

DEMOCRATS *for* EDUCATION REFORM



Advisory Memo

American Recovery and Reinvestment Act

February 23, 2009

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“What I will need from all of you is unprecedented responsibility and accountability on all of our parts. The American people are watching.”

President Barack Obama, on ARRA, to urban chief executives, February 20, 2009

Democrats for Education Reform applauds President Obama and leaders in Congress for their successful efforts to provide an historical \$100 billion increase in federal education aid to states and school districts as part of the American Recovery and Reinvestment Act.

We believe this unprecedented federal investment in local school operations is more than ample to shore up many state and local education budgets *and* advance genuine reform. We are pleased that the Secretary has outlined both of these goals on the Department’s ARRA web page.

What follows are our recommendations for maximizing this unique opportunity.

OVERVIEW

ARRA provides substantial latitude and discretion to the executive branch on the administration and oversight of education grant programs.

It is therefore of utmost importance that the Secretary provide firm leadership to states and school districts toward the goal of narrowing achievement gaps and building an education infrastructure that enables students and the nation to meet the demands of a 21st century global economy.

ARRA dramatically expands the potential of Title I of ESEA and the IDEA by providing the largest single increases in the history of these programs. In light of these unprecedented increases, we expect the Secretary to take a fresh look at compelling states to fulfill their obligations to students served by these programs.

It is also essential that the policymaking process be as transparent and open to public input as possible. In past Administrations, such decisions typically have been made behind closed doors with an elite group of high-powered lobbyists. ARRA presents the perfect opportunity to fulfill the President’s promise of change and inclusiveness.

First, ARRA dramatically expands the potential of Title I of ESEA and the IDEA by providing the largest single increases in the history of these programs. This will enable states and school districts to more effectively carry out their responsibilities to educate children in poverty and those with disabilities. In light of these unprecedented increases, we expect the Secretary to take a fresh look at compelling states to fulfill their obligations to students served by these programs.

Second, ARRA provides two new vehicles for what we hope will be bold education reform: the state stabilization fund and the new \$5 billion incentive and innovation grant programs – dubbed, we think appropriately, by the Secretary as the “Race to the Top” fund. Congress emphasized key priority areas for *special* attention under these new grant initiatives.

Here is a brief rundown of those priorities and what we see as key distinctions between the respective purposes of these funds, which comprise almost half of all ARRA education funding.

It is of utmost importance that states and districts redouble their efforts to narrow achievement gaps. It is also essential that the policymaking process be as transparent and open to public input as possible.

State Stabilization Fund

As a condition for accessing the state stabilization fund, ARRA stipulates that a state must provide assurances that it will use these funds to:

- Take steps to **improve teacher effectiveness and, in accordance with Title I of ESEA to, equalize the distribution of qualified teachers** between high and low-poverty schools¹;
- **Improve the collection and use of data** in accordance with the America COMPETES Act²;

■ **Improve state academic standards and enhance the quality of state assessments**, including federal law requirements related to the inclusion of children with limited English proficiency and the accommodations and adaptations necessary for students with disabilities³

■ **Support struggling schools.**

States must also **maintain fiscal effort** for elementary and secondary education⁴ and higher education⁵ at levels (at the very least) of support in fiscal year 2006.

State Incentive and Innovation Grants

Although the purposes are the same as those outlined above for state stabilization funds, **the “Race to the Top” fund should be reserved for providing venture capital only to those states that have shown the willingness to meet those obligations *and go above and beyond them* to serve as models of transformative education reform for the rest of the nation.**

Some examples:

■ **Achieving Equity in Teacher Distribution.** Every state should be expected to work to equalize the distribution of qualified teachers.

But only those states that have made good faith efforts and can show substantial and measurable results in remedying inequities in the distribution of teachers should be deemed eligible for inclusion in the “Race to the Top.”

■ **Data Systems.** Every state should be expected to move toward creating comprehensive data systems in accordance with the elements outlined in the America COMPETES Act.

But only those states that are moving forward to use such student-level data to drive policies that measure classroom-level teacher effectiveness, to create financial incentives to attract effective

Secretary Duncan has voiced his intent to exercise the broad authority¹ to make the \$5 billion incentive and innovation grant programs a “Race to the Top” Fund. We strongly endorse this approach and are extremely encouraged by the Secretary’s comments in public on the administration’s commitment to substantive reform.

teachers to high-need schools, to evaluate and improve professional development, and to inform decisions around teacher tenure should be eligible for inclusion in the “Race to the Top.”

■ **Assessments.** Every state should be expected to use high-quality academic assessments in line with Title I of the Elementary and Secondary Education Act⁷.

But only those states that have fully approved assessment systems and have demonstrated they are meeting the letter and spirit of Title I and other federal laws related to the inclusion of limited English proficient students and adaptations and accommodations for students with disabilities should be eligible for the “Race to the Top.”

Support for Struggling Schools. Every state should be expected to support struggling schools – particularly since states under current law can set aside 4% of the new Title I money for school improvement *in addition to* the \$3 billion allotted for the school improvement program in the stimulus.

But “Race to the Top” states should only include those that have made concerted efforts, measured by demonstrated student results, to affect dramatic changes in restructuring schools at the final stage of school improvement; e.g, funding or overseeing the reconstitution of “stage 3” schools and/or closing such schools and converting them to public charter schools.

States that have a track record of diving for the bottom when it comes to serving poor and minority youth and exploiting loopholes to avoid undertaking fundamental change in their education policies are poor candidates for participation in an all-out "Race to the Top."

In the remainder of this memo, we offer recommendations **first** for potential “Race to the Top” (incentive and innovation) projects, and **second** for areas worthy of special focus to ensure the state assurances required under the state stabilization fund, outlined above, result – once and for all - in full state and local compliance with federal law.

Incentive and Innovation Grants

DFER believes synergistic initiatives, i.e, those that leverage the funds and policies of both existing and newly authorized or expanded federal education programs -- along with state, local and philanthropic investments -- present the most exciting opportunities for bold and innovative

reforms. It is here, using \$5 billion in discretionary funding to support taking “what works“ to scale, where the Secretary would be able to move the needle for reform most drastically. Here are four examples:

Promise Neighborhoods. The substantial investment in education under ARRA and the broad flexibility afforded to the Secretary provide a perfect storm for launching community-wide efforts to attack the achievement gap.

During the 2008 campaign, President Obama proposed the creation of 20 “promise neighborhoods” in areas that have high levels of poverty and crime and low levels of student academic achievement. In doing so, he cited the acclaimed “Harlem Children's Zone” as a promising model for such efforts.

The ARRA certainly provides an opportunity to launch at least one or two “promise neighborhoods” over the next several years.

Such an initiative could also merge the goals - often perceived as disparate, but which we think are actually highly compatible - of both the "Bigger, Bolder" campaign and the “Education Equality Project.”

Instruction (before, during, and after-school) and social services (e.g., health care and nutrition screening and referrals) could be provided through maximum flexibility and coordination of the aims and purposes of a number of federal programs, both within and outside the jurisdiction of ARRA, e.g., WIC, Head Start and Early Head Start, Even Start and Other Family Literacy Programs, SCHIP, Medicaid, Title I (both pre-school and K-12), the School Improvement Program, McKinney-Vento Homeless Education, Perkins Voc-Education, Upward Bound and Gear-Up, and the Teacher Incentive Fund.

Such districts would have to meet both adequate yearly progress goals under Title I of ESEA as well as performance indicators on health and well-being, and contain a research and evaluation component that would allow for replication of their successes.

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Breakthrough Innovation in Systems of Schools.

Innovation is a critical element of the Administration's stimulus plan, and for this we applaud the Department. For too long, only incremental changes in the system have been possible because support did not exist for creating fundamentally new approaches. We suggest that the administration consider innovation across a three-tiered spectrum:

Scaling Proven Innovations: The Recovery Act language reflects the urgent need to scale up innovations already proven to have the ability to close the achievement gap between low-income students and their non-low-income peers. For example, it should be acknowledged explicitly that an extraordinary proportion of the schools making breakthrough progress in closing the achievement gap are part of strong charter management organizations, most of which face sharp resource limits on their sustainability and expansion. The same limits affect the most promising school turnaround solutions. And they affect human capital organizations that are building pipelines of teachers and school leaders who are being selected, prepared, and supported in novel ways that demonstrably increase their effectiveness. There is enormous promise in scaling and replicating these as fast as quality will allow. In this area, priority should go to entities or partnerships with proven track records of success in raising student achievement.

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Supporting Innovations. To make the Race to the Top effective, its major initiatives will require a class of supporting innovations, particularly in technology. The most effective schools rely on data systems that allow teachers to easily and efficiently implement effective data-driven instructional practices. Such schools also need systems for teachers to share instructional materials, content, assessments, and promising practices; and exchanges that allow instructional leaders to share professional development materials, videos, and observation and evaluation rubrics. Any supported innovations should be grounded in the research and best practice about data use and teacher effectiveness that underlie the Race to the Top.

Early-Stage Innovations. Education lags far behind every other significant public sector in its support for the early-stage innovations that have the capacity to markedly improve practice. Inherent in the idea of innovation is taking risks and inventing new ways of solving critical problems. However, early-stage innovation requires careful selection and intensive support. Therefore, these funds should be administered through nonprofit intermediaries that have proven track records of successfully backing and launching innovations in education – success both in identifying promising innovations and entrepreneurial teams, and in guiding them through the complex process of scaling.

World Class Standards and Assessment Systems.

There is broad consensus that the U.S. must bring its academic standards and assessments in-line with global economic demands for a college-educated, high-tech workforce. There is also wide agreement that many states’ standards and the vast majority of state assessment systems do not meet these criteria.

Improvements also need to be made in the *format* of state assessments. Most states rely too heavily on multiple choice or “fill-in-the-bubble” tests that do not tap a broad enough range of student knowledge and skills and may drive schools to engage, needlessly or not, in “drill and kill” instructional approaches.

The shortcomings of state assessments exist despite strong statutory requirements, since 1994, that such tests should, among other things:

- ✓ involve **multiple up-to-date measures** of student academic achievement;
- ✓ include measures that assess **higher-order thinking skills and understanding**;
- ✓ measure – at the discretion of the state - subjects other than math, reading, and science;
- ✓ provide for **adaptations and accommodations for students with disabilities**;
- ✓ provide for **the inclusion of limited English proficient students**, including testing **in the language and form most likely to yield accurate data** on what such students know and are able to do.

Participating “race to the top” states could be encouraged to choose from standards set forth, for example, by the Organisation for Economic Cooperation and Development (OECD) or the TIMMS (since both are increasingly used for comparing the U.S. to other industrialized countries) or those under development by ACHIEVE and the NGA.

There have been a number of political, logistical, and economic obstacles to realizing these objectives. These include the fact that a relatively small number of companies create tests, these companies try to maximize their profit margins, and states are under great pressure to do assessments on the cheap.⁸

States need not reinvent the wheel in creating academic content standards. Previously such efforts have gotten bogged down in philosophical and political quagmires; furthermore, such standards already exist and should be, to the extent practicable, adapted as is. Participating “race to the top” states could be encouraged to choose from standards set forth, for example, by the Organisation for Economic Cooperation and Development (OECD) or the TIMMS (since both are increasingly used for comparing the U.S. to other industrialized countries) or those under development by ACHIEVE and the NGA.

There are several excellent ideas proposed by education policy experts for bold, innovative assessment initiatives:

- **Barone** has proposed a system of “open-source” testing which could help solve some of the technical and cost issues by allowing states to share items, create a voluntary, core set of test items for national comparisons without requiring all states to use the exact same test, and allow for periodic updates and improvements;⁹

- **Tucker** envisions a system of new technology-enabled assessments that would use multiple forms of media (e.g., both visual and graphical representations) to measure a broader range of skills and allow for more finely tuned analyses of student achievement. Such tests would also allow for better integration between assessment and instruction¹⁰

- **Silva** has published a report¹¹ on several promising pilot programs taking place at the local level (which would *have* to be taken to scale at the *state level* to meet the requirements of ESEA and to ensure comparability across districts).

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A word of caution: The assessments described by Silva operate on a very small scale but appear similar in content and form to those developed in the 1980's and 1990's by a handful of states prior (e.g., Maryland, Kentucky and Vermont.) But for a variety of reasons – including their cost, political pushback, and certain technical shortcomings – they were abandoned as primary instruments for school accountability during the NCLB era. The Secretary should investigate these models, most prominently the now-defunct Maryland School Performance Assessment Program (MSPAP)¹², and seek to resurrect their best attributes, with appropriate improvements to meet current needs and the requirements of federal law.

Since all of these proposals have a technology component, integration with the new data systems funding – with full implementation of all data elements outlined by the America COMPETES Act - is absolutely essential.

Teacher Quality and the Equitable Distribution of Teachers

Teacher quality is the single most important correlate of student achievement; at the same time, it is the primary factor driving the opportunity gap between rich and poor students, minority and non-minority students, and native English speakers and English language learners.

Any such approach to improving teacher quality and equitably distributing good teachers must be bold, aggressive, comprehensive, and systemic.

Yet this is also the area of school reform that has lagged farthest behind other accountability-driven efforts. Some are arguing that addressing the teacher quality gap should wait a few years until *after* the next upgrade of state standards and assessments. **We could not disagree more.**

We have heard this argument before, as far back as the early 1990's. Promises made then for "opportunity to learn" remain unfulfilled. Addressing the teacher quality gap and improving state standards and assessments must go hand-in-hand. There will be no better opportunity to address the equitable distribution of teachers than that afforded *now* by the unprecedented investment in federal education programs under ARRA.

We strongly endorse reforms in the following areas¹³ as an essential foundation for any teacher quality and equity initiative:

- student and teacher identifiers in data systems;
- performance management and tenure;
- teacher placement and retention; and,
- differential pay for high-performing teachers, teachers in hard to staff neighborhoods and in difficult to staff subjects such as math and science).

Any such approach must be bold, aggressive, comprehensive, and systemic, with specific accountability indicators for tracking progress monitored at least on an annual basis.

To be blunt, the reality of state-level education politics in many states is such that there is tremendous pressure to pass legislation which assures a firewall-like separation between teachers and student performance. In New York (as well as other states such as California and Wisconsin) such legislation has been passed with very little opposition – making it now illegal to base teacher tenure decisions on student achievement. If this nation is to live up to its obligation to bring our education systems into the 21st Century, this type of progress-killing legislation should instantly disqualify a state from even being considered for “Race to the Top” funding.

To be blunt, the reality of state-level education politics in many states is such that there is tremendous pressure to pass legislation which assures a firewall-like separation between teachers and student performance.

Several states are already pursuing some promising elements of reform. For example:

- In Rhode Island, Education Commissioner Peter McWalters has ordered schools in Providence to begin filling teacher vacancies based on qualifications rather than seniority. Starting this fall, teachers at six Providence schools will be assigned based on whether they have the skills needed to serve students at those particular schools.
- In Ohio, Governor Ted Strickland has proposed that teachers be granted tenure after nine years, rather than the current three. In his State of the State address, Governor Strickland said: “Not everyone is cut out to be a teacher.... But even for teachers already in the field, we must have the ability to remove them from the classroom if their students are not learning.”

•In Colorado, the state legislature is considering a plan to create a “unique teacher identifier” so that more robust statistical analysis of teacher impact on student learning may be undertaken. (It remains to be seen what the Legislature will allow schools to do with this information, as the idea of attaching teachers to student performance is opposed by many education special interest groups.) We believe the time is right for these types of more sophisticated statistical analyses.

The Secretary has the authority to combine professional development funds under current ESEA law with the new innovation and incentive grants and the \$200 million for the Teacher Innovation Fund to work with states, districts, parents and their advocates, and local teachers’ unions on merit pay, placement, tenure, and other issues. Doing so would be entirely consistent with the ideas that President Obama advanced on the campaign trail.

Moreover, the \$100 million in funding for teacher quality enhancement grants could link such efforts to quality *pre-service* education and training, which explicitly includes alternative training providers, to ensure that teachers: a.) complete a student teaching or residency program before they assume primary responsibility for a classroom and b.) that they have the subject matter knowledge and specific expertise (e.g., ELL or special education certification) required by the school districts in which they will ultimately be hired. A 2002 GAO study¹⁴ found that there was very little accountability at either the state, institution, or federal level for the teacher quality enhancement grant program. Thus, the regulations governing this program bear revision in awarding new grants.

The Secretary has the authority to combine professional development funds under current ESEA law with the new innovation and incentive grants and the \$200 million for the Teacher Innovation Fund to work with states, districts, parents and their advocates, and local teachers’ unions on merit pay, placement, tenure, and other issues.

In addition, since over the last several years federal loan forgiveness and merit scholarships for students in teacher training programs who teach in high-need schools have been created and/or expanded, the Department should try to bundle all available aid in a way that is clear and accessible to students, institutions of higher education, and K-12 schools to maximize access and effectiveness.

“Bringing Up the Rear”

The following are areas in which we think the Secretary must take special care to bring states up to code in exchange for receipt of dollars *outside* of the innovation and incentive grant programs.¹⁵

Achieving Equity in Teacher Distribution

In thinking about the equitable distribution of teachers, the Department should be cognizant of output measures (i.e. impact on student achievement) as well as the standards in current law (i.e., experience, certification and teaching in or out-of-field). Until there are comprehensive systems for measuring teacher effectiveness, these input measures, on which there is ample research, must serve as reasonable proxies.

Federal law requirements for “highly qualified” teachers (HQT) are actually fairly modest, defining what, for most parents and policymakers, would be considered *minimum* qualifications: *all* teachers must have at least a B.A., full state licensure and certification (either through traditional *or* alternative means) and be able to show that they know the subjects they are assigned to teach.

NCLB also established a number of reporting requirements on teacher quality for states and districts.

Unfortunately, the Bush Administration exerted no oversight and failed to correct misinterpretations of NCLB’s teacher quality provisions. As a result, although the emphasis on teachers has spurred *some* positive action in *some* states and districts, the teacher quality and equity provisions in federal law have been substantially diluted.¹⁶

Unfortunately, the Bush Administration exerted no oversight and failed to correct misinterpretations of NCLB’s teacher quality provisions. As a result, although the emphasis on teachers has spurred some positive action in some states and districts, the teacher quality and equity provisions in federal law have been substantially diluted.

And, even with wide-spread gaming of the HQT definition, most states have made little or no progress achieving the law’s other critical goal with respect to teachers: equalizing the distribution of qualified teachers between high- and low-poverty schools. NCLB required states and districts receiving Title I funds to ensure that “poor and minority children are not taught at higher rates than other children by inexperienced, unqualified, and out-of-field teachers.” Under the Bush Administration, very little progress was made on this, perhaps the most powerful civil rights requirement of NCLB.

As the Citizen’s Commission on Civil Rights reported last year,

“Despite additional time and encouragement from the Department, plans turned in by the Spring of 2006 were nearly all deficient, and just nine of the revised plans that most submitted by July 2006 were deemed approvable by the Department. As in the past, the equity requirement remained a major stumbling block in terms of the quality of the state plans. Several states still did not even have an equity plan. Yet the Bush Administration decided to give most states high marks for “effort” in writing good plans.”¹⁷

We advise the Department to inform all recipients of Title I and ARRA funding that they will be expected to be in full compliance with teacher equity requirements within one calendar year.

We advise the Department to inform all recipients of Title I and ARRA funding that they will be expected to be in full compliance with teacher equity requirements within *one calendar year*. We further recommend that the Department conduct a swift and thorough audit of the progress of both the states and the 100 largest school districts on achieving both meaningful teacher quality and teacher equity. The audit should examine the accuracy, completeness and authenticity of data collected at the state and district level and ensure it is reported to the public. States that fail to meet their legal obligations to poor and minority children should be referred to the Office for Civil Rights. OCR should be empowered to use all its enforcement tools to secure compliance.

In the meantime, the Secretary should begin, immediately, to aggressively enforce the provision in Title II of ESEA that requires states to enter into compliance agreements with districts that have not met the HQT requirements of current law under their existing definitions up until such time that those definitions are revised per Department review.¹⁸

Finally, in order to make clear the discrepancies in per-pupil funding driven by the inequitable distribution of qualified and experienced teachers, the Secretary must unequivocally and immediately enforce the following provision of ARRA designed by Congress to prevent states from glossing over disparities between schools by using district wide per-pupil averages:

each local educational agency receiving funds available under this paragraph shall be required to file with the State educational agency, no later than December 1, 2009, a *school-by-school* listing of per-pupil educational expenditures from State and local sources during the 2008–2009 academic year: *Provided further*, That each State educational agency shall report that information to the Secretary of Education by March 31, 2010 (p. 67)

Standards and Assessments. Despite having been given billions of dollars in federal funds to develop standards and assessments (\$2 billion alone under the Goals 2000 Act, 1994-99) few states have model accountability systems, and a significant number do not meet the bare bones requirements set forth beginning in 2002 (most of which, other than the frequency of testing, are similar to those required under federal law since 1994).

We urge the Secretary to put an end to the “run-out-the-clock” or “shell game” approaches by states that are chronically delinquent in meeting their obligations to poor and minority children.

As of January, when Secretary Spellings issued her final report, there were 11 states that had not received full approval for their assessment systems - more than seven years into the current ESEA reauthorization. Two additional states have been approved “with recommendations.” In addition, some states that *have* fully approved standards and assessment systems have not revised their standards or assessments to meet all NCLB requirements.

Several of these are the same states that were reported as not being in full compliance at end of the Clinton Administration in 2001 (7 years after that ESEA reauthorization). Many of these states are not in compliance – or at risk of not being in compliance - due to recent changes - because they have not made the necessary adaptations for the most vulnerable students e.g., English Language Learners and students with disabilities.

We urge the Secretary to put an end to the “beat the clock” or “shell game” approaches of states that are chronically delinquent in meeting their obligations under federal law. Some of the states with the worst records of creating and implementing quality assessments are those that protest the loudest about federal accountability requirements because, they argue, the tests are not valid measures of student achievement. Every state receives millions of dollars per year in direct funding and set-asides, which will increase substantially with increased funding for programs such as Title I and IDEA.

States that are out of compliance should have one year to upgrade their systems or face reductions in or complete rescissions of their Administrative funds, and other escalating penalties thereafter. We believe this may be the only way to get the most recalcitrant states up to snuff with the most rudimentary reliability, validity, and technical assessment standards.

Support for Underperforming Schools. Under ARRA, states will be allocated an unprecedented sum for school improvement: \$3 billion under the school improvement program, plus the 4% state Title I set-aside (\$400 million nationwide of the \$10 billion Title I increase) provided under current law.

Most states, however, have not pursued corrective actions and school restructuring with the vigor and comprehensiveness envisioned under the 2002 ESEA reauthorization. In a fairly damning 2007 study, the Government Accountability Office¹⁹ found that:

Some of the states with the worst records of creating and implementing quality assessments are home to those who protest the loudest that accountability requirements are unfair because tests are not valid measures of student achievement.

About 60 percent of schools in restructuring implemented a restructuring option as required by NCLBA [i.e, 40% did *not*], and the two most frequently selected options were “*other*” major restructuring, such as *reconfiguring the grade levels* served by the school, and replacing *selected* school staff... **[M]any schools in restructuring may not have undertaken restructuring options as prescribed under NCLBA.** [emphases added].

We urge the Secretary to take immediate action to ensure that states take the actions required under federal law to restructure chronically low-performing schools; these must include more fundamental restructuring actions such as reconstitution and/or closing and re-opening the school

as a public charter. This will require ensuring the ability of states and districts to contract with nonprofit school operators—charter or otherwise—that have proven capacity to turn around failing schools.

We also urge the Secretary to take immediate action to ensure that children required to attend schools “in need of improvement” under Title I are afforded their individual rights and remedies. First, their parents must have the choice to transfer their children to a better-performing public school, with transportation provided. States and districts have resisted complying with this provision largely because it is politically challenging. But children should not be forced to wait in perpetuity while the adults try to fix broken schools.

Second, parents must be able to access supplemental educational services that meet their children’s needs and are convenient to attend. The Secretary should reaffirm the parent-option provisions in the law, as well as in the regulations issued in 2008. He should also task his staff with conducting compliance reviews, responding to parent complaints, and seeking to elicit buy-in from states to develop and promote more inter-district and charter school options where capacity is a limitation on parent’s ability to choose a better school.

Both President Obama and Secretary Duncan have shown what we think is well-founded faith in public charter schools as an option for schools for which other means of reform have failed. The Secretary should compel states to make more frequent use of the charter option for schools or districts in restructuring.

Both President Obama and Secretary Duncan have shown what we think is well-founded faith in public charter schools as an option for schools for which other means of reform have failed. In addition to compelling states to make more frequent use of the charter option for schools or districts in restructuring, there are several additional actions that the Secretary can take to jump-start restructuring efforts and level the playing field:

- As a condition for receiving new school improvement funds – either under the authorized SIP program or the 4% state set-aside – states shall not be allowed to cap the number of charter schools for the purposes of school restructuring. At the very least, states should have a “smart cap” mechanism so that proven successes can become “super-charters” capable of replication without taking up new charter school slots under a statutory cap.

Further, states should also be required to adopt a funding system ensuring that established streams of state and local funding follow students directly into charter schools established for purposes of restructuring, thereby preventing the imposition of a de facto cap on the establishment of such schools.

* As a further condition on receiving school improvement funds, states should demonstrate (with real data and parent notification) they are providing meaningful transfer options (including inter-district, where appropriate) to all parents of children attending schools in or eligible for restructuring.

• States that use fiscal stabilization funds for school modernization, maintenance, or repair should be required to allocate an equitable share of funds to charter schools.

• LEAs that use fiscal stabilization funds for school modernization, maintenance, or repair should be required to allocate an equitable share of funds to charter schools for facilities.

• If the equitable share for individual charter schools is too small to be useful, the funding should go into a pot for charter schools that only charters can apply for, on a discretionary basis (or be distributed through the state's existing charter school facilities funding mechanism, if it has one).

Most states have not pursued corrective actions with the vigor and comprehensiveness envisioned under the 2002 ESEA reauthorization. Only 60 percent of schools in restructuring implemented a restructuring option as required by NCLBA"

Closing

We applaud the Administration's commitment to making the most of this historic opportunity to help our nation live up to its obligations to its public school students. We look forward to working with the Administration – and to serving as friendly (but determined) critic when necessary to ensure that this unprecedented infusion of federal funds to state and local school budgets are accompanied by significant reforms.

Democrats for Education Reform (DFER) is a political action committee whose mission is to encourage a more productive dialogue within the Democratic Party on the need to fundamentally reform American public education. DFER operates at all levels of government to educate elected officials and support reform-minded candidates for public office. For more information, go to www.dfer.org.

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(Note - Organizations listed here are for identification purposes only and do not imply an endorsement or affiliation.)

¹ 14005(d)(2)

² 14005(d)(3)

³ 14005(d)(4)

⁴ 14005(d)(1)(A)

⁵ 14005(d)(1)(B)

⁷ Section 1111

⁸ See, for example, Margins of Error: The Testing Industry in the No Child Left Behind Era, by Thomas Toch at http://www.educationsector.org/research/research_show.htm?doc_id=346734

⁹ “Could ‘Open Source’ Testing Help Resolve the Testing Impasse?,” Education Week, http://www.edweek.org/login.html?source=http://www.edweek.org/ew/articles/2008/11/19/13barone_ep.h28.html&destination=http://www.edweek.org/ew/articles/2008/11/19/13barone_ep.h28.html&levelId=2100

¹⁰ “Beyond The Bubble: Technology and the Future of Student Assessment,” Education Sector, http://www.educationsector.org/research/research_show.htm?doc_id=826893

¹¹ Measuring Skills for the 21st Century, Education Sector,
http://www.educationsector.org/research/research_show.htm?doc_id=716323

¹² For a description of how the MSPAP differed from traditional standardized tests and provided a positive influence on instruction, see D. Piche, et al., *Title I in Midstream: The Fight to Improve Schools for Poor Kids*, pp. 40-42 (Citizens' Commission on Civil Rights, 1999), available at <http://www.cccr.org/doc/midstream.pdf>.

¹³ These areas are also supported by the Hope Street Group. See "Closing our Educational Achievement Gaps: Fostering Innovation in K-12 Education" http://www.hopestreetgroup.org/K-12_education

¹⁴ <http://www.gao.gov/products/GAO-03-6>

¹⁵ These sources would include Titles I and II of ESEA, IDEA, and the state stabilization grants under ARRA.

¹⁶ For more on how states and districts have “gamed” the teacher quality requirements of NCLB, see “Days of Reckoning: *Are States and the Federal Government Up to the Challenge of Ensuring a Qualified Teacher for Every Student?*” by Citizens' Commission on Civil Rights, 2006 at: <http://www.cccr.org/doc/DaysOfReckoning.pdf>

¹⁷ “The Continuing Challenge: Good Teachers for Disadvantaged Children” at:
<http://www.cccr.org/doc/TheContinuingChallengeReport.pdf>

¹⁸ ESEA 2141 (c): If the State educational agency determines, based on the reports described in section 1119(b)(1), that the local educational agency has failed to make progress toward meeting the annual measurable objectives described in section 1119(a)(2), and has failed to make adequate yearly progress as described under section 1111(b)(2)(B), for 3 consecutive years, the State educational agency shall enter into an agreement with such local educational agency on the use of that agency's funds under this part. As part of this agreement, the State educational agency — (1) shall develop, in conjunction with the local educational agency, teachers, and principals, professional development strategies and activities, based on scientifically based research, that the local educational agency will use to meet the annual measurable objectives described in section 1119(a)(2) and require such agency to utilize such strategies and activities;

¹⁹ Education Should Clarify Guidance and Address Potential Compliance Issues for Schools in Corrective Action and Restructuring Status, GAO-07-1035.