July 13, 2009

US Department of Education
Attn: Secretary Duncan
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan:

On behalf of Sylvan, the country's largest and most experienced provider of Supplemental Educational Services (SES), I am writing to comment on the draft guidance released by the Department last week related to waivers under Title I, Part A of the Elementary and Secondary Education Act (ESEA).

We strongly support the SES program because we believe its mission to bring high-quality tutoring services to low-income and low-achieving children is critical to ensuring that every student graduates ready for college and work. Sylvan has a strong track record in improving academic achievement of students who have fallen behind. We are committed providing high-quality services to SES-eligible students, and we believe the SES program should ensure that every eligible student has an opportunity to participate in a SES program.

Yet, we appreciate the need for States and districts to have the flexibility to use ARRA dollars to meet the unique circumstances within their jurisdictions, and to help adjust to the fiscal realities that many are facing during the current economic downturn. More flexibility in Federal programs can be a very useful school improvement strategy, as long as that flexibility is used to provide enhanced services to children in need - especially those from disadvantaged backgrounds. For example, we agree that it is good policy and practice to permit schools in year one of school improvement to offer SES along with public school choice. We encourage States to take advantage of this newly offered flexibility to allow schools to provide the kind of additional academic support that high quality tutoring provides to students who are academically at-risk. We also agree that it makes sense to allow districts to have flexibility in re-calculating their Per-Pupil Allocation (PPA) for SES because it will enable districts to serve even more students, using the additional funds provided under ARRA.

We are concerned, however, that key provisions in the draft guidance could result in fewer services to high need students in low performing schools. In the worst case, the Department could end up granting wholesale waivers on SES that ultimately are not in the best interests of the children who desperately need extra support to catch up to their peers. That is why, first and foremost, we strongly urge you to emphasize in the guidance and fully enforce the existing law that makes it clear that any State or LEA receiving a waiver for ARRA funds must provide evidence about how it will continue to ensure that it will meet the goals of the SES and public school choice programs. If a State or LEA is unable to do so, then no waiver should be granted.

We also urge the Department to make it abundantly clear that all of the new waivers provided for in this guidance apply only to ARRA Title I funds and that only those districts that make every effort to spend the full 20 percent of regular Title I on SES and public school choice are eligible to participate.

While we are generally supportive of districts having the ability to provide SES, we are concerned about the waiver allowing low-performing districts and schools to be providers in the coming year. Specifically, we believe this waiver could unintentionally set in motion a process at the State level that approves hundreds of new providers in a timeframe and within a framework that is inconsistent with the current process set by States.

As such, we strongly encourage the final guidance to require States to use the same criteria and review process for waiver-driven applications as they use for all other providers. For example, all potential providers should be required to attend the same mandatory meetings and face the exact same requirements as all other providers, and face the same sanctions if they fail to comply.

In addition, we believe it should be made clear that districts in States seeking such waivers should not be permitted to delay the start of SES programs for 2009-2010 even if waiver applicants are still awaiting their approval. We also believe that districts approved under this process should meet the same reporting requirements as those districts previously participating in the "Districts in Need of Improvement" pilot program.

Another area of general concern deals with the waiver of the 20 percent SES/Choice set-aside relative to the additional ARRA Title I dollars. While we recognize the need for districts to have some flexibility in the use of these funds, we're disappointed that under the draft guidance, districts would not be required to show any evidence that they are in compliance with their SES program using regular Title I funds.

We strongly encourage that the final guidance include the following modifications with respect to waivers of the SES/Choice set-aside:

- Waivers should not be available to any school district that has a waiting list of students desiring to participate in either the public school choice or SES programs; and
- No waivers should be granted to a school district that is not in compliance with the Title I regulations issued last year and reiterated in your April 1, 2009 letter to Chief State School Officers.

By making these modifications to the final guidance, we believe you will not only be supporting the concept of additional flexibility, but you will also ensure quality within SES programs and expand the number of disadvantaged students having access to these services.

Sylvan again wants to take this opportunity to thank the Department for the opportunity to comment on the proposed non-regulatory guidance as it pertains to the SES program. We understand the need for flexibility and waivers as it pertains to ARRA funds, but want to reiterate our concern that regular Title I funds should be fully utilized to ensure that students have access to the important tutoring services provided through the SES program.

Sincerely,

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