Office of the General Counsel

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July 5, 2016

Submitted Electronically

Ms. Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW, Room 3C106
Washington, DC 20202-2800

Re: Implementing Programs Under the Elementary and Secondary Education Act – Docket ID ED-2016-OESE-0032

Dear Ms. Miller:

On behalf of the United States Conference of Catholic Bishops (USCCB), we respectfully submit the following comments on proposed rules implementing programs under the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act. 81 Fed. Red. 34539 (May 31, 2016).

The Catholic Church is the largest non-government educator of school-age children in the United States, with nearly 2 million students in more than 6,500 schools. Our schools educate children from families of all sizes, faith backgrounds, income levels, and circumstances. Since the 1965 introduction of the Elementary and Secondary Education Act (ESEA), federal law has recognized that students in non-government schools should equitably receive services to which they are entitled and would otherwise receive if they attended the district school.

The equitable provisions of ESEA, as amended by the Every Student Succeeds Act (ESSA), have a significant impact on Catholic school students and teachers. According to the most recent data, more than 118,000 students at 3,546 Catholic schools benefit from Title I services.[1]

Currently, students and teachers at Catholic and other non-government schools are not represented in the state plan requirements under the proposed

[1] National Catholic Educational Association, United States Catholic Elementary and Secondary Schools 2014-2015: The Annual Statistical Report on Schools, Enrollment, and Staffing.

rulemaking. By not requiring states to offer assurance of consultation with officials from these schools, the Department is ignoring the plain language of ESEA, as amended by ESSA. These comments reflect our collaboration with the Council for American Private Education (CAPE) and the National Catholic Educational Association (NCEA).

I. Assurances

At 81 Fed. Reg. 34615, §299.13(c), the paragraph should be amended to read as follows (additions underlined):

"Assurances. An SEA that submits either a consolidated State plan or an individual program State plan must submit to the Secretary the assurances included in section 8304 of the Act, <u>including assurances of compliance with applicable provisions regarding participation by private school children and teachers</u>. An SEA also must include…"

Section 8302(b)(3) of ESEA, 20 U.S.C. § 7842(b)(3), explicitly states, "assurances of compliance with applicable provisions regarding participation by private school children and teachers" as among materials "that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application."

Through that explicit and singular mention, such assurances are given a highlighted status in the statute. Nevertheless, the sections of the proposed regulations that relate to consolidated state plans (Sections 299.13-19) make no mention whatsoever of assurances of compliance with provisions relating to the participation of private school children and teachers. The above amendment would correct that defect and make it explicit in the regulations, as it is in the statute, that consolidated applications must include the assurance in question.

II. Stakeholders

At 81 Fed. Reg. 34616, §299.15(a), the Department should add the following to the list of stakeholders that must be consulted in the development of the consolidated plan: "<u>Representatives of private school children</u>."

Section 8302(b)(1) of ESEA, 20 U.S.C. § 7842(b)(1), requires the U.S. Secretary of Education to collaborate, as appropriate, with specified agencies, including "private schools," in establishing criteria and procedures relating to the consolidated state plan and application. (We note that 20 U.S.C. § 7842 is cited in the proposed rules as one of the statutory sources for §299.15.) Given this expected

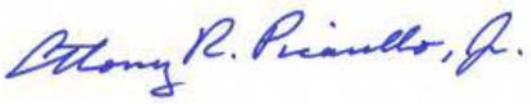
collaboration at the federal level (which, to the best of our knowledge, has not taken place) and given the fact that the statute in paragraph (3) explicitly references "assurances of compliance with applicable provisions regarding participation by private school children and teachers" as among materials "that are absolutely necessary for the consideration of the consolidated State plan or consolidated State application," it makes eminent sense that representatives of private school children be included on the list of stakeholders that must be consulted in the development of the consolidated plan.

The fact that private school students have been historically underserved in ESEA programs despite explicit requirements in the statute for their equitable participation only bolsters the case for requiring states to consult private school representatives when developing the consolidated plan and application.

Conclusion

Catholic school students and teachers deserve representation as states craft their plans for compliance with the ESEA, as amended by ESSA. Currently, the Department's proposal does not require the input of non-government officials, despite the clear language in statute requiring their inclusion. We urge the Department to alter its regulatory language as suggested in any final rule and to work diligently with the states to ensure equitable services for all students.

Respectfully submitted,



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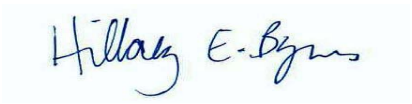
Associate General Secretary & General Counsel



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