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April 8, 2015

Monique M. Chism, Ph.D.  
Director, Office of State Support  
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 Dr. Chism:

We write to provide additional information on our complaint to the United States Department of Education ("USED"), dated October 15, 2014, concerning the New Jersey Department of Education's ("New Jersey" or "State") failure to intervene in priority and focus schools in the State-operated Newark Public Schools ("NPS"), as required by New Jersey's Elementary and Secondary Education Act Waiver ("ESEA Waiver") and State implementing regulations. By letter dated December 17, 2014, we were informed that our complaint was referred to your Office for investigation.

On January 16, 2015, we received a letter from New Jersey Commissioner of Education David Hespe ("Commissioner") providing certain information related to our complaint and asserting that New Jersey "has complied with all aspects of its ESEA Flexibility, including its implementation in NPS Priority and Focus Schools." We have reviewed the Commissioner's submission and provide our response below.

On its face, the Commissioner's submission confirms that the State interventions required under New Jersey's ESEA Waiver have not been implemented in NPS priority and focus schools, as required by the Waiver conditions and the School Turnaround and Improvement regulations, New Jersey Administrative Code 6A:33. Specifically, it is clear that the designated Essex/Hudson Regional Achievement Center ("RAC"), which is "led by experienced educators and specialists who are charged with driving school improvement and student achievement" in priority and focus schools, N.J.A.C. 6A:33-1.3, has not been assigned to the NPS priority and focus schools, as the State has done with such schools in all other districts. In addition, it is clear that the NPS priority and focus schools, unlike all other priority and focus schools, did not have quality school reviews ("QSR") completed by the RACs nor school improvement plans ("SIP") developed through a RAC-led collaborative process with each school.

Further, to the extent that the Commissioner indicates that something akin to the required RAC-led QSRs and SIPs were, at some point, prepared for the NPS priority and focus schools, they were done at the direction of State District Superintendent Cami Anderson – not the Essex/Hudson RAC – and clearly did not conform to the requirements in the ESEA Waiver and School Turnaround regulations. The Commissioner indicates that in 2012-13 and 2013-14, documents “certifying completion of a QSR process” developed by Superintendent Anderson for the NPS priority and focus schools were submitted to the State. However, the School Turnaround regulations explicitly require the Essex/Hudson RAC to “conduct a quality school review (QSR) to evaluate the [Priority or Focus] school’s current performance and determine its needs in connection with each turnaround principle.” N.J.A.C. 6A:33-2.3(a). We are unaware of any other district that has been allowed to complete these essential requirements on its own and then, at some later date, submit them to the State to satisfy the school turnaround and improvement requirements.

Similarly, while acknowledging that “[s]chools in Priority or Focus status are required to complete yearly SIPs,” the Commissioner states that “[s]chools may also use an alternate planning template.” He reveals that “[d]uring the current superintendent’s tenure, a Strategic Plan template was created by NPS that aligns with the RAC SIP template and was approved by NJDOE” and that “[e]ach NPS school in Priority or Focus status has submitted this plan for both years that the waiver has been in effect.” Once again, the ESEA Waiver and School Turnaround regulations do not permit local superintendents to “create” their own improvement plans for priority and focus schools. The State’s actions in allowing Superintendent Anderson to bypass the Essex/Hudson RAC altogether and conduct improvement activities on her own is in flagrant violation of the explicit requirements in New Jersey’s Waiver.

The Commissioner also concedes that only in NPS has the State allowed the local superintendent to assume full responsibility “for establishing and directly implementing the vision for turnaround.” This delegation is in direct contravention of New Jersey’s RAC intervention protocols. The Commissioner also states that, on an unspecified date, “it was determined that Superintendent Anderson would lead the Department’s school improvement efforts within the district, with the support of the RAC central office.” Again, delegation of these critical tasks and responsibilities to Superintendent Anderson is entirely improper, unauthorized, and contrary to the express conditions and representations made by New Jersey to secure approval of the Waiver and in USED follow-up monitoring. Even more troubling, our request under the New Jersey Open Public Records Act for documentation of the State’s “determination” to allow Superintendent Anderson to implement her own improvement efforts in NPS priority and focus schools, rather than the requisite interventions through the Essex/Hudson RAC, yielded no responsive records.

Further, the Commissioner provides no evidence of, nor assurance that, the Essex/Hudson RAC has been or is now providing necessary supports and progress monitoring of NPS priority and focus schools. In fact, the Commissioner makes clear that the RAC will have no role in supporting improvement efforts in each school or

evaluating implementation of the SIPs to ensure progress over time. Instead, the Commissioner indicates his Office will simply review Superintendent Anderson's "initiatives" and evaluate "the state-appointed superintendent's performance" – not each school's progress – through her employment contract with the State.

Simply put, there is no basis in the ESEA Waiver or the School Turnaround regulations for the wholesale delegation of the intervention and improvement efforts for each of the NPS priority and focus schools to Superintendent Anderson. NPS status as a State-operated district does not alter this fact, and we are aware of no other district – State-operated or otherwise -- that has been permitted to maintain control over of the school turnaround and improvement process.

Finally, we also bring to your attention data and other evidence indicating that, whatever "initiatives" Superintendent Anderson may have undertaken, the NPS priority and focus schools have not shown any significant improvement over the last three years. NPS has sixteen priority schools and sixteen focus schools, designated by the State in 2012. Neither group has shown sustained and consistent improvement in academic outcomes in the ensuing years. The seven NPS schools labeled "Renew Schools" by Superintendent Anderson have also failed to demonstrate significant progress. See Alliance for the Newark Public Schools, "The Renew Schools of Newark, New Jersey: A Second Look" (Feb. 2015).

In conclusion, it is clear that New Jersey has flagrantly violated the express terms of its ESEA Waiver conditions and State implementing regulations by not facilitating RAC-led intervention in the 32 NPS priority and focus schools over the last three years. In light of New Jersey's non-compliance, we request that USED undertake prompt corrective action, including: (1) restarting the minimum intervention periods for NPS priority and focus schools to allow the effective RAC interventions mandated by the ESEA Waiver and State regulations; (2) issuing a clear directive that delegation of intervention efforts to the State-appointed superintendent is inconsistent with the ESEA Waiver and State regulations; and (3) other sanctions as may be appropriate. We stand ready to assist USED in ensuring that all New Jersey school districts comply with RAC intervention requirements to provide the state's most vulnerable students with the interventions and supports guaranteed therein.

Sincerely,

  
David G. Sciarra, Esquire  
Executive Director

cc: NJ Commissioner of Education David Hespe  
Congressman Donald Payne  
NJ State Senators Ronald Rice and Teresa Ruiz  
NJ Assemblypersons Ralph Caputo and Eliana Pintor  
Robert Kim, USDOE, Office of Civil Rights