



## Education Law Center

*Standing Up for Public School Children*

August 20, 2012

Christopher Cerf, Commissioner  
NJ Department of Education  
P.O. Box 500  
Trenton, NJ 08625-0500

Re: Accountability Policy Changes/Compliance with  
Administrative Procedure Act

Dear Commissioner Cerf:

Education Law Center ("ELC") advocates for equal educational opportunities for all New Jersey public school children, and as counsel in the Abbott v. Burke education equity litigation, works to ensure that the Department of Education ("DOE" or "State") provides children in high need districts and schools with the resources necessary to achieve State academic standards. On behalf of these children, I write to bring to your attention an urgent and serious issue regarding the State's failure to comply with the requirements of the Administrative Procedure Act ("APA"), N.J.S.A. 52:14B-1 et seq., in making numerous and substantive policy changes in New Jersey's system of school and district accountability.

By memorandum dated April 11, 2012, and other subsequent communications, the DOE has notified public school administrators and local education stakeholders that districts and charter schools must adhere to "a new accountability system" that will "replace" pre-existing requirements of the federal No Child Left Behind Law, state law and DOE regulations. As described in the April 11 memorandum, this new system makes several major changes from prior state policy, including:

1) Applying a "new methodology" based on "annual measurable objectives" ("AMO") to assess the performance of public schools, including charter schools, statewide;

2) Defining and placing schools in three categories -- "Priority, Focus and Reward Schools" -- based on the new AMO methodology;

3) Conducting DOE "quality school reviews" in Priority and Focus schools and requiring those schools to develop and "execute comprehensive School Improvement Plans" based on "eight turnaround principles," in partnership with "Regional Achievement Centers" to be established by DOE throughout the state;

4) Providing monetary payments and other recognitions to schools classified as Reward Schools;

5) Prescribing "interventions" to be implemented by schools classified as Priority and Focus Schools that include "removal and reassignment" of school principals, professional development, implementation of "model curriculum," and hiring "full time specialists" to be "embedded in schools;"

6) Prescribing a "three year period" within which the Priority and Focus Schools must demonstrate a DOE-determined benchmark level of "improvement in academic achievement;" and

7) Mandating "state ordered closure, replacement, or other action" for those Priority and Focus Schools that "fail to demonstrate" the DOE mandated level of improvement.

As is plainly evident, these new requirements for district and school accountability are substantive changes in policy that are intended by DOE to have statewide coverage; be applied uniformly to all districts and schools; operate prospectively; prescribe new legal standards and directives that are not clearly inferable from existing state statutes; and reflect a material and significant change from past State accountability policy. Thus, the policy changes possess all the basic elements in the well established definition of agency action requiring agency rulemaking under the APA. See, e.g. Metromedia, Inc. v. Director of Taxation, 97 N.J. 313, 331-32 (1984).

Despite falling clearly within the definition triggering agency rulemaking, the DOE, to date, has neither proposed, nor promulgated rules on the new district and school accountability policies in accordance with the procedures in the APA, N.J.S.A. 52:14B-4, a legally-required precondition to the proper implementation of those policies.<sup>1</sup> Indeed, NJDOE continues to

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<sup>1</sup> We note, however, that DOE recently published a proposed amendment to change the District Performance Review indicators under the Quality Single Accountability Continuum ("QSAC") to incorporate the new performance assessment methodology and

direct districts and schools to comply with the new accountability standards, mandates and other policies through sub-regulatory memoranda, advisories and other communications, ignoring the clear substantive and procedural requirements of the APA. This failure is especially egregious since the material and significant changes in district and school accountability policy directly impact local administrators, teachers, school board members, parents and other concerned stakeholders, yet these effected parties have not had the benefit of clear rules codifying critical details and guidelines on these policy changes, nor have they been afforded the requisite notice and opportunity to comment on those rules in advance of policy implementation.

Accordingly, we request that your Office temporarily suspend further implementation of the key elements of the "new" accountability system, as outlined above, until such time as the DOE can propose for public comment and adopt appropriate rules codifying those changes in accordance with the procedures set forth in the APA. Further, we request that you promptly notify district and school administrators and other necessary stakeholders of this suspension as soon as possible.

We stand ready to work with your Office and DOE to ensure proper compliance with the APA, and other state laws, in the implementation of the new accountability requirements. Thank you for your attention to this matter.

Sincerely,



David G. Sciarra  
Executive Director

cc: Michael Walters, Deputy Attorney General (via email)  
LEE Group Members (via email)  
Senate and Assembly Education Committees (via email)

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Priority, Focus and Reward School categories, 44 N.J.R. 2016 (August 6, 2012), even though the agency has not promulgated rules codifying the new methodology and school classifications in the first instance.