

November 4, 2013

Submitted electronically via Federal eRulemaking Portal at <http://www.regulations.gov>

The Honorable Arne Duncan
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202-2110

Re: ESEA Waiver Renewal Applications, Docket ID number ED-2013-ICCD-0014

Dear Secretary Duncan:

Thank you for the opportunity to comment on the Elementary and Secondary Education Act (ESEA) state waiver or “flexibility” renewal process. The Center has worked since 1972 to expand opportunities for women and girls in the areas of education and employment, family economic security, and health. The waiver renewal process offers the Department of Education an important opportunity to ensure that states, operating with the flexibility afforded to them by the Department’s waivers, hold their districts and schools accountable for improving the performance of the most vulnerable subgroups of students. We believe the waiver renewal process has improved in several key areas. In particular, we commend the Department for its efforts to resolve state-specific implementation challenges, such as insufficient identification of low-performing schools and subgroups and a failure to solicit and respond meaningfully to community input.

We write to highlight additional areas for improvement that will help to ensure that states continue to hew to the core purpose of ESEA during the waiver period. In particular, we urge the Department to scrutinize very seriously the representations states make in their waiver renewal applications regarding their reporting and usage of data and regarding their commitments to transparency and stakeholder input. We believe these requirements can serve as key indicators to whether states are continuing to prioritize the students that have been historically overlooked and underserved in our nation’s schools.

I. To Ensure that Schools Respond to the Needs of all Students, the Department Should Disallow the Use of “Supergroups” and Require that States and Districts Report Subgroup Data that is Fully Disaggregated and Cross-tabulated by Race/Ethnicity and Gender.

We commend the Department for its plan to work with states to ensure they are identifying low-performing schools and subgroups. We understand the Department has recently conducted a review of the extent to which each state system identified low-performing schools and subgroups, using data from 2010-11 and 2011-12 on various

measures including student achievement, graduation rates, and performance against AMOs and graduation rate targets. The Renewal Guidance states that, where a state system “is not identifying low-performing schools and subgroups appropriately or sufficiently,” the Department will work with the state to determine the cause of such misidentification or under-identification and require the state to revise the way it collects and reports data.¹

We appreciate the Department’s plan to scrutinize the way that states are tracking subgroups and their performance. Collecting the right data to properly document the performance of traditionally underserved student groups is critically important to the realization of ESEA’s civil rights objective. Unfortunately, under the waivers, some states combine subgroups of students – such as racial and ethnic minorities, low-income students, students with disabilities, and English language learners – together into one “supergroup” and use data for the aggregated supergroup to rate schools, identify them as “priority” or “focus” schools, and make decisions about interventions. For example, Arkansas combined low-income students, students with disabilities, and English-language learners into one subgroup, and Kentucky combined Black, Latino, American Indian, low-income, and English-language learner students together.

This approach increases the chances that (1) schools that are failing particular subgroups of students will not be identified as needing improvement; and that (2) interventions will not be tailored appropriately and effectively to the needs of the very groups that ESEA is meant to protect. Lumping all traditionally underserved subgroups into a “supergroup” has the effect of masking the reality for smaller subgroups that face different challenges and require different interventions. In the waiver renewal process, the Department has an opportunity to ensure that schools are no longer planning to rely on aggregated data that masks the performance of vulnerable subgroups.

Additionally, we urge the Department to require states and districts to collect and disseminate *more* segmented data on the performance of student subgroups. Data reported by states and districts on graduation rates, academic assessments, and any other indicators of student performance should be fully disaggregated and cross-tabulated by gender and race/ethnicity. In its most recent effort to reauthorize ESEA, the Senate HELP Committee approved a bill that would require data to be reported in this manner, an important step toward ensuring that the data reporting requirements in ESEA are meaningful and that issues faced by particular subgroups of students are not masked.

II. The Department Should Require States to Demonstrate that they are Carefully Considering Stakeholder Input and Incorporating Community Feedback into their Plans.

To ensure that community input is given the full weight it deserves, state waiver applications must provide for a clear mechanism for community input. We therefore are pleased to see that the Renewal Form requires states to provide a description of how they engaged diverse communities and the specific changes they made as a result of these

¹ U.S. Dep’t of Educ., ESEA Flexibility: Renewal Guidance for Window 1 and 2 States 11 (Aug. 29, 2013), available at <http://www.regulations.gov/#!documentDetail;D=ED-2013-ICCD-0114-0002>.

consultations. This is a marked improvement over the previous application process. But the Department should provide a more detailed framework to guide states as to what evidence is needed. Particularly since some states' initial waiver applications misrepresented what efforts were made to reach out to stakeholders, in the renewal applications states should be required to chronicle the extent of their engagement with community groups, when the engagement occurred and with what frequency, and the process states used to integrate the community's feedback into their decision making.

III. The Department Must Ensure Transparency in the Waiver Renewal Process.

The Department must ensure that the waiver renewal process is open and transparent for everyone, at every stage in the process. For example, we understand the Department has conducted an analysis of data on the differentiated recognition, accountability, and support systems implemented by states under the waivers and how schools and students have fared under these systems. According to the Renewal Guidance, results of these analyses were to be shared with State Educational Agencies beginning in October 2013. We urge the Department to also make these data public *before* any waiver renewal applications are processed, with enough time for public comment. These data also must be presented in a format that is accessible to parents and other stakeholders. Given the variability between state systems, we suggest that the Department standardize the format in which this information is presented to the public; the Department also should make sure the information is clear and concise, so it will be comprehensible to a wide range of stakeholders. Finally, we urge the Department to subject waiver renewal applications to a peer review process for evaluation, to ensure the most robust review possible.

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In exchange for a renewed waiver of statutory or regulatory requirements, states, districts, and schools should have to prove that they are taking the steps necessary to ensure educational equity and high standards for all students. We appreciate the opportunity to comment on the Department's consideration of waiver renewal applications. If you have any questions, please contact Lara S. Kaufmann at (202) 588-5180.

Sincerely,



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Vice President for Education & Employment



Lara Kaufmann
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