

October 31, 2014

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

Re: Addressing racial and economic isolation and school diversity in the ESEA Waiver Renewal Guidance

Dear Secretary Duncan,

We are writing to follow up on important recent letters on the Elementary and Secondary Education Act (ESEA), including the letter on waivers submitted on October 27, 2014, by the Leadership Conference on Civil and Human Rights, and the letter on accountability by the Opportunity to Learn Campaign and several civil rights groups on October 28, 2014. We are writing separately to urge the Department to afford significant weight and consideration to issues of racial and socio-economic isolation in granting, denying, and renewing ESEA waivers. This weight and consideration are significant for two major reasons.

First, the current version of the ESEA, the No Child Left Behind Act (NCLB), is structured around monitoring and closing racial, socio-economic and other achievement gaps. Decades of social science research, including massive studies commissioned by the Department itself (formerly the Department of Health, Education and Welfare) demonstrate that racial and socio-economic segregation and isolation is a primary contributor to the achievement gap. The socio-economic status of the students with whom a child attends school will have an impact on the child's educational achievement, advancement, and outcomes that is roughly as significant as the child's own socio-economic status. Thus, state and local policies pertaining to racial and socio-economic segregation and isolation have a direct and primary relation to a school system's ability to make progress toward NCLB's goals. For that very reason, NCLB's funding formulas specifically weigh the allocation of federal funds based on a school's concentration of poverty. These are the NCLB goals, not a different set, that this Administration remains obligated to enforce and further.

Second, the ESEA contains various equity provisions that intersect with and address school segregation. Most notable are its provisions that require substantial comparability in resources and teachers between Title I and non-Title I schools. School assignment policies are as important to resource equity as fiscal policy. It is the presence of racial and socio-economic segregation that creates the possibility and incentive for resource inequity. Various reports, including the data that the Department itself now collects, show that schools with high proportions of poor and minority students are those with the least access to high quality teachers

and adequate financial resources. The ESEA as written does not prohibit segregated or isolated schools, but it does prohibit unequal ones. The solution to the latter is to consider the former. Any educational system that attempts to address inequality by reducing racial and socio-economic isolation ought to receive encouragement and serious consideration from the Department. Moreover, the failure to do so sends the opposite and incorrect message.

For these reasons, we suggest that, at a minimum, the Department include the following provisions in the forthcoming guidance on ESEA waiver renewals:

- ¶ Include “progress toward reducing racial and economic isolation and segregation in local schools and districts” as a key consideration in ESEA waiver renewal;
- ¶ Require explicit reporting by the state on number and percentage of schools with over 80% of children eligible for free and reduced price lunch, the number and percentage of schools with greater than 80% white or “minority” enrollment, and evidence of progress over time in reducing racial isolation and poverty concentration in schools and districts in the state; and
- ¶ Require explicit reporting by the state on efforts to promote racial and economic diversity in the public schools (including state-supported interdistrict programs), and listing of any structural or state law barriers to expanding racial and economic diversity.

In sum, issues of racial and socio-economic isolation and segregation are inseparable from the ESEA’s historical mission and the specific provisions and requirements of NCLB. In evaluating applications for waivers and flexibility under the ESEA, we urge the Department to afford these issues the weight and consideration that social science and the statutory text and purpose of ESEA demand.

Sincerely,

Philip Tegeler  
Poverty & Race Research Action Council  
Washington, DC

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

Janel George  
NAACP Legal Defense and Educational Fund, Inc.  
Washington, DC

Laura Murphy  
ACLU, Washington Legislative Office  
Washington, DC

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

Ted Shaw  
UNC Center for Civil Rights  
Chapel Hill, NC

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

Sharon L. Davies  
Kirwan Institute for the Study of Race & Ethnicity  
The Ohio State University  
Columbus, Ohio

e. christi cunningham  
Education Rights Center  
Howard University School of Law  
Washington DC

Todd Mann  
Magnet Schools of America  
Washington, DC

V. Elaine Gross  
ERASE Racism  
Syosset, NY

Professor Kevin Welner  
University of Colorado\*  
Boulder, CO

Professor John C. Brittain  
David A. Clarke School of Law  
University of the District of Columbia\*  
Washington, DC

Professor Rachel D. Godsil  
Seton Hall University School of Law\*  
Newark, NJ

Genevieve Siegel-Hawley  
Virginia Commonwealth University\*  
Richmond, VA

\*University listed for identification purposes only