

# Federal Support for School Integration: An Obama Administration Review

Issue  
Brief 8

As the second term of the Obama Administration draws to a close, the National Coalition on School Diversity has updated this review of federal support for school integration during the tenures of Secretaries Arne Duncan and John King. While much remains to be done, the Obama Administration has made concrete progress on school integration policy. This overview begins with the Administration's 2011 Guidance on voluntary school integration, and covers the Department's K-12 competitive grants, preschool programs administered cooperatively with HHS, the Department's handling of state waivers under the Elementary and Secondary Education Act, and new legislative developments. As reflected in these initiatives, the Department has broad authority to support voluntary school integration efforts, and we hope to see additional progress over the next four years on this bipartisan issue, especially at the state and local level.

This Review is divided into four sections:

1. Administrative guidance and action supporting school diversity
2. School diversity language and incentives in USDOE competitive grant programs for K-12 education
3. School diversity language and incentives in Early Childhood Education programs
4. Reauthorization of the Elementary and Secondary Education Act and "ESEA Flexibility"

## 1. Administrative guidance and action supporting school diversity

Throughout Obama's tenure in the White House, the Department of Education has released a series of guidance documents clarifying the responsibilities of state and local governments with respect to their civil rights obligations. In addition to the joint Department of Education/Department of Justice guidance regarding the use of race to achieve diversity and avoid student isolation, this section examines supplementary guidance from the Obama Administration that could be useful in supporting student diversity and ensuring all students have an equitable opportunity to benefit from high-quality educational programs.

### A. Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools

The first order of school diversity business for the Department of Education in 2009 was the removal of misleading Bush Administration guidance to states and local school districts discouraging race-conscious efforts to integrate schools. The earlier guidance was posted after the U.S. Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District 1* (2007),<sup>1</sup> in which a majority of the Court struck down individual racial assignment provisions in two voluntary school integration plans. However, the Bush Administration guidance failed to acknowledge that a separate 5-4

<sup>1</sup> *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007)

majority had actually announced, for the first time, that that school diversity and reduction of racial isolation are “compelling government interests” that justify the use of non-discriminatory measures to achieve racial integration:

This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue. Likewise, a district may consider it a compelling interest to achieve a diverse student population.<sup>2</sup>

It took the Obama Administration over two years to issue a revised guidance interpreting the 2007 Supreme Court decision, but the final result was a comprehensive overview of school integration policy, issued jointly by the Secretary of Education and the Attorney General. Consistent with the *Parents Involved* decision, the 2011 “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools”<sup>3</sup> recognizes that achieving racial diversity and reduction of racial isolation are compelling government interests, and endorses “race conscious” measures to promote school diversity, that do not involve taking into account the race or individual students for admission or assignment purposes (like the Supreme Court deci-

sion, the guidance lists examples of such measures, including affirmative school siting, redefined attendance zones, geographically weighted lotteries, socioeconomic integration, interdistrict transfer programs, etc).<sup>4</sup> Importantly, the Guidance also clarifies that race of individual students can still be taken into account to achieve diversity in circumstances where “race-neutral and generalized race-based approaches would be unworkable.” School districts are encouraged to contact the Department of Justice (“DOJ”) or the Department of Education (“USDOE”) for technical assistance in applying these guidelines.

## B. Dear Colleague Letter Regarding Mobility via Educational Socioeconomic Opportunity

In June of 2016 the Departments of Education, Housing and Urban Development (“HUD”), and Transportation issued a letter urging state and local housing, education, and transportation agencies to work together to promote diversity in schools and communities.<sup>5</sup> The letter specifically urges state and local agencies to encourage regional collaborations in implementing HUD’s new Affirmatively Furthering Fair Housing Process. The joint letter also encourages State Educational Agencies (“SEAs”) and Local Education Agencies (“LEAs”) to consider a range of actions to improve school and community diversity. SEAs and LEAs are encouraged to consider changes to attendance zones to increase diversity, site new schools in areas where they are likely to draw diverse student

2 Id. at 797-798.

3 U.S. Departments of Education, Justice, “Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools,” available at <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>.

4 The Guidance suggests, but does not require, that districts first consider the feasibility of purely race-neutral criteria (such as socioeconomic status of students or neighborhoods) before adopting generalized, race-based approaches (such as attendance zones based on the racial composition of neighborhoods).

5 U.S. Departments of Education, Housing and Urban Development, Transportation, “Dear Colleagues Letter regarding Mobility Via Educational Socioeconomic Opportunity,” available at <http://www2.ed.gov/documents/press-releases/06032016-dear-colleagues-letter.pdf>.

populations, and place boundary-free, open enrollment, or lottery schools in areas where a diversity of communities will have adequate transportation and equal access. LEAs and SEAs are also encouraged to coordinate with transportation and housing authorities in school site planning, as well as sharing information on school achievement and the demographic composition of schools in order to create housing and school choice opportunities that satisfy communities' unique needs. This letter is an acknowledgement on the part of the Obama Administration regarding the reciprocal relationship between housing and school segregation, and lays the groundwork for the future collaboration of housing, transportation, and education agencies to tackle persistent racial and socioeconomic segregation.

### C. Other Guidance Supporting School Diversity and Diverse Students

In addition to the 2011 guidance on the voluntary use of race for student assignment and the 2016 tri-agency letter, the Obama Administration released several additional guidance documents that should have a positive impact on educational opportunities for low-income, minority, and English learner students.

In 2009 the Department of Education issued guidance on Title VI and Public School Choice, clarifying the Title VI duties of SEAs and LEAs under No Child Left Behind to ensure that the parents of students of color have equitable access to options to transfer their child from a consistently underperforming Title I school to another public school

served by their LEA,<sup>6</sup> ensuring minority and low-income students are not trapped in consistently underperforming schools.

In January 2014 the Departments of Justice and Education issued joint guidance regarding the administration of discipline in schools without discriminating on the basis of race, color, or national origin.<sup>7</sup> This guidance arose from notable racial disparities in suspension and expulsion rates uncovered in the Civil Rights Data Collection, with African-American students being three times more likely to be suspended or expelled than white students (a trend research indicates is not driven by more frequent or more serious misbehavior by students of color).

The Department of Education again issued guidance regarding state and local obligations to minority and low-income students in October 2014, this time focused on resource comparability.<sup>8</sup> This guidance was issued to address chronic and widespread racial disparities in educational resources, which has historically resulted in students of color having less consistent access to resources like rigorous courses, effective teachers, safe school facilities, and high-quality instructional materials.

The civil rights obligations of charter schools were also a focus of several pieces of guidance during the Obama Administration. In January 2014 the Department of Education updated existing nonregulatory guidance for charter schools, clarifying the circumstances under which charters receiving Charter Schools Program grant funds may use

6 U.S. Department of Education, "Dear Colleague Letter on Title I Public School Choice Provisions," available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20090108.html>.

7 U.S. Departments of Education, Justice, "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

8 U.S. Department of Education, "Dear Colleague Letter: Resource Comparability," available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>.

weighted lotteries for student admission to promote diversity and inclusion, and detailing how existing grantees could amend grant applications to allow for weighted lotteries. That same year the Department issued guidance regarding the responsibilities of charter schools to comply with Federal civil rights laws, regulations, and guidance.<sup>9</sup>

The Obama Administration issued multiple guidance letters regarding educational obligations to English Learner (“EL”) students and their families. In January 2015 the Departments of Justice and Education issued joint guidance regarding the requirement that public schools take affirmative steps to ensure EL students can meaningfully participate in educational programs and services.<sup>10</sup> In September of 2016 the Department of Education issued guidance specific to the provision of services for EL students, this time regarding the use of Title III funds to provide supplemental services that improve English language proficiency and academic achievement.<sup>11</sup> This guidance also reminds Title III recipients that the funds must be used to supplement, not supplant, services required by Title IV and the Equal Educational Opportunities Act of 1974, as well as services required by State and local law. Combined, these guidance documents help ensure that states and districts know students of color, low-income students, and EL

students have access to, and be able to take advantage of, high-performing, well resourced schools with fair discipline policies, and that charter schools share these obligations despite their differences from traditional public schools.

With the guidance on the voluntary use of race in student assignment, the tri-agency letter encouraging cooperation between housing, transportation, and education agencies, and subsequent guidance on school discipline, resource disparities, and EL students, the Obama Administration has created a regime of nonregulatory guidance designed to support diverse, integrated schools with resources sufficient to adequately support all learners.

## D. Enforcement Action by the Office of Civil Rights

The Office of Civil Rights at the Department of Education (“OCR”) has the primary responsibility of ensuring equal access to education for all students, and achieves this goal through enforcing a range of existing civil rights laws.<sup>12</sup> OCR’s core responsibilities include responding to and investigating civil rights complaints filed by the public, monitoring educational institutions’ compliance with prior agreements, issuing policy guidance to clarify responsibilities under relevant civil rights

9 U.S. Department of Education, “Dear Colleague Letter: Charter Schools,” <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>.

10 U.S. Departments of Education, Justice, “Dear Colleague Letter: English Learner Students and Limited English Proficient Parents,” <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

11 U.S. Department of Education, “Non-Regulatory Guidance: English Learners and Title III of the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA),” *available at* <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiiguidenglishlearners92016.pdf>.

12 OCR enforces the following laws: Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex; Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability; Age Discrimination Act of 1975, which prohibits discrimination on the basis of age; Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability; Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum. See U.S. Department of Education, “About OCR,” *available at* <http://www2.ed.gov/about/offices/list/ocr/aboutocr.html>.

laws, responding to requests for information and providing technical assistance, and the administration of the Civil Rights Data Collection.<sup>13</sup>

In fiscal year 2016 OCR received a record 16,720 new complaints, an increase of 188% over 2006, initiated 13 proactive compliance reviews, and resolved 8,625 cases, including 1,116 resolutions that secured changes ensuring the protection of students' civil rights. Overall, since 2009 OCR has received 76,022 complaints, with each year representing a new record in terms of complaints received, resolved 66,102 cases, initiated 204 compliance reviews, and issued 34 policy guidance documents. Of the cases received by OCR since 2009, 2,576 have involved instances of racial harassment in primary and secondary schools.<sup>14</sup> Furthermore, the Obama Administration's Department of Education OCR has achieved the above with a staff near historic lows; in 2016 OCR's staff numbers remained at 11% less than in 2006, even as the number of complaints received and resolutions achieved reached their highest figures.

## **2. School diversity language and incentives in USDOE competitive grant programs for K-12 education**

Although the Obama Administration missed a huge early opportunity to include school diversity as a priority in the "Race to the Top" funding programs, Secretaries Duncan and King embedded incentives for school diversity in several other important grant programs, discussed below.

### **A. Supplemental Priorities for Discretionary Grant Programs:**

In 2010 USDOE included in the supplemental priorities for discretionary grant programs a preference for "projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation," in order to "promote cross-racial understanding, break down racial stereotypes, and prepare students for an increasingly diverse workforce and society."<sup>15</sup> In 2014 USDOE updated its supplemental priorities for discretionary grant programs, this time expanding the existing diversity preference to include "racial, ethnic, and socioeconomic diversity" for the purpose of "decreasing the racial, ethnic, or socioeconomic isolation of students who are served by the project."<sup>16</sup> The updated diversity preference is 1 of 15 competitive funding priorities listed, and permits, but does not require, school diversity to be included in the point system for competitive grants. The programs that are listed in this section are all competitive or discretionary grant programs.

On June 8, 2016, USDOE proposed an additional supplemental priority focused on supporting socioeconomic integration strategies.<sup>17</sup> This proposed priority would supplement, rather than replace, the 2014 diversity priority for discretionary grant programs. Specifically, the new priority supports the identification of socioeconomic isolation and barriers to integration, developing technical assistance regarding socioeconomic integration strategies, the design and implementation of alternative funding strategies, and evidence-based

13 U.S. Department of Education, "Securing Equal Educational Opportunity," available at <http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf>.

14 *Id.*

15 75 Fed. Reg. 78486, 78500 (Dec. 15, 2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-12-15/pdf/2010-31189.pdf>.

16 79 Fed. Reg. 73426, 73452 (Dec. 10, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-10/pdf/2014-28911.pdf>.

17 81 Fed. Reg. 36833 (June 8, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-08/pdf/2016-13456.pdf>.

strategies to be carried out intra-district, inter-district, or regionally, in coordination with other relevant governmental entities. In conjunction with a recent letter released by the U.S. Departments of Education, Transportation, and Housing and Urban Development,<sup>18</sup> the inter-agency cooperation supported by this proposed supplemental priority indicates the Obama Administration's recognition that socioeconomic segregation must be addressed through multiple avenues to meet with sustained success.

### B. Magnet Schools Assistance Program:

USDOE provides grants for magnet schools with approved required or voluntary desegregation plans that “reduce, eliminate, or prevent minority group isolation” and promote diversity. In 2010, partly in response to the *Parents Involved* case, through an interim final rule USDOE amended the regulations that had required binary racial classifications (i.e. “minority” and “nonminority”) and had prohibited the creation of magnet schools with minority enrollments exceeding the district-wide average. Whether a school's voluntary plan meets the statutory requirements is now determined by USDOE on a case-by-case basis.<sup>19</sup> In November 2012, the 2010 amendments to the regulations were officially adopted without alteration after a comment period.<sup>20</sup>

On December 31, 2012, USDOE's notice inviting applications for funding somewhat strengthened

the program's focus on school diversity.<sup>21</sup> The notice added the requirement that applications must include projected enrollment by race and ethnicity for magnet and feeder schools, and that applicants' voluntary desegregation plans “must demonstrate how LEAs will reduce, eliminate, or prevent minority group isolation.”<sup>22</sup> To ensure equal access to magnets supported by federal dollars, the revised competition offered up to 10 points for applicant schools that used a lottery system of admissions, rather than screening using academic achievement or interview processes. Furthermore, the 2012 notice emphasized the importance of diversity and desegregation efforts by significantly increasing the number of selection criteria points available for plans that reduce, eliminate, or prevent minority group isolation.

On April 22, 2016, USDOE issued a notice inviting applications for funding. This updated notice contained another increase in the number of points allotted for plans that reduce, eliminate, or prevent minority group isolation, accounting for over a quarter of total selection criteria and competitive preference priority points, substantially increasing the importance of high-quality desegregation plans for MSAP applicants.<sup>23</sup> On December 13, 2016, USDOE issued a new notice inviting applications, with notice of intent to apply due January 9, 2017, and final applications due April 11, 2017.<sup>24</sup> The new MSAP competition will award between 20 and 30 grants ranging from \$700,000 to \$4 million paid out over five years, which may now be applied to

18 U.S. Department of Education, “Dear Colleagues Letter regarding Mobility via Educational Socioeconomic Opportunity,” available at <https://www2.ed.gov/documents/press-releases/06032016-dear-colleagues-letter.pdf>.

19 75 Fed. Reg. 9777 (Mar. 4, 2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-03-04/pdf/2010-4415.pdf>.

20 77 Fed. Reg. 67572 (Nov. 13, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-13/pdf/2012-27559.pdf>.

21 77 Fed. Reg. 77056 (Dec. 31, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-31/pdf/2012-31434.pdf>.

22 *Id.* at 77058.

23 81 Fed. Reg. 23682, 23690 (April 22, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-09437.pdf>.

24 81 Fed. Reg. 89911 (Dec. 13, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-13/pdf/2016-29907.pdf>.

transportation costs, and includes up to 4 additional points for applicants that focus on increasing racial diversity and socioeconomic integration.

### C. Charter School Programs:

There are currently several charter school funding competitions, including Grants for Replication and Expansion of High-Quality Charter Schools, Grants for State Educational Agencies (SEAs), and Grants to Non-State Educational Agency (Non-SEA) Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination. While several Charter Schools Program (CSP) grant competitions have featured additional points for increasing student diversity, it is not known if these incentives are strong enough for applicants to actively develop diverse charter schools.<sup>25</sup>

In January 2011 USDOE announced a competition for SEAs to start new charter schools or disseminate information about existing charters, and included “promot[ing] student diversity, including racial and ethnic diversity, or avoid[ing] racial isola-

tion” as 1 of the 7 competitive funding priorities.<sup>26</sup> In July 2011 USDOE published final priorities for the CSP Grants for Replication and Expansion of High-Quality Charter Schools, which included promoting student diversity, including racial and ethnic diversity, and serving students with disabilities and English language learners “at a rate that is at least comparable to the rate at which these students are served in public schools in the surrounding area” as a final priority.<sup>27</sup> In March 2012 USDOE published a call for applications for new awards from the Grants for Replication and Expansion of High-Quality Charter Schools competition, which provided 1 of its 6 competitive funding priorities to schools that “promote student diversity, including racial and ethnic diversity, or avoid racial isolation.”<sup>28</sup> In April 2012 USDOE announced a competition for Grants to Non-SEA Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination, which included “projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation” as 1 of 4 competitive priorities.<sup>29</sup>

- 25 Actively promoting diverse, integrated charter schools using CSP grants is especially important given that research indicates charter schools exacerbate student segregation. See Frankenberg, E., Siegel-Hawley, G., Wang, J. (2010). *Choice without Equity: Charter School Segregation and the Need for Civil Rights Standards*. Los Angeles, CA: The Civil Rights Project/Proyecto Derechos Civiles at UCLA, available at <http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/choice-without-equity-2009-report/frankenberg-choices-without-equity-2010.pdf>. See also Iris C. Rotberg, *Charter Schools and the Risk of Increased Segregation* (March 27, 2014), available at [http://www.edweek.org/ew/articles/2014/02/01/kappan\\_rotberg.html](http://www.edweek.org/ew/articles/2014/02/01/kappan_rotberg.html).
- 26 76 Fed. Reg. 4322 (January 25, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-25/pdf/2011-1518.pdf>. School diversity counts for up to 5 points above the base maximum, depending on how well the application meets the diversity priority; the base maximum is 100 points for SEAs that do not propose to use grant funds for dissemination activities and 110 points for SEAs that do propose to use funds for dissemination activities. For 2011, the other priorities are periodic review and evaluation (up to 10 points), number of high-quality charter schools (up to 8 points), an authorized public chartering agency other than a Local Educational Agency, or an appeals process (5 points), high degree of autonomy (up to 5 points), improving achievement and high school graduation rates (up to 12 points), and improving productivity (up to 5 points).
- 27 76 Fed. Reg. 40898, 40900 (July 12, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-12/pdf/2011-17491.pdf>.
- 28 77 Fed. Reg. 13304 (Mar. 6, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-06/pdf/2012-5427.pdf>. Under this program school diversity counts for up to 4 points above a base maximum of 100 points, depending on how well the application meets the diversity priority. Other priorities include a focus on low-income demographic (9 points), school improvement (1 point), technology (1 point), promoting science, technology, engineering, and mathematics education (1 point), and novice applicants to this grant (4 points).
- 29 77 Fed. Reg. 22298 (Apr. 13, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-04-13/pdf/2012-8980.pdf>. Under this program school diversity counts for up to 2 points above a base maximum of 100 points, depending on how well the application meets the diversity priority. Other priorities include improving achievement and high school graduation rates (up to 6 points), improving productivity (up to 2 points), and support for military families (up to 5 points). For start-up grants, applicants can attain 3 base points for projects that “assist educationally disadvantaged students in meeting State academic content standards and State student academic achievement standards.”

In January 2014 the USDOE issued non-regulatory guidance allowing the use of weighted lotteries by charter schools receiving federal start-up and replication funding (these are lotteries that favor low-income or educationally disadvantaged students to create a more integrated school).<sup>30</sup> Under earlier regulations, charter schools receiving federal funds were required to use a blind lottery for student admission, limiting charters' abilities to create a diverse student body. This new guidance is an encouraging step to making federally funded charter schools more equitable and integrated.

In June 2015 USDOE released a notice of final priorities, requirements, definitions, and selection criteria for the CSP Grants for SEAs,<sup>31</sup> as well as a notice inviting applications for new awards. The new awards will enable SEAs to provide financial assistance “for the planning, program design, and initial implementation of charter schools and for the dissemination of information about successful charter schools, including practices that existing charter schools have demonstrated are successful.”<sup>32</sup> Three selection criteria, *(f) Dissemination of Information and Best Practices*, *(g) Oversight of Authorized Public Chartering Agencies*, and *(i) Project Design*, include encouraging language regarding student diversity. The language requires that SEAs disseminate information on best practices for diverse schools, encourages SEAs to consider student diversity as an evidence-based model for student improvement, and encourages SEAs to

consider student diversity as a potential area of need within the state to be addressed by charter schools. While this regulation included more emphasis on diversity than previous iterations of CSP Grants for SEAs, it stopped short of requiring (or incentivizing) diversity as a factor for SEAs applying for these grants. The upside, however, is that these changes to the program supported the spread of information on best practices regarding diversity in charter schools, and charter schools and developers received confirmation that diversity focused schools are an acceptable and encouraged evidence-based model for improving student achievement.

Also in June 2015, USDOE released a CSP notice inviting applications to the Grants for Replication and Expansion of High-Quality Charter Schools competition. This program contains a competitive preference priority awarding up to 3 additional points for “applicants that demonstrate a record of (in the schools they currently operate or manage), as well as an intent to continue (in schools that they will be creating or substantially expanding under this grant), taking active measures to...promote student diversity.”<sup>33</sup> While this extra emphasis on diversity is laudable, it may lack impact on applicants due to one of the program’s absolute priorities, which requires that “an applicant must demonstrate that *at least 60 percent* of all students in the charter schools it currently operates or manages are individuals from low-income families”<sup>34</sup>

30 U.S. Department of Education, “Charter Schools Program, Title V, Part B of the ESEA Nonregulatory Guidance,” available at [www2.ed.gov/programs/charter/fy14cspnonregguidance.doc](http://www2.ed.gov/programs/charter/fy14cspnonregguidance.doc).

31 80 Fed. Reg. 34202 (June 15, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-15/pdf/2015-14391.pdf>.

32 80 Fed. Reg. 34228 (June 15, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-15/pdf/2015-14392.pdf>.

33 80 Fed. Reg. 33499, 33501-33502, (June 12, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-12/pdf/2015-14386.pdf>. Applicants can earn up to 10 competitive preference priority points under three competitive preference priorities. Competitive Preference Priority 1 includes three options (applicants may only pick one): up to 5 points for supporting students who are members of federally recognized Indian tribes, up to 4 points for school improvement, or up to 1 point for projects in Promise Zones; Competitive Preference Priority 2 includes up to 3 points for promoting diversity; and Competitive Preference Priority 3 offers up to 2 points for new applicants.



This emphasis on serving student bodies with high concentrations of low-income students is at odds with socioeconomic integration goals, and will pose an unintended barrier to racial integration in these programs as well.

In August 2015 USDOE put out a notice inviting applications for awards for fiscal year 2016 for CSP Grants to Non-SEA Eligible Applicants for Planning, Program Design, and Initial Implementation and for Dissemination. This funding competition has an invitational priority for promoting diversity, reflecting a special interest in charter schools “designed to attract and serve students from diverse backgrounds, including students from different racial and ethnic groups and educationally disadvantaged students...as reflected in the (a) charter school’s mission statement, (b) vision of the charter school, or (c) charter or performance agreement between the charter school and its authorizer.”<sup>35</sup> Unfortunately there are no points attached to the invitational priority, which makes it less likely applicants not already serving a diverse student body will seek to do so as a result of this grant competition.

In the spring of 2016, USDOE released two additional invitations for new awards from the CSP: Grants for State Educational Agencies, and Grants for Replication and Expansion of High-Quality Charter Schools. The new Grants for State Educational Agencies regulation contains improvements with regard to fostering diverse schools. The new program dedicates selection criteria points to the quality of an SEA’s plan to ensure charter

authorizing agencies are “[a]pproving charter school petitions with design elements that incorporate evidence-based school models and practices, including, but not limited to, school models and practices that focus on racial and ethnic diversity in student bodies and diversity in student bodies with respect to *educationally disadvantaged students*, consistent with applicable law,” among other factors.<sup>36</sup> While there is still no requirement for SEAs to ensure charters authorizers focus on integration, the regulation clearly indicates to SEAs that charter authorizers incorporating racial and ethnic diversity into their charter petitions will be more likely to get the full 20 points available under the selection criteria.<sup>37</sup> There are no significant diversity-related changes to the Grants for Replication and Expansion of High-Quality Charter Schools competition, which maintains the small competitive preference priority for promoting diversity.<sup>38</sup>

#### D. Race to the Top:

The Race to the Top program, originally authorized as part of the federal stimulus package in 2009 provided funds to states that propose reforms in the following four core educational assurance areas: “adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy; building data systems that measure student growth and success, and inform teachers and principals about how they can improve instruction; recruiting, developing, rewarding, and retaining effective teachers and principals, especially where they are needed most; and turning around our lowest-achieving

35 80 Fed. Reg. 50833, 50834 (August 21, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-08-21/pdf/2015-20723.pdf>.

36 81 Fed. Reg. 23463, 23471 (April 21, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-21/pdf/2016-09298.pdf>.

37 The regulation dedicates 20 selection criteria points to the “Quality of SEA’s Plan to Ensure that Authorizers are: (i) Focusing on Racial and Ethnic Diversity in Student Bodies (ii) Establishing Measureable Performance Expectations (iii) Providing Annual Public Performance Reports (iv) Supporting Charter School Autonomy”

38 81 Fed. Reg. 28837 (May 10, 2016) available at <https://www.gpo.gov/fdsys/pkg/FR-2016-05-10/pdf/2016-10925.pdf>.

schools.”<sup>39</sup> The original 2009 notice’s proposed priorities, requirements, and selection criteria did not include diversity. During the notice-and-comment period, a number of commenters suggested adding incentives for voluntary integration; however, USDOE declined to include diversity as a competitive or invitational priority.<sup>40</sup> None of the three funding phases that followed in 2009, 2010, or 2011 modified priorities so as to prioritize diversity or explicitly incentivize voluntary integration.<sup>41</sup> On August 16, 2012, USDOE published its final notice and invitation for applications for new awards for the Race to the Top – District competition.<sup>42</sup> Once again, USDOE did not include diversity as an absolute or competitive priority, even though it is an approved competitive priority and even though the NCSD has repeatedly urged the Department to include diversity in the RTT program.<sup>43</sup> However, in a small gesture of support for districts struggling to promote diversity, the Department announced that applicants may apply for additional funding (up to \$2 million) for “strategies for increasing diversity across schools and LEAs and within schools and classrooms.”<sup>44</sup> There are also some other positive civil rights provisions in the final notice on school discipline.<sup>45</sup>

### E. Investing in Innovation:

The Investing in Innovation (i3) program provides grants to school districts to encourage innovative practices that demonstrate an impact on the program’s key outcomes: improving student achievement or student growth, closing achievement gaps, decreasing dropout rates, increasing high school graduation rates, and increasing college enrollment and completion rates.<sup>46</sup> The original 2009 notice’s proposed priorities, requirements, and selection criteria did not include diversity.<sup>47</sup> During the notice-and comment period, a number of commenters suggested adding incentives for racial and ethnic diversity; however, USDOE declined to include diversity as an absolute or competitive priority, though it did suggest that applicants might utilize diversity to the extent that it serves as an intermediate variable that is strongly correlated with the program’s key outcomes.<sup>48</sup> Following the inclusion of diversity as a permissible priority in the Supplemental Priorities for Discretionary Grant Programs in late 2010, commenters again urged the Department to include diversity as a priority for future (i3) competitions. The Department declined to include diversity as a priority in its 2011

39 U.S. Department of Education, “Programs: Race to the Top Fund,” available at <http://www2.ed.gov/programs/racetothetop/index.html>.

40 74 Fed. Reg. 59688 (Nov. 18, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27426.pdf>.

41 74 Fed. Reg. 59836 (Nov. 18, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27427.pdf>; 75 Fed. Reg. 19496 (Apr. 14, 2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-04-14/pdf/2010-8376.pdf>; 76 Fed. Reg. 70980 (Nov. 16, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29582.pdf>.

42 77 Fed. Reg. 49654 (Aug. 16, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-08-16/pdf/2012-20037.pdf>.

43 NCSD, “Comments on proposed Race to the Top District Guidelines,” available at [http://www.schooldiversity.org/pdf/race\\_to\\_the\\_top\\_district\\_comments\\_by\\_civil\\_rights\\_groups\\_6-8-12.pdf](http://www.schooldiversity.org/pdf/race_to_the_top_district_comments_by_civil_rights_groups_6-8-12.pdf).

44 *Supra* note 25 at 49666.

45 *Id.* at 49660 (“LEAs in which minority students or students with disabilities are disproportionately subject to discipline and expulsion” must undergo a district-wide assessment of the underlying causes of the abnormal rates of discipline and expulsion, and must develop a plan detailing how the district will address the underlying causes, as well as reduce the disproportionate instances of discipline and expulsion).

46 U.S. Department of Education, “Programs: Investing in Innovation Fund (i3),” available at <http://www2.ed.gov/programs/innovation/index.html>.

47 74 Fed. Reg. 52214 (Oct. 9, 2009), available at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-09/pdf/E9-24387.pdf>.

48 75 Fed. Reg. 12004 (Mar. 12, 2010), available at <http://www.gpo.gov/fdsys/pkg/FR-2010-03-12/pdf/2010-5147.pdf>.

revision of the priorities, but mentioned that it might consider new rules to include diversity in future competitions.<sup>49</sup>

In December 2012, USDOE published a notice soliciting comments regarding new proposed priorities, requirements, definitions, and selection criteria for the i3 program.<sup>50</sup> Once again, USDOE did not include “promoting diversity” as a proposed priority, despite repeated suggestions from the civil rights community to do so. Members of the NCSD took the opportunity presented by USDOE’s call for comments to again emphasize the importance of school diversity, and to illustrate ways in which the i3 program would be well served by a diversity preference.<sup>51</sup> Unfortunately, USDOE continued to ignore diversity as a priority for the i3 program for two additional rounds of funding, with USDOE awarding Development grants, Validation grants, and Scale-up grants in 2013<sup>52</sup> and 2015.<sup>53</sup> None of these competitions contained any diversity incentive.

However, on April 25, 2016, USDOE issued a revised notice inviting applications for the i3 Development grants competition, which contains a major shift in the direction of supporting diverse

student bodies. The new notice includes Promoting Diversity as the first listed Absolute Priority, with the intention to “provide funding to projects that are designed to prepare students for success in an increasingly diverse workforce and society by increasing the diversity, including racial, ethnic, and socioeconomic diversity, of students enrolled in individual schools or postsecondary programs; or, in the case of preschool, elementary, or secondary programs, decreasing the racial, ethnic, or socioeconomic isolation of students who are served by the project.”<sup>54</sup> Furthermore, the competition’s invitational priority encourages applications that focus on “[d]esigning and implementing intra-district, inter-district, community, or regional programs that improve student outcomes by increasing socioeconomic diversity.”<sup>55</sup>

While there continues to be no focus on student diversity in the May 2016 notices inviting applications for Validation<sup>56</sup> and Scale-up<sup>57</sup> grants, the Department’s inclusion of diversity as an absolute priority in the Development grants stage of the i3 program is an encouraging step, which may lead to the presence of diversity focuses in later Validation and Scale-up grant competitions.

49 76 Fed. Reg. 32073 (June 3, 2011), available at <http://gpo.gov/fdsys/pkg/FR-2011-06-03/pdf/2011-13589.pdf>.

50 77 Fed. Reg. 74407 (Dec. 14, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-14/pdf/2012-30199.pdf>.

51 NCSD, “Comments on proposed Investing in Innovation Fund guidelines” available at [http://school-diversity.org/pdf/Investing\\_in\\_Innovation\\_comments\\_-\\_school\\_diversity\\_priority.pdf](http://school-diversity.org/pdf/Investing_in_Innovation_comments_-_school_diversity_priority.pdf).

52 Development grant, 78 Fed. Reg. 18682, (March 27, 2013), available at [www.gpo.gov/fdsys/pkg/FR-2013-03-27/pdf/2013-07016.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-03-27/pdf/2013-07016.pdf); Validation grants, 78 Fed. Reg. 25990 (May 3, 2013), available at [www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10466.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10466.pdf); and Scale-up grants, 78 Fed. Reg. 25977 (May 3, 2013), available at [www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10464.pdf](http://www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10464.pdf).

53 Development grants, 80 Fed. Reg. 16648 (March 30, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-03-30/pdf/2015-07213.pdf>; Validation grants, 80 Fed. Reg. 32216 (June 5, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13672.pdf>; and Scale-up grants, 80 Fed. Reg. 32229 (June 5, 2015), available at <http://www.gpo.gov/fdsys/pkg/FR-2015-06-05/pdf/2015-13673.pdf>.

54 81 Fed. Reg. 24070, 24074 (April 25, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-04-25/pdf/2016-09436.pdf>.

55 *Id.* at 24074.

56 81 Fed. Reg. 30279 (May 16, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-05-16/pdf/2016-11522.pdf>.

57 81 Fed. Reg. 30267 (May 16, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-05-16/pdf/2016-11531.pdf>.

On December 15, 2016, USDOE announced the first round of the Education Innovation and Research Program grants, which replace Investing in Innovation under the Every Student Succeeds Act.<sup>58</sup> Like the i3 program, the Education Innovation and Research Program grants are broken into three stages: Early-Phase grants focused on launching, iterating, and refining innovative practices that have potential for future scaling, and Mid- and Expansion-Phase grants that require increasingly rigorous levels of evidence but receive more robust financial support.

The Education Innovation and Research Program Early-Phase grants, like the final round of i3 Development grants, include an absolute priority focused on school diversity. The priority is designed to support innovative “instructional approaches that impact socioeconomic integration and student achievement within schools (e.g., schools could improve participation of students from low-income households in advanced placement or “honors” coursework) or redesigned inter-district recruitment and admissions strategies to support and foster such diversity in schools.”<sup>59</sup>

### F. Voluntary Public School Choice Program:

This program provided grants to establish or expand intradistrict, interdistrict, and open enroll-

ment public school choice programs that focus on providing parents with greater options in acquiring a high-quality public education for their children, particularly parents whose children attend schools in need of improvement.<sup>60</sup> As of the most recent notice in 2007, diversity was not listed as a competitive priority.<sup>61</sup> However, programs could earn up to 10 points above a base maximum of 100 points if they that had a substantial impact on students in low-performing schools in providing those students with opportunities to attend high-performing schools.<sup>62</sup> Since 2007, the program has provided no new awards.<sup>63</sup>

### G. School Improvement Grants (including “Turnaround Schools”):

The Title I School Improvement Grants (SIG) program provides funds to SEAs for use in turning around the lowest performing schools; under the program an SEA can award up to \$2,000,000 per participating school.<sup>64</sup> To award SIG funds, an SEA must select “those [local educational agencies (LEAs)] that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools” to achieve at an acceptable level.<sup>65</sup> To receive SIG funds, the LEA must agree to implement (and demonstrate the capacity for implementation of) a rigorous intervention in each school

58 U.S. Department of Education, “U.S. Department of Education Announces Inaugural Education Innovation and Research Competition,” available at <http://www.ed.gov/news/press-releases/us-department-education-announces-inaugural-education-innovation-and-research-competition>.

59 81 Fed. Reg. 90809, 90810 (Dec. 15, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-15/pdf/2016-30085.pdf>.

60 U.S. Department of Education, “Programs: Voluntary Public School Choice - Purpose,” available at <http://www2.ed.gov/programs/choice/index.html>.

61 72 Fed. Reg. 4700 (Feb. 1, 2007), available at <http://www.gpo.gov/fdsys/pkg/FR-2007-02-01/pdf/E7-1539.pdf>.

62 For the most recent year, 2007, the other priorities were partnership/interdistrict approaches (up to 20 points), a wide variety of choices (up to 10 points), secondary schools (up to 10 points), and student achievement data (up to 10 points).

63 U.S. Department of Education, “Programs: Voluntary Public School Choice - Funding Status,” available at <http://www2.ed.gov/programs/choice/funding.html>.

64 75 Fed. Reg. 66363 (Oct. 28, 2010), available at <http://www2.ed.gov/programs/sif/2010-27313.pdf>.

65 *Id.* at 66365.

that the LEA commits to serve. Under the original SIG program, interventions were required to take one of four forms: the turnaround model, the restart model, school closure, and the transformation model.<sup>66</sup> As Richard Kahlenberg pointed out, the interventions originally required under the SIG program focused heavily on changing administrative and teaching staff composition, and place no emphasis on increasing student diversity.<sup>67</sup> Many schools qualifying for SIG funding are racially and economically isolated, and the original intervention models assumed schools would remain segregated, even though research shows that a racially and socioeconomically diverse student body can have a beneficial effect on students' learning,<sup>68</sup> and that with a similar investment, the lowest performing schools could be transformed into magnet schools, ensuring long term student diversity.<sup>69</sup>

While the transformation of a failing school into a magnet school model is not a prohibited use of

SIG funds, the original requirements for turnaround schools made it difficult to take this approach. LEAs seeking to create magnet schools were obligated to “take all of the actions required by the final requirements...an LEA could not, for example, convert a turnaround school to a magnet school without also taking the other actions specifically required as part of a turnaround model, which are not necessarily consistent with a successful magnet school approach.”<sup>70</sup> In forcing LEAs seeking to create magnet schools to take all the steps required by the “turnaround” model, the original SIG program saddled schools with a significant burden which would have made it difficult to execute and effective magnet model given the requirements in place.<sup>71</sup> Most problematically, magnet schools created under the turnaround model would be required serve the same student body as the schools they replace, limiting their ability to encourage diversity in the classroom and potentially inhibiting growth in student achievement.

66 *Id.* at 66366.

67 Richard Kahlenberg, *Turnaround Schools That Work: Moving Beyond Separate but Equal* (The Century Foundation), available at <http://tcf.org/assets/downloads/tcf-turnaround.pdf>.

68 *Id.* See also Susan Eaton, *School Racial and Economic Composition & Math and Science Achievement* (The National Coalition on School Diversity Brief #1); Susan Eaton, *How the Racial and Socioeconomic Composition of Schools and Classrooms Contributes to Literacy, Behavioral Climate, Instructional Organization and High School Graduation Rates* (The National Coalition on School Diversity Brief #2); Susan Eaton and Gina Chirichingo, *The Impact of Racially Diverse Schools in a Democratic Society* (The National Coalition on School Diversity Brief #3); Philip Tegeler, Roslyn A. Mickelson, & Martha Bottia, *What we know about school integration, college attendance, and the reduction of poverty* (The National Coalition on School Diversity Brief #4); Roslyn A. Mickelson, *School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence* (The National Coalition on School Diversity Brief #5); Genevieve Siegel-Hawley and Erica Frankenberg, *Magnet School Student Outcomes: What the Research Says* (The National Coalition on School Diversity Brief #6); Genevieve Siegel-Hawley, *How Non-Minority Students Also Benefit from Racially Diverse Schools* (The National Coalition on School Diversity, Brief #8).

69 *Supra* note 46, pp. 7-10.

70 U.S. Department of Education, “Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965,” 31, available at [www2.ed.gov/programs/sif/sifguidance03012012.doc](http://www2.ed.gov/programs/sif/sifguidance03012012.doc).

71 *Supra* note 43 at 66366. (a) Turnaround model: (1) A turnaround model is one in which an LEA must— (i) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates; (ii) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students, (A) Screen all existing staff and rehire no more than 50 percent; and (B) Select new staff; (iii) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school; (iv) Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully

The alternative “restart” model under the original SIG program potentially provided enough flexibility in the composition of the student body to allow for the implementation of an effective and diverse magnet school model. While SIG recipients under the restart model were required to “enroll...any former student who wishes to attend the school,”<sup>72</sup> if many of the former school’s students enrolled in a new school, as opposed to the restart, then the restart school could have space available to create a diverse student body using the magnet school model. Unfortunately, only charter schools were authorized under the restart model, in which the school would be closed and reopened under a charter school operator, a charter management organization, or an education management organization. In 2011, Senator Harkin, Chair of Senate Education Committee, sponsored a reauthorization of the ESEA that would have allowed for the creation of magnet schools as a part of the restart model.

In February 2015, following the comment period, USDOE published the final requirements adopted for the SIG program.<sup>73</sup> The announced alterations and additions to the SIG program represent an important step on the part of USDOE toward increased support for student diversity and school integration using a variety of funding streams, as well as showing responsiveness to feedback from researchers and policy advocates.<sup>74</sup> Possibly the most significant development for the SIG program in the final requirements is the adoption of the State-determined model, which allows an SEA to “submit one State-determined intervention model for the Secretary’s review and approval” so long as the model is a whole-school reform.<sup>75</sup> This opens the door for SEAs to create diversity-focused interventions using SIG funds, similar to a program now underway in New York State, where officials recently implemented a socioeconomic integration pilot program using SIG funds. New York’s program, which launched in early 2015, provides fund-

71 continued

implement school reform strategies; (v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new “turnaround office” in the LEA or SEA, hire a “turnaround leader” who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability; (vi) Use data to identify and implement an instructional program that is research-based and vertically aligned from one grade to the next as well as aligned with State academic standards; (vii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students; (viii) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and (ix) Provide appropriate social-emotional and community-oriented services and supports for students.

72 *Id.* at 66366.

73 80 Fed. Reg. 7224 (Feb. 9, 2015), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-02-09/pdf/2015-02570.pdf>.

74 Following the creation of the SIG program, the NCSD and other advocates had repeatedly encouraged USDOE to amend the SIG requirements to promote the use of magnet schools with diverse student populations as part of the turnaround process. In September 2014 USDOE responded with proposed revisions to the final requirements for the SIG program, adding three new potential interventions for which SIG funds may be applied: an evidence-based, whole-school reform model; an early learning model; or an approved State-determined model. 79 Fed. Reg. 53254 (Sept. 9, 2014), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-09-08/pdf/2014-21185.pdf>. The regulation also included a footnote referencing an invitation to “strategy developers and other entities to submit prospective strategies and research studies of the effectiveness of those strategies” for potential inclusion as evidence-based, whole-school reform models eligible for SIG funds. *Id.* at 53257. For more information, see U.S. Department of Education, “Programs: School Improvement Grants - Invitation to Submit Evidence-Based Whole-School Reform Strategies,” *available at* <http://www2.ed.gov/programs/sif/npr-wholeschlreform.html>. The NCSD submitted a request that magnet schools be included as an approved evidence-based, whole-school reform strategy for SIG funds, NCSD, “Magnet Reform Strategy - School Improvement Grants,” *available at* [http://school-diversity.org/pdf/NCSD\\_SIG\\_Proposal\\_withcoverletter\\_10-31-14.pdf](http://school-diversity.org/pdf/NCSD_SIG_Proposal_withcoverletter_10-31-14.pdf), which was unfortunately rejected in an initial round of review. U.S. Department of Education, “Reply to Magnet Reform Strategy - School Improvement Grants,” [http://school-diversity.org/wp-content/uploads/2014/09/NCSD\\_SIG-Evidence-Based-Model\\_Decision-Letter\\_5.6.15-2.pdf](http://school-diversity.org/wp-content/uploads/2014/09/NCSD_SIG-Evidence-Based-Model_Decision-Letter_5.6.15-2.pdf).

14 75 *Id.* at 7246.

ing to LEAs to implement choice and educational models designed to support the achievement of low-SES students and to deconcentrate poverty.<sup>76</sup>

In March 2016 USDOE published a blog post requesting input from the public “how the School Improvement Grants (SIG) program can be used to promote voluntary, community-supported efforts to expand socioeconomic diversity in schools” and increase student achievement.<sup>77</sup> While this public input request does not mean SIG recipients will focus on student diversity, it is further evidence of the impact that diversity advocates have had on the Department’s approach to school turnaround and improving student achievement.

In December 2016, Secretary King announced the new Opening Doors, Expanding Opportunities grant competition. Opening Doors, Expanding Opportunities offers up to \$12 million for 20 district or groups of districts for the purpose of developing plans to increase socioeconomic integration in schools and completing pre-implementation activities that are focused on student diversity.<sup>78</sup> In addition to using socioeconomic status grantees can promote student diversity through other avenues, such as considering factors like students’ race and ethnicity. Competition funds may be put toward a variety of goals, such as community

engagement seeking input on the best approaches to promote student diversity, conducting data analysis, setting measurable diversity goals, and preliminary steps toward implementation of diversity efforts. This competition is open to all districts with schools that receive or are eligible for School Improvement Grants, with rural districts and those wishing to explore interdistrict integration efforts receiving priority.

## H. Equity Assistance Centers

On March 2016, the Department of Education issued proposed rules for Equity Assistance Centers (“EACs”), formerly known as Desegregation Assistance Centers.<sup>79</sup> The rules included an alteration in the number and composition of regions supporting Equity Assistance Centers would be determined, ultimately resulting in a reduction of the overall number of regions and Equity Assistance Centers from ten to four. The proposed reduction in number of regions and EACs was opposed by the NCSD,<sup>80</sup> but the Department maintained that the reduction would provide each center with more funding, ensuring a greater percentage of funds would be used to provide technical assistance by reducing overhead expenses, and ultimately maintained the reduction in the final regulations, published July 2016, cutting the number of EACs from ten to four.<sup>81</sup> The final

76 See New York State Education Department, “NYS Schools to Receive Grants to Promote Socioeconomic Integration,” available at <http://www.nysed.gov/news/2015/nys-schools-receive-grants-promote-socioeconomic-integration>; see also New York State Education Department, “2015-18 Title I School Improvement Section 1003(a) Socioeconomic Integration Pilot Program,” available at <http://www.p12.nysed.gov/funding/2015-18-title-1-ses-integration-grant/home.html>.

77 See U.S. Department of Education, “Socioeconomic Diversity as a School Turnaround Strategy,” available at <http://blog.ed.gov/2016/03/socioeconomic-diversity-as-a-school-turnaround-strategy/>. For NCSD’s response to this request for input, see NCSD, “Comments on Socioeconomic Diversity as a School Turnaround Strategy,” available at [http://school-diversity.org/pdf/NCSD\\_SIG\\_Comments\\_Re\\_SES\\_Diversity\\_as\\_a\\_Turnaround-Strategy.pdf](http://school-diversity.org/pdf/NCSD_SIG_Comments_Re_SES_Diversity_as_a_Turnaround-Strategy.pdf).

78 81 Fed. Reg. 90343 (Dec. 14, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-12-14/pdf/2016-29936.pdf>

79 81 Fed. Reg. 15665 (March 24, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-24/pdf/2016-06439.pdf>.

80 NCSD, “Comments on Proposed Rule for Equity/Desegregation Assistance Centers,” available at <http://school-diversity.org/wp-content/uploads/2016/04/NCSD-Comments-on-EAC-proposed-regulations-4-25-16.pdf>.

81 81 Fed. Reg. 46808 (July 18, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-07-18/pdf/2016-16811.pdf>. The new Equity Assistance Centers will be: the Mid-Atlantic Equity Consortium in Bethesda, MD; the South Central Collaborative for Equity at the

regulations also update the definition of “sex desegregation” to include sexual orientation, and further indicate that, in the event of increased funding for EACs in the future, the Department may consider increasing the number of geographic regions.

### 3. School diversity language and incentives in Early Childhood Education programs

The primary sources of federal funding for early education include Head Start, Title I of ESEA, Race to the Top Early Learning Challenge, and the Child Care and Development Fund (also referred to as the Child Care and Development Block Grant). None of these programs have traditionally provided any incentives or priorities for a racially or socioeconomically diverse student body, and some program features may have actually exacerbated segregation in the past – for example, programs that are designed solely for low-income children.<sup>82</sup> But building on research demonstrating the benefits of integration in the preschool years,<sup>83</sup> the Obama Administration has begun to promote greater diversity in some of these pre-k programs, although other funding streams still lack any diversity criteria.

#### A. Head Start and Early Head Start:

The Head Start program, run by the Office of Head Start within the Department of Health and Human Services (“HHS”), provides funding to local agencies for quality early education targeted at children in economically disadvantaged families.<sup>84</sup> In the past, diversity was not mentioned explicitly and was in fact discouraged in Head Start, as the program was designed to fund solely low-income children, generally in separate “Head Start” classrooms. The Early Head Start Program, also run by the Office of Head Start, provides services to infants, toddlers, and pregnant women in predominantly economically disadvantaged communities.<sup>85</sup> The evaluation criteria are largely identical, with no explicit encouragement of diversity in the target population to be served.<sup>86</sup> To the extent that Head Start and Early Head Start programs serve an existing, diverse population, the Head Start Multicultural Principles require culturally relevant programming designed to both preserve the cultural identity of individuals and provide them with the necessary skills to succeed in a diverse society.<sup>87</sup> The Head Start Multicultural Principles and the Head Start Program Performance Standards also emphasize that programs must pro-

81 continued

Intercultural Development Research Association in San Antonio, TX; the Great Lakes Equity Center at Indiana University in Indianapolis, IN; and the Metropolitan State University of Denver in Denver, CO.

82 See Bruce Hunter, Noelle Ellerson, and Saha Pudelski, *AASA Summary: Harkin/Enzi Senate ESEA Reauthorization* (October 2011), available at [http://www.aasa.org/uploadedfiles/policy\\_and\\_advocacy/files/harkinenzisummary.pdf](http://www.aasa.org/uploadedfiles/policy_and_advocacy/files/harkinenzisummary.pdf); see also Alyson Klein, *Senate ESEA Draft Bill Would Scrap Adequate Yearly Progress* (October 11, 2011), available at [http://blogs.edweek.org/edweek/campaign-k-12/2011/10/senate\\_esea\\_draft\\_bill\\_would\\_s.html](http://blogs.edweek.org/edweek/campaign-k-12/2011/10/senate_esea_draft_bill_would_s.html).

83 See *A Better Start: Why Classroom Diversity Matters in Early Education* (Century Foundation and the Poverty & Race Research Action Council, April 2015), available at [http://www.prrac.org/pdf/A\\_Better\\_Start.pdf](http://www.prrac.org/pdf/A_Better_Start.pdf)

84 U.S. Department of Health & Human Services, Office of the Administration for Children & Families, “Early Childhood Learning & Knowledge Center: Grants & Oversight - Is Head Start a Good Fit for my Agency?,” available at <http://eclkc.ohs.acf.hhs.gov/hslc/grants/grant-toolkit/understanding.html>.

85 U.S. Department of Health & Human Services, Office of the Administration for Children & Families, “Early Childhood Learning & Knowledge Center: Training and Technical Assistance - About Early Head Start,” available at <http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/ehsnrc/about-ehs/about.html#about>.

86 *Supra* note 61.

87 U.S. Department of Health & Human Services, Office of the Administration for Children & Families, “Revisiting and Updating the Multicultural Principles for Head Start Programs Serving Children Ages Birth to Five” available at



vide language services to address the linguistic diversity of enrolled children and adults.<sup>88,89</sup>

On June 19, 2015, the Department of Health and Human Services, in cooperation with the Department of Education moved for the first time to incorporate economic integration in the Head Start program, publishing proposed revisions to the Head Start Performance Standards,<sup>90</sup> including socioeconomic diversity in the *Determining Community Strengths and Needs*,<sup>91</sup> *Enrollment*,<sup>92</sup> and *Fees*<sup>93</sup> sections. NCSA members submitted supportive comments on the new standards.<sup>94</sup> On September 6, 2016, HHS issued final regulations for the Head Start Performance Standards,<sup>95</sup> maintaining support for socioeconomic diversity in Head Start programs that was included in the earlier proposed revisions. The new performance standards indicate that Head Start grantees must evaluate the community they serve and consider enrolling students from diverse economic backgrounds, provided that that enrolled

children from higher economic backgrounds funded from sources outside of Head Start grants will not be considered part of a program's eligible funded enrollment, and that Head Start programs can charge these students fees.

### B. Title I Preschools:

Title I funds are distributed to SEAs and LEAs for the benefit of students in districts with a high level of poverty.<sup>96</sup> They can be used for district-wide, school-operated, and targeted programs in preschools, as well as elementary and secondary schools, and can be used to supplement other existing programs.<sup>97</sup> Diversity is not considered a priority for Title I funding; rather, as poverty level is the ultimate priority. In fact, states may receive more Title I funding if they possess a larger number of isolated, high poverty schools and school districts – there is no incentive in the Title I funding formula for states and districts that are moving away from racial and economic segregation.

87 continued

[http://eclkc.ohs.acf.hhs.gov/hslc/hs/resources/ECLKC\\_Bookstore/PDFs/Revisiting%20Multicultural%20Principles%20for%20Head%20Start\\_English.pdf](http://eclkc.ohs.acf.hhs.gov/hslc/hs/resources/ECLKC_Bookstore/PDFs/Revisiting%20Multicultural%20Principles%20for%20Head%20Start_English.pdf).

- 88 U.S. Department of Health & Human Services, Office of the Administration for Children & Families, "Early Childhood Learning & Knowledge Center: Training and Technical Assistance - Using the Multicultural Principles To Establish a Framework to Create and Strengthen Language Policies and Procedures in Head Start and Early Head Start Programs," *available at* <http://eclkc.ohs.acf.hhs.gov/hslc/ta-system/cultural-linguistic/Dual%20Language%20Learners/pdm/responsiveness/UsingtheMulticu.htm>.
- 89 U.S. Department of Health & Human Services, Office of the Administration for Children & Families, "Early Childhood Learning & Knowledge Center: Policy & Regulation - Head Start Program Performance Standards and Other Regulations," *available at* <http://eclkc.ohs.acf.hhs.gov/hslc/standards/hspps>.
- 90 80 Fed. Reg. 35430 (June 19, 2015), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2015-06-19/pdf/2015-14379.pdf>.
- 91 *Id.* at 35528. ("A program must consider whether the characteristics of the community allow it to operate classrooms that include children from diverse economic backgrounds, in addition to the program's eligible funded enrollment").
- 92 *Id.* at 35531. ("A program should consider whether it is feasible to enroll children from diverse economic backgrounds who would be funded from other sources that include private pay, in addition to the program's eligible funded enrollment").
- 93 *Id.* at 35531. ("In order to support programs serving children from diverse economic backgrounds or using multiple funding sources, including private pay, a program may charge a fee to families who are not part of the Head Start funded enrollment").
- 94 Poverty & Race Research Action Council, "PRRAC Comments on proposed Head Start performance standards," *available at* [http://school-diversity.org/pdf/PRRAC\\_comments\\_on\\_proposed\\_Head\\_Start\\_performance-standards.pdf](http://school-diversity.org/pdf/PRRAC_comments_on_proposed_Head_Start_performance-standards.pdf).
- 95 81 Fed. Reg. 61294 (Sept. 6, 2016) *available at* <https://www.gpo.gov/fdsys/pkg/FR-2016-09-06/pdf/2016-19748.pdf>.
- 96 73 Fed. Reg. 64436 (Oct. 29, 2008), *available at* <http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/102908a.pdf>.
- 97 U.S. Department of Education, "Non-Regulatory Guidance: Serving Preschool Children Through Title I Part A of the Elementary and Secondary Education Act of 1965, as Amended," *available at* <http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf>.

### C. Race to the Top Early Learning Challenge:

The Race to the Top Early Learning Challenge competition provided grants to states to support statewide systems of high-quality early childhood education and development programs that benefit low-income/disadvantaged children.<sup>98</sup> The program highlighted the following as its key areas of reform: successful state systems; high-quality, accountable programs; promoting early learning and development outcomes for children; a great early childhood education workforce; and measuring outcomes and progress.<sup>99</sup> Diversity within the student body was not stated as a priority in the selection criteria for proposals. “[P]romoting school readiness for children with high needs” is an absolute priority that, under a previous version of the competition where grant money was prohibited from being used to create new early learning or development programs, had the potential to encourage racial and socioeconomic integration. However, the notice for the most recent round of competition does not retain similarly restrictive language, thus reducing the chances this program will facilitate classroom integration.<sup>100</sup> Applicants receive 20 base points (out of 280 base maximum points) for proposals that promote access to high-quality early learning and development programs for children with high needs, including children from low income families and English language learners. Applicant states must also demonstrate

that their program standards are culturally and linguistically appropriate to the population to be served.

### D. Child Care and Development Fund:

The Child Care and Development Fund provides funds to states to assist low-income families and those receiving or transitioning from public assistance in obtaining child care while they work or attend educational programs, as well as to improve the quality of child care within the state.<sup>101</sup> There was no mention of diversity or integrated services in the 1998 final rule,<sup>102</sup> and the most recent revision of the rule in 2007 did not add any such incentives.<sup>103</sup>

### E. Race to the Top Competition to Build and Develop and Expand High-quality Preschool Programs:

Pursuant to Public Law 113-76, USDOE committed \$250M to a Race to the Top competition for the development and expansion of high-quality preschool programs.<sup>104</sup> While the program’s stated goal of ensuring universal access to high-quality early education programs for all children from low- and moderate-income families was admirable, NCSD urged USDOE to avoid the unintended consequence of encouraging states, LEAs and providers to set up separate, segregated pre-K programs solely for low-income children. To this end,

98 U.S. Department of Education, “Programs: Investing in Innovation Fund (i3),” available at <http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/index.html>.

99 76 Fed. Reg. 53564 (Aug. 26, 2011), available at <http://www.gpo.gov/fdsys/pkg/FR-2011-08-26/pdf/2011-21756.pdf>.

100 76 Fed. Reg. 53564 (Aug. 30, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21139.pdf>.

101 63 Fed. Reg. 39936 (July 24, 1998), available at <http://www.gpo.gov/fdsys/pkg/FR-1998-07-24/pdf/98-19418.pdf>.

102 *Id.*

103 72 Fed. Reg. 50889 (Sept. 5, 2007), available at <http://www.gpo.gov/fdsys/pkg/FR-2007-09-05/pdf/07-4308.pdf>.

104 U.S. Department of Education, “Public Comment Sought for New Competition to Build, Develop and Expand High-Quality Preschool Programs,” available at [www.ed.gov/blog/public-comment-sought-for-new-competition-to-build-develop-and-expand-high-quality-preschool-programs/](http://www.ed.gov/blog/public-comment-sought-for-new-competition-to-build-develop-and-expand-high-quality-preschool-programs/).

the NCSD submitted formal comments,<sup>105</sup> and closely tracked the program's development. However, despite recommendations from NCSD, the program never included diversity incentives to counteract the unintended consequence of setting up isolated pre-K programs for low-income students.

### F. Preschool Development Grants:

In August 2014 the Department of Health and Human Services published notices inviting applications for funding awards for the Preschool Development Grants program, for both development and expansion grants. These notices both contained diversity incentives under selection criterion E., Collaborating With Each Subgrantee and Ensuring Strong Partnerships, for subgrantees that articulate how they “will integrate, to the extent practicable, High-Quality Preschool Programs for Eligible Children within economically diverse, inclusive settings, including those that serve children from families with incomes above 200 percent of the Federal Poverty Line.”<sup>106</sup> The description is worth 6 points.

## 4. Reauthorization of the Elementary and Secondary Education Act and “ESEA Flexibility”

In 2010 the Obama administration released a blueprint for revising the Elementary and Secondary

Education Act (ESEA), which was due for reauthorization in 2007; the blueprint built upon significant education reforms made in response to the American Recovery and Reinvestment Act of 2009.<sup>107</sup> In January 2015, following the approval of a socioeconomic integration pilot program in New York State using federal SIG funds, Secretary of Education Arne Duncan delivered a speech encouraging lawmakers to work together on a reauthorization of the ESEA, and suggested lawmakers support innovations that increase equity, including programs focused on “expanding socioeconomic integration of schools.”<sup>108</sup> In July 2015 the Obama administration released a report titled “Giving Every Child a Fair Shot: Ensuring All Students Have Equal Opportunity to Succeed,” which advocates for a reauthorization of the ESEA that holds all subgroups of students to high standards, allows for identification of low performing schools so they may receive target resources, ensures all students have an equitable opportunity to succeed (including access to excellent teachers, rigorous coursework, and a continuum of community services supporting childhood development), and encourages “approaches to teaching and learning, based on evidence of what works and what can work better for their schools.”<sup>109</sup>

### A. ESEA State Waivers

In the absence of Congressional agreement on an ESEA reauthorization bill and a collective under-

105 NCSD, “Comments on ‘Competition to Build and Develop and Expand High-quality Preschool Programs’” [www.school-diversity.org/pdf/integratedpreschoolcommentsletter2-26-14.pdf](http://www.school-diversity.org/pdf/integratedpreschoolcommentsletter2-26-14.pdf).

106 79 Fed. Reg. 48874, 48886 (Aug. 18, 2014), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-08-18/pdf/2014-19426.pdf>. See also 79 Fed. Reg. 48854 (Aug. 18, 2014), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-08-18/pdf/2014-19426.pdf>.

107 U.S. Department of Education, “A Blueprint for Reform Accelerate achievement The Reauthorization of the Elementary and Secondary Education Act” (2010) *available at* <https://www2.ed.gov/policy/elsec/leg/blueprint/blueprint.pdf>.

108 U.S. Department of Education, Remarks of U.S. Secretary of Education Arne Duncan, “America’s Educational Crossroads: Making the Right Choice for Our Children’s Future,” *available at* <http://www.ed.gov/news/speeches/americas-educational-crossroads-making-right-choice-our-children%E2%80%99s-future>

109 U.S. Department of Education, “Giving Every Child a Fair Shot: Ensuring All Students Have Equal Opportunity to Succeed” (2015), *available at* [https://www.whitehouse.gov/sites/default/files/docs/esea\\_white\\_house\\_report\\_.pdf](https://www.whitehouse.gov/sites/default/files/docs/esea_white_house_report_.pdf) at 4

standing that the primary achievement goal of No Child Left Behind (for all children to meet math and reading standards of proficiency by 2014) could not be achieved as originally defined, USDOE offered states flexibility to commit to their own, federally approved plans in exchange for waivers from a possible 13 ESEA requirements.<sup>110,111</sup> As of May 12, 2016, 43 states, the District of Columbia and Puerto Rico were granted flexibility.<sup>112</sup> Two more states and the Bureau of Indian Education also submitted requests for flexibility.<sup>113</sup> The principles that states must adhere to in submitting their plans for federal approval are 1) College- and Career-Ready Expectations for All students, 2) State-Developed Differentiated Recognition, Accountability, and Support, 3) Supporting Effective Instruction and Leadership, and 4) Reducing Duplication and Unnecessary Burden.<sup>114</sup> Although racial and economic integration are proven tools to achieve the goals identified in the waiver rules, school diversity and reduction of racial isolation are not included as a priority, and in spite of extensive new reporting requirements as part of the waiver process, states were not required to report their levels of racial and economic concentration, or trends toward

greater or lesser segregation in their jurisdictions.<sup>115</sup>

## B. The Every Student Succeeds Act

On December 10, 2015, President Obama signed into law the latest revision of the Elementary and Secondary Education Act, known as the Every Student Succeeds Act (ESSA). ESSA represents a departure from the federally focused No Child Left Behind, instilling SEAs and LEAs with significantly increased control over Title I interventions, accountability systems, and student evaluations. However, despite the loss of direct federal control over the minutia of states' education plans, the U.S. Department of Education retained the authority to order SEAs and LEAs back to the drawing board if their proposed plans do not adequately protect the rights of students.

In late December 2016, the Department of Education issued a call for public input regarding the administration of Title I funds under ESSA, specifically with regard to Accountability and State Plans.<sup>116</sup> The NCSD submitted comments advocating for the approval of racial and socioeconomic

110 U.S. Department of Education, "ESEA Flexibility" (June 7, 2012), available at <http://www2.ed.gov/policy/eseaflex/approved-requests/flexrequest.doc>.

111 The 10 original provisions that can be waived regard: 1) the 2013–2014 timeline for determining adequate yearly progress (AYP); 2) implementation of school improvement requirements; 3) implementation of LEA improvement requirements; 4) rural LEAs; 5) schoolwide programs; 6) support for school improvement; 7) reward schools; 8) highly qualified teacher (HQT) improvement plans; 9) the transfer of certain funds; 10) use of school improvement grant (SIG) funds to support priority schools. The 3 newly added optional flexibility areas include: 1) flexibility in the use of twenty-first century community learning centers (21st CCLC) program funds; 2) flexibility regarding making AYP determinations; 3) flexibility regarding within-district Title I allocations.

112 U.S. Department of Education, "ESEA Flexibility," available at <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

113 *Id.*

114 U.S. Department of Education, "Programs: ESEA Flexibility," available at [www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc](http://www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc), U.S. Department of Education, "ESEA Flexibility Guidance for Renewal Process For Windows 1 and 2 States" (Aug. 29, 2013), available at [www2.ed.gov/policy/elsec/guid/esea-flexibility/flex-renewal/flexrenewalguidance.doc](http://www2.ed.gov/policy/elsec/guid/esea-flexibility/flex-renewal/flexrenewalguidance.doc).

115 NCSD, "Addressing racial and economic isolation and school diversity in the ESEA Waiver Renewal Guidance," available at [http://school-diversity.org/pdf/NCSD\\_Waiver\\_Letter\\_10-31-14.pdf](http://school-diversity.org/pdf/NCSD_Waiver_Letter_10-31-14.pdf).

116 80 Fed. Reg. 79528 (Dec. 22, 2015), available at <https://www.gpo.gov/fdsys/pkg/FR-2015-12-22/pdf/2015-32178.pdf>.

integration as evidence-based strategies for school improvement, as well as including measures of racial and economic isolation in State accountability systems.<sup>117</sup> In May 2016 the Department issued a notice of proposed rulemaking, which amended regulations implementing programs under Title I, and called for public input.<sup>118</sup> In August 2016 the NCSD submitted comments, again urging the Department to explicitly recognize integration on the basis of race as an evidence-based turnaround strategy, in addition to integration by socioeconomic status, which was already included. NCSD also urged the Department to lower the threshold for number of student needed to trigger the law's protections for subgroups, and suggested alterations to the proposed school rating system to improve the summative ratings.<sup>119</sup> The Department issued final regulations on ESSA Accountability and State Plans on November 29, 2016. While these final regulations did not alter the subgroup threshold or significantly change the proposed summative rating system, they contain changes responsive to NCSD's suggestions, including explicit recognition that racial and ethnic diversity can be the focus of LEAs' evidence-based turnaround strategies under § 200.21(d)(3).<sup>120</sup>

### C. Stronger Together

In February 2016, a new \$120 million school integration grant program titled Stronger Together was proposed in the Department of Education's FY

2017 budget.<sup>121</sup> In July, the Stronger Together School Diversity Act was introduced in both the House of Representatives and the Senate.<sup>122</sup> The bill mirrors the budget request, proposing a \$120 million competitive grant program designed to support existing, locally developed, voluntary racial and socioeconomic integration efforts. The Stronger Together grant program would help prepare all students to excel academically and professionally in an increasingly diverse country and interconnected world. As the United States continues to diversify, with a projected transition to majority-minority by mid-century, the bonds between students from different backgrounds as a result of the Stronger Together program would prepare students to thrive in a truly multiracial, multicultural workforce, and help move our country toward the integrated society that was the promise of *Brown v. Board of Education*.

Stronger Together grants would be available to school districts, educational service organizations, or regional education authorities, creating the opportunity for flexible school integration efforts that may traverse district boundary lines and combat inter-district segregation. Furthermore, the Stronger Together program would withhold a portion of funds for national activities, enabling the creation of a data sharing system between grantees, as well as with applicants who did not receive grants but still wish to pursue integration efforts. Public input and support is a key part of this pro-

117 NCSD, "NCSD Comments on Implementing Programs under Title I of the Every Student Succeeds Act," available at [http://school-diversity.org/pdf/NCSD\\_Comments\\_for\\_ESSA\\_Title\\_I\\_implementation\\_1-21-16.pdf](http://school-diversity.org/pdf/NCSD_Comments_for_ESSA_Title_I_implementation_1-21-16.pdf)

118 81 Fed. Reg. 34540 (May 31, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-05-31/pdf/2016-12451.pdf>.

119 NCSD, "Comments on Notice of Proposed Rulemaking for the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act— Accountability and State Plans; Docket ID: ED-2016-OESE-0032," available at [http://school-diversity.org/pdf/NCSD\\_comments\\_-\\_ESSA\\_State\\_Plans\\_and\\_Accountability-Regulations-8-1-16.pdf](http://school-diversity.org/pdf/NCSD_comments_-_ESSA_State_Plans_and_Accountability-Regulations-8-1-16.pdf).

120 81 Fed. Reg. 86076, 86161 (Nov. 29, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-29/pdf/2016-27985.pdf>.

121 U.S. Department of Education, "Fiscal Year 2017 Budget Summary and Background Information" (2017), available at <http://www2.ed.gov/about/overview/budget/budget17/summary/17summary.pdf>.

122 Full text of the bill is available at [www.congress.gov/bill/114th-congress/house-bill/5738/text](http://www.congress.gov/bill/114th-congress/house-bill/5738/text).

gram, and to compete for funds applicants would be required to show a record of strong family and community involvement in development of the integration plan. Grants would be available for both planning and implementation, giving areas lacking an ongoing homegrown integration initiative an opportunity to compete for planning grants, and also giving the Department of Education leverage to ensure grantees develop solid plans for enhancing diversity in order to win implementation funding. Furthermore, planning grants would enable robust community deliberation and consultation, and ensure any plans established enjoy firm community support – without which integration programs cannot be successful. Technical assistance funds would also be provided for under the proposed program.

## **Conclusion**

We hope that the next Administration will continue to respect and support states and local school districts around the country that are working to bring students together across race and class lines, both through voluntary school integration programs, and through long-standing successful court ordered programs. School integration programs can provide low income and minority students with broader educational choices and access to opportunity without some of the negative consequences of unregulated choice programs. Research also shows that school integration benefits all children, both academically and socially, and leads to a more cohesive democracy. School integration is not a partisan issue, it is about equal opportunity and a better future for all our children.



This issue brief was prepared by **Michael Hilton**, Policy Counsel at the Poverty & Race Research Action Council, with helpful input from Derek Black, Phil Tegeler, and other NCSd coalition members.

The National Coalition on School Diversity is a network of national civil rights organizations, university-based research institutes, local educational advocacy groups, and academic researchers seeking a greater commitment to racial and economic diversity in federal K-12 education policy and funding. [www.school-diversity.org](http://www.school-diversity.org)

Also available from NCSd:

**The National Coalition on School Diversity** | March, 2015 | Issue Brief 5

**Linking Housing And School Integration Policy: What Federal, State And Local Governments Can Do**

*In collaboration with the Poverty & Race Research Action Council (PRRAC)*

In spite of the obvious “unintended consequences” between housing and school policy, government housing and education agencies have only collaboratively tried to promote the common goals of racial and economic integration. Recent efforts to promote collaboration among housing and school agencies have focused on place-based interventions to enhance the learning environment for low-income children in segregated, high poverty schools and neighborhoods. These are important initiatives, but working together, government housing and education planners can do more to address the underlying conditions of segregation and poverty concentration that are a major contributor to unequal neighborhoods and school conditions.

Housing and school integration can have a strong mutually reinforcing effect – research indicates that children who attend economically and racially integrated schools have improved achievement and long-term educational outcomes, and are more likely to grow up and live in integrated communities and neighborhoods, and send their own children to integrated schools.<sup>1</sup> Similarly, regional school integration programs have been linked to declines in patterns of housing segregation.<sup>2</sup>

1. Hoxby, C. M. School Desegregation and the Economic Mobility of African Americans. *Journal of Human Capital*, 2000, 4(1), 1-35.

2. Hoxby, C. M. School Desegregation and the Economic Mobility of African Americans. *Journal of Human Capital*, 2000, 4(1), 1-35.

**The National Coalition on School Diversity** | October 2016 | Issue Brief 7

**How the Administration’s “Stronger Together” school integration proposal built on the lessons learned from the flawed TASP program**

by Kathryn A. McDermott, Erica Frankenberg, and Elizabeth DeBray

In 2009, Congress allocated \$2.5 million for a competitive federal grant program, Technical Assistance for Student Assignment Plans (TASP), that aimed to increase diversity in public schools, but which had only limited success. The Obama Administration’s “Stronger Together” 2017 budget proposal (and the accompanying Stronger Together School Diversity Act of 2016) shows that the U.S. Department of Education (USED) has learned from the experience of TASP in the following ways:

- Stronger Together commits \$20 million in grants that will support voluntary programs for integration in PK-12 schools. Because TASP had only \$2.5 million, each district’s grant was too small to create sustainable programs, but Stronger Together grants should be:
- Stronger Together separates planning grants from implementation grants. The TASP grants went to school districts all at once, which meant that when several of the districts’ projects failed away from their original diversity goals, USED had no leverage to get them back on track. Projects that use Stronger Together planning grants will have to come up with solid plans for enhancing diversity in order to win implementation funding.
- Stronger Together requires community outreach and engagement. One of the problems with TASP was that districts had only 30 days to prepare proposals for BOYH planning and implementation. As a result, there was generally a lack of practice involvement from community groups, which made it hard to build coalitions to support and sustain a commitment to diversity.
- Stronger Together grants may be awarded to school districts, educational service organizations, or regional education authorities. Making grants only to single districts was a weakness of TASP. Some TASP grant districts were in a good position to create diverse schools because they had low White or middle-class students and/or were focused on redesigning their assignment policies in ways that might attract more advantaged students back to the district even if that meant that within-district segregation would deepen.
- Stronger Together sets aside \$2.5 million for national activities like technical assistance, evaluation, and sharing knowledge among grantees. In our study of TASP people in the districts that were grants told us that they would have had more connections with other grantees, districts and implementation support from USED. Currently, there is a reemergence of interest in diversity and integration, and the knowledge gained through Stronger Together would also be useful to leaders in districts that do not receive grants.

We also would like to see the Department strengthen Stronger Together in the following ways:

1. Our prior research on the TASP program is summarized in a 2016 paper, “Good Intentions, Limited Impact: The Technical Assistance for Student Assignment Plans (TASP) Program.” Available at: <http://www.national-education-policy.org/2016/08/22/good-intentions-limited-impact-the-technical-assistance-for-student-assignment-plans-tasp-program/>

**Brief No. 6** | The National Coalition on School Diversity | October, 2012 | Research Brief

**How Non-Minority Students Also Benefit from Racially Diverse Schools**

By Genevieve Siegel-Hughes

Nearly six decades of multi-disciplinary social science evidence points to important academic, social and civic benefits for low-income students of color who attend high quality, diverse schools. Research has highlighted key findings that document these beneficial outcomes are summarized in prior “Research Briefs” in this series ([www.school-diversity.org](http://www.school-diversity.org)). Some of this research has also pointed to benefits accruing to students of all races and ethnicities attending integrated schools. One of these benefits has been paid to the ways in which “white” students are advantaged by racially diverse school settings. As outlined in racially integrated schools is also associated with important social and psychological advantages that improve productivity in an increasingly diverse workplace. Recognizing that sustained support for school diversity on the part of white families is central to the creation of stable, integrated schools, this research brief examines the best evidence to date on the benefits of racially diverse K-12 experiences for white students.

**Context: The Demographic Transformation of Schools and a Changing Economy**

Last year, for the first time in history, white infants accounted for less than half of all births, according to the Census.<sup>1</sup> This momentous shift in the very youngest Americans is one of many concrete indicators of profound demographic transformation. School enrollments reflect these broader population trends. In 1970, white students made up roughly 80% of the national public school enrollment – a figure that has fallen to less than 54% today.<sup>2</sup> Enrollment in the country’s two largest regions, the South and the West, are disproportionately and unbalanced.<sup>3</sup>

Schools are public institutions consistently attended by 9 out of 10 school-aged children in the country,<sup>4</sup> and so each should serve as training grounds for the world that rising generations of students will experience. Yet in spite of our growing diversity, high levels of school segregation persist.<sup>5</sup> The typical white student in the U.S. for example, goes to a school where roughly three-quarters of his or her peers are also white, even though whites now account for just more than half the national school enrollment.<sup>6</sup> As the research summarized below suggests, racially and ethnically homogeneous school settings do not adequately prepare either white students or their nonwhite peers for life and work in a multicultural society.<sup>7</sup>

As the global economy continues to transition from the industrial age to an era based on knowledge production, flexibility, innovation and risk, today’s students should be educated in learning environments that foster such characteristics. Racially and ethnically diverse schools are optimal settings in which to do so, for a variety of reasons further explored in the following sections.

**Better Learning Outcomes for Non-Minority Students in Diverse Schools**

Diverse schools are linked to a host of positive learning outcomes for white students. These