



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

**JUN 19 2015**

David G. Sciarra, Esq.  
Executive Director  
Education Law Center  
600 Park Place, Suite 300  
Newark, NJ 07102

Dear Mr. Sciarra:

I am writing in response to your letter of October 15, 2014, to Arne Duncan, U.S. Secretary of Education (ED), and subsequent letters of January 15, April 8, and May 18, 2015 to Dr. Monique Chism, Director of the Office of State Support in the Office of Elementary and Secondary Education. In your October 15 letter, you raised concerns that the New Jersey Department of Education (NJDOE) is not complying with the commitments it made in its request for flexibility under the Elementary and Secondary Education Act of 1965, as amended (ESEA flexibility), with respect to the Newark Public Schools (NPS). I appreciate your raising your concerns on behalf of the students in NPS.

In your October 15 letter, you asserted that NJDOE “fail[ed] to intervene in all 28 schools identified as Priority and Focus schools in the State-operated Newark district, as required by the [ESEA] Waiver approved by [ED] on February 9, 2012.” You noted that NJDOE’s approved ESEA flexibility request established Regional Achievement Centers (RACs) that are charged with driving school improvement and student achievement in Priority and Focus schools. For each identified school, the designated RAC would: (1) conduct a Quality School Review (QSR) based on the turnaround principles of ESEA flexibility; (2) develop and implement a school improvement plan (SIP); (3) provide support for implementation of the SIP and, if necessary, take appropriate action to ensure the SIP’s meaningful implementation; and (4) appoint a qualified turnaround provider to assist with SIP implementation if the school fails to adequately implement the SIP, make progress, or cooperate with the RAC. According to NJDOE’s ESEA flexibility request, teams for each RAC would “visit and assess every Priority and Focus school” and “develop a comprehensive individualized school improvement plan for each school keyed to the interventions described below.” Following an investigation, you found substantial evidence that NJDOE, through the Essex/Hudson RAC, had not “commenced, nor undertaken, any of the required RAC interventions in all 28 Newark Priority and Focus schools.” Specifically, you asserted that the Essex/Hudson RAC did not complete a QSR or SIP for any of those schools; provide support for implementation of each SIP; or undertake appropriate interventions as required in New Jersey’s ESEA flexibility request.

By letter of December 17, 2014, Dr. Chism asked the New Jersey Commissioner of Education, David Hespe, to respond to the serious concerns in your letter. On January 16, 2015, Commissioner Hespe responded. Although he acknowledged the role of the RACs in intervening in Priority and Focus schools, Commissioner Hespe noted the need to differentiate the work of the RACs based on factors

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unique to each district, such as the number of Priority and Focus schools in a district, existing district initiatives, and the nature of the relationship between the State and the district. In particular, Commissioner Hesper distinguished State-operated districts such as NPS, which are led by State-appointed superintendents who report directly to the Office of the Commissioner and who are accountable, in consultation with NJDOE, for school improvement efforts within their districts. With respect to NPS, in particular, NJDOE determined that the State-appointed superintendent would lead the school improvement efforts within the district, with the support of the RAC central office. According to Commissioner Hesper, the State-appointed superintendent for NPS worked with the RAC central office and the Office of the Commissioner to support work in all 28 Priority and Focus schools in NPS. He indicated that, in 2012–2013 and 2013–2014, all Priority and Focus schools underwent a QSR developed by NPS and reviewed by the RAC, a process NJDOE determined met the rigor and requirements of the State’s process under ESEA flexibility. Commissioner Hesper submitted a copy of NPS’ QSR process. He also indicated that each Priority and Focus school in NPS completed an annual SIP for both 2012–2013 and 2013–2014, albeit on a template created by NPS and approved by NJDOE, and that RAC central office staff worked with NPS to provide feedback and any required revisions prior to approval. Commissioner Hesper submitted a copy of each school’s SIP to ED. He also indicated that NPS’ progress and implementation are monitored by his office, particularly the Chief Intervention Officer, through weekly meetings, data reviews, and school visits. Finally, Commissioner Hesper committed to conducting a “thorough and comprehensive review of [NPS’] school improvement efforts” to determine the need for further RAC intervention.

In reviewing Commissioner Hesper’s response, I find that it supports the allegations in your October 15 letter that the Essex/Hudson RAC did not fulfill the responsibilities of a RAC outlined in New Jersey’s ESEA flexibility request with respect to NPS’ Priority and Focus schools. Specifically, Commissioner Hesper did not indicate that the RAC conducted a QSR or developed and implemented a SIP in each Priority and Focus school in NPS. Nor did he indicate that the Essex/Hudson RAC provided direct support for implementation of each SIP or undertook specific interventions as articulated in New Jersey’s ESEA flexibility request. Instead, Commissioner Hesper indicated that the State-appointed superintendent for NPS conducted a QSR and developed a SIP for each school under the guidance and oversight of his office and the RAC central office. Moreover, according to Commissioner Hesper, the State-appointed superintendent provided SIP supports and undertook interventions to improve student achievement under the supervision of the Office of the Commissioner directly.

I place great importance on a State’s implementation of ESEA flexibility in accordance with its ESEA flexibility request. Because ED granted waivers of a number of significant ESEA provisions through ESEA flexibility, a State’s request becomes the road map for how the State will hold schools and districts accountable for improving the quality of instruction and raising student achievement, particularly for the most vulnerable students like those in NPS. I agree that New Jersey’s request indicates that the respective RAC would “visit and assess every Priority and Focus school” and “develop a comprehensive individualized school improvement plan for each school keyed to the interventions described [in the request].” There is no indication from Commissioner Hesper that the Essex/Hudson RAC carried out those responsibilities in NPS. As a result, it appears that NJDOE did not follow the accountability plan for Principle 2 that it set out in its request. Instead, according to Commissioner Hesper, the RAC’s responsibilities were carried out by the State-appointed superintendent because NPS is a State-operated district.

I fully understand your concern that the RACs have particular expertise in identifying strengths and weaknesses in a Priority or Focus school, designing an appropriate SIP, and helping to implement that



SIP to ensure that interventions determined to best address the identified weaknesses in the school are carried out effectively—and that such expertise could be beneficial to assisting NPS. ED viewed with favor NJDOE’s plan to create the RACs articulated in New Jersey’s original ESEA flexibility request. At the same time, the purpose of ESEA flexibility, as articulated by Secretary Duncan on September 23, 2011, was to “build on and support the significant State and local reform efforts already under way in critical areas.” It provided flexibility with respect to certain ESEA requirements “in exchange for rigorous and comprehensive *State-developed plans* designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction” (emphasis added).

On March 31, 2015, NJDOE submitted a request for renewal of ESEA flexibility. As you noted in your May 18 letter to Dr. Chism, NJDOE made a number of amendments in that request to further differentiate its system of supports and interventions. Notably, NJDOE indicated it will establish three tiers of Priority schools and three tiers of Focus schools: Tier I will consist of the highest need/lowest capacity Priority and Focus schools not in State-operated districts; Tier II will consist of other Priority and Focus schools not in State-operated districts; and Tier III will consist of Priority and Focus schools in State-operated districts. NJDOE will assign a rating to each school based on two metrics: (1) internal capacity, as measured by the QSR process, and (2) student outcomes, as measured by the growth made in the number of students meeting proficiency from 2012–2013 to 2013–2014, based on the State’s standardized tests. NJDOE explained that Tier III schools will be evaluated based on internal capacity and student outcomes, but, because they are located in State-operated districts that are led by a State-appointed superintendent who reports directly to the Commissioner of Education, the superintendents will have primary responsibility for developing and implementing plans to improve their Priority and Focus schools. According to NJDOE, this unique relationship between the superintendent in a State-operated district and the Commissioner necessitates a different RAC support model that is customized to the State-operated superintendent’s plan of action.

ED is in the process of reviewing NJDOE’s request for renewal of ESEA flexibility and, thus, I cannot speak definitively as to whether all the amendments will be approved. I am mindful, however, that the purpose of ESEA flexibility is to support State-led reform efforts. Principle 2 of ESEA flexibility specifically requires a State to articulate its *State-developed* system of recognition, accountability, and support. Accordingly, ED defers to the State in how it sets up that system, provided it meets the elements of Principle 2. Whether NJDOE uses its RACs to intervene in *all* Priority and Focus schools or relies on State-appointed superintendents to assume those functions in State-operated districts is its prerogative, provided its system overall is sufficiently robust.

In your May 18 letter, you pointed out that New Jersey’s proposed amendments to its request for renewal of ESEA flexibility would also violate New Jersey’s Turnaround regulations. I can only hold NJDOE responsible for implementing the commitments it has made to receive ESEA flexibility and the requirements of ESEA that were not waived. The State is responsible for overseeing NJDOE and holding it accountable for complying with State law and regulations. I have flagged this issue for Commissioner Hespe’s attention.

I am aware that there are a number of concurrent issues involving NPS, at least some of which may raise Federal compliance issues with respect to Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act. Please know that this reply in no way is meant to affect resolution of those issues or any other issue that is pending with respect to NPS.

I very much appreciate your bringing your concerns to ED's attention. I too am concerned that our most vulnerable children, like many of those in NPS, have every opportunity to succeed. I am asking Commissioner Hesse to submit to me a copy of his review of NPS' school improvement efforts. Additionally, please note that ED will continue to monitor NJDOE's implementation of its State-developed recognition, accountability and support system to help ensure that Priority and Focus schools receive appropriate interventions and supports.

Thank you for your interest in all students that they receive a quality education and become college and career ready. If you have any further questions, please contact Zaid Abuhouran or Lisa Sadeghi of my staff at: [OSS.NewJersey@ed.gov](mailto:OSS.NewJersey@ed.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Rieman", with a long, sweeping flourish extending to the right.

Heather Rieman  
Acting Assistant Secretary