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Governor




Terry Holliday, Ph.D.
Commissioner of Education

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
DEPARTMENT OF EDUCATION

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MEMORANDUM

TO: Teacher Effectiveness Steering Committee Members

FROM: Terry Holliday, Commissioner of Education 

DATE: January 10, 2012

RE: Feedback on the NCLB Waiver Request SEA Guidelines

At the November meeting, I met with the group to review requirements from the ESEA Waiver Flexibility Application and the Race to the Top (RTTT) Phase 3 grant with regard to development of teacher/principal evaluation and support systems. Once again, I am reviewing the requirements of the ESEA Waiver Flexibility application and also providing highlights of the feedback from the United States Department of Education (USDOE) peer review process.

Highlights from ESEA Flexibility document from USDOE 9/23/2011 – Principle 3 Supporting Effective Instruction and Leadership – page 5

The state education agency (SEA) and each local education agency (LEA) must commit to develop, adopt, pilot, and implement with the involvement of teachers and principals, teacher/principal evaluation and support systems. These are systems that are: 1) used for continuous improvement of instruction; 2) meaningfully differentiate teacher/principal performance using at least 3 levels; 3) use multiple valid measures in determining performance levels, including as a significant factor data on student growth of all students; 4) evaluate teachers/principals on a regular basis; 5) provide clear, timely and useful feedback, including feedback that guides professional development needs; and, 6) will be used to inform personnel decisions.

Student growth is defined on page 9 of the same document as the change in student achievement for an individual student between two or more points in time. For the purpose of this definition, student achievement means – grades and subjects required under ESEA section 1111(b)(3) – state assessments of reading and math meet this requirement. Also, an LEA may use other measures of student learning such as pre-tests, end-of-course assessments (EOC), performance-based assessments, student learning objectives, performance on English Language Learner (ELL) assessments, and other measures of student achievement that are rigorous and comparable across schools within an LEA.

- KDE's feedback from the USDOE peer review process on Principle 3 focused on our need to clarify how academic growth on tested and untested subjects will be measured for evaluation purposes (We need to clarify the process we will use to identify and utilize growth data in the evaluation and support systems) and clarify that ALL students will be included in the growth model (specifically ELL, students with disabilities and those taking alternative assessments).

Given the attached letter that the National Education Association (NEA) sent to the USDOE and the concerns voiced by Jefferson County Teachers Association (JCTA) over the use of student growth in the evaluation system that is required to be used in determining performance levels and inform personnel decisions, we need your guidance on next steps.

Points for Discussion

- An SEA must develop and adopt guidelines for evaluation and support systems.
- LEAs must develop and implement evaluation and support systems consistent with SEA guidelines.
- The SEA must adopt guidelines by the end of the 2011-12 school year and the system must be operational by 2014-15.
- The SEA/LEA must provide training on the evaluation system.
- The SEA must provide student growth data on current and previous year students to, at a minimum, teachers of math and language arts.

Guidance Questions

- Do we continue development of a state evaluation/support system with a local option to develop and implement an evaluation and support system that meets state guidelines?
- OR
- Do we only develop guidelines and pass responsibility to develop, pilot, adopt, and implement valid systems that meet SEA guidelines to local districts?

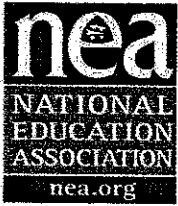
Based on your guidance, KDE could choose to continue with development of a state evaluation/support system with local options. If so, we have several key steps remaining:

- The Kentucky Board of Education will adopt guidelines for teacher/principal evaluation and support systems by the end of 2011-12 and this will be addressed through administrative regulation (this step has to happen with either choice).
- The multiple measures would be field tested.
- Correlation studies based on field test of multiple measures would be conducted.
- Recommendations and guidelines for a weighted evaluation system based on the correlation study results would be developed.

If, based on your guidance, KDE chooses the second option, then we would abandon the field test, validation studies, pilot test, and correlation studies. The only SEA requirement would be to develop guidelines and ensure LEAs implement valid evaluation and support systems that meet the SEA guidelines.

Your feedback on this issue is essential.

Attachment: NEA Letter to USDOE



Great Public Schools
for Every Student

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Dennis Van Roekel
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Lily Eskelsen
Vice President

Rebecca S. Pringle
Secretary-Treasurer

John Stocks
Executive Director

December 21, 2011

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.”).