



## **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.

October 17, 2011

Sen. Tom Harkin  
Chairman  
Senate Committee on Health Education  
Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

Sen. Michael Enzi  
Ranking Member  
Senate Committee on Health Education  
Labor and Pensions  
428 Dirksen Senate Office Building  
Washington, DC 20510

**RE: TEACHER QUALITY AND EQUITY PROVISIONS IN THE REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT**

Dear Senators Harkin and Enzi:

Six months ago, we wrote to you as a coalition of civil rights, disability rights, parent, education, and grassroots community organizations to share our recommendations for ensuring all children have access to teachers who are *both* fully-prepared *and* effective. Today that Coalition includes 81 organizations which believe that ensuring full and equal access to qualified and effective teachers should be a cornerstone of the ESEA. We firmly believe our country's success in having all children graduate college and career ready depends on our ability to ensure all students have access to teachers who are fully-prepared to teach on their first day in the classroom and who, once there, prove themselves effective.

We applaud you for taking the courageous step of releasing a bipartisan bill and attempting to fix some of the many flaws in NCLB. Of particular note, we support your proposal's provisions to close the "comparability loophole" and thereby require true comparability in expenditures (including the most significant expenditure, actual teacher salaries) between Title I and non-Title I schools. However, we write to express our serious concern that the ESEA Reauthorization proposal, including the manager's amendment released today, undermines the critical goal of providing all children with equal access to competent teachers.

**1. THE ESEA PROPOSAL SEVERELY WEAKENS THE "HIGHLY QUALIFIED TEACHER" STANDARD.**

Although the proposal appears to retain NCLB's "highly qualified teacher" requirements, the new definition of "highly qualified" weakens the standard so much as to make the phrase virtually meaningless and its protections for at-risk students nearly nonexistent. In this proposal, teachers are defined as "highly qualified" if they have just enrolled in an alternative certification program, even if they have completed little or no training and have met no standard of competence.

This proposal weakens even further the low "highly qualified" standard reflected in the temporary Continuing Resolution (CR) amendment enacted last December—which our coalition vigorously opposed because of the harmful risks to which it exposes our most vulnerable students. That resolution required all states to label teachers-in-training as "highly qualified" merely because they have enrolled in an alternative certification program. This new proposal does further damage by eliminating the CR's supervision and professional development requirements for these teachers-in-training, allowing them to learn to teach on vulnerable children without training, supervision, or support.

These untrained, novice teachers are disproportionately concentrated in schools and classrooms serving low-income students, students of color, English language learners, and students with disabilities. As discussed below, because the proposal also weakens NCLB's equitable distribution provisions, it will result in greater inequities in access to fully-prepared and effective teachers. Moreover, as to states and

districts that adopt new evaluation systems in order to obtain TIF grants, the proposal discontinues attention to teacher qualifications for teachers who gain as little as one year of experience, allowing many to continue teaching without ever becoming fully prepared and certified. Overall, one of the greatest promises under No Child Left Behind—that all students are guaranteed well-qualified teachers in the core subjects—will essentially have been abandoned for those students most in need.

## **2. THE PROPOSAL WILL PERMIT THE INEQUITABLE DISTRIBUTION OF TEACHERS.**

Where NCLB prohibited states and districts from disproportionately concentrating teachers who are unqualified, inexperienced, or teaching out-of-field in schools and classrooms serving poor and minority students (Sec. 1111(b)(8)(C)), this proposal would free states from having to equitably distribute any three of the following 5 categories of teachers: non-highly qualified teachers; inexperienced teachers, teachers still in training programs; out-of-field teachers; and teachers not highly rated.

In states that have implemented teacher and principal evaluation systems, the bill and manager's amendment eliminate entirely the requirement that students whose teachers are not "new" be taught by highly qualified teachers. Instead of a focus on initial qualifications, your proposal would address teacher competence after a teacher's initial year or so by focusing on ensuring teacher effectiveness. But even if these new evaluation systems are accurate and meaningful—something hotly debated—new teachers will not be covered by them, as most experts agree that teachers' effectiveness cannot be judged until there are at least three years of classroom data to examine.

Thus, your proposal allows underprepared teachers to teach for years before their effectiveness is ever measured (and, when measured, proposes states do so based on uncertain evaluation standards). Further, nothing in the bill prohibits districts from assigning teachers rated effective in their authorized subject (*e.g.*, physical education) to teach another subject for which they are unqualified and unrated (*e.g.*, algebra).

Allowing unqualified or out-of-field teachers to teach our most vulnerable children will not advance our nation's teaching quality. The kinds of programs that would do so: incentives to improve working conditions, improve and equalize salaries, service scholarships to attract career teachers to high-need fields and locations, and supports for high-quality teacher education programs for high-need communities are largely absent from the bill.

## **3. THE PROPOSAL ELIMINATES PUBLIC DISCLOSURE OF DATA ON TEACHER QUALITY AND EQUITY.**

Among NCLB's most laudable provisions were those requiring public disclosure of important data on student achievement and access to highly qualified teachers. Transparency of this information was intended to drive accountability, so that parents and the public could hold their districts and schools accountable for providing students with the resources they needed to learn. We are therefore extremely troubled that your proposal entirely eliminates the requirement that states, districts and schools publicly disclose in their annual report cards information on the qualifications and distribution of teachers. Nor is the Secretary any longer required to report such important data nationally.

While we are pleased that the proposal maintains the provisions regarding parents' right-to-know the qualifications of their child's teachers, including the requirement to notify parents when their child has been taught for 4 or more weeks by a teacher who is not highly qualified, we note that this provision, too, will be seriously undermined by the watered down definition of "highly qualified" in your proposal. And while districts are required to report *to their states* on the distribution of their teachers' preparation and

experience and, where applicable, their effectiveness rating, nowhere is this important information required to be disclosed publicly at the school, district, or even state level.

We thank you for your leadership in crafting this ESEA Reauthorization proposal and for restarting this important public debate. We hope that, through the upcoming amendment process, the proposal can be strengthened to ensure that all students will have full and equal access to teachers who are both fully-prepared when they start teaching and who prove themselves effective over time, based on valid measures of teacher competence. We understand that Senator Sanders intends to introduce amendments to address our concerns. We urge you to support them.

Sincerely,

Members of the National Coalition on Teaching Quality (list attached)

cc: Members, Senate Committee on Health Education Labor and Pensions