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October 27, 2014

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

Re: Elementary and Secondary Education Act (ESEA) Waivers

Dear Secretary Duncan,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations charged with the promotion and protection of the rights of all persons in the United States, we are writing to you regarding the renewal of state waivers under the Elementary and Secondary Education Act (ESEA). The Leadership Conference urges you to maintain accountability for subgroups and to hold states to rigorous standards for waivers that include evidence that they will narrow achievement gaps and improve graduation rates of students of color, low-income students, students with disabilities, and English learners.

The Leadership Conference believes that access to a high quality education is a fundamental civil right for all children. Yet, sixty years after *Brown v. Board of Education*, and nearly fifty years since passage of ESEA, too many of our nation's students still do not have access to equal educational opportunities. To the contrary, even though the past two ESEA reauthorizations prodded states and local educational agencies (LEAs) to close gaps in achievement and high school completion, far too many recipients of federal education funds continue to drag their feet on making the improvements and investments needed to realize the promise of *Brown* to all our children.

Instead, our public education system persistently shortchanges the very students who need more support and intervention—including qualified and effective teachers, a curriculum and learning environment that ensures college and career readiness, instructional accommodations, extra time, and other supports – by systematically providing them with less.

As a result, far too few low-income students and students of color (particularly those with disabilities or limited English proficiency) graduate from high school prepared for college or a career. For example:

- Although the national high school graduation rate for all students has increased, approximately 30 percent of African American and Hispanic students do not graduate on time, if at all.ⁱ
- Among those students who do graduate from high school and take the ACT, only 11 percent of African American students, 23 percent of Hispanic students, and 24 percent of Asian/Pacific Islander students meet three or more college-ready benchmarks for the four subject areas tested.ⁱⁱ
- Of those students who do graduate from high school and go onto college, approximately 30 percent of African American and Hispanic students and 23 percent of Asian/Pacific Islander students will need at least one remedial course.ⁱⁱⁱ This costs students both time and money on subject matter they should have mastered in high school. The fact that so many students of color are not prepared for college or a career is a direct consequence of inadequate education at the high school level.

With respect to ESEA, it is apparent that many states and LEAs are unable or unwilling to come close to meeting the achievement goals of the ESEA—i.e. that all students meet grade level standards within twelve years—without strong and sustained federal oversight and monitoring. Indeed, without past federal involvement, educational outcomes could have been far worse. The current records and past archives of your Department have countless examples of state requests for permission from the Secretary to shirk their duties under both federal law and their own state constitutions. Thankfully, both you and your predecessor rightly rejected many of the more dangerous proposals, including threats by school districts to disregard statewide assessment requirements.

We recognize that the Department has tried to strike a balance between the need to preserve the primary purpose of ESEA—to improve outcomes for students in high-poverty schools—and the cacophony of demands from state and local actors to be excused from requirements they do not like. For example, the Department on several occasions, and most recently in late August, has been clear that waiver states must have “a clear and rigorous process for providing interventions and supports to low-achieving students” in any schools where one or more student subgroups have not meet annual measurable objectives (AMOs) or graduation rate targets.^{iv} We applaud and urge you to maintain and enforce this requirement.

We are concerned, however, that despite the Department’s past guidance and states’ promises that waivers would lead to better results for disadvantaged children, there has been no significant evidence to date that this has been the case. For example, the Department and some states claimed that more students would be included in accountability systems. Other states claimed that being relieved of Title I’s school improvement requirements would enable them to employ more effective strategies to improve student outcomes. Yet recent studies tell us it is far more likely that fewer struggling students are actually receiving the support and interventions they need and deserve. For example:

- An analysis of subgroup accountability conducted by the Campaign for High School Equity, a coalition of civil rights organizations, identified 13 states (Arkansas, Connecticut, Florida, Massachusetts, Minnesota, Missouri, Nevada, New Jersey, New Mexico, North Carolina, Ohio, South Carolina and Washington), where more 100 fewer schools were identified for interventions under the waiver than under current law.^v
- An analysis conducted by the New America Foundation found that, across 16 states with waivers, more than 4,400 schools identified for intervention under current law were not identified as “priority” or “focus” under waivers.^{vi}
- An analysis by the Alliance for Excellent Education found that Puerto Rico and fifteen states that received waivers do not require interventions based on the graduation rates of student subgroups and/or include subgroup graduation rates for such a small portion of their overall accountability index that they are unlikely to trigger interventions. Alaska, Arizona, Kentucky, New Hampshire, New Jersey, New Mexico, North Carolina, Pennsylvania, Puerto Rico, and Rhode Island lack any subgroup graduation rate accountability. Hawaii, Michigan, Minnesota, Nevada, Oklahoma, and South Carolina have such weak subgroup graduation rate accountability that a low subgroup graduation rate fails to trigger interventions.^{vii}

In order to safeguard the rights and interests of the intended beneficiaries of Title I and to ensure the most effective use of Title I funds, we recommend approval of a state’s waiver request or extension only if the state meets the following conditions:

1. The waiver plan has been reviewed and recommended for approval by a peer review process that is transparent and inclusive of all stakeholders, and particularly of individuals who represent underserved students and families, including English learners and students with disabilities.
2. The state has and will maintain a statewide accountability system that includes:
 - a. Annual numerical targets for all students in all subgroups and all schools and school districts for academic achievement, high school completion and college readiness.
 - b. Effective interventions and supports when one or more subgroups in a school or school district miss these targets.^{viii}
 - c. Statewide annual assessments that are aligned with college and career-ready standards and meet the standards set in Sec. 1111(b)(3) of the ESEA.
3. The state and its local school district agents have effective systems in place to identify students who are at risk of academic failure or of dropping out and to provide such students with timely assistance and support so that they are prepared to meet college and career-ready standards.

4. The state and its local school district agents have a realistic plan for turning around low-performing schools and providing opportunities for students to attend higher performing schools.

The continued commitment of the federal government to equal educational opportunity is more important than ever as states and LEAs continue to recover from historic budget shortfalls. This is not the time to walk away from a robust accountability system. Our families, our communities, and our nation can ill-afford to limit accountability to a small percentage of our schools while ignoring the others, thereby retreating from the long-standing federal role in ensuring that minority students, low-income students, English learners, and students with disabilities have access to a robust and well-rounded curriculum; well supported and prepared educators; safe environments that are conducive to learning; and supports that address a range of student needs so that they are better prepared to succeed in the classroom.

Thank you for your consideration. For additional information, please contact Senior Counsel Dianne Piche at piche@civilrights.org.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

ⁱ M. Stetser and R. Stillwell, *Public High School Four-Year On-Time Graduation Rates and Event Dropout Rates: School Years 2010-11 and 2011-12. First Look (NCES 2014-391)*, (U.S. Department of Education, Washington, DC: National Center for Education Statistics), <http://nces.ed.gov/pubs2014/2014391.pdf> (accessed October 2, 2014).

ⁱⁱ The four subject areas tested are English, reading, mathematics, and science. ACT, *The Condition of College and Career Readiness 2014* (Washington, DC: Author, 2014), <http://www.act.org/research/policymakers/cccr14/pdf/CCCR14-NationalReadinessRpt.pdf> (accessed October 2, 2014).

ⁱⁱⁱ D. Sparks and N. Malkus, *Statistics in Brief: First-Year Undergraduate Remedial Coursetaking: 1999–2000, 2003–04, 2007–08* (NCES 2013-013) (Washington, DC: US Department of Education, National Center for Education Statistics, 2013), <http://nces.ed.gov/pubs2013/2013013.pdf> (accessed October 2, 2014).

^{iv} Paragraph 10 of the Department's August 29, 2014 waiver guidance states:

In addition, in a guidance letter issued to SEAs on November 26, 2012, the Department clarified that each SEA approved for ESEA flexibility must incorporate, to a significant degree, the four-year adjusted cohort graduation rate in its State-developed system of differentiated recognition, accountability, and support, including using graduation rate targets for all students and for all subgroups to drive incentives, interventions, and supports in all other Title I schools. As a result, each SEA seeking a renewal of ESEA flexibility must demonstrate that its high-quality plan for ensuring continuous improvement in other Title I schools includes a clear and rigorous process for providing interventions and supports for low-achieving students in those schools when one or more subgroups miss AMOs [Annual Measurable Objectives] or graduation rate targets over a number of years.”

In guidance issued in March 5, 2013 (question C-48b), the Department stated unequivocally that SEAs and LEAs must ensure that no Title I school is permitted to miss graduation targets for a number of years for one or more subgroups without identification for and implementation of interventions or specific strategies designed to improve graduation rates of those subgroups.

^v Campaign for High School Equity, *Maintaining a Focus on Subgroups in an Era of Elementary and Secondary Education Act Waivers*, (Washington, DC: Author, 2013), page 37-39, http://www.highschoolequity.org/images/WaiversReport_R8.pdf.

^{vi} A. Hyslop, *It's All Relative: How NCLB Waivers Did – And Did Not – Transform School Accountability*, (Washington, DC: New America Foundation, 2013), page 4, <http://newamerica.net/sites/newamerica.net/files/policydocs/ItsAllRelative-12-17-2013.pdf>.

^{vii} Information on AZ, KY, MI, MN, NV, NJ, NM, OK, NC, RI, and SC available in P. Lovell, J. Cardichon, and F. Jones, *The Effect of ESEA Waiver Plans on High School Graduation Rate Accountability* (Washington, DC: Alliance for Excellent Education, 2013), pp. 11–12. Information on AK, HI, NH, PA, and PR will be available in a forthcoming paper from the Alliance for Excellent Education on subgroup graduation rate accountability.