

The National Coalition on School Diversity

April 25, 2016

Britt Jung
U.S. Department of Education
400 Maryland Avenue SW, Room 3E231
Washington, DC 20202–6135

Re: Comments on Proposed Rule for Equity/Desegregation Assistance Centers
Docket ID: ED–2016–OESE–0006

Dear Ms. Jung:

On behalf of the undersigned members of the National Coalition on School Diversity, we are writing to comment on the Department’s proposed rule for “Equity Assistance Centers (Formerly Desegregation Assistance Centers)” as set out in the Federal Register, Volume 81, page 15665 (March 24, 2016).

As we will discuss in specific detail below, we have concerns with most of the Department’s proposed changes to this grant program. Generally, we urge the Department not to make changes that dilute the specific focus of these centers—which is to provide ongoing, effective, on-the-ground support to public school personnel, students, parents, and community members as they actively work to address school segregation in their communities.

Before separately addressing the primary changes proposed by the Department,¹ we want to highlight two related points that we consider to be central to any decision-making on this rule.

Point #1: Equity and desegregation—while interrelated—are not the same thing.

The Department proposes to officially change the name from Desegregation Assistance Centers to Equity Assistance Centers, reasoning that “the term ‘equity’ *better reflects the breadth of the types of desegregation issues faced in schools now*, as students from different backgrounds and experiences are brought together” (emphasis added). The Department goes on to state that, “Ultimately, the purpose of the regional centers is to ensure access to educational opportunities for all students

¹ The Department proposes five key changes to these regulations, listed at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-01/pdf/2016-07459.pdf>, which would: 1) Amend the section that governs the existing geographic regions to allow the Secretary flexibility in choosing the number and composition of geographic regions to be funded with each competition; 2) Add religion to the areas of desegregation assistance, add a definition for “special educational problems occasioned by desegregation,” and amend the definition of “sex desegregation” to clarify the protected individuals identified by this term; 3) Remove the existing selection criteria (to instead rely on the General Selection Criteria listed under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210); 4) Remove the limitations and exceptions established in current 34 CFR 270.6 on providing desegregation assistance, to align these regulations with those of other technical assistance centers; and 5) Remove 34 CFR part 271, as the SEA program has not been funded in twenty years. We also propose to merge part 272 into part 270, so that a single part covers the EAC program. Proposed Rule, 81 Fed. Reg. 15669 (proposed Mar. 24, 2016) (to be codified at 34 C.F.R. pt. 270).

without regard to their race, sex, national origin, or religion. In the 21st century, *issues related to desegregation* include harassment, school climate, resource equity gaps, discrimination, and instructional practices designed to reach all students” (emphasis added).

We certainly do not dispute the importance of equity strategies, and in fact many of our member organizations are heavily involved in equity work (e.g. working to address school climate, resource gaps, improve instructional practices, reform funding formulas, etc.). Further, as a coalition, we firmly believe that efforts to promote diversity should go hand in hand with equity strategies. But there is no universal agreement on the connection between “equity” and “desegregation.” In fact, the opposite is often true - in our experience in the field, it is not uncommon to see equity strategies characterized as being at odds with integration strategies, or implemented separately and without regard to any efforts to foster school integration.

At a time when the Department is once again embracing efforts to promote school integration, we think it is essential that you keep the closely related concepts of equity and integration linked in the Centers’ titles and provide leadership in helping people better understand the connections between school desegregation and equity. Thus, we suggest that the Department include the term “integration” in the new name (“Integration and Equity Assistance Centers” or “Equity and Integration Assistance Centers”), if such assistance is, in fact, a continuing core component of these centers’ work as intended by Congress.

Point #2: The evolution of desegregation efforts since they were defined in section 401 of title IV of the Civil Rights Act of 1964 (which provides the basis of authority for Desegregation Assistance Centers), coupled with the current state of the law, warrants the inclusion of new language that more accurately describes the type of desegregation efforts for which Desegregation Assistance Centers provide support.

The rule’s definition of “race desegregation,”² drawn from the Civil Rights Act of 1964, does not accurately reflect the nature of modern desegregation efforts. Unsurprisingly, the Civil Rights Act defined desegregation very narrowly. As the Department appropriately notes, “Under section 401 of title IV of the Civil Rights Act of 1964, the terms ‘Secretary,’ ‘Desegregation,’ ‘Public school,’ and ‘School board’ are defined. The Secretary has the authority to define through regulation other terms that apply to the Equity Assistance Centers program under 20 U.S.C. 1221e-3 and 3474.”³ In other words, because the term “desegregation” is explicitly defined in the Civil Rights Act, it would be inappropriate to simply update the definition.

However, given the Department’s renewed emphasis on voluntary school integration, the modern emphasis on both racial and socioeconomic integration, and the very practical reality that most desegregation today is occurring naturally (in instances of changing demographics) or as a result of voluntary efforts (rather than as a result of a court order after a finding of intentional discrimination), we believe that the Department should add updated language accordingly.

² “Race desegregation means the assignment of students to public schools and within those schools without regard to their race, including providing students with a full opportunity for participation in all educational programs regardless of their race. ‘Race desegregation’ does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.”

³ Proposed Rule, 81 Fed. Reg. 15669 (proposed Mar. 24, 2016) (to be codified at 34 C.F.R. pt. 270).

For example, adding a definition for “racial integration,” which draws from the Supreme Court’s *Parents Involved in Community Schools v. Seattle School District No. 1* decision and the Department’s own guidance on this topic, would be a good start. We think this additional language is appropriate, given that the Centers do not limit their assistance to educational communities actively under desegregation order.

Responses to Specific Proposed Changes

1) Response to the Department’s proposal to amend the section that governs the existing geographic regions to allow the Secretary flexibility in choosing the number and composition of geographic regions to be funded with each competition.

While we would support some degree of increased flexibility for the Secretary, we oppose the changes as proposed. Specifically, we strongly oppose the immediate reduction in the number of centers (from ten to four). While the Department is correct that some kinds of technical support can be made available by “using the latest technology available,” the Department overlooks that this work—which is often emotionally charged and challenging to navigate, both politically and financially—depends heavily on personal relationships that are built and sustained over time.

The Department would be sending mixed signals to educators across the country, by proposing policies that encourage educators to increase their emphasis on desegregation⁴ while stripping them of the type of specialized technical assistance they will need to be successful in their efforts. If anything, we would think allowing the Secretary more flexibility to “respond to the magnitude of the need for desegregation assistance,” at the precise moment he is seeking more of an investment in integration would result in a request to *increase*, rather than reduce, the number of technical assistance centers. We can imagine a number of reasons why having more “flexibility to change the number and composition of the regions in the future” could be necessary and perhaps even constructive. However, proposing such a drastic change at this juncture seems unwise.

Over the years, the Desegregation Assistance Centers have developed strong ties to educators and communities in their regions. They possess expertise about how civil rights issues manifest in specific locations. It would be a shame to lose this institutional knowledge, which can and should be a tremendous resource as the Department renews its emphasis on integration.

However, in the event that the Department moves forward with the proposed reduction in the number of Centers, we offer responses to two questions for which the Department specifically requested feedback:

- *What factors should the Secretary consider when determining the composition of States in each geographic region?* We suggest explicitly adding “new and/or emerging issues in the field” as a sixth criteria the Secretary should consider when determining the number and boundaries of the regions.

⁴ Examples of these include proposals to: use SIG funds for socioeconomic diversity, increase magnet school funding, launch a new “Stronger Together” socioeconomic integration initiative, prioritize diversity in its Investing in Innovation grantmaking, etc.

- *Are there potential costs or benefits associated with the proposed approach that we have not addressed?* Given the nature of this work—namely that it cannot be accomplished with “webinars” but must be done on the ground, over time, in and with educational communities to be effective—we anticipate that a reduction in the number of centers will lead to extended travel costs. The nature of this work does not change simply because the number of DACs has been reduced. It will still require in-person meetings; training, retraining, and ongoing support; capacity, infrastructure, and relationship building; collaborative planning and problem-solving, etc. The Department must be willing to invest resources appropriately to ensure that its DACs are able to provide the type of on-the-ground support necessary to be effective in combatting segregation and structural inequity.

2) Response to the Department’s proposal to add religion to the areas of desegregation assistance, add a definition for “special educational problems occasioned by desegregation,” and amend the definition of “sex desegregation” to clarify the protected individuals identified by this term.

We support the Department’s proposed changes as listed above. In particular, we strongly support the amended definition of “sex” to explicitly include pregnancy and related condition, sex stereotypes, and transgender status or gender identity. This explicit inclusion is particularly critical in light of the Centers’ mission to promote sex desegregation and equity more broadly. As the NPRM states, this amended definition will bring this regulation into conformity with the definitions and interpretations of other federal agencies. It will also promote the work of the Centers in providing technical assistance related to sex equity and sex desegregation by assisting them in implementing key guidance that has been issued under Title IX, including *the Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities* (Dec. 1, 2014) and *Questions and Answers of Title IX and Sexual Violence* (Apr. 29, 2014). However, the final rule – consistent with developments in the case law and recent decisions from federal agencies – should include discrimination based on sexual orientation in the list of prohibited discrimination on the basis of sex. In addition, the final rule should state explicitly that stereotypical notions of gender include the sex-role expectation that females should be attracted to and romantically involved only with males (and not females) and that males should be attracted to and romantically involved only with females (and not males).

Insofar as the term “special educational problems occasioned by desegregation,” is concerned, we propose that the Department use the following language instead: “special educational issues occasioned by desegregation means those challenges that arise in classrooms, schools, and communities in the course of desegregation efforts based on race, national origin, sex, or religion.” Though we understand that some of this language is drawn from the section 401 of title IV of the Civil Rights Act of 1964, it is important to stop characterizing common challenges that arise in the process of integration as “problems” that emerge “*as a result of*” desegregation rather than framing them as part of the work that is necessary to create equitable, inclusive learning environments for all children.

3) Response to the Department’s proposal to remove the existing selection criteria (to instead rely on the General Selection Criteria listed under the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.210).

We oppose this change, though note that we would support some revisions of the selection criteria, if appropriately tailored to the civil rights context. Although we can understand the Department’s desire to simplify and standardize selection criteria, doing so is not always appropriate. The Department should avoid the temptation to take shortcuts where civil rights are concerned. The current selection criteria under § 272.30 is tailored to the nuances of this particular kind of work, and is designed to attract applicants with relevant qualifications and expertise. In contrast, the EDGAR criteria is vague and is disconnected from the particulars of the civil rights (and, even more specifically, the desegregation) context. We are concerned, too, with such substantial changes to the selection criteria, along with an expansion of the Secretary’s discretionary authority, being proposed at this point in the Administration. The stability that such criteria can provide during administrative transitions cannot be overstated. The Department should make every effort to protect the rights of minority and underserved students as it prepares for the next administration.

4) Response to the Department’s proposal to remove the limitations and exceptions established in current 34 CFR 270.6 on providing desegregation assistance, to align these regulations with those of other technical assistance centers.

The Department proposes adjustments to current 34 CFR 270.6 in order to comply with the General Education Provisions Act, 20 U.S.C. 1232(a), which does not authorize technical assistance centers to exercise direction or control over the curriculum. The section currently states that grant recipients “may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels,” but provides an exception in §270.6(b) that allows grantees to use funds in this way to afford students of limited English proficiency “a full opportunity to participate in all educational programs.”

We think that the proposed rule (and the prior rule) go too far in their attempted compliance with the Congressional mandate. Educators working in diverse settings know the importance of culturally inclusive curriculum in promoting integration and equity.

The Centers should be able to develop and promote best practices for school curriculum without engaging in “direction and control” of local districts. Notably, many Centers currently assist schools with strategies to modify their instructional techniques so they may more effectively reach the English Learner.⁵ The Department should clarify that the change in the regulation will not prevent EACs from assisting school districts in need of support and assistance with inclusive curriculum design.

Thank you for the opportunity to present these comments. We would be happy to meet to provide additional input in the future.

⁵ With the growing EL population, the demand for these services is growing and the Department should insure that although these types of services may touch upon the direct instruction of EL students, providing further guidance on the meaning of “the development or implementation of activities” would help ensure EL students are not discriminated against based on their national origin.

Sincerely,

Gina Chirichigno
Michael Hilton
Philip Tegeler
Poverty & Race Research Action Council
Washington, DC

Monique Lin-Luse
Janel George
NAACP Legal Defense Fund
Washington, DC

Jennifer Bellamy
Dennis Parker
ACLU
Washington, DC

Myron Orfield
Institute on Metropolitan Opportunity
University of Minnesota
Minneapolis, MN

Professor John C. Brittain
University of the District of Columbia School of Law
Washington, DC
(University listed for affiliation purposes only)

Susan E. Eaton
The Heller School for Social Policy and Management
Brandeis University
Waltham, MA
(University listed for identification purposes only)

Gail Sunderman
Maryland Equity Project
University of Maryland
College Park, MD
(University listed for affiliation purposes only)

Professor Genevieve Siegel-Hawley
Virginia Commonwealth University
Richmond, VA
(University listed for affiliation purposes only)