

July 23, 2014

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

Re: Comments on “Secretary’s Proposed Supplemental Priorities and Definitions for Discretionary Grant Programs,” Proposed Priority 12 – “Promoting Diversity.”

Dear Secretary Duncan,

On behalf of the undersigned members of the National Coalition on School Diversity, we are writing to comment on the Department of Education’s proposed revision of the “Promoting Diversity” funding priority for discretionary programs, set out at 79 Fed. Reg. 35736, 35743 (June 24, 2014).

As discussed in more detail below, we recognize the importance of socioeconomic integration – and the harmful impact of poverty concentration in schools, particularly for low income children of color. Indeed, in most cases, efforts to promote racial and economic diversity should go hand in hand. We think it is essential that the Department keep these closely related concepts linked in the final priorities, and not permit grantees to avoid racial diversity in favor of economic integration alone. We also urge the Department to clarify that efforts to promote diversity and reduce racial isolation must be substantial, so that states and local districts are not rewarded for de minimus reductions in segregation. Most importantly, as discussed below, the Department must finally start implementing the revised priority.

Why the proposed priority is needed

Nationwide since 1990, public K-12 schools have become increasingly segregated by race and class. Today, black students are substantially more segregated than they were in 1970.¹ The typical white student is now in a school whose student composition is nearly three-fourths white, one-eighth Latino and one-twelfth black.² On the other hand, the typical black or Latino student would have 8 white classmates and at least 20 black and/or Latino classmates.³

These numbers reveal deep disparities when one considers two additional realities: 1) white public school enrollment nationwide was almost four times the combined black and Latino enrollment in 1968, but only about a fifth bigger in 2011 (in the West, white enrollment now falls below Latino enrollment); and 2) although low socioeconomic status is not always a proxy for race, schools with a disproportionate number of African American and Latino students tend also to be low-wealth schools, which tend to become “failing” schools. Thus, Latino and African

¹ Gary Orfield and Erica Frankenberg, with Jongyeon Ee and John Kuscera, *Brown at 60: Great Progress, a Long Retreat and an Uncertain Future* (2014), available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future/Brown-at-60-051814.pdf>.

² *Id.*

³ *Id.*

American children in this country are much more likely to find themselves isolated in a “failing” school than are their white peers. As the Department noted in its 2011 *Guidance on the Voluntary use of Race to Achieve Racial Diversity and Avoid Racial Isolation in Elementary and Secondary Schools* (“*Guidance*”),

[W]here schools lack a diverse student body or are racially isolated . . . they may fail to provide the full panoply of benefits that K-12 school can offer. The academic achievement of students in racially isolated schools often lags behind that of their peers at more diverse schools. Racially isolated schools often have fewer effective teachers, higher teacher turnover rates, less rigorous curricular resources, and inferior facilities and other educational resources.

An additional reality that exacerbates this racially entrenched unequal access to quality public schooling is the growing culture (often fueled by private interest groups) of “parental choice” options like charters, vouchers, and open enrollment, which tend to increase both racial and socioeconomic segregation of K-12 students. But when education and civil rights advocates raise concerns about growing segregation with local school boards across the country, they often face a political brick wall. Despite the Department’s 2011 *Guidance*, since the *Parents Involved* decision, the automatic and immutable response by local boards is “we cannot consider race in any decisions we make.” Our efforts to point out those permissible race conscious methods for achieving school integration which a majority of the Court support (school boundary lines, school siting, use of magnet schools and socioeconomic status, targeted recruiting) are overwhelmed by political resistance.

The Department’s failure to implement the current school diversity priority

Since December 15, 2010, the Department of Education has permitted a funding preference in discretionary grant programs for “projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation.”⁴ According to the Department, “[t]he intent of this priority . . . is to focus on the racial and ethnic diversity of students in order to promote cross-racial understanding, break down racial stereotypes, and prepare students for an increasingly diverse workforce and society.”⁵ In light of the stated purpose of the priority, the Department declined to expand the definition of diversity to include socioeconomic status, disability, English language learners, and others in its final review of the supplemental priorities in 2010.

Despite this seeming commitment to supporting racial diversity, in the almost four years since this priority took effect the Department has consistently underemphasized racial diversity in discretionary grant programs. The diversity priority has been wholly absent from the Investing in Innovation program, the School Improvement Grants program, Race to the Top Phase 3, the Race to the Top Early Learning Challenge, the Race to the Top Competition to Build and Develop and Expand High-quality Preschool Programs, and has not been mentioned in the ESEA waiver process. Even within grant competitions that do include the diversity priority, the diversity priority is significantly outweighed by other competitive priorities. For instance, a new notice inviting applications for the “Charter Schools Program Grants for Replication and

⁴ 75 FR 78486, 78508 (December 15, 2010).

⁵ *Id.* at 78500.

Expansion of High-Quality Charter Schools” does attach an additional 5 points to applications meeting the diversity priority, but the program attaches twice as many points to applications serving a student body that is at least 60 percent low-income.⁶

The only program to place significant emphasis on diversity is the Magnet School Assistance program, which has limited effectiveness due to its small allocation in the Department’s budget - \$91.6 million in 2014, compared with \$248.2 million for the Charter Schools Program and \$250 million for Race to the Top.

Prioritizing both racial and economic diversity

In addition to recognizing the educational benefits of socioeconomic diversity, the Department must continue to prioritize the specific and unique benefits of racially integrated learning environments. This year is the 60th Anniversary of *Brown v. Board of Education*, and decades of social science research have confirmed that separate remains extremely unequal.⁷ Racially and socioeconomically isolated schools are strongly related to a number of factors that limit educational opportunities and outcomes.⁸ Research shows that a myriad of benefits are linked to racially diverse schools, all of which are increasingly important in our global society.⁹ There are unique short and long-term educational benefits that result from interactions with children who are from different racial and ethnic backgrounds. Social scientists believe that when specific conditions are met, learning in a racially diverse, integrated environment produces significant social and cognitive benefits for *all* students, particularly so at the younger ages.¹⁰

As the demographics of our student population shift and impact a growing cross-section of schools, we must seek more than socioeconomic diversity within the classroom. Most studies on the benefits of diversity on student achievement focus on the relationship between racial diversity and the economic resources associated with that. But the evidence shows that racial and ethnic diversity – in addition to other types of diversity – can create “exceptional opportunities” for students to develop the ability to solve complex problems and engage in

⁶ 79 FR 35323, 35324 (June 20, 2014). Another recently announced competition, the “Charter Schools Program Grants to Non-State Educational Agency Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination,” will only consider applications from charter programs purporting to improve achievement and graduation rates in schools where at least 50 percent of students are from low-income families, while holding out an “Invitational Priority” to promote diversity, which is largely pointless because the Department will “not give an application that meets this invitational priority a competitive or absolute preference over other applications.” 79 FR 30099, 30100 (May 27, 2014). Thus, high poverty, segregated charters are invited to apply but are then given no real incentives to reduce the concentrations of poverty or racial isolation their students experience.

⁷ “*E Pluribus... Separation, Deepening Double Segregation for More Students*,” by Gary Orfield, John Kucsera and Genevieve Siegel-Hawley, The Civil Rights Project, September 2012, p. 7, <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national>; Roslyn Mickelson, “Twenty-first Century Social Science Research on School Diversity and Educational Outcomes,” 69 *Ohio State Law Journal* 1173-1228 (2008).

⁸ *Id.* at 8.

⁹ “Spaces of Inclusion? Teachers’ Perceptions of School Communities with Differing Student Racial & Socioeconomic Contexts,” by Genevieve Siegel-Hawley and Erica Frankenberg, The Civil Rights Project, April 23, 2012, p. 3.

¹⁰ “The Social Developmental Benefits of Intergroup Contact among Children and Adolescents,” by Melanie Killen, David S. Crystal and Martin Ruck,” *Lessons in Integration: Realizing the Promise of Racial Diversity in American Schools*, Erica Frankenberg and Gary Orfield, ed., University of Virginia Press, 2007, p. 57-58.

critical thinking. Bringing students of different racial and ethnic backgrounds together permits schools to address issues of status, cultural and achievement differences. Intercultural competencies, including the ability to work well with others of different races, may require practice and may be more difficult to learn in homogeneous schools.¹¹

Perhaps the most compelling evidence about the impact of racial segregation is its tendency to become self-perpetuating. In the education context, this suggests that only when students are exposed to sustained integrated experiences will they lead more integrated lives as adults.¹² True integration requires that students of all races have the opportunity to engage in meaningful, equal status relationships. Equity therefore demands that our students have access to quality, racially integrated education.¹³ Thus while we support the Department's desire to reduce concentrated poverty in our schools, success in creating truly integrated learning environments requires federal policy which promotes racial diversity, as well as socioeconomic diversity.

Changes to encourage meaningful local efforts

We appreciate the department's inclusion of the word "increasing" in the proposed priority, to signify that the goal of the priority is to encourage schools and districts that are not diverse to make efforts to improve. However, we think that this modifier can be strengthened further, in two ways – first, by adding the term "significantly," to distinguish the intent of the priority from "de minimus" efforts, and second, to include already diverse districts that are struggling to maintain diversity within the priority.

In order to ensure that the proposed priority is effective, and attracts meaningful proposals, we recommend the following changes to the text of the priority:

Proposed Priority 12—Promoting Diversity.

Projects that are designed to reduce segregation and prepare students for success in an increasingly diverse workforce and society by significantly increasing the diversity, including racial, ethnic, *and* socioeconomic diversity, of students enrolled in schools or postsecondary programs; or in the case of preschool, elementary, or secondary programs, significantly decreasing the racial, ethnic, ~~or~~ and socioeconomic isolation of students served by the project. This priority will also be available to already diverse districts that are struggling to maintain their racial, ethnic, and socioeconomic diversity.

We also recommend that the commentary accompanying the proposed priority underscore some of the points made in this letter, including:

- stressing the need to address racial and socioeconomic isolation together where feasible;

¹¹ "Designing Schools that Use Student Diversity," by Willis D. Hawley, *Lessons in Integration: Realizing the Promise of Racial Diversity in American Schools*, Erica Frankenberg and Gary Orfield, ed., University of Virginia Press, 2007, pp. 32-37.

¹² "Fifty Years after Brown: New Evidence of the Impact of School Racial Composition on Student Outcomes," by Michal Kurlaender and John Yun, p. 57, <http://files.eric.ed.gov/fulltext/EJ795134.pdf>.

¹³ Siegel-Hawley and Frankenburg at 3.

- discussing the education harms of racial and economic segregation and the short and long term benefits of integration;¹⁴
- describing in detail examples of effective programs to promote diversity and reduce racial and economic isolation – including taking diversity and segregation impacts in to account in school siting, school closing, school zone boundaries, and encouraging districts and states to explore cross district efforts where reduction of segregation is infeasible within a single school district,¹⁵
- for state competitions, emphasizing the role of state funding incentives for interdistrict cooperation, school construction guidelines and incentives to promote integration;
- stressing the need for documentation of threats to diversity by already diverse districts, and listing policy options available to harness the benefits of diversity and to maintain diversity in such districts; and
- emphasizing that “de minimus” efforts to reduce racial isolation or increase diversity will not qualify an applicant for the priority.

Thank you for the opportunity to present these comments, and we would be happy to meet to provide further input and dialogue on this important issue.

Yours truly,

Philip Tegeler
Michael Hilton
Poverty & Race Research Action Council
Washington, DC

Tanya Clay House
Brenda Shum
Lawyers Committee for Civil Rights Under Law
Washington, DC

Elizabeth Haddix
University of North Carolina Center for Civil Rights
Chapel Hill, NC

¹⁴ See, e.g., Mickelson, R.A., “Twenty-first Century Social Science Research on School Diversity and Educational Outcomes” 69 *Ohio State Law Journal* 1173-1228 (2008); Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, *Parents Involved in Community Schools v. Seattle Sch. Dist.*, 551 U.S. 701 (2007) (Nos. 05-908 & 05-915); Gary Orfield et al., “*E Pluribus...Separation: Deepening Double Segregation for More Students*,” available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/mlk-national/e-pluribus...separation-deepening-double-segregation-for-more-students>.

¹⁵ Other examples of successful integration techniques are discussed in the Department’s K-12 school diversity guidance, but should be repeated again in the final priority notice. See U.S. Dep’t of Justice & U.S. Dep’t of Educ., “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools” (Dec. 2011), available at <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>.

Leticia Smith-Evans
Janel A. George
NAACP Legal Defense and Educational Fund, Inc.
Washington, DC

Khin Mai Aung
Asian American Legal Defense and Education Fund
New York, NY

Todd Mann
Magnet Schools of America
Washington, DC

john a. powell
Haas Institute for a Fair and Inclusive Society
University of California, Berkeley
Berkeley, CA

Susan Eaton
Charles Hamilton Houston Institute for Race and Justice
Harvard Law School
Cambridge, MA

Myron Orfield
Institute on Metropolitan Opportunity
University of Minnesota
Minneapolis, MN

David Sciarra and Molly Hunter
Education Law Center
Newark, NJ

V. Elaine Gross
ERASE Racism
Syosset, NY

David Tipson
New York Appleseed
New York, NY

Jonathan Feldman
Empire Justice Center
Rochester, NY

Professor Roslyn Arlin Mickelson*
University of North Carolina at Charlotte
Charlotte, NC

Genevieve Siegel-Hawley*
Virginia Commonwealth University
Richmond, VA

Derek Black*
University of South Carolina School of Law
Columbia, SC

John C. Brittain*
University of the District of Columbia Law School
Washington, DC

cc: Catherine Lhamon, Assistant Secretary for Civil Rights
Nadya Dabby, Assistant Deputy Secretary for Innovation and Improvement

* University affiliation listed for identification purposes only