



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234
Office of P-12

Ira Schwartz, Assistant Commissioner
Office of Accountability
55 Hanson Place, Room 400
Brooklyn, New York 11217
Tel: (718) 722-2796 / Fax: (718) 722-4559

May 29, 2013

Dr. Pamela Brown, Superintendent
Buffalo City School District
712 City Hall
Buffalo, NY 14202-3375

Dear Dr. Brown:

I am writing to you in response to a complaint that we received from Mr. Samuel Radford III, President, Buffalo School District Parent Coordinating Council, regarding the Buffalo Public Schools' (BPS) failure to comply with the provisions of Section 1116 of the federal Elementary and Secondary Education Act (ESEA) pertaining to Public School Choice (PSC) and Commissioner's Regulations Section 120.3 which specify the requirements for the provision of PSC in Priority and Focus Schools. Based on the information that we have gathered through our review of your annual Consolidated Application, and our meeting of February 26th with you, members of your staff and Mr. Radford III, we find that BPS is not in compliance with the requirements for implementation of PSC.

During the 2012-2013 school year, BPS failed to provide requested PSC to 95 eligible students. Under New York State's approved ESEA Flexibility Waiver, USDE has stated that ESEA §1116(b), which contains the federal PSC provisions, is waived and that only §1116(b)(13) "which requires [an] LEA to permit a child who has transferred to remain in the choice school throughout the highest grade in the school, is not waived." However, New York State continues to require PSC under §120.3 of the Commissioner's regulations, which does not include lack of capacity as an acceptable reason to deny students the option to transfer under the PSC program. Consequently, by failing to offer PSC to 95 students during the 2012-13 school year, the Buffalo City School district is not in compliance with the requirements of §120.3 of the Commissioner's regulations which state that "[e]ach Title I LEA that has a Title I school in a Priority or Focus designation **shall provide all students enrolled in the school** the option to transfer..." (emphasis added) (8 NYCRR §120.3[a]).

In order to come into compliance with Commissioner's regulations, BPS must develop a Corrective Action Plan (CAP) and submit it to SED for approval by no later than June 30, 2013. To develop the CAP, the district must use the enclosed templates, which are designed to identify each of the buildings within BPS and their capacity to facilitate PSC. The CAP must also identify any challenges the district faces in providing PSC to all requesting students, including

students with disabilities and English language learners, and the strategies that the district will use to address these challenges. The CAP must contain specific goals and timelines for coming into full compliance with Commissioner's regulations, the actions that will be taken to accomplish the goals, and the way in which BPS will measure achievement of the CAP goals and report progress to SED. BPS must describe in its Corrective Action Plan (CAP) how it will offer PSC to all eligible students as required by section 120.3 of the Commissioner's regulations. The CAP must describe: (1) current entrance requirements based on academic or other skills for all BPS schools in Good Standing; (2) the impact of such requirements on BPS' compliance with the regulatory requirements for offering PSC; and (3) how BPS will modify or revise such entrance requirements to ensure compliance with section 120.3, where necessary.

We will arrange a phone call in the next few days to discuss the CAP requirements so that we can facilitate your submission of an approvable plan to SED.

We look forward to assisting you to develop a plan by which BPS can offer PSC to all eligible students as required.

Sincerely,

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

Ira Schwartz

Enclosures

cc: Judy Elliott
John B. King, Jr.
Ken Slentz
Roberto Reyes