

June 8th, 2012

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

Submitted via internet comment at:

<http://www.ed.gov/comment/reply/12250#comment-form>

RE: Race to the Top District Draft Guidelines

Dear Secretary Duncan,

On behalf of the undersigned organizations and individuals supporting quality, racially and economically integrated education, we submit these comments in response to the draft executive summary of the draft requirements, priorities, selection criteria, and definitions for the Race to the Top District competition for the Department of Education's Race to the Top District Competition.¹ Our primary concern is that the proposed standards overlook the continuing importance of avoiding racial and economic segregation in public schools, and promoting voluntary school integration. We recognize that the notice and comment website is set up to solicit "informal" comments, but we believe that the omission of school diversity criteria from the new notice merits a more formal response.

The importance of promoting integration and avoiding racial isolation has been reaffirmed as a compelling government interest by five Justices of the U.S. Supreme Court in *Parents Involved in Community Schools v. Seattle School District #1*,² and by the Department itself in its December 2011 *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*,³ issued jointly with the U.S. Department of Justice. Yet this acknowledged federal interest in diversity and reduction of racial isolation is altogether absent from the draft standards for the Race to the Top District Competition. We recognize the challenges in creating and maintaining racial and economic diversity. However, we believe that it is inappropriate to use federal money to perpetuate racial and economic isolation in our public schools. At the very least, new federal funds should incentivize local efforts to promote diversity.

We made this same point in 2009 in response to the "Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria," for the Department of Education's original Race to the Top Fund,⁴ asking for diversity to be included as a priority. It did not appear in the final rule, nor has it appeared in any of the Race to the Top funding phases since then. However, the need for diversity in our schools has only grown more salient. In his 2010 speech at the Edmund Pettus Bridge in Selma, Alabama, Secretary Duncan discussed the importance of diversity in education both broadly and as it had benefited him, stating that "policies which stunt healthy diversity are bad for children and at odds with the

¹ <http://www.ed.gov/race-top/district-competition>

² 551 U.S. 701 (2007).

³ <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>.

⁴ 74 Fed. Reg. 37803 (July 29, 2009).

American Dream,” and committing that the Department would embark on a revitalized mission to increase the fairness and equity in education.⁵

The December 2011 *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools* further emphasizes this priority, stating that racially diverse schools provide “incalculable civic and educational benefits” to students, and that schools lacking in racial diversity “may fail to provide the full panoply of benefits that K-12 schools can offer.” The Guidance clarifies that schools and districts can lawfully promote school diversity, and gives examples of methods that can be used to achieve diversity.⁶ The Department, in this new competitive funding round, should be soliciting innovative educational approaches that achieve this goal. There is no reason for the Department to divorce the concept of educational reform from the compelling need for school diversity – in fact, the two can and should go hand in hand.

Furthermore, the Department’s *Supplemental Priorities for Discretionary Grant Programs*, published in December 2010, affirmatively permit the Department to provide a funding preference for “projects designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation,” in order to “promote cross-racial understanding, break down racial stereotypes, and prepare students for an increasingly diverse workforce and society.”⁷ Given this explicit approval of diversity as a source of preference for federal grant money, the Department should in its NOFA utilize a priority for student diversity to encourage voluntary integration consistent with the terms of the guidance. Such a priority would not be unprecedented; promoting student diversity and avoiding racial isolation are currently competitive preference priorities (albeit very weak) for federally funded charter school programs.⁸

Under the new Race to the Top funding round, LEAs and regional groups of LEAs are in an optimal position to effectively promote integration. They can institute school, district, and inter-district policies that foster a diverse student body, can monitor levels of diversity at the school-level and the classroom-level, and can act dynamically to address the unique issues that arise in balancing the importance of diversity with the difficulty of satisfactorily achieving it. As recognized in the December 2011 *Guidance*, LEAs are often in the best role to build a diverse student population in American schools from the bottom up.

Given the unique opportunity for the RTT-D Competition to target the compelling goal of diversity at the ground level, we urge that the final notice reflect the goal of supporting racial and economic integration in public schools. We suggest that the statement of purpose and each section of the NOFA reflect this commitment, and that a priority is placed on applications whose proposals similarly reflect this commitment. Otherwise, the importance of reducing racial and economic isolation of disadvantaged students of color as part of an overall school reform strategy is likely to be overlooked both by applicants and by US DOE proposal reviewers.

⁵ *Crossing the Next Bridge: Secretary Arne Duncan’s Remarks on the 45th Anniversary of “Bloody Sunday” at the Edmund Pettus Bridge, Selma, Alabama* (Mar. 8, 2010), <http://www2.ed.gov/news/speeches/2010/03/03082010.html>.

⁶ Department of Justice & Department of Education, *Guidance on the Voluntary Use of Race to Achieve Diversity and to Avoid Racial Isolation in Elementary and Secondary Schools* (Dec. 2, 2011), <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>.

⁷ 75 Fed. Reg. 78486 (Dec. 15, 2010).

⁸ See 76 Fed. Reg. 4322 (Jan. 25, 2011); 77 Fed. Reg. 22298 (Apr. 13, 2012); 77 Fed. Reg. 13304 (Mar. 6, 2012).

In accordance with these general comments, we recommend the following additions to the Notice:

¶ As an Absolute Priority, a Competitive Preference Priority, or a Proposed Invitational Priority, the Department should add “Innovative Approaches to Voluntary School Integration” and “Intra-/Inter-district School Transfers to Promote Integration.” This could include, for example, large LEAs encouraging intra-district transfer and magnet programs to promote integration, and small LEAs applying as interdistrict consortia (or demonstrating evidence of interdistrict cooperation) encouraging inter-district transfer programs to promote integration (building on the experience of successful programs in metro areas across the country, including Boston, St. Louis, Hartford, and Minneapolis).

¶ Core Educational Assurance Areas should include as a fifth area the goal of creating a racially and socioeconomically diverse learning environment for students.

¶ Under Eligibility Criteria, we suggest the addition of the following two criteria. These are already likely obvious to many DOE grantees. In practice, however, these principles are often disregarded:

6. The proposal by the LEA or consortium of LEAs will attempt to ameliorate, and not increase, school based poverty concentration and racial isolation in the schools affected by the proposal.

7. The LEA or consortium of LEAs may not use these federal funds to create new racially concentrated or high poverty schools.

¶ Program Requirements should include language supporting voluntary school integration efforts. The Department should require each applicant to include in its application an analysis of how its proposal will utilize both the federal funds and its local resources (including ground-level knowledge of ongoing circumstances) to increase or decrease racial and economic isolation and segregation of students in the jurisdiction applying for funds.

¶ Selection Criteria (B)(4): “A high quality plan...” should include a description of how the district has demonstrated evidence of a plan to successfully address the racial and economic isolation of students in the jurisdiction applying for funds. Priority should be given to proposals with demonstrated evidence that the district has the will and capacity to encourage voluntary racial and socioeconomic integration within the school and classroom. In particular, weight should be given to applicants who have demonstrated how their plan will capitalize on district-level resources and knowledge to increase student diversity through school transfer programs, diversity-conscious attendance zones, or other innovative methods.

¶ Selection Criteria (C)(4): “Performance Measurement” should include as a measure “The extent to which the applicant has established annual ambitious yet achievable annual targets for decreasing the racial and economic isolation of low-income students.” One measure of how well the applicant has so established might be the quality of its intra-/inter-district school transfer program plan.

¶ Selection Criteria (D): “Transition Plan and Continuous Improvement” should include “The extent to which the applicant has a plan for increasing the racial and socioeconomic diversity within schools and classrooms, and for decreasing the racial and socioeconomic isolation of

students in the schools, grades, or subgroups receiving RTT-D funds.” In particular, plans should provide for how the LEAs will implement their school transfer programs to balance the efficacy of the diversity goal with the potential for balkanization.

¶ Require that each LEA implement data collection and a plan to reduce conditions of racial isolation for low-income students. Data collection should include longitudinal data pertaining to individual student performance for ethnic majority and minority students, transfer and neighborhood students, and students of high-, middle-, and low-income families.

Thank you for the opportunity to present these comments. Please let us know if you need additional information; we would be happy to consult with the Department further on the issues addressed in this letter.

Sincerely,

Philip Tegeler
Poverty & Race Research Action Council
Washington, DC

Damon T. Hewitt
Leticia Smith-Evans
Eric Rafael González
NAACP Legal Defense and Educational Fund, Inc.
New York, NY

Tanya Clay House
Lawyers' Committee for Civil Rights
Washington, DC

Laura W. Murphy
Deborah J. Vagins
Washington Legislative Office
American Civil Liberties Union
Washington, DC

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

Gary Orfield & Patricia Gandara
Civil Rights Project/Proyecto Derechos Civiles
University of California, Los Angeles
Los Angeles, CA

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

john powell
Haas Diversity Research Center
Berkeley School of Law
Berkeley, CA

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

Kevin Welner
University of Colorado
Boulder, CO
(University listed for identification purposes only)

Derek Black
Howard University School of Law
Washington, DC
(University listed for identification purposes only)

cc: Russlynn Ali, Assistant Secretary for Civil Rights

Carmel Martin, Assistant Secretary for Planning, Evaluation and Policy
Development

Deborah Delisle, Assistant Secretary for Elementary and Secondary Education