Federal Support for School Integration: A Status Report

1. Review of school diversity language and incentives in key USDOE programs

The Secretary of Education has expressed strong support for school diversity and reduction of racial isolation in speeches and in the Joint Guidance on Voluntary School Integration, and the Department of Education has included a general preference for school integration among its permissible funding preferences (see below). However, this support for school integration is not yet reflected in the requirements and point systems of many key competitive grant programs, where it might make the most difference.

■ Supplemental Priorities for Discretionary Grant Programs:

Funding preference in discretionary grants programs is permitted 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." 75 Fed. Reg. 78486 (Dec. 15, 2010).[1] This new "diversity preference" is 1 of 16 competitive funding priorities listed in the Federal Register notice. It permits, but does not require, school diversity to be included in the point systems for competitive grants.

■ Language from DOJ-USDOE Guidance on the Voluntary Use of Race:

Consistent with the 2007 Supreme Court decision in *Parents Involved*,[2] the Department's 2011 "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools"[3] 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 (the guidance also lists examples of such measures, including affirmative school siting, redefined attendance zones, geographically weighted lotteries, socioeconomic integration, interdistrict transfer programs, etc).[4] Importantly, the Guidance also clarifies that race of individual students *can* still be taken into account to achieve diversity in situations where "race-neutral and generalized race-based approaches would be unworkable." School districts are encouraged to contact DOJ or USDOE for technical assistance in applying these guidelines.

■ 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, USDOE

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1   http://www.gpo.gov/fdsys/pkg/FR-2010-12-15/pdf/2010-31189.pdf

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

3   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).

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. 75 Fed. Reg. 9777 (Mar. 4, 2010).[5]

On December 31, 2012, USDOE issued a new notice inviting applications for funding awards, which also strengthens the program's focus on school diversity. 77 Fed. Reg. 77056. The notice adds 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."[6] Furthermore, the 2012 notice emphasizes 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.

The major weakness of the Magnet Schools Assistance Program is its small size in the USDOE budget — $9.16M in 2014, as compared with $248.2M in the federal charter school budget and $250 in Race to the Top.

■ *Charter School Programs:*

There are currently several charter school funding competitions for State Education Agencies, indi-

vidual charter schools, and non-profit charter management organizations. Each of these competitions permit a small number of points in the competitive rating system for schools that "promote student diversity, including racial and ethnic diversity, or avoid racial isolation," but these priorities are relatively weak and do not provide a strong incentive for applicants to promote diverse charter schools.

Compared with the small number of points allocated for the promotion of diversity, applicants can earn a significant number of points for serving "educationally disadvantaged" students, including, *inter alia*, individuals from low-income families, English learners, migratory children, children with disabilities, and neglected or delinquent children.[7] While these criteria do not necessarily promote segregation and poverty concentration on their face, they may have that effect in practice, if more points are allotted to applicants serving extremely high percentages of disadvantaged students.

For State Education Agencies who want to start new charter schools or disseminate information about existing charters, USDOE provides 1 of its 7 competitive funding priorities to schools that "promote student diversity, including racial and ethnic diversity, or avoid racial isolation." 76 Fed. Reg. 4322 (Jan. 25, 2011).[8,9] Applicants can attain 20 base points for the "contribution the charter schools grant program will make in assisting educationally disadvantaged and other students in meeting State academic content standards and State student academic achievement standards."

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5   http://www.gpo.gov/fdsys/pkg/FR-2010-03-04/pdf/2010-4415.pdf

6   Federal Register / Vol. 77, No. 250 / Monday, December 31 (p. 77580)

7   http://www.gpo.gov/fdsys/pkg/FR-2011-07-12/pdf/2011-17491.pdf

8   http://www.gpo.gov/fdsys/pkg/FR-2011-01-25/pdf/2011-1518.pdf

9   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).

For individual charter schools in states that do not already have a charter school State Education Agency grant, and who seek start-up or dissemination funds, USDOE provides 1 of its 4 competitive funding priorities to "projects that are designed to promote student diversity, including racial and ethnic diversity, or avoid racial isolation." 77 Fed. Reg. 22298 (Apr. 13, 2012).[10] Applicants can attain 15 base points for closing historic achievement gaps between protected subgroups or for demonstrating that there have not been significant achievement gaps at the school between protected subgroups. They can gain another 15 base points for success significantly above the state average for educationally disadvantaged students, and another 10 points for their general contribution in assisting educationally disadvantaged students (in particular, applicants must focus on the location and student populations to be served).

In January 2014 the USDOE issued non-regulatory guidance allowing the use of weighted lotteries, lotteries that favor low-income or educationally disadvantaged students to create a more integrated school, by charter schools receiving federal start-up and replication funding.[11] 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 first step to making federally funded charter schools more equitable and integrated.

■ *Race to the Top:*

The Race to the Top program provides funds to states who 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 schools."[12] The original 2009 notice's proposed priorities, requirements, and selection criteria did not include diversity. 74 Fed. Reg. 27804 (July 29, 2009).[13] 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. 74 Fed. Reg. 59688 (Nov. 18, 2009).[14] None of the three funding phases that followed modified priorities so as to prioritize diversity or explicitly incentivize voluntary integration. 74 Fed. Reg. 59836 (Nov. 18, 2009),[15] 75 Fed.

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10   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 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." For non-profit charter management organizations with proven success in charter schools who want to replicate or expand their existing models, USDOE provides 1 of its 6 competitive funding priorities to schools that "promote student diversity, including racial and ethnic diversity, or avoid racial isolation." 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 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).

11   www2.ed.gov/programs/charter/fy14cspnonregguidance.doc

12   http://www2.ed.gov/programs/racetothetop/index.html

13   http://www.gpo.gov/fdsys/pkg/FR-2009-07-29/pdf/E9-17909.pdf

14   http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27426.pdf

15   http://www.gpo.gov/fdsys/pkg/FR-2009-11-18/pdf/E9-27427.pdf

Reg. 19496 (Apr. 14, 2010),[16] & 76 Fed. Reg. 70980 (Nov. 16, 2011).[17]

On August 16, 2012, USDOE published its final notice and invitation for applications for new awards for the Race to the Top – District competition.[18] 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.[19] 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."[20] There are some other positive civil rights provisions in the final notice on school discipline.[21]

■ 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.[22] The original 2009 notice's proposed priorities, requirements, and selection criteria did not include diversity. 74 Fed. Reg. 52214 (Oct. 9, 2009).[23] 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. 75 Fed. Reg. 12004 (Mar. 12, 2010).[24] Following the inclusion of diversity as a permissible priority in the Supplemental Priorities for Discretionary Grant Programs, commenters again recommended it as a priority for future Investing in Innovation competitions. The Department declined to include diversity as a priority in this revision of the priorities, but mentioned that it might consider new rules to include diversity in future competitions. 76 Fed. Reg. 32073 (June 3, 2011).[25]

However, on December 14, 2012, USDOE published a notice soliciting comments regarding new proposed priorities, requirements, definitions, and selection criteria for the i3 program. 77 Fed. Reg. 74407. Once again, USDOE did not include "pro-

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16   http://www.gpo.gov/fdsys/pkg/FR-2010-04-14/pdf/2010-8376.pdf

17   http://www.gpo.gov/fdsys/pkg/FR-2011-11-16/pdf/2011-29582.pdf

18   Federal Register / Vol. 77, No 159 / Thursday, August 16, 2012 (p. 49660)

19   The NCSD's comments on the RTT-District Competition proposed notice were submitted on June 8, *see* http://www.school-diversity.org/pdf/race_to_the_top_district_comments_by_civil_rights_groups_6-8-12.pdf

20   *Supra* note 18. at 49666

21   *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.

22   http://www2.ed.gov/programs/innovation/index.html

23   http://www.gpo.gov/fdsys/pkg/FR-2009-10-09/pdf/E9-24387.pdf

24   http://www.gpo.gov/fdsys/pkg/FR-2010-03-12/pdf/2010-5147.pdf

25   Federal Register / Vol. 76, No. 107 / Friday, June 3, 2011 (p. 32073), *available at* http://gpo.gov/fdsys/pkg/FR-2011-06-03/pdf/2011-13589.pdf

moting 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 diversity in our schools, and to illustrate ways in which the i3 program would be well served by a diversity preference.[26]

Unfortunately, the Department once again declined to include a diversity priority in the most recent Final Priorities, Requirements, Definitions, and Selection Criteria for the I3 competition. 78 Fed. Reg. 18682 (March 27, 2013). None of the current competitions for Development grants,[27] Validation grants,[28] or Scale-up grants[29] contain any diversity incentive.

■   *Voluntary Public School Choice Program:*

This program provides grants to establish or expand 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. As of the most recent notice in 2007, diversity was not listed as a competitive priority. 72 Fed. Reg. 4700 (Feb. 1, 2007).[30] However, pro-

grams 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.[31] Since 2007, the program has provided no new awards.[32]

School Improvement Grants ("Turnaround Schools")

The Title I School Improvement Grants (SIG) program provides funds to state educational agencies (SEAs) for use in turning around the lowest performing schools.[33] An SEA can award up to $2,000,000 per participating school. 75 Fed. Reg. 66363 (Oct. 28, 2010). 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.[34] To receive SIG funds, the LEA must agree to implement (and demonstrate the capacity for implementation of) a rigorous intervention in each school that the LEA commits to serve. Interventions may take one of four forms: the turnaround model, the restart model, school closure, and the transformation model.[35]

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26   http://school-diversity.org/pdf/Investing_in_Innovation_comments_-_school_diversity_priority.pdf

27   Federal Register / Vol. 78, No. 59/ Wednesday, March 27, 2013 (p. 18710), *available at* www.gpo.gov/fdsys/pkg/FR-2013-03-27/pdf/2013-07016.pdf

28   Federal Register / Vol. 78, No. 86/ Friday, May 3, 2013 (p. 25990), *available at* www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10466.pdf

29   Federal Register / Vol. 78, No. 86/ Friday, May 3, 2013 (p. 25977), *available at* www.gpo.gov/fdsys/pkg/FR-2013-05-03/pdf/2013-10464.pdf

30   http://www.gpo.gov/fdsys/pkg/FR-2007-02-01/pdf/E7-1539.pdf

31   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).

32   http://www2.ed.gov/programs/choice/funding.html

33   Federal Register / Vol. 75, No. 208 / Thursday, October 28, 2010 (p. 66363). *Available at* http://www2.ed.gov/programs/sif/2010-27313.pdf.

34   *Id.* at 66365

35   *Id.* at 66366

As Richard Kahlenberg has pointed out, the interventions favored by USDOE focus heavily on changing administrative and teaching staff composition, and place no emphasis on increasing student diversity.[36] Many schools qualifying for turnaround schools funding are racially and economically isolated, and the current turnaround model assumes that they will stay that way, even though research shows that a racially and socioeconomically diverse student body can have a beneficial effect on students' learning.[37] But with a similar investment, the lowest performing schools could be transformed into magnet schools, ensuring long term student diversity.[38]

While the creation of magnet schools is not an impermissible use of SIG funds, the requirements for turnaround schools will make it difficult to use a magnet school model. LEAs seeking to create magnet schools "must 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."[39] In forcing magnet schools to take all the steps required by the turnaround model, schools may be unduly burdened and may not be able to execute and effective magnet model given the requirements in place.[40] Additionally, magnet schools created under the turnaround model 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. The Department should amend

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

37 *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. Michelson, *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 Sigel-Hawley, *How Non-Minority Students Also Benefit from Racially Diverse Schools* (The National Coalition on School Diversity, Brief #8)

38 *Supra* note 33, p. 7-10

39 Guidance on Fiscal Year 2010 School Improvement Grants Under Section 1003(g) of the Elementary and Secondary Education Act of 1965, p. 31, *available at* www2.ed.gov/programs/sif/sigguidance03012012.doc.

40 *Supra* note 1 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 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

these requirements to promote the use of magnet schools with diverse student populations as part of the turnaround process.

The alternative "restart" model for turnaround schools may provide enough flexibility in the composition of the student body to allow for the implementation of an effective and diverse magnet school model. SIG recipients under the restart model "must enroll…any former student who wishes to attend the school."[41] However, if many of the former school's students enroll 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. Currently, only charter schools are authorized under the restart model, in which the school is 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.

■ *Early Childhood Education:*

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 provide any incentives or priorities for a racially or socioeconomically diverse student body. Some program fea-

tures may exacerbate segregation – for example, many programs prioritize funds for proposals that are designed solely for low-income children.[42]

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, provides funding to local agencies for quality early education targeted at children in economically disadvantaged families.[43] Two of the primary criteria for funding are demonstration of a need for such services in the proposed location and for the proposed population, and achievement of early learning and developmental outcomes to promote school readiness for children.[44] Diversity is not mentioned explicitly and may in fact be unintentionally discouraged implicitly, as the program is designed to fund solely low-income children. 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.[45] The evaluation criteria are largely identical, with no explicit encouragement of diversity in the target population to be served.[46] 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.[47] The Head Start Multicultural Principles and the Head Start Program Performance Standards also emphasize that programs must provide language services to

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41   *Id.* at 66366

42   *See* http://www.aasa.org/uploadedfiles/policy_and_advocacy/files/harkinenzisummary.pdf; *see* also [CITE] http://blogs.edweek.org/edweek/campaign-k-12/2011/10/senate_esea_draft_bill_would_s.html

43   http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/understanding.html

44   http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/criteria.html

45   http://www.ehsnrc.org/AboutUs/ehs.htm

46   http://eclkc.ohs.acf.hhs.gov/hslc/hs/grants/criteria.html

47   http://eclkc.ohs.acf.hhs.gov/hslc/hs/resources/ECLKC_Bookstore/PDFs/Revisiting%20Multicultural%20Principles%20for%20Head%20Start_English.pdf

2. Authorized budget amounts in key federal education programs

PROGRAM	STAT CITE	CFR CITE	NOFA CITES	2011 BUDGET FINAL[1]
Magnet Schools Assistance Program[9]	ESEA, 20 USC §§ 7231-7231j	34 CFR § 280	75 FR 9879 (3/4/10)	$99.8M
Voluntary Public School Choice[10]	ESEA, 20 USC §§ 7225-7225g	34 CFR §§ 74-86 & 97-99	72 FR 4700 (2/1/07)	$25.8M
Expanding Educational Options Reauthorization	Proposed ESEA			___
Charter School Programs[11]	ESEA, 20 USC §§ 7221-7221i	34 CFR § 76(h); 34CFR §§ 74-86, 97-99	77 FR 13304 (3/6/12); 77 FR 22298 (4/13/12)	$255.5M
Race to the Top[12]	AARA, Pub. L. No. 111-5, 123 Stat. 115, §§ 14005-6	34 CFR Subt. B, Ch. II	74 FR 59836 (11/18/09); 75 FR 19496 (4/14/10); 76 FR 70980 (11/16/11)	$698.M
Investing in Innovation[13]	AARA, Pub. L. No. 111-5, 123 Stat. 115, §§ 14007-14007c	34 CFR §§ 74-86; 97-99	77 FR 11087 (2/24/12); 77 FR 18216 (3/27/12); 77 FR 18229 (3/27/12)	$149.7M
Head Start and Early Head Start[14]	HAS, 42 USC §§ 9801-9852(c)	45 CFR §§ 1301-1311		$7,560M[15]
Title I Grants to LEAs[23]	ESEA, 20 USC §§ 6301-6339, 6571-6578	34 CFR §200; 34 CFR§§ 76-77, 80-82, 84-85, 97-99		$14,492.4M
Race to the Top Early Learning Challenge[25]	AARA, Pub. L. No. 111-5, 123 Stat. 115, §§ 14005-6	34 CFR Subt. B, Ch. II	76 FR 53564 (8/26/11)	___
Child Care and Development Fund[26]	CCDBGA, 42 USC §§ 9858-9858(q)	34 CFR §§ 98-99		$2,223M[27]
School Improvement Grants[35]	20 USC § 6303	34 CFR § 200	75 FR 66363 (10/28/10)	$534.6M

Table Notes

1   http://www2.ed.gov/about/overview/budget/budget13/summary/13summary.pdf

2   http://www2.ed.gov/about/overview/budget/budget12/summary/12summary.pdf

3   http://www2.ed.gov/about/overview/budget/budget13/summary/13summary.pdf

4   http://www2.ed.gov/about/overview/budget/budget13/summary/13summary.pdf

5   www2.ed.gov/about/overview/budget/budget14/14action.pdf

6   http://www2.ed.gov/about/overview/budget/budget14/summary/14summary.pdf

7   www2.ed.gov/about/overview/budget/budget14/14action.pdf

8   www2.ed.gov/about/overview/budget/budget15/summary/15summary.pdf

9   http://www2.ed.gov/programs/magnet/index.html

10 http://www2.ed.gov/programs/choice/index.html

11 http://www2.ed.gov/about/offices/list/oii/csp/index.html

12 http://www2.ed.gov/programs/racetothetop/index.html

13 http://www2.ed.gov/programs/innovation/index.html

14 http://www.acf.hhs.gov/programs/ohs

15 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

16 http://www.hhs.gov/about/FY2012budget/fy2012bib.pdf

2012 BUDGET REQUEST[2]	2012 BUDGET FINAL[3]	2013 BUDGET REQUEST[4]	2013 BUDGET FINAL[5]	2014 BUDGET REQUEST[6]	2014 BUDGET FINAL[7]	2015 BUDGET REQUEST[8]
$110M	$99.6M	$99.6M	$91.6M	$99.6M	$91.6M	$91.6M
0 (requested within EEO)	0	0 (requested within EEO)	0	0 (requested within EEO)	0	0
$372M	0	$255M	___	$294.8M	___	$248.2M
0 (requested within EEO)	$255M	0 (requested within EEO)	$241.5M	___	$248.2M	0 (requested within EEO)
$900M Challenge)	$549M (including Early Learning Challenge)	$850M (including Early Learning	$520.2M	$1,000M	$250.0	$300M
$300M	$149.4M	$150M	$141.6M	$215M	$141.6M	$165.0M
$8,100M[16]	$7,969M[17]	$8,054M[18]	$7,573.2M[19]	$9,621M[20]	$8,598.1M[21]	$8,868M[22]
$14,492.4M	$14,516.5M	$14,516.5M	$13,760.2M	$14,516.5M	$14,384.8M	$14,384.8M[24]
$350M	(within Race to the Top)	(within Race to the Top)	___	___	___	___
$2,927M[28]	$2,278M[29]	$2,603M[30]	$2,205.6M[31]	$2,478M[32]	$2,360.0M[33]	$2,417M[34]
$600.0M	$533.6M	$533.6M	$505.8M	$658.6M	$505.8M	$505.8M

17 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

18 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

19 http://www.nea.org/assets/docs/FFY14-Head-Start.pdf

20 http://www.hhs.gov/budget/fy2014/fy-2014-budget-in-brief.pdf

21 http://www.gpo.gov/fdsys/pkg/BILLS-113hr3547eah/pdf/BILLS-113hr3547eah.pdf (page 883)

22 www.hhs.gov/budget/fy2015/fy-2015-budget-in-brief.pdf

23 http://www2.ed.gov/programs/titleiparta/index.html

24 www2.ed.gov/about/overview/budget/budget15/justifications/b-aaee.pdf

25 http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/index.html

26 http://www.acf.hhs.gov/programs/occ/resource/child-care-and-development-fund

27 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

28 http://www.hhs.gov/about/FY2012budget/fy2012bib.pdf

29 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

30 http://www.hhs.gov/budget/budget-brief-fy2013.pdf

31 http://www.aasa.org/uploadedFiles/Policy_and_Advocacy/files/FY14%20LHHS%20Approps%20Details%20011314.pdf

32 http://www.hhs.gov/budget/fy2014/fy-2014-budget-in-brief.pdf

33 http://www.gpo.gov/fdsys/pkg/BILLS-113hr3547eah/pdf/BILLS-113hr3547eah.pdf (page 881)

34 *Supra* note 22

35 http://www2.ed.gov/programs/sif/index.html

address the linguistic diversity of enrolled children and adults.[48,49]

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. 73 Fed. Reg. 64436 (Oct. 29, 2008).[50] 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.[51] Diversity is not considered a priority for Title I funding; rather, as poverty level is the ultimate priority, states may receive more Title I funding if they possess isolated, impoverished schools and school districts rather than integrated ones.

Race to the Top Early Learning Challenge: competition provides grants to states to support statewide systems of high-quality early childhood education and development programs that benefit low-income/disadvantaged children.[52] The program highlights 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. 76 Fed. Reg. 53564.[53] Diversity within the student body is 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.[54] 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.

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.[55] There was no mention of diversity or integrated services in the final rule. 63 Fed. Reg. 39936 (July 24, 1998).[56] The most recent revision of the rule did not add any such incentives. 72 Fed. Reg. 50889 (Sept. 5, 2007).[57]

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48   http://eclkc.ohs.acf.hhs.gov/hslc/tta-system/cultural-linguistic/Dual%20Language%20Learners/pdm/responsiveness/UsingtheMulticu.htm

49   http://eclkc.ohs.acf.hhs.gov/hslc/standards/Head%20Start%20Requirements

50   http://www2.ed.gov/legislation/FedRegister/finrule/2008-4/102908a.pdf

51   http://www2.ed.gov/policy/elsec/guid/preschoolguidance2012.pdf

52   http://www2.ed.gov/programs/racetothetop-earlylearningchallenge/index.html

53   http://www.gpo.gov/fdsys/pkg/FR-2011-08-26/pdf/2011-21756.pdf

54   Federal Register / Vol. 78, No. 169 / Friday, August 30, 2013 (p. 53992), *available at* www.gpo.gov/fdsys/pkg/FR-2013-08-30/pdf/2013-21139.pdf

55   http://www.gpo.gov/fdsys/pkg/FR-1998-07-24/pdf/98-19418.pdf

56   http://www.gpo.gov/fdsys/pkg/FR-2007-09-05/pdf/07-4308.pdf46

57   http://www.ed.gov/esea/flexibility/documents/esea-flexibility.doc

Race to the Top Competition to Build and Develop and Expand High-quality Preschool Programs

Race to the Top Competition to Build and Develop and Expand High-quality Preschool Programs: Pursuant to Public Law 113-76, USDOE has committed $250M to a Race to the Top competition on the development and expansion of high-quality preschool programs.[58] 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 is admirable, we have 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. The NCSD has submitted formal comments,[59] and will follow the program's development closely. While the program is still in the early stages of development, it is important to note that no diversity incentives have been identified thus far.

■ *ESEA Flexibility:*

In the long struggle for Congressional agreement on an ESEA reauthorization bill and a collective understanding 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 has offered states flexibility to commit to their own, federally approved plans in exchange for waivers from a possible 13 ESEA requirements.[60,61] As of September 17, 2013, 41 states and the District of Columbia have been granted flexibility.[62] 4 more states, Puerto Rico, and the Bureau of Indian Education have also submitted requests for flexibility.[63] 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.[64] 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 are not required to report their levels of racial and economic concentration, or trends toward greater or lesser segregation in their jurisdictions.segregation in their jurisdictions.

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58   www.ed.gov/blog/public-comment-sought-for-new-competition-to-build-develop-and-expand-high-quality-preschool-programs/

59   www.school-diversity.org/pdf/integratedpreschoolcommentsletter2-26-14.pdf

60   www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc

61   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 or 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

62   www2.ed.gov/policy/elsec/guid/esea-flexibility/approvalflexrequest820.doc

63   www2.ed.gov/policy/elsec/guid/esea-flexibility/requestunderrview820.doc

64   www.ed.gov/esea/flexibility/documents/esea-flexibility-acc.doc, www2.ed.gov/policy/elsec/guid/esea-flexibility/flex-renewal/flexrenewal-guidance.doc

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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**

No.1 – School Racial and Economic Composition & Math and Science Achievement

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No. 2 – How the Racial and Socioeconomic Composition of Schools and Classrooms Contributes to Literacy, Behavioral Climate, Instructional Organization and High School Graduation Rates

By Susan Eaton

No. 3 – The Impact of Racially Diverse Schools in a Democratic Society

By Susan Eaton and Gina Chirichigno

No. 4 – What we know about school integration, college attendance, and the reduction of poverty

By Philip Tegeler, Roslyn Arlin Mickelson and Martha Bottia

No. 5 – School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence

By Roslyn Arlin Mickelson

No. 6 – Magnet School Student Outcomes: What the Research Says

By Genevieve Siegel-Hawley and Erica Frankenberg

No. 7 – The Reciprocal Relationship Between Housing and School Integration

By Roslyn Arlin Mickelson

No. 8 – How Non-Minority Students Also Benefit from Racially Diverse Schools

By Genevieve Siegel-Hawley

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The National Coalition on School Diversity

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To learn more about becoming an NCSD member, email us at school-diversity@prrac.org