(a)

## ISSUE

### Supplement not Supplant

ESEA section 1118(b) requires an LEA to demonstrate that its methodology to allocate State and local funds to schools results in each Title I school receiving all of the State and local funds it would otherwise receive if it were not receiving Title I, Part A funds. An LEA need not have a methodology to comply with ESEA section 1118(b)(2) if it has:

- One school;
- Only Title I schools; or
- A grade span that contains only: a single school, non-Title I schools, or Title I schools (i.e., no methodology is required for this grade span).

NMPED's SSFS Bureau Guide states that an LEA with a total enrollment less than 1,000 students does not need to demonstrate compliance with supplement not supplant requirements. NMPED indicated that this is an error in the guidance.

The SSFS Bureau Guide also indicates that State charter schools do not need to demonstrate compliance with supplement not supplant requirements. NMPED indicated that this is because all State charter schools are LEAs that only contain one school. While these single-school charter school LEAs need not have a methodology to comply with ESEA section 1118(b)(2), it does not relieve the LEA of its requirement under ESEA section 1118(b)(1) and elsewhere to operate consistent with all Federal, State and local requirements and to provide free public education, including for schools and grade spans meeting the conditions described above. NMPED was unable to demonstrate how it ensures that all LEAs, including single-school charter LEAs, comply with ESEA section 1118(b)(1).

Additionally, the SSFS Bureau Guide indicates that the Department established a deadline for LEA compliance with supplement not supplant requirements of the beginning of the 2023-2024 school year, which is inaccurate. NMPED indicated that it was unsure of the origin of this language.

### Comparability

ESEA section 1118(c) requires each State to only provide Title I, Part A funds to an LEA if the State and local funds will be used in schools served by Federal programs to provide services that, on the whole, are at least comparable to services in schools that are not receiving funds. Each LEA is required to develop procedures for compliance with comparability requirements.

ESEA section 1118(c) contains certain exceptions such as that the comparability requirement does not apply to an LEA that has only one school in each grade span. An LEA may also exclude schools with 100 or fewer students from its comparability determination. NMPED, however, has a process that has resulted in exclusion from the comparability determination beyond these exceptions, including reasons such as “non-traditional high school with dual enrollment.” NMPED indicated that it does not have any documented procedures or criteria for considering these exceptions.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit evidence that it has:

1. Corrected the erroneous statements that (a) an LEA with a total enrollment of less than 1,000 students need not to demonstrate compliance with supplement not supplant requirements; (b) LEAs had until the start of the 2023-2024 school year to comply with Title I supplement not supplant; and (c) single school LEAs, including charter school LEAs, need not comply with supplement not supplant by clarifying that they must still comply with ESEA section 1118(b)(1) (e.g., by revising its SSFS Bureau Guide).
2. Updated its guidance to LEAs and schools to clarify when comparability requirements do not apply to be consistent with ESEA section 1118(c).

## OTHER TITLE I REQUIREMENTS – SCHOOL CONDITIONS

## REQUIREMENT SUMMARY

Description: An SEA must support LEAs receiving Title I, Part A funds to improve school conditions for student learning, including through reducing: 1) incidences of bullying and harassment; 2) the overuse of discipline practices that remove students from the classroom; and 3) the use of aversive behavioral interventions that compromise student health and safety.

Each LEA plan, for an LEA receiving Title I, Part A funds, must describe how the LEA will support efforts to reduce the overuse of discipline practices that remove students from the classroom, which may include identifying and supporting schools with high rates of discipline, disaggregated by each of the subgroups of students, as defined in ESEA section 1111(c) (2).

ESEA  
§§ 1111(g) (1) (C) and 1112(b) (11)

## ISSUE

ESEA section 1111(g)(1)(C) requires the SEA to support LEAs receiving Title I funds to improve school conditions for student learning, including through reducing incidences of bullying and harassment, the overuse of discipline practices that remove students from the classroom, and the use of aversive behavioral interventions that compromise student health and safety. NMPED uses a safe schools guide for schools, the intent of which is:

1. Assisting schools and their community partners with the development and revision of site-specific Safe Schools Plans (SSP);
2. Preventing and mitigating an occurrence and/or recurrence of adverse events;
3. Properly training school staff and students to assess, facilitate and implement response actions to emergency events; and
4. Providing the basis for coordinating protective actions prior to, during and after any type of crisis.

Additionally, NMPED provides a Safe School Plan template which includes assurances related to bullying, discipline, and use of aversive behavioral interventions, as well as training opportunities for staff to support safe school plans. However, NMPED's [approved ESEA consolidated State plan](#) also mentions requiring Title I schools to have a Wellness Policy, in addition to a Safe School Plan and the submission of annual assurances. NMPED's Safe School Plan template indicates that the Safe School Plan is one component of the wellness policy which is mandated in [New Mexico law](#). NMPED has not provided evidence that it requires all schools to have a Wellness Policy or has not updated its ESEA consolidated State plan to reflect its current practice. The assurances described in the State plan are included in Appendix B-1 of the Safe School Plan template.

NMPED submitted additional information to the Department in March 2024 which the Department will review as it works with NMPED to resolve its required actions.

**REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit:

1. Evidence that it has changed its current practices to fully align with its ESEA consolidated State plan (i.e., that all schools are required to have a Wellness Policy in addition to having a Safe School Plan and submitting annual assurances); or
2. An amendment to its approved ESEA consolidated State plan to indicate how it supports LEAs receiving Title I funds to improve school conditions for student learning, including through reducing incidences of bullying and harassment, the overuse of discipline practices that remove students from the classroom, and the use of aversive behavioral interventions that compromise student health and safety, if NMPED plans to continue its current practices.

## OTHER TITLE I REQUIREMENTS – SCHOOL TRANSITIONS

## REQUIREMENT SUMMARY

Description: Each LEA plan, for an LEA receiving Title I, Part A funds, must describe how the local educational agency will implement strategies to facilitate effective transitions for students from middle grades to high school and from high school to postsecondary education including, if applicable, through: 1) coordination with institutions of higher education, employers, and other local partners; and 2) increased student access to early college high school or dual or concurrent enrollment opportunities, or career counseling to identify student interests and skills.

ESEA  
§ 1112(b)(10)

## ISSUE

ESEA section 1112(b)(10) requires each LEA’s plan, for an LEA receiving Title I funds, to describe how the LEA will implement strategies to facilitate effective transitions for students from middle grades to high school and from high school to postsecondary education including, if applicable, through coordination with institutions of higher education, employers, and other local partners, and through increased student access to early college high school or dual or concurrent enrollment opportunities, or career counseling to identify student interests and skills.

NMPED provided evidence that it supports students to provide effective transitions of students to decrease the risk of students dropping out through its Career Clusters program and its math curriculum that is career technical relevant. However, NMPED did not provide evidence that it implemented the additional actions described in NMPED’s [approved ESEA consolidated State plan](#) (pages 131-137) related to preschool/pre-kindergarten to kindergarten transitions (e.g., New Mexico Early Learning Guidelines), elementary to middle school transitions (e.g., New Mexico’s K-3 Plus program), middle to high school transitions (e.g., each student developing a Next Step Plan), high school to college and career (e.g., supporting teen parents through the Graduation, Reality, and Dual-Role Skills (GRADS) in conjunction with the U.S. Health and Human Services Department Pregnant and Expecting Teen Grant), and special education transitions (e.g., Project SEARCH).

NMPED submitted additional information to the Department in March 2024 which the Department will review as it works with NMPED to resolve its required actions.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit:

1. Evidence that it has changed its current practices to fully align with its ESEA consolidated State plan; or

- 
2. An amendment to its approved ESEA consolidated State plan to indicate how it supports students to provide effective transitions.



## **OTHER TITLE I REQUIREMENTS – EARLY CHILDHOOD EDUCATION SUPPORT AND COORDINATION**

### **REQUIREMENT SUMMARY**

Description: As applicable, each LEA receiving Title I funds shall coordinate activities with Head Start agencies and, if feasible, other entities carrying out early childhood development programs. Additionally, each LEA must support, coordinate, and integrate Title I services with early childhood education programs at the LEA or individual school level, including plans for the transition of participants in such programs to local elementary school programs.

ESEA  
§§ 1112 (b) (8), 1113 (c) (5), 1114 (b) (7) (iii) (V),  
1115 (b) (2) (C), and 1119

### **ISSUE**

ESEA section 1119(a) and (b) requires each LEA receiving Title I funds to support, coordinate, and integrate Title I services with early childhood education programs at the LEA or individual school level, including plans for the transition of participants in such programs to local elementary school programs. Each LEA must develop agreements with Head Start agencies and, if feasible, other entities carrying out early childhood development programs, to carry out such activities. NMPED did not provide evidence of how it ensures that LEAs meet the requirements in ESEA section 1119(a) and (b).

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit evidence that it has policies and/or procedures to ensure that its LEAs meets all requirements in ESEA section 1119(a) and (b) (e.g., through its monitoring protocol).

## OTHER TITLE I REQUIREMENTS – COMMITTEE OF PRACTITIONERS

## REQUIREMENT SUMMARY

Description: The State educational agency has involved the committee of practitioners established under section 1603(b) in developing the plan and monitoring its implementation.

ESEA  
§§ 1111(g)(2)(L) and 1603(b)

### ISSUE

ESEA section 1111(g)(2)(L) requires the State plan to contain an assurance that the SEA has involved the committee of practitioners established under ESEA section 1603(b) in developing the plan and monitoring its implementation. ESEA section 1603(b) requires an SEA to create a State committee of practitioners to advise the State in carrying out the responsibilities under Title I. It also requires the committee to include the following individuals:

1. representatives from LEAs (as the majority of its members);
2. administrators;
3. teachers from traditional public schools, charter schools (if applicable to the State), and career and technical educators;
4. principals and other school leaders;
5. parents;
6. members of local school boards;
7. representatives of private school children;
8. specialized instructional support personnel and paraprofessionals;
9. representatives of authorized public chartering agencies (if applicable to the State); and
10. charter school leaders (if applicable to the State).

NMPED indicated that it does not have a committee of practitioners.

### REQUIRED ACTION

Within 60 business days of receiving this report NMPED must submit a plan and timeline for convening a committee of practitioners in accordance with statutory requirements.

## OTHER TITLE I REQUIREMENTS – EDUCATOR EQUITY

## REQUIREMENT SUMMARY

Description: Any State that receives support under Title I, Part A must describe how low-income and minority children are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers and must evaluate and publicly report the progress of the SEA with regard to such description and ensure that LEAs identify and address any disparities that result in low-income students and minority students being taught at higher rates than other students by ineffective, inexperienced, or out-of-field teachers.

ESEA  
§§ 1111(g), 1112

## ISSUE

ESEA section 1111(g)(1)(B) requires an SEA to evaluate and publicly report its progress toward ensuring that low-income and minority children in Title I schools, relative to other students, are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers. During the review NMPED acknowledged that it does not yet meet the requirements in ESEA section 1111(g)(1)(B) and had already identified some steps to meet them. Specifically, regarding:

- Ineffective teachers, NMPED indicated that its teacher evaluation system launched in school year 2022-2023, and the system will provide data on ineffective teachers.
- Out-of-field teachers, NMPED indicated that it does not currently collect the data but will work internally to determine the best way to collect the data from LEAs. NMPED did not provide a timeline for doing so.
- Inexperienced teachers, NMPED stated that 21.8 percent of teachers in New Mexico have a Level I license, which, according to NMPED, means that a teacher is inexperienced. NMPED also indicated that information on a teacher's license level is available on its website.

NMPED has not met the requirement for evaluating the data by Title I and non-Title I schools, evaluating its progress in reducing disparities, or publicly reporting the progress.

## REQUIRED ACTION

Within 60 business days of receiving this report NMPED must:

1. Provide evidence that it publicly reports its progress toward ensuring that low-income and minority children in Title I, Part A schools are not served at disproportionate rates by ineffective, inexperienced, and out-of-field teachers consistent with ESEA section 1111(g)(1)(B). Specifically, the Department would expect to see at least two years of data on these measures

(e.g., baseline measures from the State’s ESEA consolidated State plan and current year measures).

2. Provide a plan and timeline that indicates when the State will next publicly report its progress in addressing any disproportionate rates of access to ineffective, inexperienced, or out-of-field teachers by low-income and minority children in Title I, Part A schools.
3. If NMPED proposes to meet requirements in ESEA section 1111(g)(1)(B) in a manner that differs, in part or in whole, from the manner described in its approved ESEA consolidated State plan, NMPED must submit a request to amend its ESEA consolidated State plan accordingly.

### **RECOMMENDATION**

The Department recommends that NMPED also clearly link the publicly reported information described in the required action above from New Mexico’s State and local report cards (e.g., by including a description and link in the educator qualifications section of the report cards).

## **EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – LEA TRANSPORTATION PROCEDURES**

### **REQUIREMENT SUMMARY**

Description: An SEA must collaborate with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care and ensure LEAs receiving a Title I, Part A subgrant collaborates with the State or local child welfare agency to develop and implement procedures governing transportation for children in foster care.

ESEA  
§ 1111(g) (1) (E) and §§ 1112(c) (5) (A)-(B)

### **ISSUE**

ESEA section 1112(c)(5)(B) requires each LEA receiving a Title I, Part A subgrant to provide an assurance that it will, in collaboration with the relevant local child welfare agency, develop and implement written transportation procedures describing how it will provide, arrange, and fund transportation for students in foster care. NMPED did not provide evidence that its Title I, Part A subgrant application includes this required assurance.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must provide a plan for how the SEA will update its Title I, Part A subgrant application to include the required assurance related to the development of transportation plans for students in foster care.

## EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – SUBRECIPIENT MONITORING

### REQUIREMENT SUMMARY

Description: An SEA must collaborate with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care and ensure LEAs receiving a Title I, Part A subgrant collaborates with the State or local child welfare agency to develop and implement procedures governing transportation for children in foster care.

ESEA  
§ 1111(g) (1) (E) and §§ 1112(c) (5) (A)-(B)

### ISSUE

Under 2 C.F.R. § 200.332(d), the SEA is responsible for monitoring subrecipient activities as necessary to ensure that the subaward is used in compliance with Federal statutes and regulations. NMPED described its desktop monitoring routines related to the Title I, Part A educational stability requirements as a means for facilitating the review and approval of annual Title I, Part A subgrant applications; however, NMPED did not describe other subrecipient monitoring routines that would examine an LEA's compliance with all educational stability requirements in ESEA sections 1111(g)(1)(E) and 1112(c)(5)(B). Neither LEA interviewed could identify when NMPED had last monitored the LEAs for implementation of the Title I, Part A educational stability requirements for students in foster care.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline detailing how it will monitor LEA compliance with all Title I, Part A requirements related to the educational stability of students in foster care. This plan must indicate, among other requirements, (1) how NMPED will monitor LEAs to ensure that best interest determinations are being made when students enter foster care or experience a change in foster care placement and (2) how NMPED will monitor that LEAs have written transportation procedures governing how transportation will be provided, arranged, and funded for students in foster care.

## Title I, Part C

### ALLOCATIONS – STATE ADMINISTRATION

### REQUIREMENT SUMMARY

Description: An SEA shall ensure that, when sub awarding funds to local operating agencies (LOAs), it makes subawards in accordance with applicable statutory requirements (including requirements related to the process for sub awarding funds and the amounts to be sub awarded to individual subrecipients). In determining the amount of any subgrants to LOAs, the SEA must take into account the numbers and needs of migratory children, the Priority for Services (PFS) requirement in ESEA section 1304(d), and the availability of funds from other Federal, State, and local programs.

ESEA  
§ 1304(b) (5)

EDGAR  
34 C.F.R. 76.50-51

### ISSUE

The SEA NMPED staff explained that the document submitted to explain the MEP subgrant allocation process is old and needs to be updated to reflect current procedures. Specifically, priority 1 should reference the PFS requirement while priorities 2 and 3 are no longer applicable. After the monitoring, the SEA submitted the spreadsheet that was used to calculate FY 24 allocations to its subgrantees. Upon examination, Department staff discovered that the SEA did not include the needs of migratory children in its subgrant formula, nor was there any explanation of how the SEA takes that factor into account in determining the amount of subgrants awarded to its LOAs.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit an updated MEP subgrant funding formula or other procedures which take into consideration the following required factors, described in ESEA section 1304(b)(5):

1. The numbers of migratory children;
2. The needs of migratory children;
3. The statutory requirement to give priority for services to migratory children who have made a qualifying move within the previous 1-year period and who are failing, or most at risk of failing, to meet the challenging State academic standards, or have dropped out of school; and
4. The availability of funds from other Federal, State, and local programs.

Please keep in mind that although the SEA is required to take the needs of migratory children into account in determining the amount of subgrants, the SEA does not have to take into account all of the identified unique educational needs of migratory children in its subgrant procedure. In addition, in cases where there is insufficient information regarding an identified need, the SEA may use the best available proxy (see [MEP Non-Regulatory Guidance](#), Chapter XI, Question B10).



## **SUPPLEMENT, NOT SUPPLANT AND UTILIZATION OF OTHER AVAILABLE SERVICES**

## **REQUIREMENT SUMMARY**

Description: The SEA and its subgrantees must ensure that funds from the Title I, Part C program are used to supplement not supplant (SNS) State and local funds.

In addition, Title I, Part C funds may only be used to address the needs of migratory children that are not addressed by services available from other Federal or non-Federal programs, except that migratory children who are eligible to receive services under Title I, Part A may receive those services through Title I, Part A funds or through Title I, Part C funds that remain after the agency addresses the unique educational needs of migratory children.

ESEA  
§1118(b), §1304(c)(2), and §1306(b)(2)

## **ISSUE**

As part of the self-assessment and during the interview, the Department asked NMPED what types of guidance and/or technical support the SEA provided to LOAs and schools regarding SNS requirements. The SEA did not submit documentation to respond to this question in the self-assessment. However, during the interview process, the NM State MEP Director commented that a technical assistance manual will be created to provide information and support to their subgrantees. When asked if she could provide examples of information shared with subrecipients outlining SNS requirements for Title I, Part C, the director responded that the SEA does not have an updated guidance manual, and it was something she would put down on the list for her to work on. In the meantime, she would make sure that when reviewing applications for the next school year, she would hold conversations around SNS as part of the application review process, as described above. Finally, in the process of planning for MEP activities, NMPED does not coordinate efforts and activities across programs featuring similar goals, objectives, or required activities. SEA staff commented that in the past there had been conversations across programs to review requirements, but the practice stopped because of COVID.

## **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit to the Department the following:

1. A plan and timeline for how it will provide guidance, technical assistance, to subrecipients on implementing SNS requirements for Title I, Part C, and identifying other available sources (Federally or non-Federally funded) to address the needs of migratory children prior to using Title I, Part C funds to address those needs.
2. Evidence of guidance and technical assistance to LOAs on implementing these two requirements, which could include material such as the technical assistance manual NMPED staff mentioned they are currently developing.

## SUBRECIPIENT MONITORING

## REQUIREMENT SUMMARY

Description: An SEA shall monitor LOAs receiving federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

EDGAR

34 C.F.R. 76.770

Uniform Guidance

2 C.F.R. 2 CFR 200.329(a) and 200.332(d)

## ISSUE

Based on discussions with NMPED, the Department staff learned that NMPED has not monitored its MEP subgrantees since the onset of the COVID-19 pandemic. Before the pandemic, the SEA monitored districts through annual visits. NMPED has yet to set a schedule to begin monitoring its LOAs and schools. The State MEP Director shared that NMPED was in the process of creating a plan for consolidated subrecipient monitoring visits on a three-year cycle but had nothing to share with the Department at the time of the interview.

The Department learned that NMPED does not have a formal process for ensuring LOAs are complying with the comprehensive State plan for service delivery, nor does the SEA currently monitor compliance with the Priority for Services (PFS) requirement. Site visits occur every three years as part of the MEP evaluation, but there is not currently a process or plan to address evaluation findings with LOAs, such as gaps in how subgrantees are managing record keeping. As described under the next section, NMPED uses their application process to determine the activities subgrantees will implement, but there is no process for monitoring implementation of the subrecipient application. NMPED reviews requests for reimbursement and application amendments to monitor any changes in activities.

In the subrecipient application, LOAs are also asked to describe how students identified under the PFS provision will be served before serving other students. NMPED shared that in the past, as part of subrecipient monitoring, LOAs supplied service delivery logs to demonstrate compliance with the PFS requirement. The monitoring visits are no longer occurring.

Additionally, when asked about the SNS and the use of other available funds (Federally or non-Federally funded) to address the needs of migratory children prior to using Title I, Part C funds to address those needs, NMPED staff explained that there is not currently a process in place to do so. As with requirements for SDP and PFS, NMPED uses their application process to determine the activities its subgrantees with implement, but there is no process in place to monitor for these two requirements.

**REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must provide the Department a plan and timeline for conducting monitoring of its subgrantees for compliance with MEP programmatic and fiscal requirements, including compliance with the comprehensive State plan for service delivery, the PFS requirement, as well as compliance with SNS and identification of other available sources (Federally or non-Federally funded) to address the needs of migratory children prior to using Title I, Part C funds to address those needs.

## IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: TRAINING

## REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes training to ensure that recruiters and all other staff involved in determining eligibility and in conducting quality control procedures know the requirements for accurately determining and documenting child eligibility under the MEP.

ESEA

§ 1304(c)(8), §§ 1309(2)-(5)

EDGAR

34 C.F.R. 76.700 and 76.731

Title I Regulations

34 C.F.R. § 200.89(d)(1) and (d)(6)

## ISSUE

NMPED recently changed its MEP identification and recruitment (ID&R) model and the process for examination of each Certificate of Eligibility (COE). The State’s current process for reviewing COEs begins with completion of the COE by a State recruiter/interviewer, followed by review by a district reviewer, and a final review for approval by a designated SEA reviewer, such as the MEP State Director.

Given that State recruiters, district reviewers, and SEA reviewers are involved in eligibility data certification, all must be trained to know the requirements for making accurate eligibility determinations. NMPED did not provide sufficient documentation to show that the SEA is providing adequate training for all staff involved. Although an Identification and Recruitment Consortium (IDRC) Consortium Incentive Grant (CIG) training list was provided and there was some reference to required trainings during the SEA interview, there was no documentation to confirm how often training is provided to staff or what training materials are being used. The IDRC CIG training list provided showed the total number of New Mexico MEP staff that attended, but it was unclear who attended and the requirements for attending. Furthermore, the presentations submitted under “COE Eligibility Training” focused on the logistics of the COE approval process rather than MEP eligibility requirements. The training materials submitted by NMPED do not ensure that all staff involved understand eligibility requirements.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide evidence that it has:

1. Updated its processes and written procedures describing the training requirements to ensure recruiters and all other staff involved in determining child eligibility under the MEP and in conducting quality control procedures receive sufficient training in determining eligibility; and
2. Maintained documentation that supports the SEA's implementation of this aspect of its ID&R quality-control system (e.g., training sign-in sheets, etc.).

## IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: SUPERVISION, REVIEW, AND EVALUATION OF INDIVIDUAL RECRUITERS

### REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes documentation of a record of actions taken to improve the system where periodic reviews and evaluations indicate a need to do so.

ESEA

§ 1304(c)(8), §§ 1309(2)-(5)

EDGAR

34 C.F.R. 76.700 and 76.731

Title I Regulations

34 C.F.R. § 200.89(d)(6)

### ISSUE

According to NMPED, State recruiters and district reviewers are required to complete the MEP ID&R Competency Skills Assessment and the State ID&R Coordinator provides training on topics when a low score is received. Additionally, the NMPED MEP ID&R Coordinator plans to implement a new Recruiter Observation Skills Rubric for the 2023-2024 school year to evaluate each State recruiter.

However, there was no evidence provided demonstrating a record of actions taken to address unsatisfactory evaluations of recruiters. As described in the [MEP National ID&R Manual](#), if a particular recruiter has made errors, the SEA should investigate additional eligibility determinations made by that recruiter. Repetitive errors may indicate that additional training is needed or may indicate fraud on the recruiter's part. Errors that affect eligibility should be recorded and the reason that the error was made should be identified. Furthermore, SEAs need to develop a corrective action plan to address problems in making proper eligibility determinations that these errors highlight.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide documentation of the SEA's procedures for how it will address issues identified in periodic reviews and evaluations of recruiters.

## IDENTIFICATION AND RECRUITMENT – QUALITY CONTROL: PROCESS FOR RESOLVING ELIGIBILITY QUESTIONS

## REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes a formal process for resolving eligibility questions raised by recruiters and their supervisors and for ensuring that this information is communicated to all local operating agencies.

ESEA  
§ 1304(c)(8), §§ 1309(2)-(5)

EDGAR  
34 C.F.R. 76.700 and 76.731

Title I Regulations  
34 C.F.R. § 200.89(d)(3)

## ISSUE

NMPED does not have a formal process for ensuring that answers to eligibility questions are communicated to all LOAs. When NMPED answers an eligibility question, the SEA must communicate these answers not just to the recruiter or local MEP that asked the question, but to all LOAs to help ensure consistent ID&R statewide. Although NMPED’s self-assessment response indicated that memorandums or trainings are provided when there is a trend in significant errors or misunderstandings, no evidence was submitted to substantiate this response and NMPED confirmed there is no formal, documented process during the interview.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide its written procedures to ensure that answers to eligibility questions are communicated to all LOAs. We recommend that the SEA also keep a log of these questions and responses in a centrally accessible location for later reference and/or for training purposes.

## SERVICE DELIVERY PLAN AND PRIORITY FOR SERVICES

## REQUIREMENT SUMMARY

Description: Each SEA receiving MEP funds must ensure that its local operating agencies comply with the comprehensive State plan for service delivery.

In providing services with funds received under Title I Part C, each recipient of such funds shall give priority to migratory children who have made a qualifying move within the previous 1-year period and who are failing, or most at risk of failing, to meet the challenging State academic standards; or have dropped out of school.

EDGAR  
34 C.F.R. 76.770

Title I Regulations  
34 CFR §200.83

ESEA  
§1304 and §1306

## ISSUE

Based on discussions with NMPED and MEP staff at the selected LOA, NMPED does not provide guidance or technical assistance to subrecipients on the State service delivery plan or the PFS requirement. NMPED shared they are currently working on creating a technical assistance manual for the New Mexico MEP.

The Department learned that NMPED uses the application process to determine whether subrecipients plan to implement strategies in line with the State plan for service delivery, and LOAs are expected to choose specific evidence-based strategies in line with the comprehensive State plan for service delivery. The application submitted as part of the monitoring process included a checkbox that applicants use to indicate whether they will address the strategies from the service delivery plan during the school year and summer term and how they will use MEP funds to implement the strategy. However, there is no guidance or technical assistance for subrecipients on how to implement their chosen strategies from the SDP.

As described in the previous section, LOAs are also asked in the subrecipient application to describe how students identified under the PFS provision will be served before serving other students. But NMPED does not provide technical assistance for subrecipients around the PFS requirement.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department the following:

1. A plan and timeline for how it will provide guidance and technical assistance to subrecipients on implementing the comprehensive State plan for service delivery and the PFS requirement, and

2. Evidence of guidance and technical assistance to LOAs on implementing the comprehensive State plan for service delivery and the PFS requirement, which could include material such as the technical assistance manual NMPED staff mentioned they are currently developing.



## **MIGRANT STUDENT INFORMATION EXCHANGE DATA SUBMISSION – INCOMPLETE DATA**

## **REQUIREMENT SUMMARY**

Description: An SEA that receives a grant of MEP funds must submit electronically to Migrant Student Information Exchange (MSIX) the Minimum Data Elements (MDEs) applicable to the child's age and grade level, regardless of the type of school in which the child is enrolled (e.g., public, private, or home school), or whether a child is enrolled in any school.

Title I Regulations  
34 C.F.R. § 200.85(b)(1)

## **ISSUE**

### **1. Missing Grade Level (MDE #42) for Category 1 AND Category 2 Child Counts**

Category 1 Child Count refers to the 12-month unduplicated total number of migratory children who are eligible to be counted for funding purposes. It consists of all the migratory children ages 3 through 21 who, within 36 months minus one day of making a qualifying move which generated a new qualifying arrival date, resided in the State for one or more days during the September 1 to August 31 performance period.

Category 2 Child Count refers to the unduplicated statewide total summer/intersession count of eligible migratory children who can be counted for funding purposes. It consists of all the migratory children who were served for one or more days in a MEP-funded summer or intersession program in the State during the September 1 to August 31 performance period.

The Department used the MSIX Category 1 and Category 2 Child Count reports to assess the accuracy and submission of Grade Level (MDE #42) data submitted to MSIX by NMPED. The MSIX team explained that NMPED had a significant number of children with missing grade level for the 2022-23 Performance Period in MSIX. On September 20, 2023, the MSIX team pulled the MSIX Category 1 and Category 2 report for the 2022-23 Performance Period. The report revealed 36 children with missing grade level for Category 1, and 4 children with missing grade level for Category 2 in MSIX. During the monitoring, NMPED staff explained that as grades are verified during the completion of new enrollment, the information is sent to MSIX. NMPED staff indicated that the missing information for eligible migratory children is sent via email to OME reviewers by student ID as part of the State's reporting. NMPED staff further explained that the missing grade level for Category 1 and Category 2 children in the 2022-23 Performance Period was due to a new NMPED staff at the district level entering data by editing existing enrollment line instead of adding a new enrollment line for new enrolled students. Therefore, the Department concluded that while NMPED is ensuring grades are verified for new enrollments, there is room for improvement by making sure grade-level data is entered accurately in State's database system for all Category 1 and Category 2 eligible migratory children.

## 2. State Assessment Type (MDE #52 - Values 09, 10, 11)

The Department used the MSIX assessment reports to evaluate the collection and submission of State assessment data submitted to MSIX by NMPED. On September 20, 2023, the MSIX team pulled the MSIX Assessment Report for the 2022-23 Performance Period, and the report revealed zero data for the three critical values for State Assessments: value 09 (State Assessment – Mathematics), value 10 (State Assessment – Reading or Language Arts), and value 11 (State Assessment – English Language Proficiency). During the monitoring, NMPED staff indicated that the only assessment type value the State is submitting to MSIX is value 01 (State Assessment). The MSIX team explained that the Assessment Type (MDE #52) is a critical State assessment MDE in which values 09 and 10 must be entered and documented for eligible migratory children before submission to MSIX. The MSIX team mentioned that there is an upcoming webinar titled “State Assessment Promising Practices” that will provide adequate information on State assessment submission process. The Department concluded that NMPED must begin to submit State assessment values 09 and 10 as applicable for Category 1 eligible migratory children in grades 3 through 8 and at least once in grades 9 through 12.

## 3. MEP Project Type (MDE #31)

The Department used the MSIX Enrollments (MDE Type) report to assess the accurate counts of MDEs under the enrollment category submitted to MSIX by NMPED. On September 20, 2023, the MSIX team pulled the MSIX Enrollments (MDE Type) report for the 2022-23 Performance Period. The report showed 99% of missing data for MEP Project Type MDE 31. During the monitoring, NMPED staff explained that all MDEs that existed in State’s old system were being collected and submitted to MSIX. It was explained that when State changed database systems and transferred data from old system to new system, the MEP Project Type - MDE 31 was not a data entered in the old system, therefore the information was not available to be transferred to State’s new database system. NMPED staff also explained that the changing of database systems caused a lot of blanks in the new State system because of all the transferred COEs from the old State system. During the monitoring interview, OME reviewers determined NMPED is submitting most of the MDEs to MSIX except for MEP Project Type, MDE 31. Therefore, OME reviewers concluded that NMPED is not currently submitting MDE 31, with values: 01 – School-based MEP Project and Non-School-based MEP Project which is appropriate for migrant education programs.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must:

1. Submit to MSIX Grade Level data for all Category 1 and Category 2 eligible migratory children for the 2022-23 Performance Period. In addition, NMPED must begin to submit Grade Level data for Category 1 and Category 2 eligible children going forward. NMPED must submit documented procedures to ensure Grade Level data is entered accurately in the State Migrant specific database before submission to MSIX.
2. Submit a plan of action with a timeline for collection and submission of State assessment values 09 and 10 for MDE #52 to MSIX. These plans must include the following:
  - a. Policy and procedures to proactively collect and include these State assessment values in the State Migrant specific database before submission to MSIX; and

- b. NMPED must submit data for Assessment Type (MDE 52) for values 09 (State Assessment – Mathematics) and 10 (State Assessment – Reading or Language Arts) as applicable for Category 1 eligible migratory children in grades 3 through 8 and at least once in grades 9 through 12 enrolled in school in New Mexico during the 2022-2023 Performance Period and going forward. NMPED must provide the Department with a MSIX Assessment report as evidence that these data have been submitted.
3. Submit documentation stating procedures to update the State’s new database system for automatic collection of MEP Project Type MDE 31 and submission to MSIX. This procedure must contain actional steps NMPED is taking for collecting and submitting all MDEs to MSIX.

## Title II, Part A

### PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: SEA-LEVEL FUNDS

### REQUIREMENT SUMMARY

Description: SEAs and LEAs may use Title II, Part A funds for a variety of allowable activities, including evidence-based professional development, recruitment and retention, and class size reduction. Activities must meet the purpose of Title II, Part A, which is to enhance instruction in order to improve student achievement. In carrying out activities, SEAs and LEAs must use data and engage in ongoing consultation with key stakeholders to continually improve the implementation of funded activities. LEAs must also prioritize Title II, Part A funds to schools that are implementing comprehensive support and improvement activities and targeted support and improvement activities and that have the highest percentage of children in poverty and children who are neglected or delinquent.

ESEA

§§ 2101(c)(4)(B); 2101(d)(2)(D); 2101(d)(2)(K); 2102(b)(2)(C); 2102(b)(2)(D); 2102(b)(3); 2103(b)(3); 2103(b)(3)(D); and 8101(42)

### ISSUE

ESEA sections 2101(d)(2)(K) and 2101(d)(3) require SEAs to use data and engage in consultation with stakeholders when planning and adapting how to use State-level Title II, Part A funds.

Through document review and the interview, NMPED provided no evidence that it uses data and consults with the required stakeholder groups in ESEA section 2101(d)(3) to update and improve Title II, Part A State-level activities. Consequently, NMPED is at risk of providing activities with its Title II, Part A State-level funds that do not meet the needs of stakeholders and do not result in advances in academic achievement among students. Going forward, NMPED stated that it is currently considering focus groups, surveys, and other methods for collecting feedback from a broader array of required stakeholders. NMPED also noted that it plans to examine student data in making decisions about how to use State-level Title II, Part A funds.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline for how the State will use data and engage in consultation with required stakeholder groups regarding how Title II, Part A State activities funds will be used, as required by ESEA sections 2101(d)(2)(K) and 2101(d)(3).

## **PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: SEA-LEVEL FUNDS**

## **REQUIREMENT SUMMARY**

Description: SEAs and LEAs may use Title II, Part A funds for a variety of allowable activities, including evidence-based professional development, recruitment and retention, and class size reduction. Activities must meet the purpose of Title II, Part A, which is to enhance instruction in order to improve student achievement. In carrying out activities, SEAs and LEAs must use data and engage in ongoing consultation with key stakeholders to continually improve the implementation of funded activities. LEAs must also prioritize Title II, Part A funds to schools that are implementing comprehensive support and improvement activities and targeted support and improvement activities and that have the highest percentage of children in poverty and children who are neglected or delinquent.

### ESEA

§§ 2101(c)(4)(B); 2101(d)(2)(D); 2101(d)(2)(K); 2102(b)(2)(C); 2102(b)(2)(D); 2102(b)(3); 2103(b)(3); 2103(b)(3)(D); and 8101(42)

## **ISSUE**

One of the purposes of Title II, Part A is to provide grants that “increase student achievement consistent with challenging State academic standards” (ESEA section 2001(1)). Through document review and the interview, NMPED provided no evidence that it uses student achievement data to inform how it uses Title II, Part A State activities funds. Consequently, NMPED is at risk of providing activities with its Title II, Part A State-level funds that do not advance student academic achievement.

## **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline for how the State will use student achievement data to make and adjust its strategy for using State activities funds, as required by ESEA section 2001(1).

## PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS

## REQUIREMENT SUMMARY

Description: SEAs and LEAs may use Title II, Part A funds for a variety of allowable activities, including evidence-based professional development, recruitment and retention, and class size reduction. Activities must meet the purpose of Title II, Part A, which is to enhance instruction in order to improve student achievement. In carrying out activities, SEAs and LEAs must use data and engage in ongoing consultation with key stakeholders to continually improve the implementation of funded activities. LEAs must also prioritize Title II, Part A funds to schools that are implementing comprehensive support and improvement activities and targeted support and improvement activities and that have the highest percentage of children in poverty and children who are neglected or delinquent.

### ESEA

§§ 2101(c)(4)(B); 2101(d)(2)(D); 2101(d)(2)(K); 2102(b)(2)(C); 2102(b)(2)(D); 2102(b)(3); 2103(b)(3); 2103(b)(3)(D); and 8101(42)

## ISSUE

ESEA sections 2102(b)(2)(D) and 2102(b)(3) require LEAs to use data and engage in consultation with a specific subset of stakeholders when planning and adapting how to use Title II, Part A funds.

Through document review and the interview, NMPED provided no evidence that it ensures that LEAs meet the data review and consultation requirement. NMPED provided no evidence that it provides technical assistance, written resources, or monitoring to support LEAs (ESEA 2101(c)(4)(B)(vi)) in using data and consulting with the required stakeholder groups to update and improve Title II, Part A activities. The two LEAs interviewed noted that NMPED neither provides technical assistance on consultation nor monitors to ensure that LEAs engage in consultation. NMPED stated that it provides generic trainings to LEAs in allowable uses of Title II, Part A funds and in best practices such as mentoring, but there is no evidence that these trainings include reference to the data use and consultation requirements. Consequently, LEAs are at risk of providing activities with their Title II, Part A funding that do not meet the needs of stakeholders.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline for how the State will ensure, including through subgrantee monitoring, that LEAs use data and engage in consultation with required stakeholder groups regarding how Title II, Part A funds will be used, as required by ESEA sections 2102(b)(2)(D) and 2102(b)(3).

## PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS

## REQUIREMENT SUMMARY

Description: SEAs and LEAs may use Title II, Part A funds for a variety of allowable activities, including evidence-based professional development, recruitment and retention, and class size reduction. Activities must meet the purpose of Title II, Part A, which is to enhance instruction in order to improve student achievement. In carrying out activities, SEAs and LEAs must use data and engage in ongoing consultation with key stakeholders to continually improve the implementation of funded activities. LEAs must also prioritize Title II, Part A funds to schools that are implementing comprehensive support and improvement activities and targeted support and improvement activities and that have the highest percentage of children in poverty and children who are neglected or delinquent.

### ESEA

§§ 2101(c)(4)(B); 2101(d)(2)(D); 2101(d)(2)(K); 2102(b)(2)(C); 2102(b)(2)(D); 2102(b)(3); 2103(b)(3); 2103(b)(3)(D); and 8101(42)

## ISSUE

When LEAs spend local Title II, Part A funds for purposes where an evidence base is needed (e.g., reducing class size to an evidence-based level (section 2103(b)(3)(D)), providing teachers and school leaders with evidence-based professional development (PD) (section 2103(b)(3)(E)), or other evidence-based activities that meet the purpose of Title II, Part A (section 2103(b)(3)(P)), SEAs must ensure that the LEA activities are evidence-based. Through document review and the interview, NMPED provided no evidence that it supports LEAs in providing evidence-based activities. In one of the LEA interviews, LEA staff noted that NMPED does not provide technical assistance or monitoring related to evidence-based practices. Consequently, LEAs are at risk of providing activities that are not supported by evidence with Title II, Part A State-level funds.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline for how the State will ensure that LEAs use evidence-based professional development and class size reduction activities, as required by ESEA sections 2103(b)(3)(D) and 2103(b)(3)(E).

## PREPARING, TRAINING, AND RECRUITING HIGH-QUALITY TEACHERS, PRINCIPALS, OR OTHER SCHOOL LEADERS: LEA-LEVEL FUNDS

## REQUIREMENT SUMMARY

Description: SEAs and LEAs may use Title II, Part A funds for a variety of allowable activities, including evidence-based professional development, recruitment and retention, and class size reduction. Activities must meet the purpose of Title II, Part A, which is to enhance instruction in order to improve student achievement. In carrying out activities, SEAs and LEAs must use data and engage in ongoing consultation with key stakeholders to continually improve the implementation of funded activities. LEAs must also prioritize Title II, Part A funds to schools that are implementing comprehensive support and improvement activities and targeted support and improvement activities and that have the highest percentage of children in poverty and children who are neglected or delinquent.

### ESEA

§§ 2101(c)(4)(B); 2101(d)(2)(D); 2101(d)(2)(K); 2102(b)(2)(C); 2102(b)(2)(D); 2102(b)(3); 2103(b)(3); 2103(b)(3)(D); and 8101(42)

## ISSUE

ESEA section 8101(42) requires SEAs to ensure that LEA professional development activities funded by Title II, Part A meet the statutory definition of professional development. In the LEA interviews, LEA staff noted that NMPED does not monitor to confirm that professional development activities adhere to the ESEA definition. Document review and the SEA interview supported the LEAs' contention. As a result, LEAs are at risk of using Title II, Part A funds to provide professional development activities that do not meet the ESEA definition of professional development.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department a plan and a timeline for ensuring that professional development provided by LEAs using Title II, Part A funds meets the definition of professional development in ESEA section 8101(42).

## RECOMMENDATION

In the interview, NMPED noted that it has established a working group to develop a State professional development definition. NMPED should ensure that this working group is aware of the ESEA professional development definition (ESEA section 8101(42)) so that the two definitions align. The State definition may elaborate on the ESEA definition, but the Department recommends that the SEA ensure there is no confusion created if the SEA creates a dual definition system in which one definition applies to State funds and one to Federal funds.



## Title III, Part A

### STANDARDIZED STATEWIDE ENTRANCE AND EXIT PROCEDURES, ENGLISH LEARNER IDENTIFICATION

### REQUIREMENT SUMMARY

Description: States are required to have standardized statewide entrance and exit procedures. An SEA is required to assess English learners annually for English language proficiency from grades Kindergarten through 12 with an ELP assessment. Furthermore, pursuant to the purposes of the Title III program and the definition of “English learner,” Title III funds are intended for students who, due to their English language difficulties, need support to meet the same challenging State academic standards that all children are expected to meet.

ESEA

§§ 1111(b)(2)(G), 3102(1)-(2), 3113(b)(2), 8101(20)

Title I Regulations

34 C.F.R. § 200.5(a)(2)

### ISSUE

ESEA section 3113(b)(2) requires SEAs to establish and implement standardized statewide entrance and exit procedures, including an assurance that all students who may be English learners (ELs) are assessed for such status within 30 days of enrollment in a school in the State.

#### American Sign Language

Question 7 of the New Mexico language use survey (LUS) includes American Sign Language (ASL) in the list of options for languages other than English that the student uses most frequently at home, and the *NM Language Usage Survey Guidance Handbook* indicates that answering ‘yes’ to one or more languages in response to question 7 would trigger administration of the EL Screener assessment used to determine a student’s status as an EL. During the monitoring interview, NMPED confirmed that if a parent answers ‘yes’ to one or more of questions 1-6 of the LUS, indicating a student uses or is exposed to a “language other than English” at home, and then only selects ASL in response to question 7, then this would trigger EL Screener administration. NMPED’s process raises the possibility that LEAs are using Title III funds for students who do not meet the EL definition, as Title III funds may not be used to serve students who use ASL and are not from national-origin minority groups or do not otherwise meet the definition of English learner in section 8101(20) of the ESEA (see <https://oese.ed.gov/files/2020/07/Larsen-outgoing-response-7.27.2015.pdf>).

#### Transfer Students

The *NM Language Usage Survey Guidance Handbook* directs LEAs to “use a thoughtful process as you review the student’s data on a fact specific case by case basis” for transfer students in grades 6 through 12 for whom the LEA cannot find or track prior EL status.

These directions for transfer students in grades 6 through 12 for whom the LEA cannot find or track prior EL status are not standardized statewide because too much discretion is left to individual LEAs.

The *NM Language Usage Survey Guidance Handbook* section on EL identification procedures for transfer students in grades 6 through 12 for whom the LEA cannot find or track prior EL status continues with the excerpt:

“If the student has been in public education in New Mexico for nine years, please do not follow the EL identification process, instead, monitor the student’s academic progress. If the student is not succeeding, please refer to the state’s Response to Intervention process.”

These specific directions regarding transfer students who have been in New Mexico’s public education system for nine years and for whom the LEA cannot find or track prior EL status are not consistent with the requirements in ESEA section 3113(b)(2) to assess potential ELs for EL status within 30 days of enrollment in a school in the State. During the monitoring interview, NMPED noted that in practice, if no information is found in the State’s data systems for transfer students who have been in New Mexico’s public education system for nine years, then the LEAs would follow NMPED’s EL identification process. However, NMPED submitted to the Department a document with resolution of findings in one LEA, in which the LEA referenced not assessing potential ELs for EL status among transfer students who have been in New Mexico public education for nine years; it does not appear that NMPED flagged this as a concern for the LEA. Therefore, current procedures indicate that LEAs may not be identifying ELs among transfer students who have been in New Mexico’s public education system for nine years and for whom the LEA cannot find or track prior EL status.

In response to the monitoring interview question of how it implements EL entrance procedures for transfer students, one participating LEA provided, as an example, that if a student transferred to the LEA from another state, then the LEA would look at the student’s scores on that State’s annual English language proficiency assessment as well as the student’s grades in the sending school system to determine whether the student should be classified as an EL. Because States have discretion to define English language proficiency, the definition varies across States (ESEA sections 1111(c)(4)(A)(ii) and 1111(c)(4)(B)(iv)). While there are occasions where it may be appropriate to consider assessment evidence from a transfer student’s previous State (*e.g.*, if the student’s prior year records from the previous State indicate the use of the same annual ELP assessment as in New Mexico, then NMPED may choose not to rescreen the student and simply apply NMPED’s exit criteria to the student’s prior ELP assessment results), the criteria determined by the LEA may not follow NMPED’s standardized statewide EL identification process.

### **Students whose Native Language is English**

Title III, Part A funds can be used for students whose native language is English only under specific circumstances.

In most circumstances, the Department anticipates that an EL’s native language is not English. However, there may be circumstances when the criteria in ESEA section 8101(20)(C) would allow for a student to be identified as an EL even though their native language is English but “whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual— (i) the ability to meet the challenging State academic standards; (ii) the ability to successfully achieve in classrooms where the language of instruction is English; or (iii) the opportunity

to participate fully in society.” (ESEA section 8101(20)(D)). For example, per ESEA section 8101(20)(C)(ii), a student who is a Native American who comes from an environment where a language other than English has had a significant impact on the individual’s level of English language proficiency may potentially be an EL for purposes of Title III, Part A funding and services.

For New Mexico’s school year 2021-2022 data reporting, English was reported as one of the top 10 languages spoken by ELs in file specification 141, data group 678, at the SEA level and also at the LEA level for 118 LEAs. During the monitoring interview, NMPED explained that while some of these ELs are Native American students, other students among these ELs do not identify themselves as Native American and are Spanish heritage students whose families have been in New Mexico for centuries. While NMPED has discretion to provide language services to Spanish heritage students with State or local funds, students whose native language is English can only qualify for Title III, Part A funding and services if they meet the specific criteria of the definition of English learner in ESEA section 8101(20)(C). EL identification procedures that deviate from the definition of English learner in ESEA section 8101(20) may lead to including students who should not be ELs in the count of ELs for purposes of in-State allocations of Title III funds.

### **Erroneous Identification**

During the monitoring interview, NMPED acknowledged that it does not provide written guidance on how to address erroneous EL identification. This lack of written guidance on how to address erroneous EL identification could lead to inconsistencies when the procedures are implemented across New Mexico LEAs and, therefore, undermine NMPED’s standardized statewide EL exit procedures.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must:

1. Submit evidence that it has updated its guidance, training, and monitoring documents and tools, as appropriate, to ensure that:
  - a. ASL does not, in and of itself, become the sole basis for determining that a student is an EL and eligible for services funded by Title III;
  - b. Standardized statewide entrance procedures are established and implemented for students transferring from other New Mexico LEAs or from other States, consistent with ESEA section 3113(b)(2); and
  - c. Students whose native language is English are considered potential ELs only if they meet the criteria in ESEA section 8101(20)(C); and
2. Submit evidence that it has communicated these updates related to ASL, transfer students, and students whose native language is English to all LEAs; or
3. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such guidance has been disseminated to all LEAs.

**RECOMMENDATION**

The Department recommends that NMPED include in its standardized statewide entrance and exit procedures written guidance on how LEAs should address erroneous EL identification. See question 4 on page 46 of the Department's Non-Regulatory Guidance: English Learners and Title III of the ESEA for additional information

(<https://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguidenglishlearners10219.pdf>).

## STANDARDIZED STATEWIDE ENTRANCE AND EXIT PROCEDURES

## REQUIREMENT SUMMARY

Description: States are required to have standardized statewide entrance and exit procedures for English learners.

ESEA  
§ 3113(b)(2)

### ISSUE

ESEA section 3113(b)(2) requires SEAs to establish and implement standardized, statewide entrance and exit procedures, including an assurance that all students who may be English learners (ELs) are assessed for such status within 30 days of enrollment in a school in the State.

#### **Inconsistencies Across NMPED Resources and LEAs' Awareness**

The Department acknowledges that NMPED has updated its entrance and exit procedures for ELs in 2023 and has made efforts to communicate these updates to New Mexico LEAs. For example, as supporting documentation for the monitoring effort, NMPED provided the Department a copy of its March 16, 2023, memorandum regarding New Mexico State Policy for English Learner Identification and Proficiency Criteria, which was addressed to New Mexico superintendents, charter school administrators, LEA test coordinators, directors of ELs, Title III, and Bilingual Multicultural Education Programs.

However, some of the information presented in NMPED's resources remains inconsistent with its updated standardized statewide entrance and exit procedures for ELs. For example, the copy of the *NM Language Usage Survey Guidance Handbook* that NMPED provided to the Department indicates a different cut score for exit from EL status. Similarly, the *Serving English Learners Monitoring Checklist* includes mention of the W-APT, which NMPED confirmed is no longer used as an EL screener in New Mexico.

The interviews with representatives at the two LEAs that participated in the monitoring review also revealed inconsistencies in awareness and implementation of NMPED's standardized statewide entrance and exit procedures at the LEA level. One LEA that participated in the monitoring review was unaware of the timeline requirements for EL identification. The LEA explained that it administers the State's EL screener to each potential EL within 45 days after the NM LUS is completed for that student. This 45-day timeline is inconsistent with the requirements in ESEA section 3113(b)(2) not only in the total number of days (45 days rather than 30 days) but also in the interval being measured (from LUS completion to EL screener administration, rather than from the student's enrollment date to EL screener administration). It is NMPED's responsibility to ensure that all students who may be ELs are assessed for such status within 30 days of enrollment in a school in the State. The LEA also indicated during the monitoring interview that it searched for but could not find the entrance and exit procedures on the NMPED website. Another LEA indicated that it was not aware of the 2023 updates to the *NM Language Usage Survey Guidance Handbook*, including updates to the entrance and exit procedures, and had continued to provide the broken link to an older version of the document to all parents in the LEA.

During the monitoring interview, this LEA also described cut scores for EL identification that are inconsistent with NMPED's current standardized statewide entrance procedures for ELs.

As a result of these inconsistencies, NMPED did not sufficiently demonstrate that its entrance and exit procedures for ELs are being implemented in a standardized statewide manner, including that all students who may be English learners (ELs) are assessed for such status within 30 days of enrollment in a school in the State.

### **Inconsistencies with New Mexico ESEA Consolidated State Plan**

During the monitoring interview, NMPED confirmed that it has recently updated its standardized statewide entrance and exit procedures for ELs. As a result of these updates, inconsistencies exist between New Mexico's ESEA consolidated State plan and NMPED's current standardized statewide entrance and exit procedures.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit either:

1. Evidence that it has:
  - a. Disseminated to all LEAs a reminder regarding the ESEA section 3113(b)(2) requirement that all students who may be ELs are assessed for such status within 30 days of enrollment in a school in the State; and
  - b. Provided all LEAs with updated guidance, training, and monitoring documents and tools, as appropriate, to ensure that each LEA is able to implement the State's current entrance and exit procedures for ELs in a standardized statewide manner. These updates must include any adjustments necessary to address the other required actions in this report that pertain to ESEA section 3113(b)(2); or
2. If such evidence is not available, a plan and a timeline for providing such reminders, documents, and tools, including evidence that such guidance has been disseminated to all LEAs and that NMPED's current standardized statewide entrance and exit procedures for ELs are readily accessible to LEAs.

Additionally, within 60 business days of receiving this report, NMPED must submit to the Department a request to amend its current approved ESEA consolidated State plan to address the inconsistencies in the New Mexico consolidated State plan regarding NMPED's current standardized statewide entrance and exit procedures for ELs. To address this required action, NMPED should refer to the Department's procedures for amending the State plan, which are available at: <https://oese.ed.gov/files/2022/12/State-Plan-Memo-for-2022-2023-School-Year-to-post.pdf>.

## USE OF FUNDS

## REQUIREMENT SUMMARY

Description: In carrying out activities with Title III funds, the eligible entity must carry out three required activities, all of which must be supplemental: provide an effective language instruction educational program (LIEP); provide effective professional development; and provide and implement other effective activities and strategies that enhance or supplement LIEPs, which must include parent, family, and community engagement activities.

ESEA  
 §§ 3115(c), 3115(d)

## ISSUE

Section 3115(c) of the ESEA requires eligible entities: (1) to increase the English language proficiency of English learners by providing effective language instruction educational programs; (2) to provide effective professional development; and (3) to provide and implement other effective activities and strategies that enhance or supplement language instruction educational programs for English learners, which—(A) shall include parent, family, and community engagement activities.

During the monitoring interview, NMPED acknowledged that it allows New Mexico LEAs to dedicate Title III, Part A funds to less than all three of these section 3115(c) required activities as long as the LEA implements the remaining required activities using other sources of funding. This practice is inconsistent with the requirements in ESEA section 3115(c). Each New Mexico LEA receiving Title III, Part A funds must use at least a portion of its Title III, Part A funds from each Federal fiscal year towards each of the three required activities specified in ESEA section 3115(c), and NMPED must ensure that each New Mexico LEA receiving Title III, Part A funds complies with these requirements.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit either:

1. Evidence that it has provided all LEAs with updated guidance, training, and monitoring documents and tools, as appropriate, to ensure that each LEA uses at least a portion of its Title III, Part A funds from each Federal fiscal year towards each of the three required activities specified in ESEA section 3115(c); or
2. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such guidance has been disseminated to all LEAs.

## ACTIVITIES BY AGENCIES EXPERIENCING SIGNIFICANT INCREASES IN IMMIGRANT CHILDREN AND YOUTH

## REQUIREMENT SUMMARY

Description: The SEA must reserve no more than 15 percent of its Title III grant to award at least one subgrant to one or more eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth in public and nonpublic elementary schools and secondary schools in geographic areas served by the entities.

ESEA  
§§ 3114(d)

### ISSUE

NMPED shared that it gives LEAs 27 months to obligate these funds. However, one LEA that participated in the monitoring review provided evidence to demonstrate that it could not access the full amount of its immigrant subgrant that it had been awarded for SY21-22. As a result, it had to end a project sooner than planned.

The same LEA provided additional evidence to demonstrate that its SY22-23 immigrant subgrant was approved in March 2023, but the LEA did not have budget authority to draw down the funds. The LEA stated that it still did not have access to the immigrant subgrant funds in May 2023 and was, therefore, unable to implement its summer program.

As a result, the Department determined that NMPED's process for awarding immigrant subgrants has implications for LEAs' ability to implement Title III, Part A programs, as LEAs have not been able to implement their immigrant subgrant programs or spend their funds in a timely manner.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide either:

1. Evidence that it has updated its policies and procedures related to the issuance of immigrant subgrants, consistent with ESEA section 3114(d)(1), that minimize delay in allowing LEAs to access funds after approval of an immigrant subgrant, including evidence demonstrating that LEAs awarded immigrant subgrants have timely access to such funds; or
2. If such evidence is not available, a plan and timeline that include milestones for submitting to the Department evidence demonstrating that NMPED has updated its policies and procedures as noted above, as well as evidence demonstrating that LEAs awarded immigrant subgrants have timely access to such funds.



## ACTIVITIES BY AGENCIES EXPERIENCING SIGNIFICANT INCREASES IN IMMIGRANT CHILDREN AND YOUTH

## REQUIREMENT SUMMARY

Description: The SEA must reserve no more than 15 percent of its Title III grant to award at least one subgrant to one or more eligible entities that have experienced a significant increase in the percentage or number of immigrant children and youth in public and nonpublic elementary schools and secondary schools in geographic areas served by the entities.

### ISSUE

Section 3114(d) of the ESEA requires that an SEA shall reserve not more than 15 percent of the agency's allotment under section 3111(c)(2) to award subgrants to eligible entities in the State that have experienced a significant increase in the percentage or number of immigrant children and youth and that the SEA shall equally consider eligible entities that satisfy the requirement of an increase in immigrant children and youth but have limited or no experience in serving immigrant children and youth.

Section 3201(5) of the ESEA defines immigrant children and youth as individuals who— (A) are aged 3 through 21; (B) were not born in any State; and (C) have not been attending one or more schools in any one or more States for more than 3 full academic years. This section 3201(5) definition of immigrant children and youth is separate and distinct from the immigration status of an individual.

During the monitoring interview, NMPED acknowledged that some New Mexico LEAs, either by choice or in compliance with local policies, do not track or report data on immigrant children and youth. Excluding these students distorts the count of immigrant children and youth used to calculate LEA eligibility for section 3114(d) subgrant funds.

### REQUIRED ACTION

Within 60 business days of receipt of this report, NMPED must submit either:

1. Evidence that NMPED has ensured that eligible entities as defined in ESEA section 3201(3) are accurately tracking and reporting the counts of immigrant children and youth for purposes of eligibility for the ESEA section 3114(d) subgrant; or
2. If such evidence is not available, a plan and a timeline for providing such evidence, including evidence that NMPED has implemented the plan as outlined.

## SUPPLEMENT NOT SUPPLANT

## REQUIREMENT SUMMARY

Description: The State and its subgrantees must ensure that funds from the Title III, Part A program are used to supplement, not supplant State, local, and other Federal funds.

ESEA  
§ 3115(g)

## ISSUE

ESEA section 3115(g) requires that Title III, Part A funds be used to supplement, and not supplant, the level of Federal, State, and local public funds that, in the absence of such availability, would have been expended for programs for ELs and immigrant children and youth.

One LEA that participated in the monitoring review acknowledged during the monitoring interview that it used a portion of its ESEA section 3114(d) immigrant subgrant funds to provide Chromebooks to immigrant students while using other funds to provide Chromebooks to other (non-immigrant) students so that all students were able to attend school virtually during the COVID pandemic. The use of immigrant subgrant funds to provide the same equipment to immigrant students that is provided to the general student population using other funds raises the presumption of possible supplanting, in violation of the Title III, Part A supplement, not supplant provision.

Additionally, during the monitoring interview, NMPED explained that State law stipulates certain professional development requirements for LEAs that participate in state-funded bilingual multicultural education (BME) programs. As a follow-up document, NMPED provided the Department with a copy of its September 28, 2016, memorandum regarding the State-mandated professional development in LEAs that implement state-funded BME programs. The memorandum was addressed to school district superintendents, charter school directors, bilingual directors, and principals. While the memorandum includes mention of the Title III, Part A supplement, not supplant requirement and cites ESEA section 3115(g), it does not directly state that LEAs cannot use Title III, Part A funds to meet the professional development requirements for State-funded BME programs.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit either:

1. Evidence that it has provided all LEAs with updated guidance, training, and monitoring documents and tools, as appropriate, to ensure that all uses of Title III, Part A funds are supplemental; or
2. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such guidance has been disseminated to all LEAs.

**RECOMMENDATION**

The Department recommends that NMPED directly state in future communications to the field that LEAs cannot use Title III, Part A funds to meet the professional development requirements for State-funded BME programs; because these professional development requirements are required under State law, the use of Title III funds for these activities would violate the Title III, Part A supplement-not-supplant provision.

## PARENT NOTIFICATION

## REQUIREMENT SUMMARY

Description: Each LEA that uses funds under either ESEA Title I or Title III to supplement its language instruction educational program (LIEP) must provide a parent of an English learner (EL) with notification that outlines their child's identification as an EL and placement in an LIEP.

ESEA  
 §§ 1112(e)(3)(A)-(B)

## ISSUE

ESEA section 1112(e)(3)(A)(vi) requires that each LEA using funds under Title I, Part A or Title III to provide a language instruction educational program (LIEP) shall, not later than 30 days after the beginning of the school year, inform parents of an English learner identified for participation or participating in such a program, of “the specific exit requirements for the program, including the expected rate of transition from such program into classrooms that are not tailored for English learners, and the expected rate of graduation from high school (including four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates for such program) if funds under [Title I, Part A] are used for children in high schools.”

The NMPED Language and Culture Division (LCD) provided the Department with copies of the parent notification templates that it makes available to LEAs; these parent notification templates do not address the specific requirements in ESEA section 1112(e)(3)(A)(vi) that are noted in the previous paragraph. The NMPED Title I team also provided the Department a copy of the LEA assurances in the 2023-2024 ESEA Title I application. While this list of LEA assurances includes mention of the parent notification elements in ESEA section 1112(e)(3)(A)(vi), it does not demonstrate whether and how NMPED is verifying LEA compliance with the specific requirements noted in the previous paragraph.

While the parent notification elements of ESEA section 1112(e)(3)(A)(vi) are not required to be in writing, colleagues from both LEAs that participated in the monitoring interviews indicated that they rely on the LCD parent notification templates for parent notification, and neither LEA indicated that they provided the required notification elements of ESEA section 1112(e)(3)(A)(vi) to parents of ELs through a means other than these templates. Also, during the monitoring interview, colleagues from the NMPED LCD explained that LCD does not have a process to ensure that LEAs comply with the specific parent notification requirements in ESEA section 1112(e)(3)(A)(vi) for newly enrolled ELs or for ELs returning at the start of a new school year and were unsure whether the NMPED Title I team had such a process in place.

Subsequent to the monitoring interview, NMPED LCD provided the Department with a copy of the January 31, 2018, NMPED memorandum sent from the Title I Bureau Director to Superintendents and State Charter School Administrators on the topic of Every Student Succeeds Act Parent Notification Requirements. While this memorandum includes mention of the parent notification elements in ESEA section 1112(e)(3)(A)(vi), the memorandum does not demonstrate whether and how NMPED is verifying LEA compliance with this specific statutory requirement.

**REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must submit either:

1. Evidence that it has updated its monitoring documents and/or other tools it uses (e.g., sample parent notification letters, as appropriate, to ensure LEA compliance with the parent notification requirements in ESEA section 1112(e)(3)(A)(vi), and has disseminated such tools to all LEAs; or
2. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such tools have been disseminated to all LEAs.

## PARENT PARTICIPATION

## REQUIREMENT SUMMARY

Description: Each LEA receiving Title I, Part A funds must implement an effective means of outreach to parents of English learners to inform the parents of how they can be involved in their children's education, including holding, and sending notices regarding, regular meetings for such parents, to formulate and respond to parent recommendations from parents of students assisted under Title I, Part A or Title III.

ESEA  
§1112(e)(3)(C)

## ISSUE

An SEA must ensure that, consistent with ESEA section 1112(e)(3)(C), LEAs receiving Title I funds implement an effective means of outreach to parents of English learners to inform the parents of how they can be involved in their children's education, including holding, and sending notices regarding, regular meetings for such parents, to formulate and respond to parent recommendations from parents of students assisted under Title I or Title III.

During the monitoring review, NMPED did not provide any evidence that it ensures that New Mexico LEAs comply with the requirements in ESEA section 1112(e)(3)(C).

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must either:

1. Submit evidence that it has provided all LEAs with updated guidance, training, and monitoring documents and tools, as appropriate, to ensure compliance with the parent participation requirements in ESEA section 1112(e)(3)(C); or
2. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such guidance has been disseminated to all LEAs.

## DATA QUALITY

## REQUIREMENT SUMMARY

Description: An SEA is required to have appropriate procedures in place to ensure that the data reported to the public and the U.S. Department of Education are high quality (i.e., timely, complete, accurate, valid, and reliable).

ESEA

§§ 1111(h)(5), 8303, and 8304(a)(6)(A)

EDGAR

34 C.F.R. §§ 76.720 and 76.770

GAO Green Book

Uniform Guidance

2 C.F.R. §§ 200.303 and 200.328(b)

## ISSUE

### Counts of Immigrant Students in File Specification (FS) 045

The Department's *EDFacts* file specification (FS) 045, data group 519, requires SEA- and LEA-levels counts of the unduplicated number of students who meet the definition of immigrant children and youth in Title III of ESEA. As noted elsewhere, NMPED acknowledged that some New Mexico LEAs, either by choice or in compliance with local policies, do not track or report data on immigrant children and youth. Excluding these impacts the accuracy of data that NMPED reports to the Department for *EDFacts* FS045.

### EL Opt-Out Status and Implications for Reporting

Within the collection of *EDFacts*, some of the file specifications require data to be reported for ELs in general, while others require data to be reported only for the subgroup of ELs who are served by an LIEP in LEAs receiving Title III subgrants (i.e., the subgroup of ELs whose parents have not opted them out of EL services). (See <https://www2.ed.gov/about/inits/ed/edfacts/file-specifications.html> for the lists of FS.)

Per the instructions within each FS, the following FS require data to be reported for ELs in general: FS137, FS139, FS141, and Category Set A in FS045.

The following FS require data to be reported only for the subgroup of ELs who were served by LIEPs in LEAs receiving Title III subgrants (i.e., the subgroup of ELs whose parents did not opt them out of EL services): FS050, FS116, FS126, FS138, FS210, and FS211.

NMPED's *Title III: Supplemental Support for EL Programs and Services* includes a table on page 14 that describes the Student Teacher Accountability Reporting System (STARS) data reporting process, which indicates the Title III and EL counts should be the same for LEAs receiving Title III funding. These instructions do not differentiate between ELs in general and the subgroup of ELs who were served by LIEPs in LEAs receiving Title III subgrants (*i.e.*, the subgroup of ELs whose parents did not opt them out of EL services) for the purpose of reporting data for the different FS.

During the monitoring interview, the NMPED LCD indicated that there is a field that captures whether parents opted their child out of EL services but did not know whether this field is factored into the *EDFacts* data reporting process. Subsequent to the monitoring interview, NMPED clarified that, when reporting EL students for *EDFacts* FS141 – EL Enrolled, NMPED does not exclude EL students whose parents have opted them out of participating in LIEP services. While it is accurate that ELs whose parents have opted them out of LIEPs should be included in the data reported for FS141, this follow-up clarification does not clarify whether and how NMPED is considering ELs whose parents opted them out of EL services when reporting data for the remaining *EDFacts* file specifications listed above.

### **REQUIRED ACTION**

Within 60 business days of receiving this report, NMPED must either:

1. Submit evidence that it has provided all LEAs with updated guidance, training, monitoring documents, and data collection and reporting procedures and tools, as appropriate, to ensure that data reported to *EDFacts* is accurately taking into account the opt-out status of each EL, consistent with the requirements in each file specification, and accurately reflecting the counts of immigrant children and youth in the State; or
2. If such evidence is not available, a plan and a timeline for providing such documents and tools, including evidence that such guidance has been disseminated to all LEAs.



## Title V, Part B – Rural and Low-Income School (RLIS)

### SEA FINANCIAL MANAGEMENT

### REQUIREMENT SUMMARY

Description: SEAs must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

Uniform Guidance  
2 C.F.R. §§ 200.302-305

### ISSUE

On May 10, 2023, the Department placed a grant condition on NMPED's FY 2022 RLIS award in response to NMPED's failure to make RLIS awards for FY 2020, 2021, and 2022 until March 13, 2023, and for NMPED's failure to make any FY 2019 carryover funds available to LEAs after June 30, 2020. This grant condition remains in effect. While NMPED demonstrated progress in making the funds available to its RLIS-eligible LEAs, this monitoring review revealed that weaknesses remain within the State's financial management processes. 2 C.F.R 200.303(a) states, "The non-Federal entity must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award."

Through monitoring, the Department learned that once NMPED issued the FY 2020, 2021 and 2022 RLIS awards and LEAs began to obligate and spend RLIS funds, NMPED did not make timely corresponding fund drawdowns from G5 (now called G6). Thus, G6 showed full balances for these RLIS awards even though LEAs were in the process of obligating and liquidating funds. The inconsistencies in G6 balances and RLIS records demonstrate a weakness in NMPED's financial management processes. While NMPED described that work is underway to improve these practices, NMPED could not provide updated policies or procedures during the monitoring review.

As part of the FY 2022 RLIS grant condition, NMPED was required to submit to the Department policy changes and procedures for the FY23 RLIS award, and proof that these changes were communicated to LEAs. These policies and procedures should have been available on August 8, 2023. At the time of the monitoring interview on September 20, 2023, NMPED staff were unable to provide detailed information regarding the local FY23 RLIS application. NMPED informed the Department that it was revising the application to fit within the local consolidated application. This delay in the distribution of the FY23 RLIS application, and ensuing delay in the dissemination of funds, does not demonstrate "reasonable

assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award” (2 CFR 200.303).

**Additional Note:**

As described in the cross-cutting fiscal section of this report, NMPED’s carryover process limits LEA access to the RLIS award during the 27-month performance period. The Department will work across programs, including RLIS, on the resolution of the finding related to the time in which subgrantees may access the funds.

**REQUIRED ACTION**

Within 30 business days of receiving this report, NMPED must provide the Department with the following:

- Written procedures for how and when NMPED will annually notify RLIS-eligible LEAs of their eligibility and estimated RLIS award amounts. These procedures should include how and when RLIS-eligible LEAs can access the application; how and when their application will be reviewed; and when the LEA can expect to receive its subgrant.
- A final copy of the FY23 application that LEAs use to apply to the SEA for RLIS subgrants.

Within 60 business days of receiving this report, NMPED must submit to the Department written procedures that document how NMPED will access and track RLIS funds in G6 awarded to NMPED from the Department until LEAs have fully liquidated (drawn down) the funds. These procedures must identify key staff and their responsibilities for carrying out key tasks, including the program team’s responsibilities for managing subgrants to LEAs, and how the program team collaborates with others at the SEA to ensure proper and timely drawdowns in G6.

**Additional Requirements outlined by MSO cross-cutting finding, *Period of Availability and Carryover*:**

Within 60 business days of receiving this report, NMPED must provide the Department with evidence that it has updated its policies and procedures to allow LEAs the full 27 months of the period of availability for the covered programs for both current awards and future awards, with a subsequent 120 days allowed for liquidation of the obligations. These updated policies should allow LEAs to access the full 27-month period of availability and subsequent 120-day liquidation period without having to request additional time after the initial 12 months. NMPED must also provide evidence that it has communicated this change to its LEAs.

## SUBGRANTEE USE OF RLIS FUNDS

## REQUIREMENT SUMMARY

Description: All uses of RLIS funds must comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements* (2 C.F.R. Part 200), which include, among other things, the requirement that costs be reasonable and necessary for the accomplishment of program objectives

RLIS subrecipient LEAs may use their grant funds for allowable activities under any of the following:

- Title I-A
- Title II-A
- Title III
- Title IV-A
- Parental involvement activities.

ESEA  
§5222 (a)

Uniform Guidance  
2 CFR Part 200, Subpart E

## ISSUE

NMPED's established processes for monitoring subgrantee use of RLIS funds are not sufficient to ensure that grant funds are used for allowable activities. Given that the Department includes a cross-cutting finding on this topic in this report, the Department will work across programs, including RLIS, on the resolution of the finding.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award as required by 2 C.F.R. §200.302(b)(7) and 2 C.F.R. §§200.402 through 200.411. (Note that this is the same required action as in cross-cutting finding above under *Accounting Systems and Fiscal Controls*.)

## RLIS SUBGRANTEE MONITORING

## REQUIREMENT SUMMARY

Description: An SEA shall monitor LEAs and any other entities, including external providers, receiving federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

Uniform Guidance  
2 C.F.R. 200.332(d)

### ISSUE

NMPED does not currently have a subrecipient monitoring process for RLIS subgrantees that meets all the requirements outlined in 2 C.F.R § 200.332(d). Instead, NMPED described that it reviews the RLIS local application to meet its obligation to monitor LEA implementation of the RLIS program. The local RLIS application only captures under which Title program(s) the LEA intends to use its funds. NMPED also cited its reimbursement review process, which confirms that purchases were made and were allowable.

Since NMPED also does not have a process to monitor LEA performance beyond the application review and reimbursement process, NMPED is unable to determine whether, “subaward performance goals are achieved” (2 CFR 200.332(d)) or otherwise ensure that all program requirements are met. During RLIS subgrantee interviews, LEA staff had no recollection of NMPED conducting any monitoring related to the RLIS program beyond the routine Request for Reimbursement (RfR) process.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must develop and submit the procedure it will use to monitor RLIS subrecipients for the requirements outlined in 2 C.F.R § 200.332(d). The process must include a description of how NMPED will ensure that subrecipients comply with Federal statutes, regulations, and the terms and conditions of the award.

### RECOMMENDATION

During on-site monitoring discussions NMPED outlined an ambitious consolidated monitoring plan and explained that RLIS would be included. As NMPED develops this plan, the Department recommends the SEA incorporate a process for monitoring LEA programmatic goals or consider creating SEA level programmatic goals that can be monitored against.

## ESSER and ARP ESSER

### ALLOCATIONS/SUB-AWARD PROCESS

### REQUIREMENT SUMMARY

Description: The SEA shall ensure that, when subawarding funds to subrecipients, it makes subawards in accordance with applicable statutory requirements (including requirements related to the process for subawarding funds and the amounts to be subawarded to individual subrecipients).

CARES Act  
Section 18003(c), (d)

Coronavirus Response and Relief Supplemental Appropriations Act CRRSA

American Rescue Plan Act (ARP)  
Section 2001

EDGAR  
34 C.F.R. 76.50-51  
34 C.F.R. 76.300  
34 C.F.R. 76.789  
34 C.F.R. 76.792

Uniform Guidance  
2 C.F.R. 200.332(a)  
2 C.F.R. 200.407

### ISSUE

2 C.F.R. § 200.407 requires LEAs to receive prior written approval from the State for certain costs, such as the purchase of real property, equipment, and other capital expenditures. New Mexico discussed its “5K” form that LEAs were required to use when requesting approval for purchases over \$5,000 and to use funds for construction, renovation, and HVAC projects. Though New Mexico discussed this prior-approval process, NMPED was not able to provide documentation of its prior approvals for construction projects and capital expenditures funded using ESSER and ARP ESSER funds. The State also did not provide evidence that the approval process and the agency’s policies were documented and that, in the event of staff turnover, the necessary documentation supporting approvals or denials of requests by LEAs are available.

### REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must provide the Department with evidence of its procedure for providing prior approval for construction and capital expenditures, including that prior approvals provided to subrecipients are documented and the agency is retaining the information necessary to inform monitoring activities and ensure compliance with applicable Federal requirements.

## RISK ASSESSMENT

## REQUIREMENT SUMMARY

Description: In order to determine the appropriate method and level of subrecipient monitoring, a grantee shall evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward.

Uniform Guidance  
2 C.F.R. 200.332(b)

## ISSUE

New Mexico has not implemented its risk assessment process as 2 C.F.R. § 200.332(b) requires for subrecipients of pandemic-relief funds and all other subrecipients of Federal funds as noted elsewhere in this report. During the review, the State was not able to provide a clear timeline for when its risk assessment will begin and the State's strategy for ESSER and ARP ESSER monitoring and support for subrecipients will be defined as a result of its assessment.

## REQUIRED ACTION

Within 60 business days of receiving this report, NMPED must submit to the Department documentation demonstrating that it has completed implementation of its risk assessment process and used the results of its assessment to inform its plan for ESSER and ARP ESSER subrecipient monitoring and support.

## SUBRECIPIENT MONITORING

## REQUIREMENT SUMMARY

Description: A grantee shall monitor subrecipients and any other entities, including external providers, receiving Federal funds from programs to ensure that all applicable fiscal and programmatic performance goals are achieved and that subawards are used for authorized purposes and in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

Uniform Guidance  
2 C.F.R. 200.332(d)

## ISSUE

Under 2 C.F.R. § 200.332(d), New Mexico must monitor the activities of subrecipients to ensure that subawards are used only for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and to ensure that subaward performance goals are achieved (2 C.F.R. 200.332(d)). During the review, New Mexico shared that past subrecipient monitoring was limited to a review of financial information through ongoing processes such as single audits, grant reimbursement requests, and application review processes. Though the State says that desktop monitoring had occurred, it could not provide evidence of, or satisfactorily describe, its processes, protocols, or determinations.

Program monitoring of ESSER and ARP ESSER additionally requires that a grantee monitor LEAs for Davis-Bacon compliance. In addition, the grantee must collect from the LEA and monitor a contractor's certified payroll records. NMPD is not monitoring or collecting the required contractor weekly payrolls from LEAs; however, we learned that the LEAs were working with another State agency on the Davis-Bacon requirements, which may mitigate compliance issues at the LEA level.

NMPED has the discretion to design its own subrecipient monitoring processes for both fiscal and programmatic elements of program administration. However, the State must ensure that its subrecipient monitoring activities are sufficient to provide reasonable assurance that subrecipients are administering programs in compliance with all applicable requirements (both programmatic and fiscal) and that the grantee is able to evaluate progress towards the accomplishment of performance goals.

## REQUIRED ACTION

Within 60 business days of receiving this report, New Mexico must provide the Department with a plan for implementation of subrecipient fiscal and program monitoring, to begin no later than May 20, 2024, that includes the following elements:

- A range of indicators sufficient to provide reasonable assurance that subrecipients are managing program funds in accordance with requirements;
- Fiscal elements should include procedures for documenting personnel expenditures (time and effort documentation), procurement procedures, equipment management and inventory

procedures, and LEA procedures for determining cost allowability, in addition to any other fiscal topics or requirements NMPDE determines should be covered;

- Timelines for the development of documented monitoring procedures and fiscal and programmatic monitoring protocols, including a description of planned procedures for ensuring that LEAs are fulfilling their respective responsibilities under the Davis-Bacon Act as well as all other requirements associated with using Federal education funds for construction, renovation, or repair projects;
- Identification of the staff and/or offices that will be responsible for carrying out monitoring activities;
- Descriptions of the selection process and criteria for identifying subrecipients to receive differentiated monitoring reviews based on the State's risk assessment; and
- Descriptions of the post-monitoring process, including the monitoring report process and templates, and timelines for subrecipient corrective action.

Then, within 120 business days of submitting its monitoring plan to the Department, the State must provide to the Department documentation demonstrating its analysis and any findings resulting from its initial monitoring of subrecipients in the 2023-2024 school year.



## Met Requirements with Recommendation

### Fiscal Crosscutting

#### CHARTER SCHOOL AUTHORIZATION AND OVERSIGHT

#### REQUIREMENT SUMMARY

Description: The SEA provides information on OESE programs (i.e., allocations; applications; and requirements, including requirements for proper disposition of equipment and property) to all charter schools and LEAs and Charter Management Organizations (CMOs) or Education Management Organizations (EMOs) that oversee charter schools, has established internal controls related to the charter schools' relationships with their CMOs/EMOs, and has clear procedures that are systematically monitored for orderly closure, where applicable.

ESEA

§§1122(c), 1125A(g)(3), 4306

EDGAR

34 C.F.R. §75.525(a) and §75.525(b)

#### ISSUE

As grantees, SEAs are primarily responsible for overseeing and monitoring subrecipients, including charter schools that are LEAs, that receive funding under Federal programs. When a charter school is part of an LEA and receives Federal program funds through that public LEA, the LEA, as a subgrantee, has oversight responsibilities over how those funds are used. State charter school laws allow authorizers to approve charter applications; oversee and ensure compliance; and review, renew, and revoke charter schools' contracts. In New Mexico, both NMPED and LEAs serve as charter school authorizers.

The Government Accountability Office's *Standards for Internal Control in the Federal Government* (Green Book) provide the overall framework for establishing and maintaining an effective internal control system which can be adopted by state, local, and other non-governmental entities. The Green Book states that management should perform risk assessments at the entity-wide and activity level, present internal controls as a means to manage the risk associated with Federal programs and operations and establish the importance of communicating relevant information to personnel at all levels within an agency. Effective information and communication are vital for an entity to achieve its objectives. Specifically, principles 14 and 15 state that management should internally and externally communicate the necessary quality information to achieve the entity's objectives and address related risks. The results of our review demonstrated the need for NMPED to take actions to improve communication and collaboration with LEAs who serve as charter school authorizers to establish consistency of charter authorizers operating within the State and manage the risk associated with Federal programs and

operations. Specifically:

- NMPED did not require public charter schools, which were identified for support and improvement, to develop a support and improvement plan as required by ESEA sections 1111(d)(1)(B) and (d)(2)(B) (see Support for School Improvement section and associated required action on page 42 above).
- One LEA authorizer stated that it would benefit from guidance on monitoring special education compliance with charter schools.
- One LEA authorizer recommended to revoke a charter operating in its LEA. The LEA stated that it was not familiar with the closure process, nor did it contact NMPED to ensure the LEA was following State requirements. Instead, the LEA sought guidance from a private organization on actions to take when considering closures. NMPED explained that once an LEA recommends revoking a charter, the recommendation would be determined by that LEA's school board. If the school board upholds the decision to revoke, the charter would have an opportunity to appeal the decision. If appealed, NMPED would decide on the appeal.

Guidance on policies and procedures from different organizations by different LEA charter authorizers may lead to inconsistent procedures within the State. Further, NMPED would not have an opportunity to assess the risk associated with outside guidance unless the decision was appealed. Therefore, we determined that improved communication and collaboration with LEA charter authorizers to identify and share best practices and relevant requirements may improve consistencies among charter authorizers operating within the State and allow NMPED to assess the risk associated with LEA charter authorizers' planned activities.

## **RECOMMENDATION**

We recommend NMPED identify and share best practices and relevant requirements for LEAs regarding approving charter applications; ensuring compliance with Federal and State regulations; and reviewing, renewing, and revoking charter schools' contracts to establish consistency of charter authorizers operating within the State.

## SSA Cross Cutting

### EQUITABLE SERVICES

### REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA  
 §§ 1117; 8501

Regulations  
 34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR  
 C.F.R. § 76.661

### ISSUE

Sections 1117(a)(3)(B) and 8501(a)(3)(B) of the ESEA require the SEA to employ an ombudsman to help ensure that equitable services are provided and to monitor and enforce equitable services requirements. While NMPED has an ombudsman in place, it is clear from discussions with LEAs participating in the monitoring review that LEAs make little, if any, use of this resource in carrying out equitable services requirements; one of the interviewed LEAs was unaware that NMPED has an equitable services ombudsman.

### RECOMMENDATION

The Department recommends that NMPED provide technical assistance to LEAs about how to contact the ombudsman and about how the ombudsman can assist LEAs in carrying out equitable services requirements.

## EQUITABLE SERVICES

## REQUIREMENT SUMMARY

Description: An SEA shall ensure that LEAs use Federal funds to provide benefits to eligible children enrolled in private schools and to ensure that teachers and families of participating private school children participate on an equitable basis. Where applicable, the SEA shall ensure that it uses Federal funds for State-level activities to provide benefits to eligible students and educators.

ESEA  
§§ 1117; 8501

Regulations  
34 C.F.R. §§ 200.62-67; 299.6; and 299.9

EDGAR  
C.F.R. § 76.661

## ISSUE

The LEAs interviewed as part of the monitoring review indicated that they could benefit from better access to up-to-date information, documents, and technical assistance materials about the provision of equitable services.

## RECOMMENDATION

The Department encourages NMPED to develop an equitable services web page on the agency web site to centralize technical assistance materials that LEAs can use to improve how equitable services are provided in New Mexico. The Department suggests that making more updated equitable services information in a variety of areas would be useful, such as:

- Providing clear guidance about tracking property purchased for equitable services.
- Providing a link to the Department's current Title I equitable services nonregulatory guidance (<https://oese.ed.gov/files/2023/05/Title-I-ES-guidance-revised-5-2023.pdf>).
- Providing a link to the Department's current guidance on the provisions of equitable services to programs (including Titles II-A and III-A) covered by Title VIII of the ESEA. (<https://www2.ed.gov/about/inits/ed/non-public-education/files/esea-titleviii-guidance-2023.pdf>)
- Information about how to contact the ombudsman and descriptions of services the ombudsman can provide.
- Information for private schools about how to file equitable services complaints.
- Information providing timely notice to private school officials about amounts of Title funds that LEAs have determined they will make available for equitable services.

Information on any technical assistance or guidance (webinars, written guidance materials, etc.) provided by NMPED on how to provide equitable services.

## Title I, Part A

### EDUCATIONAL STABILITY FOR STUDENTS IN FOSTER CARE – SEA COLLABORATION WITH CHILD WELFARE AGENCY

### REQUIREMENT SUMMARY

Description: An SEA must collaborate with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children in foster care and ensure LEAs receiving a Title I, Part A subgrant collaborates with the State or local child welfare agency to develop and implement procedures governing transportation for children in foster care.

ESEA  
§ 1111(g)(1)(E) and §§ 1112(c)(5)(A)-(B)

### ISSUE

ESEA section 1111(g)(1)(E) requires a State to collaborate with its State child welfare agency to ensure the educational stability of children in foster care. While NMPED described past collaborative efforts with the State child welfare agency (including a school of origin transportation resource released in March 2022), NMPED provided no evidence of recent collaboration.

### RECOMMENDATION

The Department recommends that NMPED develop regular, collaborative routines with the State child welfare agency to ensure the educational stability of students in foster care. Such collaborative routines might include, for example, periodic meetings with the State child welfare agency or the provision of joint trainings for stakeholders in the education and child welfare systems.

## Title I, Part C

### IDENTIFICATION AND RECRUITMENT – EXAMINATION OF EACH CERTIFICATE OF ELIGIBILITY

### REQUIREMENT SUMMARY

Description: An SEA must establish and implement a system of quality controls for the proper identification and recruitment of eligible migratory children that includes an examination by qualified individuals at the SEA or local operating agency level of each Certificate of Eligibility (COE) to verify that the written documentation is sufficient and that, based on the recorded data, the child is eligible for MEP services.

ESEA

§ 1304(c) (8), §§ 1309(2)-(5)

EDGAR

34 C.F.R. Part 76

Title I Regulations

34 C.F.R. § 200.89(d) (4)

### ISSUE

NMPED recently changed their MEP ID&R model and the process for examination of each COE. The State is seeking to improve the quality of recruitment by centralizing all recruiters at the State level, rather than having recruiters employed by multiple districts across the State. According to NMPED, “this centralization will allow for the NMPED to require and provide high-quality standardized training and support for all recruiters across the State.”

The SEA is responsible for the proper and timely identification and recruitment of all eligible migratory children in the State, including securing pertinent information to document the basis of a child's eligibility. Although NMPED described the COE approval process, it is unclear whether the State has a proposed timeline for approving COEs or for conducting interviews when potential migratory children are initially identified. The absence of a COE approval process timeline can lead to significant delays in the provision of services.

### RECOMMENDATION

The Department recommends that NMPED update its COE approval process to include clear timelines that all staff can strive for. Given the recent implementation of the new ID&R model, NMPED should update its procedures to ensure efficiency in recruitment, including monitoring the length of time from when migratory children are identified to when State recruiters conduct interviews and approve COEs.

## Title V, Part B – Rural and Low-Income School (RLIS)

### RLIS PROGRAM OBJECTIVES AND OUTCOMES

### REQUIREMENT SUMMARY

Description: An SEA that submits an application for funding under RLIS will provide information on program objectives and outcomes, including how the SEA will use funds to help all students meet challenging State academic standards.

ESEA  
§5223 (b) (1)

### ISSUE

NMPED’s ESEA Consolidated State plan states that, “grant funds are to be used based on needs identified by each LEA, the PED’s measurable goals and objectives for this program will be based on the specific set of activities the LEA has opted to implement. LEAs will be required to use the RLIS funds to support the Title program(s) they have selected. Therefore, the measurable program objectives will be aligned with the specific Title program(s).”

Through monitoring, NMPED explained that the local RLIS application is the main way in which the SEA collects program data from each RLIS-eligible LEA. However, the local RLIS application supplied as evidence during the monitoring is primarily a fiscal tool through which an LEA indicates its planned uses of RLIS funds. NMPED could not provide evidence of a routine policy or process at the SEA level for collecting or analyzing data from LEAs related to their accomplishment of Title programs objectives bolstered by RLIS funds.

Since the time of monitoring, NMPED has indicated that the SEA intends to amend its ESEA Consolidated State plan, including amending the RLIS portion of the plan.

### RECOMMENDATION

The Department recommends that NMPED consider how the SEA will ensure that RLIS funds are used to help all students meet the challenging State academic standards as NMPED amends its ESEA consolidated State plan. If NMPED continues the current practice of allowing each LEA to determine program objectives, NMPED should collect and analyze LEA program data at the SEA level to determine how RLIS funds are contributing to accomplishment of Title program objectives.



## PROGRAM ADMINISTRATION

## REQUIREMENT SUMMARY

Description: An SEA receiving a grant under RLIS may use up to five percent of its annual allocation for administrative costs, and to provide technical assistance to eligible LEAs. The remaining allocated funds are awarded as sub-grants to RLIS-eligible LEAs to carry out local authorized activities described in ESEA section 5222(a).

ESEA  
§5221, §5222(b)

Uniform Guidance  
2 CFR Part 200, Subpart E

## ISSUE

NMPED confirmed through monitoring that the SEA reserves five percent of its annual RLIS award before allocating the remaining funds to LEAs. While NMPED's written self-assessment response indicated that the SEA uses the 5 percent to support salaries so that NMPED can support LEAs with technical assistance, the NMPED RLIS staff interviewed stated they were unable to access the administrative funds and were unable to provide details regarding the use of administrative funds.

In their written responses and responses to interview questions, NMPED provided minimal evidence that it provided technical assistance to RLIS LEAs. NMPED referenced a Title I website to direct LEAs to the U.S. Department of Education's RLIS webspace. NMPED additionally conducted a regional training program. However, the majority of technical assistance appears to take place ad hoc between LEA and SEA staff via phone. Through RLIS subgrantee interviews, the Department learned that some LEAs would benefit from increased knowledge of the process for accessing RLIS funds and implementing RLIS requirements at the LEA-level.

## RECOMMENDATION

The Department recommends that NMPED reevaluate its use of the five percent set-aside to ensure that the funds contribute to robust RLIS technical assistance efforts.

## ESSER and ARP ESSER

### CARES ACT/TRANSPARENCY ACT REPORTING

### REQUIREMENT SUMMARY

Description: A State is required to report information identifying subrecipients (name, address, DUNS number) and subawards (CFDA number, award number, title) if, at any point during the award period, the SEA subawards \$30,000 or more in program funds (cumulatively) to any single subrecipient. Section 15011 of Division B of the Coronavirus Aid, Relief, and Economic Security (CARES) Act requires that a grantee which receives more than \$150,000 report to the U.S. Department of Education (Department) on a quarterly basis. The Department, after consultation with the Office of Management and Budget, currently interprets this CARES Act quarterly reporting requirement to be satisfied through existing Federal reporting mechanisms. Specifically, CARES Act quarterly reporting requirements are considered to be met under the more frequent, monthly reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), Pub.L. 109-282, as amended by the Digital Accountability and Transparency Act (DATA Act), Pub.L. 113-101.

CARES Act  
Section 15011

Federal Funding Accountability and Transparency Act of 2006 (FFATA)

Reporting Subaward and Executive Compensation Information  
2 C.F.R. 170.220(a)  
2 C.F.R. 170 App. A

Uniform Guidance  
2 C.F.R. 200.300(b)

### ISSUE

NMPED is in compliance with FFATA reporting; however, the grantee does not have any documented procedure for reporting FFATA data. The State director could not satisfactorily describe the State's process.

### RECOMMENDATION

NMPED should develop standard operating procedures for reporting FFATA data for its pandemic-relief and other Federal grants. Doing so will mitigate future reporting issues by memorializing the grantee's reporting practices. Thus, the grantee has a defined process, in the event of staff turnover, to benefit personnel for whom reporting is a new responsibility.