



---

October 15, 2014

Honorable Arnie Duncan  
Secretary of Education  
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  
Request for Investigation

Dear Secretary Duncan,

We write to bring to your attention serious concerns about the New Jersey Department of Education's (New Jersey or State) failure to intervene in all 28 schools identified as Priority and Focus schools in the State-operated Newark district, as required by the Elementary and Secondary Act (ESEA) Waiver approved by the United States Department of Education (USED) on February 9, 2012. As we explain, these concerns not only implicate New Jersey's compliance with express conditions of the Waiver, but also raise significant questions about whether the State has misrepresented the status of implementation during the course of USED's monitoring of the Waiver in 2012 and 2013.

A central condition of New Jersey's ESEA Waiver is 1) identification of the state's academically under-performing schools as "Priority" and "Focus" schools; 2) intensive intervention in these schools to improve student performance through evaluation, improvement plans and supports, and ongoing progress monitoring. In granting the Waiver, USED explicitly recognized that New Jersey had developed, in its Waiver application, "a high-quality plan to implement, a system of differentiated recognition, accountability, and support for all Title I districts and schools in the State." USED Waiver, Feb. 9, 2012.

New Jersey's plan to identify Priority and Focus schools, and then intervene to improve opportunities and outcomes for students in those schools is described in detail in the State's Waiver application. ESEA Waiver Application, pages 52-66, Nov.

---

60 PARK PLACE • SUITE 300 • NEWARK, NEW JERSEY • 07102

PHONE: 973.624.1815 • FAX: 973.624.7339 • TTY: 973.624.4618 • WWW.EDLAWCENTER.ORG

14, 2011. Following approval of the Waiver, the State also adopted "School Turnaround and Improvement" regulations codifying the intervention requirements for Priority and Focus schools. NJ Admin. Code 6A:33. These regulations, along with guidance documents on the Education Department's website, set forth the criteria for identifying Priority and Focus schools along with the specific and detailed requirements for State intervention and supports for those schools.

Specifically, the State has established "Regional Achievement Centers" (RACs) "led by experienced educators and specialists who are charged with driving school improvement and student achievement in schools identified as Priority and Focus." N.J. Admin. Code 6A:33-1.1. Further, for each Priority and Focus school, the State, through the designated RAC, must 1) undertake and complete a "Quality school Review'" (QSR) based on the USED's eight "turnaround principles "to evaluate the school's current performance and determine its needs in connection with each turnaround principle, N.J. Admin. Code 6A:33.2.3(a); 2) "develop and implement" a school improvement plan (SIP) "on a timeline and in a manner specified by" the RAC leader, N.J. Admin. Code 6A:33-2.4(a); 3) provide support for implementation of the SIP and, where necessary, take "appropriate action to ensure the SIP's meaningful implementation," including redirecting expenditures, restructuring curriculum, directing staff retraining or reassignment, withholding federal funds from the district, and altering the school and/or district budget, N.J. Admin. Code 6A:33-2.5; and appoint a "qualified turnaround provider" (QTP) to assist with the SIP's implementation in the event the school "fails to adequately implement the SIP, make progress, or cooperate with the RAC." N.J. Admin. Code 6A:33-3.1; Regional Achievement Centers, Frequently Asked Questions, <http://www.state.nj.us/education/rac>

New Jersey's requirements for RAC interventions in Priority and Focus schools, as prescribed in the State's School Turnaround and Improvement rules, are succinctly described in the ESEA waiver application:

"The Department's new RACs will play a critical role. Teams from these offices will 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 keyed to the interventions described below. In years

past, the State has exercised less authority than it might have when it comes to requiring districts to take bold action in their persistently underperforming schools. Today's NJDOE, however, will use the full leverage granted it under Title I and various provisions of state law to ensure districts faithfully implement improvement plans for Priority and Focus Schools." Waiver Application, at page 38(emphasis added).

New Jersey also made clear that every district (LEA) with one or more Priority and Focus schools must support and integrate the RAC interventions into the district's plan (LEAP) for use of Title I funds. The State made an express commitment in the Waiver to ensure the SIPs for Priority and Focus schools are incorporated into the district's LEAP before allocating Title 1 funds to the district, and to withhold Title 1 funds to any district that has not fully incorporated each individualized SIP into the LEAP. ESEA Waiver Application, page 39.

We have conducted a thorough investigation into New Jersey's implementation of the RAC interventions in Priority and Focus schools in the State-operated Newark district. This investigation included formal requests for documents through the State's Open Public Records Act (OPRA); communications with principals, teachers and parents in Newark's priority and focus school; communications with personnel in the Essex/Hudson RAC, the RAC assigned to the Newark district; and communications with members of the State's ESEA Advisory Committee and State officials.

Our investigation has found substantial evidence that New Jersey has not commenced, nor undertaken, any of the required RAC interventions in all 28 Newark Priority and Focus schools. Specifically, the RAC's have not completed a QSR for any of these schools under the prescribed turnaround principles; completed SIPs for each school; provided support for implementation of the SIPs; undertaken appropriate interventions to ensure meaningful implementation and progress in improving student achievement. Simply put, the State has not, through the RAC, intervened in any of the Newark Priority and Focus schools as explicitly required under New Jersey's Waiver and the State's School Turnaround and Improvement regulations.

The 28 Priority and Focus schools in Newark represent 11% of the statewide total. While our investigation did not examine whether RAC's have intervened in Priority and Focus schools

elsewhere in the state, we are unaware of any district other than Newark where the RAC has not intervened in the district's schools. Our investigation also indicates that Newark's State District Superintendent sought, and may have insisted, that New Jersey direct the Essex/Hudson RAC not to intervene in the district's Priority and Focus schools and that, at some point, the State acquiesced in that request or demand.

Moreover, there is evidence that New Jersey failed to inform USED that the RACs did not, and have not, intervened in Newark's Priority and Focus schools during the course of USED monitoring of State implementation of the Waiver from 2012 until present. For example, USED's ESEA Flexibility Part A Monitoring Report, of October 10, 2012, and the notes of an exit conference on January 23, 2013, states as follows:

NJDOE indicated during the monitoring phone call that for the 2012-2013 school year, all 75 of NJDOE's priority schools will implement interventions. Nineteen of these priority schools are schools receiving School Improvement Grant (SIG) funds to implement one of four SIG models. NJDOE indicated that it intends for all 56 non-SIG priority schools to implement interventions aligned with the eight ESEA flexibility turnaround principles...

Part A Monitoring Report, at page 5 (emphasis added). The Monitoring Report further states:

NJDOE indicated during the monitoring phone call that each priority school has been notified of its status, completed a QSR in collaboration with its respective RAC, and is on-track to submit school improvement plans, created with RAC assistance, to the central SEA office by October 29, 2012. During the exit conference call, NJDOE indicated that by mid-November, RACs had reviewed most school improvement plans and that only a small number of school improvement plans for priority schools were still under development. NJDOE indicated during the exit conference that all priority schools would be fully implementing between January-June 2013.

Part A Monitoring Report, at page 5 (emphasis added). New Jersey also "reiterated" to USED that the RACs, not LEAs, "are the main accountability unit for school performance within its new accountability system." Monitoring Report, at page 9.

In the Part A Monitoring Report, USED emphasized to New Jersey that the State must implement "meaningful interventions in accordance with the turnaround principles in all priority schools for at least three years." To ensure compliance, USED advised New Jersey that it will continue to "review evidence and timelines related to this implementation" through the monitoring process. Part A Monitoring Report, at page 6.

USED's subsequent Plan B monitoring included another monitoring report and exit conference in July and August 2013. In finding significant problems with State implementation of the RAC intervention requirements, USED again made clear that New Jersey must ensure LEA's "with one or more" priority and focus schools implements, for three years, "meaningful interventions aligned with the turnaround principles." Part B Monitoring Report, at page 4. Further, USED expressed concern that the New Jersey "does not have sufficient mechanisms in place to make a determination of whether a priority school is implementing all ESEA turnaround principles concurrently," Monitoring Report, at page 4, and directed the State to "track implementation of interventions in all priority and focus schools" and "improve implementation of selected interventions in those schools requiring assistance." Monitoring Report, at page 3.

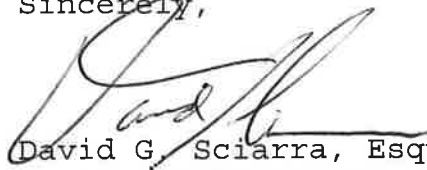
There is nothing in these Monitoring Reports to suggest New Jersey informed USED that the 28 Newark Priority and Focus schools would not be subjected to RAC interventions or that the State had, for some reason, excluded the State-operated Newark district from RAC interventions altogether. Rather, these Reports are clear on their face that New Jersey repeatedly represented to USED that all priority and focus schools and every LEA in which these schools are located, which includes Newark, were implementing SIPs and otherwise receiving appropriate supports through RAC intervention.

Accordingly, given the gravity of these issues, we request USED to immediately launch a full and thorough investigation into New Jersey's implementation of the Waiver conditions and requirements for RAC intervention in Newark Priority and Focus schools. This investigation should include whether the State misrepresented the status of RAC implementation in Newark during the course of USED monitoring of the Waiver. We also request that USED determine whether Priority and Focus schools in any other district, particularly the State-operated districts of Camden and Paterson, have not been subject to intervention from their respective RACs.

If USED's investigation confirms New Jersey's lack of compliance, we ask USED to direct prompt corrective action in Newark or any other district in non-compliance, along with such other sanctions as may be appropriate. Further, in conducting this investigation, we ask USED to actively solicit parents, teachers, principals and other stakeholders involved in Newark's Priority and Focus schools to obtain information and to develop responsive corrective action.

The students in Newark's Priority and Focus schools have been deprived of the meaningful interventions and supports designed to improve opportunities and increase academic performance, as promised when New Jersey agreed to the express conditions in the ESEA Waiver. On their behalf, we stand ready to assist USED to ensure these students receive the benefit of the improvements in opportunities and outcomes as intended by the USED in granting New Jersey's ESEA Waiver.

Sincerely,



David G. Sciarra, Esquire  
Executive Director

cc: David Hespe, Acting Commissioner of Education  
Donna Arons, Assistant Attorney General  
Catherine Lahmon, Director, Office of Civil Rights  
Deborah S. Delisle, Ass't Sec. of ESEA