



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

The Honorable Lillian M. Lowery
Secretary of Education
Delaware Department of Education
The Townsend Building
401 Federal Street Suite 2
Dover, Delaware 19901-3639

JUN 15 2010

Dear Secretary Lowery:

I am writing in response to Delaware's requests to waive two of the final requirements for the School Improvement Grants (SIG) program under section 1003(g) of the Elementary and Secondary Education Act of 1965 (ESEA). The final requirements for the SIG program were published in the *Federal Register* on December 10, 2009 (74 Fed. Reg. 65618) and were amended by interim final requirements published on January 21, 2010 (75 Fed. Reg. 3375) (collectively, final requirements).

Delaware requested these waivers in order to enable it to implement, with respect to an local educational agency (LEA) that receives SIG funds, a recently amended State regulation relating to Delaware's persistently lowest-achieving schools that are designated by the Delaware Secretary of Education (State Secretary) as *Partnership Zone* schools. Under Delaware's regulation, the State Secretary may select a persistently lowest-achieving school for participation in the *Partnership Zone* if the State Secretary determines that the school will likely benefit from *Partnership Zone* status. An LEA with a *Partnership Zone* school must enter into a memorandum of understanding (MOU) with the Delaware Department of Education (DDE) that includes the following provisions: (1) selection of one of the four SIG school intervention models; (2) for a school at which a collective bargaining agreement governs its employees, a further agreement between and among the LEA, the collective bargaining unit, and the DDE addressing those subjects that may inhibit the school's successful implementation of the selected intervention model; and (3) provisions for regular oversight of the schools by the DDE or its designee.

Delaware's regulation further provides that, if the parties to the MOU are unable to agree on the MOU within 120 days, the LEA must implement either the restart model or the school closure model (*i.e.*, the turnaround model and the transformation model are no longer an option). Further, an LEA with a *Partnership Zone* school that does not make adequate yearly progress (AYP) by the end of the second school year following implementation of the MOU must renegotiate the MOU or select one of the other school intervention models.

Delaware's winning Race to the Top application and pending SIG application reflect the above-described State regulatory requirements. However, the State regulatory requirement that an LEA with a *Partnership Zone* school must implement either the restart model or the school closure

model if an MOU cannot be reached within 120 days conflicts with the SIG final requirement that prohibits a State educational agency (SEA) from requiring an LEA to implement a particular model in one or more schools unless the SEA has taken over the school (section II.B.2(d) of the SIG final requirements). In addition, the State regulatory requirement that bases accountability for a *Partnership Zone* school on making AYP in two year conflicts with the SIG final requirement assigning responsibility to an LEA to establish the achievement goals by which it will monitor a persistently lowest-achieving school that receives SIG funds (section II.A.8(a)(i) of the SIG final requirements.) Accordingly, Delaware requests a waiver of sections II.B.2(d) and II.A.8(a)(i) of the SIG final requirements.

After reviewing Delaware's requests, I am pleased to grant the requested waivers pursuant to my authority under section 9401 of the ESEA. These waivers will apply to Delaware's fiscal year (FY) 2009 and FY 2010 SIG funds. Through the waivers, Delaware will be permitted to implement, with respect to an LEA that receives SIG funds for *Partnership Zone* schools, the State regulatory provisions that require: (1) an LEA with a *Partnership Zone* school to implement either the restart model or the school closure model if the parties are unable to agree on an MOU within 120 days; and (2) an LEA to renegotiate its MOU or select another school intervention model if it does not make AYP by the end of the second year following implementation of the MOU.

I am granting these waivers based on several critical factors. First, Delaware's winning Race to the Top application reflects the DDE's intent to implement the State regulation, and the Race to the Top application was broadly supported by key Delaware stakeholders, including local school boards and local bargaining units. Indeed, each LEA in Delaware executed a Memorandum of Understanding agreeing to participate in all aspects of the State's Race to the Top grant, and each superintendent, president of the local school board, and the leader of the local teachers' union signed on to their LEA's MOU. The fact that each of these entities signed the MOU indicates a clear statewide consensus from key stakeholders in favor of the processes outlined in the State regulation and the goals those processes support. It further indicates that key stakeholders believe that the processes required by the State regulation provide an incentive for LEAs and local bargaining units to reach agreement regarding the implementation of a school intervention model and, ultimately, are designed to ensure that LEAs will be able to implement aggressive reforms in the State's persistently lowest-achieving schools, consistent with the overall goal of the SIG program. Moreover, approving these waivers and thereby permitting Delaware to align its SIG and Race to the Top programs will help maximize Delaware's efforts to address the needs of students in some of its persistently lowest-achieving schools.

I am granting these waivers on the condition that Delaware report to the U.S. Department of Education (ED), no later than September 30, 2011, the number of *Partnership Zone* schools for which SIG funds were awarded, and the number of such schools that will be implementing either the restart model or the school closure model as a result of the failure to agree to an MOU within 120 days. In addition, please note that, in accordance with section 9401(f) of the ESEA, these waivers may be modified or terminated if the performance of the State is inadequate to justify continuation of the waivers or if the waivers are no longer necessary to achieve their original purposes.

Page 3 – The Honorable Lillian M. Lowery

I appreciate the work you are doing to improve your schools and provide a high-quality education for your students. If you have any questions, please contact Carlos McCauley at (202) 260-0824 or Carlos.McCauley@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Thelma Meléndez". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thelma Meléndez de Santa Ana