

Congress of the United States
House of Representatives
Washington, DC 20515

February 12, 2014

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

Dear Secretary Duncan:

We are writing regarding the extension of waivers under ESEA flexibility. As the Department of Education (ED) reviews applications for extension, you must ensure that states focus squarely on the interests and needs of students. The federal role in education is historically a civil rights role, serving to protect and promote equity. However, we are concerned that some state policies or practices, approved under the initial round of waivers, have not lived up to this mission. Moreover, some states may seek changes during the extension process that could further weaken equity provisions. Therefore, we call on you to hold a high bar during the renewal process and to require states to make mid-course corrections, particularly in the areas described below.

Student Subgroups and Improving Low Performance

We are concerned about the use of “super subgroups,” where states combine student subgroups for accountability purposes. Subgroup accountability is essential to ensure we do not mask the performance of students through averages, and to ensure schools report and act on achievement gaps. This concern is shared by civil rights, business, and student advocacy organizations. ESEA flexibility does require schools to take action when any subgroup fails to make progress. But many states did not describe significant or detailed steps they would take to ensure that schools take necessary action. These policies mean that students may slip through the cracks of averages and ambiguities. During the extension process, we expect you to insist states close any loopholes and invest in significant improvement efforts to ensure struggling students get the support they need and deserve.

High School Graduation Rates

We are concerned, as we have previously discussed, that some states have weakened graduation rate policies, including minimal or no accountability for student subgroups. This is alarming given that the latest results from ED’s long-term trend research show graduation rates have improved for all student groups over the past five years. Graduation rate accountability is essential to ensure students are not pushed out of school to inflate test scores, and subgroup

accountability is essential to ensure all students are served well by the system. Unfortunately, despite research showing stronger long-term outcomes for students earning a diploma, some states have diluted their focus on a regular diploma. Some states have treated four-, five-, and even six-year graduation rates interchangeably. And some have put little weight on graduation rates in their accountability indices. We believe these policies significantly undermine the role of graduation rates in accountability and violate the spirit, if not the letter, of the 2008 regulation on graduation rates (34 C.F.R. § 200.19(b)). We expect that these concerns be addressed and problems fixed during the extension process.

Students with Disabilities

We are concerned that some policies, including graduation rate and super subgroup policies approved under ESEA flexibility, are negatively impacting students with disabilities. Of additional concern, is the ongoing development and implementation of new regular and alternate assessments for this population. Students with disabilities have made marked gains in recent decades, due largely to federal focus on not only ensuring that all students be taught to and assessed on high academic standards, but also that states and school districts be held accountable for reporting and improving outcomes for all students. Through the extension process, we expect you to reaffirm ED's commitment to ensuring that ESEA flexibility in no way undermines the federal commitment to equitably educate students with disabilities.

English Learners

We are concerned about the achievement of English learner (EL) students and how it is addressed under state waiver policies. The need to adequately serve ELs is more pressing as the number of ELs is dramatically increasing, and their achievement continues to be lower in comparison to their English-proficient peers. Some states have not provided detailed plans for helping EL students and their teachers transition to new college- and career-ready standards. Further, as noted above, EL achievement may be neglected through the use of super subgroups, lack of significant action when EL subgroups fail to make progress, and minimal or non-existent graduation rate accountability for ELs. Through the extension process, we expect you to ensure all states and districts focus more attention on effectively serving EL students and effectively preparing educators to serve the distinct needs of this population.

Teacher Equity

We are concerned about student access to great teachers. Research shows teaching is the greatest school factor contributing to student learning. All students deserve to have an excellent teacher, no matter what zip code they live in or school they attend. Thus, we appreciate a key provision you did not waive in ESEA flexibility—requiring states to ensure poor and minority students

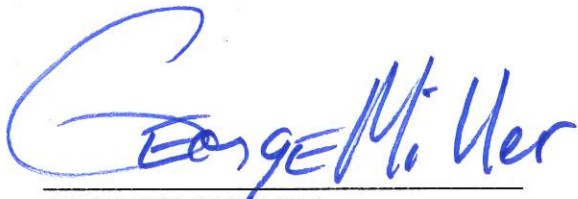
have fair access to good teachers. This is an important equity policy that has rarely, if ever, been enforced. We do recognize that measures of effective teaching are still being developed, and states are making great strides to implement new teacher and principal evaluation systems. But states must not ignore the issue of teacher equity altogether. We commend those states that have used their waiver to address this issue, and we expect ED to address the teacher equity issue in some way through the extension process.

Data Analysis

We recognize that no one solution exists to any of these problems. Both ED and states are learning as the waiver process unfolds. That requires a close and watchful eye from you. You now have student and school data that can help you determine what is working (or not) under state waivers. You should examine this data closely and share it publicly—early and often—so that researchers may assess the impact of new accountability systems. More importantly, such data analysis should be used to strengthen and improve state waiver plans, including making changes to original plans where necessary^o. While the ESEA flexibility process rightfully offers latitude to states, districts, and schools; it must also ensure that flexibility serves the needs of students. Where it does not, changes must be made.

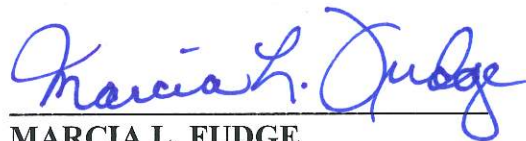
Since 1965, the federal role in education has been to uphold the value of equal opportunity. Under No Child Left Behind we made some positive gains, including no longer allowing states to hide behind averages, mask the performance of certain students, or set low expectations in order to improve appearances. ESEA flexibility should not walk back from these gains. While the extension process is an opportunity to allow for changes and innovation, we must also protect the core principle of equity. Students, and our nation, deserve nothing less.

Sincerely,



GEORGE MILLER

Senior Democratic Member, Committee on
Education & the Workforce



MARCIA L. FUDGE

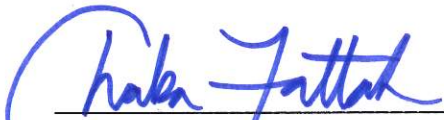
Chair, Congressional Black Caucus



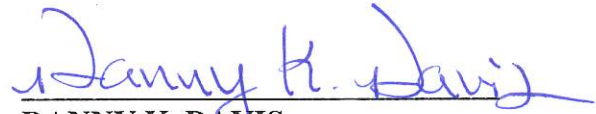
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Chair, Congressional Asian Pacific
American Caucus



RUBÉN HINOJOSA
Chair, Congressional Hispanic Caucus



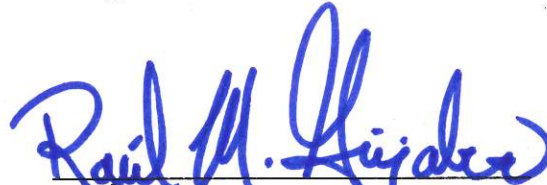
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