



Great Public Schools
for Every Student

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

RE: Support for Collectively Bargained Evaluation Reforms

Dear Secretary Duncan:

I write to request that the U.S. Department of Education (“Department”) reaffirm the ability of school districts to bargain evaluation reforms with the union representing teachers in the district without interference from the federal government. As you know, several of the signature initiatives of the Department (including Race to the Top (RTTT), School Improvement Grants (SIG), and the Department’s NCLB flexibility criteria) require states and local school districts to adopt evaluation reforms that incorporate student growth as a significant factor in the overall evaluation system. The Department also has been steadfast, as has the Obama Administration, in supporting and promoting collaborative efforts between labor and management and the central role of collective bargaining. NEA deeply appreciates that support.

I write to ask that the Department reaffirm that position by issuing written clarification that the choice of how best to incorporate student growth as a significant factor into an overall evaluation system is one to be made at the local level through the ordinary legal processes, including bargaining where applicable. Such written clarification should also make clear that, if and when such choices are made at the local level, the Department will not interfere with them.

My request is prompted by instances in which local NEA affiliates have seen their bargaining of new evaluation systems disrupted by pressure from state officials informing local school districts that certain bargains cannot be struck without violating the terms of various federal programs including SIG and RTTT. For example, most recently in Jefferson County, Kentucky, a tentative agreement was reached that included a comprehensive overhaul of the comprehensive teacher evaluation system, under which student growth data will be used as a significant factor in determining a teacher’s overall professional growth plan as well as the teacher’s specific

professional development selections. That tentative agreement is now threatened because the Kentucky Department of Education has taken the position based, it reports, on communications with the U.S. Department of Education, that the SIG program requires schools implementing the transformation model to use student growth data not just as a significant factor in the overall evaluation system, but as a significant factor in summative evaluations used to determine whether a teacher's employment continues.

Nothing in the SIG regulations compels that result. The SIG regulations require schools implementing the transformation model to "[u]se rigorous, transparent, and equitable evaluation systems for teachers" that include both strong formative and summative components. The formative piece of the "evaluation system" must provide "staff ongoing, high-quality, job-embedded professional development" and the summative piece must identify and reward teachers based on their performance and "remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so."¹ While the overall evaluation system must "[t]ake into account data on student growth ... as a significant factor," along with "other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high school graduations rates," nothing in the regulations specifies that such student growth data must be used to drive either the formative or summative components of the overall evaluation system.² Rather the choice as to how to "take into account data on student growth ... as a significant factor" in the evaluation system is left to local decisionmaking, as it should be.

Leaving that choice to local decisionmaking reflects the sound policy judgment that evaluation reforms work best where the individuals impacted by the reforms are involved in their development, and have some latitude within the broad parameters set by the SIG regulations, to craft a workable new evaluation system. That latitude is particularly important for the Department to respect as local school districts struggle through the technical challenges of developing, for example, workable value-added growth models that provide valid and reliable measures of teaching quality as opposed to reflecting primarily a host of non-teacher factors.³ In many instances, the best use of such models right now may be as an early warning system, to trigger additional observation and professional development for a teacher, rather than for high stakes employment decisions.

Of equal moment, to require schools implementing the transformation model to adopt a particular way of "[t]ak[ing] into account data on student growth ... as a significant factor" in an evaluation system—without regard for state collective bargaining laws or the terms of CBAs—flies in the face of ESEA Section 1116(d), 20 U.S.C. § 6316(d), which applies to all of the ESEA's school improvement provisions and, perforce, to the SIG program.

¹ *Final Requirements for School Improvement Grants Authorized Under Section 1003(g) of Title I of the ESEA*, 75 Fed. Reg. 66,363, 66, 366 (Oct. 28, 2010).

² *Id.*

³ See, e.g., American Education Research Association & National Academy of Education, *Getting Teacher Evaluation Right: A Brief for Policymakers* (September 2011).

ESEA Section 1116(d) states in the plainest of terms that:

Nothing in this section shall be construed to alter or otherwise affect the rights, remedies, and procedures afforded to school or school district employees under Federal, State, or local laws (including applicable regulations or court orders) or under the terms of collective bargaining agreements, memoranda of understanding, or other agreements between such employers and their employees.

As the Department has recognized, the Savings Clause means that school districts in implementing the SIG program must “compl[y] with all governing laws, regulations, and agreements, which includes providing the rights, remedies, and procedures afforded to LEA employees under existing collective bargaining agreements.”⁴ In more than half of the states in which bargaining over teacher evaluation systems is either mandated or permitted, the Savings Clause means that the federal government and the Department will not interfere with the bargaining process over how best to develop an evaluation system that complies with the broad framework established by the SIG regulations. If the Department were to depart from that understanding and require all schools implementing the transformation model to use student growth data in summative evaluations—without regard for state laws and the terms of collective bargaining agreements—it would most certainly be acting to “alter or otherwise effect” the rights of teachers to engage in collective bargaining over the subject of evaluations and therefore would be violating the Savings Clause.

In closing, I look forward to the Department reaffirming its longstanding commitment to the bargaining process by issuing written clarification that the choice regarding how best to “take into account data on student growth” in an overall evaluation system is one to be made at the local level through bargaining where applicable.

Sincerely,



Dennis Van Roekel
President

⁴United States Department of Education Office of Elementary and Secondary Education, *Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(G) of The Elementary and Secondary Education Act of 1965* (November 1, 2010) (“SIG Guidance”), p. 45. See also 75 Fed. Reg. at 65,625-26, 66,366 (specifying that the Department does not “believe we can or should prescribe the specific terms of [collective bargaining] agreements.”).