



November 15, 2010

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

RE: Request for Regulatory Relief for K-12 Schools

Dear Secretary Duncan:

As you know, despite massive budget cuts, layoffs and ballooning class sizes, thousands of public schools are continuing to strive to meet federal mandates imposed by No Child Left Behind and related regulations promulgated by the U.S. Department of Education (“Department”). Many of these narrow and punitive mandates are widely thought to be unreasonable, and even counterproductive, and would be difficult if not impossible to meet under the best circumstances. As we approach the sunset of yet another session of Congress without ESEA reauthorization, we are gravely concerned that the quality and integrity of school systems nationwide will suffer unnecessarily unless the Department takes immediate action to offer specific avenues of relief. While many education-related mandates must be ameliorated through the legislative process, others may be readily addressed through regulatory changes and guidance.

Therefore, on behalf of the 3.2 million members of the National Education Association (NEA), we urge the Department to take the following steps to offer immediate regulatory relief to our nation’s public schools in the form of waivers and interim adjustments to specific NCLB-related regulatory requirements:

1. Increase flexibility for meeting the “highly qualified” teacher requirements, including teachers of multiple subjects, special education and rural/small district educators.

Under current law, public school teachers have to meet ‘highly qualified’ requirements. While NEA supports and advocates for putting the best possible teacher in the front of every classroom, the Department could do much to ease the immense pressure this puts on small rural and small school districts that face unique obstacles when it comes to recruiting and retaining highly qualified teachers. In addition, special education teachers often need five or six certifications in core subjects beyond special education in order to satisfy current HQT requirements; while many special education teachers have one or two additional certifications, in many states they have

only two years to obtain an additional three, four or five certifications they will need to be “highly qualified” in their district.

Moreover, in many rural and frontier schools, teachers are assigned to teach multiple subjects in which they have expertise; while we believe that all teachers should be competent in all subjects they teach, and urge the Department to provide additional time and flexibility for teachers of multiple subjects to become highly qualified, especially when they have already achieved HQT status in one or more subjects.

Finally, the Department should recognize and encourage educators who voluntarily go through the distinguished and rigorous process of earning National Board Certification by deeming such teachers highly qualified in their area of expertise.

2. Increase flexibility around AYP and the allowance of multiple measures of accountability.

As you know, a large percentage of schools have been designated or remain “in need of improvement, corrective action or restructuring” only a few years in advance of the unrealistic NCLB deadline for 100% proficiency among all students and schools. The NEA believes that many schools have been either mislabeled or overly broadly labeled as in need of improvement, and that, pending ESEA reauthorization, a few key steps would help target resources to schools and student populations that need them the most:

- Provide more widely for differentiated interventions for schools rather than the one-size-fits-all sanctions, so that a school that falls short in just one or two AYP criteria would be required to develop and implement a targeted improvement plan for the specific subgroup of students.
- Allow states to limit identification of schools in need of improvement to those in which the same subgroup of students fails to meet AYP in the same subject for two consecutive years.
- Eliminate any associated penalties against schools and districts if a parent exercises his or her rights to have their children opt out of taking required tests under state law.

In addition, in light of the fact that the Department itself has recognized that NCLB and AYP have fostered inaccurate data and results on school accountability, it should allow states to develop richer, research-based school accountability formulae or matrices that consider multiple measures of school performance beyond the current use of just two statewide test scores. Other measures states could utilize include district-level assessments, graduation rates (for high school), attendance rates, school-level assessments, performance or portfolio assessments, and the percent of students participating in advanced coursework, which may include dual enrollment, honors, AP, or IB courses.

3. Provide additional common-sense flexibility for assessing and counting test scores of students with disabilities and ELL students.

The Department has stated on multiple occasions that we need a better and fairer way to assess students with disabilities and ELL students. Therefore, it should allow school IEP teams to determine the appropriate assessment and standards (regular, alternate, or modified) for each child and *remove* the current arbitrary 1 percent and 2 percent limits on students who may take alternate or modified assessments. For newly arrived, late-entry immigrant ELL students who do not speak English, for whom native language assessments or other valid assessments in the required core content subjects are not available, the Department should extend to *three* years the period of time before their test scores must be included in AYP calculations. Students who begin their educational careers in the United States obtain three years of education prior to being assessed with NCLB-mandated state standardized assessments, and these newly arrived immigrant ELL students should be afforded the same opportunity to succeed.

4. Expedite the invitation and approval of valid and reliable growth models to measure changes in student performance.

The Department should facilitate allowing *every* state to implement a transparent growth model methodology that recognizes continuous improvement for all students, grants schools credit for improving student achievement at all points on the achievement scale (for example, credit for schools that move students from below basic to basic or from proficient to advanced), and for improving student achievement over multiple years. Such systems could track individual student performance or cohort performance. States should be given greater flexibility to develop their own growth models, subject to state peer review and review by an independent expert body such as the National Council on Measurement in Education, the American Psychological Association, the American Educational Research Association, or the Joint Committee on Testing Practice.

5. Adjust graduation calculation requirements to give schools credit for *all* students who graduate, not only those who graduate within a 4- or 5-year cohort deadline.

The NEA wholly supports efforts to foster increased graduation rates, especially among students who are racial or ethnic minorities or are economically disadvantaged. However, we are concerned that the Department's 2008 graduation requirements give no credit at all to local school districts that have invested in programs that produce "late graduates" who take longer than five years to graduate. Currently, only two options are provided: 1) the four-year Adjusted Cohort Graduation Rate; or 2) the Optional Use of an Extended-year Adjusted Cohort Graduation Rate or Rates. This second option enables schools and school districts to receive credit for students who take longer than four years, but not more than five years, to graduate with a regular high school diploma. Recent studies indicate that greater attention and recognition must be given to "late graduates" as these students achieve significantly better than GED recipients and those who fail to graduate.

NEA believes there must be common-sense flexibility in calculating graduation rates for students who need more than four or five years to graduate, including, but not limited to, some students with disabilities, late-entrant immigrant ELL students, incarcerated students, students with

serious injuries and illnesses, and older students who have left high school and returned. Additional complementary indicators would provide richer context and understanding about outcomes for students and how well the system is serving them, including six-year cohort graduation rates; a college-ready graduation rate; a dropout rate; completion rates for those earning alternative completion credentials from the state or a GED; in-grade retention rates; and percentages of students who have not graduated but are still in school or who have completed course requirements but failed a state exam required for graduation.

6. Provide greater flexibility to LEAs to use funds that must currently be set aside for school choice and supplemental educational services (SES).

The Department should allow greater flexibility to LEAs in meeting the current requirement that they set aside 20 percent of Title I, Part A funds for choice and supplemental education services; doing so would free up unused portions of the set-aside funds for other exigent needs. Under current regulations, portions of the reserved 20 percent remain unavailable to the school district until spending authority ends. At that point, the funds are returned to the treasury. The Department should allow LEAs to apply directly to SEAs or the Department for waivers of the “set aside” rule if they can demonstrate that the choice/SES requirements have been satisfied and that there are critical needs for other educational purposes that improve student learning.

7. Modify SES/choice regulations to allow (a) targeted SES/choice to certain student populations; (b) local input into SES certification; (c) the designation of LEAs as SES providers; and (d) flexibility to provide SES before choice.

The SES/choice regulations should be changed as follows:

(a) Currently neither SES nor the public school choice provisions of NCLB target students based on their academic achievement. The Department should allow LEAs to limit or target eligibility for both of these programs to students in the specific subgroups that fail to meet AYP. Doing so would eliminate some of the logistical problems that currently exist and allow limited federal dollars to be used where the need is greatest.

(b) The Department should require that states give LEAs input into the certification of new SES providers. Doing so would ensure that all SES providers are highly qualified and meet the needs of local student populations, including students with disabilities and ELLs.

(c) Currently, the Department prohibits a school district that has failed to make AYP for two or more consecutive years from serving as an SES provider. The NEA opposes this restriction; we believe that, as long as the school district meets the overall criteria applicable to other SES providers, it should be eligible to become an SES provider. Allowing qualified LEAs to serve as SES providers would save enormous administrative resources, such as funds currently expended to locate eligible external SES providers.

(d) The NEA believes that schools should be afforded the flexibility to provide SES services prior to complying with school choice options if doing so would be in the best interest of students and the public. The Department should allow states to offer only SES, not both SES

and school choice, in year one of school improvement. The guidance should further clarify that states that are participating in the flexible SES pilot should be allowed to provide SES *only* in year one of school improvement if this is consistent with their approved pilot plan.

8. Implement waivers to allow all Title I SIG schools to reset their NCLB timeline, not just turnaround and restart schools, and to give flexibility around the ‘Rule of 9’ with respect to the transformation model.

Currently, the School Improvement Grants program only allows LEAs and schools that choose the turnaround and restart models to “start over” in the timeline for achieving AYP before sanctions are imposed. Moreover, currently, if an LEA has nine or more Tier I or Tier II schools, it may choose the transformation model in only half of such schools (the so-called “Rule of 9”). The Department should allow waivers to (1) allow *all* SIG Tier I and II schools to reset the NCLB timeline and (2) enable more schools to choose the transformation model if they can provide evidence that such model would be the most effective option.

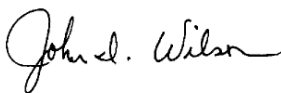
Within the “transformation model,” the Department has articulated important reform elements, including high-quality professional development; recruiting, placing and retaining the most effective school personnel; comprehensive instructional reform; extended learning time and community-oriented schools; increased operating flexibility; and sustained support from local, state or external partners. The other three intervention “models” over-rely on a single decision about staffing, leadership or management and thus do not, *per se*, provide strong alternative models for sustainable, systemic reform.

And as we stated in our public comments on the Race to the Top Program,

We urge the Administration to . . . embrace the diversity of choices available to students, parents, school districts, and states across the country. Well-designed charters are not the only way to innovate, and we need to embrace and champion other models such as magnet schools . . . magnets promote racial and socioeconomic integration more effectively than charters, while offering the same advanced academics and unique courses that make both models popular among parents, according to a 2008 report from the Civil Rights Project at University of California, Los Angeles.

Thank you for your consideration of the above comments. Please do not hesitate to call Donna Harris-Aikens at (202) 822-7409 or dharris-aikens@nea.org if you have any questions.

Sincerely,



John I. Wilson
Executive Director



Donna M. Harris-Aikens
Director, Education Policy and Practice Department