

May 18, 2015

Monique M. Chism, Ph.D.
Director, Office of State Support
United States Department of Education
Office of Elementary and Secondary Education
400 Maryland Ave, SW
Washington, DC 20202

Re: New Jersey's Compliance with ESEA Waiver Conditions -
ESEA Flexibility Renewal Application

Dear Dr. Chism:

We write to alert you to information contained in New Jersey's ESEA Flexibility Renewal Application ("Renewal Application") that is relevant to our complaint regarding the New Jersey Department of Education's ("NJDOE" or "State") failure to implement required Regional Achievement Center ("RAC") interventions in the Newark Public Schools ("NPS"). Education Law Center submitted an October 15, 2014 complaint to the U.S. Department of Education ("USED") regarding the State's failure to intervene in NPS priority and focus schools according to the requirements of its ESEA Waiver and state School Turnaround and Improvement regulations, New Jersey Administrative Code 6A:33, and has provided additional information in several follow-up communications.

We have received and reviewed a copy of the ESEA Flexibility Renewal Application recently submitted to USED by the NJDOE.¹ The Renewal Application outlines the establishment of a separate, newly devised intervention category for priority and focus schools in State-operated school districts, including NPS. As explained below, this new classification, created out of whole cloth, constitutes an improper post-hoc justification for the State's clear failure to comply with RAC intervention requirements according to the conditions of its original ESEA Waiver, as codified in the state Turnaround regulations, and the NJDOE's unauthorized delegation of the

¹ Although the deadline for submission of ESEA Flexibility Renewal Applications by states was March 31, 2015, New Jersey has not posted its Renewal Application publicly. ELC's request pursuant to the State Open Public Records Act ("OPRA") for the Renewal Application submitted to USED by the NJDOE elicited a document containing visible editing in "tracked changes." We were subsequently advised that the document is undergoing revision as a result of exchanges between USED and NJDOE. When quoting the Renewal Application in this letter, we include text added through tracked changes and omit text that was struck through, or deleted, in the Renewal Application provided in response to our OPRA request.

responsibility to improve NPS priority and focus schools to State Superintendent Cami Anderson. The statements made by NJDOE in the Renewal Application again demonstrate its continued misrepresentation of intervention efforts to the USED.

The Renewal Application states that “NJDOE will establish three tiers of Priority Schools and three tiers of Focus schools” (p.54). Tiers I and II classify priority and focus schools in non-State-operated districts by need/capacity levels, while Tier III priority and focus schools “are those that are still evaluated based on internal capacity and student outcomes, but are also located within State-operated districts that are led by State-appointed superintendents who report directly to the Commissioner of Education and, thus, have primary responsibility for developing and implementing plans to improve their Priority and Focus schools (p.55).” The NJDOE attempts to justify this newly created category by asserting that “[t]his unique relationship between the Superintendent in a State-operated district and the Commissioner necessitates a different RAC support model that is customized to the State-operated Superintendent’s plan of action” (p. 55).²

On its face, the portions of the Renewal Application setting out Tier III interventions are a bald attempt to justify the fact that NJDOE has not implemented required RAC interventions in NPS — and perhaps other State-operated districts — as well as the improper delegation of intervention efforts to NPS Superintendent Anderson. NJDOE has presented no evidence supporting differential treatment of State-operated districts from other districts in the state. Neither the original ESEA Waiver nor the State Turnaround regulations, which implement the ESEA Waiver’s RAC-led intervention requirements, provide for a separate intervention process in State-operated districts. The Renewal Application’s statement that NJDOE “will tier the intensity of [its] interventions” (p.75) according to its newly devised three-tier categorization directly belies the footnote attached to that section of the application, which declares that “[a]ll interventions will be implemented consistent with State statutes and regulations” (p.74 n.2). Furthermore, the data cited in ELC’s April 8, 2015 follow-up letter demonstrates the lack of progress in NPS priority and focus schools, as well as NPS “Renew Schools,” under Superintendent Anderson’s local initiative. Given that the Commissioner is directly responsible for Superintendent Anderson’s employment contract and evaluating her performance, independent RAC supervision and implementation of intervention efforts is critical to foster student, teacher, parent and community confidence and trust in that process.

Finally, the Renewal Application again raises serious concerns that the State continues to misrepresent its implementation of required RAC-led interventions to USED. In our original complaint, we highlighted NJDOE’s failure to inform USED that

² We note that NPS has been under State operation for 20 years. In its initial waiver, the State did not differentiate the type, level or responsibility for interventions in priority and focus schools between the State-operated districts of Newark, Paterson, Jersey City and Camden and the remainder of the districts governed by a local board of education. NJDOE made clear that all priority and focus schools would undergo RAC-led interventions under the State’s Turnaround regulations, and USED imposed this requirement as a condition of the waiver approval.

RACs had not intervened in all priority and focus schools — specifically in NPS — during USED monitoring of the State’s ESEA Waiver. The Renewal Application again explicitly affirms that “[t]eams from [RAC] offices visit and assess every Priority and Focus school and, in conjunction with the NJDOE’s central office, district and school leaders, educators, and families, develop a comprehensive individualized school improvement plan for each school” (p.55, emphases added). Our April 8th letter reviewed the statements in Commissioner Hespe’s January 16th letter demonstrating that the Essex/Hudson RAC had not conducted either Quality School Reviews or developed school improvement plans for all NPS priority and focus schools. Our May 6th letter regarding the Elliott Street Elementary School provides further direct proof that RACs are not intervening in all schools with priority and focus designations. As explained in our complaint and follow-up submissions, it is clear that the State has failed to comply with the interventions required by New Jersey’s Turnaround regulations, which codify the RAC intervention requirements in its ESEA Waiver.

Accordingly, we request that USED promptly reject New Jersey’s Renewal Application, as submitted, and return it to the NJDOE with instructions for revision. These instructions should require the NJDOE to eliminate the Tier III category for priority and focus school intervention in State-operated districts and place all priority and focus schools under RAC-led interventions. We also reiterate the request in our April 8th letter that USED take prompt corrective action in NPS including: (1) restarting the minimum intervention periods for NPS priority and focus schools to allow the effective RAC interventions mandated by the ESEA Waiver and State regulations; (2) issuing a clear directive that delegation of intervention efforts to the State-appointed superintendent is inconsistent with the ESEA Waiver and State regulations.

We again request that you provide us with an update on the status of your investigation of this matter. Please feel free to contact me with questions or requests for additional information.

Sincerely,



David G. Sciarra, Esquire
Executive Director

cc: NJ Commissioner of Education David Hespe
Congressman Donald Payne
NJ State Senators Ronald Rice and Teresa Ruiz
NJ Assemblypersons Ralph Caputo and Eliana Pintor
Catherine Lhamon and Robert Kim, USDOE, Office of Civil Rights