



Education Law Center

Standing Up for Public School Children

December 22, 2011

The Honorable Secretary Arne Duncan
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Comments: New Jersey ESEA Waiver Request

Dear Secretary Duncan:

Education Law Center (ELC) submits this letter to bring to the attention of the United States Department of Education (USDOE or Department) certain matters regarding the New Jersey Department of Education's (NJDOE or State) application for a waiver from various provisions of the Elementary and Secondary Education Act (ESEA). Established in 1973, ELC advocates for the legal rights of New Jersey's 1.3 million public school children to high quality education under state and federal laws, particularly our state's at-risk students, students with disabilities, and students of color. ELC also serves as the legal representative of students in New Jersey's high need school districts in our capacity as counsel to the schoolchildren in the landmark Abbott v. Burke education equity litigation.

As we explain below, ELC requests that the USDOE defer decision on the NJDOE's waiver application until several serious concerns are properly addressed by the State.

First, the NJDOE did not make the complete waiver application, filed with USDOE on November 14th, available for public review and comment prior to its submission to your Department, as required in waiver guidelines. Instead, on November 3rd, the NJDOE released only a "draft outline" of the application that failed to contain most of the crucial details on the waiver proposals. The State provided only a brief five day period, including a weekend and a state holiday, for public comment. In comments on the draft outline, ELC expressly requested NJDOE to delay the application until the February 2012 cycle in order to provide an opportunity for public review and comment on the yet-to-be released full application. Letter to Acting Commissioner Christopher Cerf, November 9, 2011. Nonetheless, the NJDOE proceeded to submit the application without a meaningful opportunity to solicit and obtain input from teachers and their representatives, and from diverse stakeholders in New Jersey, including students, parents, community-based organizations and organizations representing students with disabilities and English-language learners, and business.

Second, it appears that the NJDOE failed to include in its waiver application to the USDOE the full record of public comments received by the State. For example, our comments on the “draft outline,” filed November 9th, were not part of the NJDOE submission to your Department. ELC is aware of other civil rights and stakeholder organizations whose comments on the outline were also not included. In order to determine whether the State meaningfully engaged and solicited input on the waiver proposal, and to assess the substance of those proposals, it is imperative that the NJDOE submit the entire record on the application for your Department’s consideration, and not omit select portions of that record.

Third, our November 9th comments on the draft outline identified a number of critical issues that the NJDOE needed to address in the final waiver application, including the standards, criteria, timelines and other details related to college and career ready standards, teacher evaluations and distribution equity, principal evaluations, focus and priority schools, the proposed single accountability system, and the needs of students with disabilities and English language learners. In reviewing the final submission to your Department, it is clear that many, if not all, of these critical issues remain unaddressed by the NJDOE.

Fourth, in our November 9th comments, ELC raised strong objection to the NJDOE’s proposal, as set forth in the draft outline, to allocate federal Title I funds to “reward schools,” to be identified by the NJDOE. Based on the criteria in the State’s final submission to your Department, we have examined the student demographics of the proposed reward schools. If the NJDOE application is approved, the State could allocate Title 1 funds to a subset of New Jersey schools that serve very low proportions of low income students and English language learners. This reinforces our concern that limited Title 1 funds remain available to meet the needs of students in New Jersey’s high poverty schools and districts.

Fifth, while not required by USDOE, the NJDOE failed to include any fiscal analysis and estimate of the costs of the proposed waiver to the State and local districts, if approved by your Department. New Jersey, like other states, has experienced recurring state budget shortfalls which have resulted in reductions in education aid under the New Jersey School Funding Reform Act (SFRA), the State’s recently enacted funding formula. Abbott v. Burke, 2011 (NJ Supreme Court orders State to restore SFRA formula aid to urban districts). At a minimum, the NJDOE should be required to estimate the costs of implementation of the proposed waiver, and certify that the State will maintain current and future levels of SFRA formula aid while any waiver remains in effect.

Finally, many of the elements of the proposed waiver are not currently authorized under state law, including the proposals for teacher and principal evaluations, the single accountability system, creation of a Commissioner’s district, and the closing of focus or priority schools. It is critical that the NJDOE specifically identify those elements of the waiver proposal that require authorization through enactment of new or amendatory legislation by the New Jersey Legislature. In addition, the NJDOE should be required to

eliminate those elements of the waiver proposal that are clearly beyond the scope of the USDOE waiver guidelines, such as vouchers – called “opportunity scholarships” -- for students to attend private or religious schools.

In light of the above concerns, ELC requests that your Department defer decision on the NJDOE waiver application to the next application and review cycle in February 2012. In addition, we request that the NJDOE be required to address the concerns set forth in this letter, and any other concerns identified by your Department, in a revised application, and make the revised application available with sufficient time for review and meaningful input by New Jersey stakeholders, civil rights organizations and others.

Thank you for your consideration of these comments, and do not hesitate to contact me if I can provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "David Sciarra". The signature is fluid and cursive, with the first name "David" being more prominent.

David G. Sciarra
Executive Director

cc: Acting Commissioner Christopher Cerf



Education Law Center

Standing Up for Public School Children

November 9, 2011

Christopher Cerf
Acting Commissioner
NJ Department of Education
PO Box 500
Trenton, NJ 08625-0500

Dear Acting Commissioner Cerf:

On behalf of our clients, Education Law Center (ELC) submits the following comments on the New Jersey Department of Education's draft ESEA waiver application. ELC works to secure the legal rights of New Jersey's 1.3 million public school children to high quality education under state and federal laws, particularly our state's at-risk students, students with disabilities, and students of color. As an advocate for students in New Jersey's high need school districts, ELC serves as counsel to the class of urban schoolchildren in the landmark Abbott v. Burke education equity case.

The outline of the No Child Left Behind waiver application that the New Jersey Department of Education made public on November 3, 2011, is short on many details. However, it makes clear that the NJ Department of Education (DOE) will propose significant changes in many key areas, including standards and assessments, evaluation of teachers and principals, accountability for student performance, and the identification of and intervention in "under-performing" schools. These are significant changes that will affect every NJ student, teacher, principal, school and district, and will require major adjustments of current policy and law. NJ's most vulnerable students – students with disabilities, at risk students, and ELL students – and schools serving high concentrations of these students, will be particularly affected by these proposals.

Accordingly, Education Law Center strongly urges DOE to revise its waiver application as set forth below:

1. First, DOE should defer submission of the application from November 14 to the next application review window in mid-February. This would facilitate a more rigorous and transparent process with more meaningful opportunity for parents, educators, advocates and other stakeholders to provide input on the proposals. Such far-reaching plans deserve more careful legislative review and fuller public examination than the Department has provided for. The Department's selective private conversations with an unknown number of "stakeholders" and "community members" are not a substitute for transparent public review of such significant proposals. Nor do they create the common stakeholder buy-in required for such proposals to succeed. Such a restricted process also opens the door to a repeat of the state's failed application for a federal Race To The Top grant.

2. Second, in developing a revised proposal for submission in February, ELC recommends that the DOE more fully address a number of critical issues raised by the November 3 draft outline, including, but not limited to:

- a. A more complete description of the programs, policies, timelines, and regulatory changes proposed to implement the transition to “college and career ready standards” for all students. It is especially relevant to note that the Department’s College and Career Readiness Task Force has been specifically charged with defining what “college and career readiness” should include and with developing the “process, benchmarks and timelines [that] should be established to guide transition from the current system to the new system.” The Task Force is due to submit its recommendations by December 31. This is another reason to defer submission of the waiver application until it can be informed by the work of the Task Force.
- b. More specificity with respect to the criteria proposed for evaluation of teachers and principals and particularly the equitable distribution of experienced educators and school leaders. ELC is especially concerned about the Department’s request to suspend NCLB’s “highly qualified teacher” requirements and replace those requirements with an incomplete and untested new teacher evaluation system that is in the early stages of a pilot. Numerous national, state, and local civil rights, advocacy and education groups have raised concerns about this issue. (See attached letter signed by nearly 100 members of the National Coalition on Teaching Quality , including ELC.)
- c. Similarly, the Department should detail more fully its proposed plans for a new principal evaluation system beyond the draft outline’s vague assurance that it is “currently also working on draft guidelines and procedures for a principal evaluation system.”
- d. More detail about the specific definitions and criteria proposed for identifying “focus” and “priority” schools and the supports that will be provided by the state to assist these schools. This should include a list of NJ schools that would currently fall into each category as required by the ESEA waiver guidelines. The application should also address the current requirements for high need schools as set forth in NJ’s School Funding Reform Act and make clear where the Department is suggesting programmatic or statutory changes in SFRA and/or NJ’s Quality Single Accountability Continuum (QSAC) system
- e. The application should articulate in detail the specific standards for “a new single accountability system” as proposed in the preliminary report of the Governor’s Education Transformation Task Force. That report explicitly recommended “development of a single, unitary and streamlined accountability system consisting of the best and most practically important aspects of both QSAC and NCLB... This new system would serve as the basis of a waiver request to the federal government from NCLB.” Given the Department’s expressed intention to use the NCLB waiver process to define and implement a new comprehensive state accountability system, its application should include considerably more detail about what that new system is, how it would work and what regulatory or statutory changes it would require. Again, the fact that the final Task

Force report is due on December 31 is yet another reason for deferring the application until February.

- f. The application should address how the proposed new standards, assessment and accountability system will specifically address the needs of students with disabilities and English language learners.

3. Third, DOE should remove from the application any proposal that is clearly outside the scope of the NCLB statute and those limited provisions in which the U.S. Secretary of Education has offered to provide more flexibility through a waiver. From the outline presented, this includes the proposed legislation for tax credit subsidies for private and religious school tuition vouchers and legislation that would allow for-profit education management firms to assume control of public schools. There may be other similar provisions that should be removed. Not only are these outside the scope of the NCLB waiver, they are also not authorized by state law.

4. Fourth, ELC objects to DOE's request for a waiver to permit the use of Title I monies for "any of the State's reward schools." The use of Title I funds to provide financial rewards to typically high performing schools directly contravenes Title I's statutory purpose of "Improving the Academic Achievement of the Disadvantaged," by mandating efforts to meet the educational needs of "low-achieving children in our Nation's highest-poverty schools," and other "disadvantaged children." 20 U.S.C. 6301 § 1001.

5. Finally, ELC strongly recommends that a revised application include a fiscal analysis and estimate of the costs of the proposals included in the waiver application to both the state and school districts. A similar analysis recently prepared by the California Department of Education found that it would cost the state up to \$3 billion to meet the waiver conditions. This includes the costs of new curriculum materials, new assessments, extensive professional development, new evaluation systems for teachers and principals, and other items. [See Education Week, 9/27/11.] All of these items, as well as others specific to NJ, such as the proposed creation of seven new "Regional Achievement Centers," are included in the Department's draft application, yet none of the costs are addressed.

For all these reasons, ELC reaffirms its strong recommendation that the Department defer submission of the application from the November 14 deadline to the federal Education Department's next review period in mid-February. Such a timeline would allow for both a more complete application and public examination of the as yet unspecified costs of the Department's proposals. Such far-reaching plans and financial commitments deserve more careful legislative review and fuller public examination than the Department has provided to date.

Thank you for your consideration of these comments.

Sincerely,



David G. Sciarra, Esq.