



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of Elementary, Middle, Secondary and Continuing Education

Ira Schwartz, Interim Director
Office of School Improvement and Community Services (NYC)
55 Hanson Place, Room 400
Brooklyn, New York 11217
Tel. (718) 722-2796 / Fax: (718) 722-4559

January 29, 2010

Dr. Joseph C. Conaty
Assistant Secretary
Elementary and Secondary Education
United States Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Dr. Conaty:

I am writing on behalf of all local educational agencies (LEAs) in New York State (NYS) that receive funds under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA) to request a waiver for fiscal year (FY) 2009 of the requirement in section 1116(b)(10) of the ESEA and in 34 C.F.R. § 200.48(a)(2) to determine an LEA's "20 percent obligation" for public school choice-related transportation and supplemental educational services (SES) based on the LEA's total FY 2009 Title I, Part A allocation (*i.e.*, including both its regular Title I, Part A allocation and its Title I, Part A allocation under the American Recovery and Reinvestment Act of 2009 (ARRA)). Specifically, I am seeking this waiver to allow LEAs within New York State to exclude some or all of the Title I, Part A funds they receive under the ARRA in calculating their "20 percent obligation" for choice-related transportation and SES.

The New York State Education Department (NYSED) believes that the requested waiver will increase the quality of instruction for students and improve the academic achievement of students by providing each LEA within New York State with flexibility to spend ARRA funds that the LEA would otherwise be obligated to spend on SES or choice-related transportation on other allowable Title I, Part A activities that the LEA believes best address the particular needs of its students.

The NYSED has set the following annual measurable objectives (AMOs) in reading and mathematics for the 2010–2011 and 2011–2012 school years which will be accessible at the following website:

<http://www.emsc.nysed.gov/irts/accountability/amos/>

The NYSED will determine adequate yearly progress (AYP) based on assessments administered in the 2009–2010 school year in accordance with the requirements of section 1111(b)(2) of the ESEA and in accordance with the USED approved Differentiated Accountability plan. New York believes that, ultimately, the flexibility provided by the requested waiver with respect to how ARRA funds may be spent for allowable Title I, Part A activities may help more schools and LEAs within the State make AYP by enabling them to direct funds appropriately to help their students meet the AMOs set forth above.

The NYSED hereby assures that, if it is granted the requested waiver, we will implement the waiver only with respect to an LEA that provides assurances that:

- It will comply with its statutory and regulatory obligations and New York State’s USED approved Differentiated Accountability Plan for the provision of SES and public school choice with respect to its regular Title I, Part A allocation;
- It will use the funds freed up by the waiver to address needs identified based on data, such as Statewide or formative assessment results;
- It will comply with all of its other Title I, Part A statutory and regulatory obligations, and New York State’s USED approved Differentiated Accountability Plan, including the obligations in sections 1114 and 1115 to have schoolwide and targeted assistance programs that “use effective methods and instructional strategies that are based on scientifically based research;” and

- It will submit an application for Title I funds, or, if necessary, an amendment to its existing LEA application, that describes the data on which it relied to identify needs that will be addressed using the funds freed up by the waiver and the evidence that supports the strategies it intends to use to address those needs.

The NYSED further assures that it will not approve an LEA’s application or amendment to an LEA’s application unless or until it determines that, based on the LEA’s description, the LEA has satisfied its obligation to identify needs based on data and address those needs using evidence-based strategies. NYSED will not approve an LEA to implement the waiver unless or until the LEA has an approved application (or amended application) that includes the required description of the data on which the LEA relied to identify needs and the evidence that supports the strategies to address those needs. If necessary to carry out these assurances, NYSED will require an LEA seeking to implement the waiver to amend its application in accordance with NYSED’s usual process for changing an LEA’s application.

Prior to submitting this waiver request, New York State provided all LEAs in the State with notice and a reasonable opportunity to comment on this request. New York State provided such notice by consulting with our Committee of Practitioner’s, providing notification to District Superintendents, School Superintendents, Charter School Administrators, and Title I Coordinators. An e-copy of the notification is available at:

<http://www.emsc.nysed.gov/nyc/TitleI/ARRA/FieldMemoARRAandTitleIPartAWaivers.html>.

The notification was also posted for comment on November 30, 2009. Comments were to be submitted to NYSED by December 11, 2009. There was one response received on December 10th.

Please feel free to contact me by phone or email at (718) 722-2796 or ischwartz@mail.nysed.gov if you have any questions regarding this request. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ira Schwartz".

Ira Schwartz

D/sa

Attachment

c: David Steiner
John King
Roberto Reyes
Sandra Norfleet