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To: Office of School Operations and Management Services
New York State Department of Education
From: Geri D. Palast, Executive Director, Campaign for Fiscal Equity
Billy Easton, Executive Director, Alliance for Quality Education
Date: April 4, 2008
Re: Comments on Proposed Final Regulations for Contract for Excellence

VIA EMAIL: p16education@mail.nysed.gov

Overview

The Campaign for Fiscal Equity (CFE) and the Alliance for Quality Education (AQE) have led the successful 15 year effort to establish the constitutional right to a sound basic education for all of New York's public school students through litigation, policy development, advocacy, and organizing the input and action of parents and communities across the state. During the first year of the implementation of the Contract for Excellence, CFE and AQE worked closely with the State Education Department (SED) to ensure that the draft regulations and the Contract for Excellence approval process adhered to the statutory framework embodied within the 2007-08 Education Budget and Reform Act.

The statute provides the Contract for Excellence framework in order to construct an accountability system that ensures:

- Strategic investments predominately serve high needs students in low performing schools;
- Plans are developed with active consultation, comment and, where necessary, complaint, by the public;
- School districts provide clear benchmarks, multi-faceted performance measurements, and transparent program investment data.

With this framework implemented, New York schools can show that together, we have accomplished the goal of achieving academic excellence and proving that proper investment of these long awaited new funding matters. The Contract for Excellence must put New York on the road to graduating every student from high school giving them the tools to be responsible citizens and successful participants in a global society. Accountable implementation will be critical to our ultimate success.

CFE and AQE have worked with the SED since April of 2007, a full year, on this process. We have provided extensive comments and suggestions for the final regulations that are already on record. These proposed final regulations incorporate some of those suggestions. We will address modifications we believe are still necessary from our previous suggestions. However, we are deeply troubled by the SED's misinterpretation of the role of the public in the development and comment in the Contract for Excellence process. This was addressed separately in a letter to Commissioner Richard Mills and the Regents dated March 18, 2008, appended here.

Public Participation. CFE and AQE were involved in the legislative drafting of the law to ensure that the public -- taxpayers, voters, community members and advocates -- have a role in the review of the Contract in addition to parents and stakeholders. One of the driving principles underlying both the litigation and the legislation is to guarantee that the voice and the views of the public are given an active and substantial role in determining how these hard won new resources are effectively utilized to achieve the goal of academic excellence for all public school students. In the first year of the Contract, despite limited inclusion of the public by 85% of the school districts statewide -- contrary to the law, the input of our organizations and members of the public had a substantial impact on the approval process. We looked to the development of the final regulations as a place to further clarify the processes for expanding public participation as required by the legislation. Instead, we find that SED has drafted proposed final regulations that misinterprets, severely limits and undermines one of the basic tenets of the law by limiting the plain meaning of the term public to a limited list of participants.

In our initial comments, we articulated four overarching principles that must drive the formulation of the Contract:

1. **The first priority must be to serve high need students in low performing schools. Both the expenditure of resources, the primary focus of the Contract programs, and performance indicators and measurements must reflect this priority;**
2. **The regulatory, planning and implementation process must be transparent and include public participation. The statute requires solicitation of public input as well as full public hearings and a transcript in subsequent years;**
3. **Indicators, benchmarks and measurements must link inputs and outputs so that we can utilize the accountability system as a tool; and**
4. **District level Contracts must incorporate school specific planning information.**

We want to continue working with the Department and the Board of Regents to finalize the regulations. To this end, CFE and AQE respectfully submit the following comments organized according to the order of the Proposed Revisions to the Regulations of the Commissioner Relating to Contracts for Excellence issued by SED for consideration by the Regents on February 5, 2008 and printed in the New York State Register on March 5, 2008 for the purpose of public comment.

We are also attaching our original comments on the proposed Guidance Document.

Comments

Section 100.13(a) Definitions

1. **(a)(8) "Students with low academic achievement" means students who:**

   (a)(8)(iii) Suggest adding ELL students who have not achieved sufficient scores on the LEP proficiency test.

Section 100.13(b) Applicability

1. **(b)(1)(i)(a-d) "that has at least one school currently identified pursuant to section 100.2(p) of this Part as:"**

   By limiting applicability to SRAP, SINI, Corrective Action and Restructuring schools – the unintended result may be the exclusion of low-performing schools serving high need students because they can make AYP through safe harbor rules. Additionally, the math accountability standards are very low. In New York City, this could exclude a significant number of schools. **Also applicable to 100.13(c)(2)(ii); 100.13(d)(1)(b)**

   Perhaps an additional category could be added:

   (b)(i)(e) *Schools that are below the school district (or state) average in performance on the ELA or Math assessments or the 4 year graduation rate.*

Section 100.13(c) Contract Requirements

CFE and AQE continue to have concerns that the lack of specificity in the draft regulations resulted in a non-uniform response from school districts and in many cases lacked transparency. While the SED prepared a formatted document to be used by the districts, few if any, submitted Contracts using this format. CFE and AQE see the Contract submitted as two distinct documents. The first is the narrative which includes the district's detailed overall plan of how and why they chose the schools to fund; what strategies and programmatic decisions they will be utilizing; how they will meet the needs of the highest need students as specified by law; and what benchmarks and measurements will be used to measure their success. An additional document should be required detailing the school level distribution showing strategy and programmatic decisions; prioritizing high need students; and benchmarks and measurements. This document should be prepared in a database format like excel so it facilitates deeper analysis. Below are some suggestions for language.

1. **(c)(1) Add after "shall":** *be transparent and accessible. The narrative shall be written in plain language and presented in a format that is easy to read to ensure that the public can understand and take action where necessary. The Contract shall provide detail on an overall district plan, including which schools it has targeted and why; what strategy and programmatic decisions are being utilized; and what benchmarks and measurements will be*

used to measure success. Each contract shall also include a database format detailing those components on a school level basis. The Contract shall be submitted pursuant to a timeline, as prescribed by the commissioner and shall:

2. **Add to section (c)(1)(i)**: *and show how money is spent on a school level by strategy and within each strategy by program; how they predominately serve the populations enumerated above, and include benchmarks and measurements for success.*

3. **Modify narrative language after (c)(1)(vi)(c)-Strike** *"Such plan shall be aligned with the capital plan of the city school district of the city of New York ...";* **Replace with** *"The capital plan of the city school district of the city of New York shall be aligned with such plan and…"*

4. **Section 100.13(c)(2) Approval and Certification**

   4.1. Under the proposed regulation, compliance with the public process requirements is not considered by the commissioner when approving each district's contract for excellence. The commissioner should consider each district's public process and the requirements under section 100.13(e) to ensure it was complied with before approving their contract. Section 100.13(c)(2) should therefore read "*Approval shall be given to contracts demonstrating to the satisfaction of the commissioner that the requirements of subdivision (e) of this section, the public process, were satisfied, and that the allowable programs and activities selected by the district pursuant to the requirements of subdivision (d) of this section:…"*

   4.2. The proposed regulation does not require districts to provide their public comment assessment to the commissioner when they submit their contracts for approval. A copy of the public comment assessment, which each district is required to create under §100.13(e)(2)(ii)(c)(2)(iii), should be included in the contract sent to the commissioner for approval. This should be required so that the commissioner can ensure compliance with that section and review the public comments provided in each district and the district's response to those comments.

   4.3. The proposed regulation does not provide an opportunity for the public to see final versions of the proposed contracts submitted to the commissioner for approval. Contracts submitted to the commissioner for approval should be made publicly available by the school districts in government offices, libraries, schools, and online.

   4.4. The public should have an opportunity to make their views known to the commissioner on the final proposed contracts of each district. The proposed regulations do not, however, allow a public process at the state level once the contracts are submitted by each district. There should be a 30 day public comment period commencing once contracts are submitted to the commissioner for approval.

   4.5. 100.13(c)(2)(ii) See above 100.13(b) Applicability comment.

5. Section 100.13(c)(3) Use of Contract Amount

5.1. Add to section (3)(i)(a) "*of students with low academic achievement [as defined in section 100.13(a)(8)]*

5.2. Section (3)(ii)(a) CFE and AQE agree that a significant percentage (75) of the Contract amount should be distributed to the bottom half of the schools ranked as poorer performing. We question, however, whether including "*provided that all schools within the district that are in improvement status shall receive at least their pro rata share of contract funds based on their share of total district need."*

For instance, in New York City, there are schools on the state's SRAP list whose overall performance is relatively high compared to the city and state's average performance that should not be receiving a pro rata share. As examples, Bayside High School, Forest Hills High School, Francis Lewis High School and Edward R Murrow High School – which are identified as a SRAP schools – have 4 year graduation rates of 68%, 68%, 70% and 67% respectively. Yet they were allocated almost $2,000,000, $700,000, $800,000 and $900,000 respectively. These are low poverty schools that have been identified because the school has not met AYP for some sub-category.

So that anomalies like these do not occur, we suggest the following language change: "*provided that all schools within the district that are in improvement status shall receive at least their pro rata share of contract funds based on their share of [total district need] actual high need low performing students."*

5.3. Section (3)(iii) This new paragraph provides some of the flexibility a district may need to direct Contract dollars to high need low performing students that may be excluded because of the limitations of some sections of the regulations. But the last part of the sentence seems too restrictive – appearing to funnel reallocated dollars only to schools under registration review. Does it need to be this restrictive? It might better serve students if it said: "*to predominately benefit students having the greatest educational needs who are enrolled in schools [under registration review] identified pursuant to section 100.2(p) of this Part.* **Our suggestion would want to include the change suggested earlier in the document – which is to allow low performing schools that are not identified as SINI or SRAP schools.**

6. (c)(4) Amendment of contract—Add language to this section, "*Any amendment resulting in a reallocation of resources of greater than 5% shall be subject to public comment requiring a 15 day notice and a 15 day comment period. There shall be a transcript provided to the Commissioner and a statement by the district indicating how the public's comments were incorporated in the amendment."*

Section 100.13(d) Allowable programs and activities

1. (d)(1)(b) See above 100.13(b) Applicability comment.

2. (d)(2) Specific program requirements

(d)(2)(i)(1)(i) This revision is quite problematic. Previously, consistent with the law, the draft regulations required the city of New York in the preparation of their Class Size Reduction Plan to prioritize both low performing schools identified by the state and overcrowded schools. The draft of the final regulations, perhaps unintentionally, now **limits** the requirements for priority to overcrowded schools that require academic progress. In New York City, overcrowding remains a serious problem with more than 400 of the 1,100 school buildings at 100% or greater capacity.

In CFE's recent report – *A Seat of One's Own: Class Size Reduction in the Lowest Performing Schools in New York City* – CFE found that possibly 152 of the city's 408 SINI-SRAP schools could reduce class sizes to the CFE BRICKS standard established in the lawsuit given the capacity available as reported in the city's 2005-06 Enrollment Capacity Utilization report. The redrafting of the regulations would offer the city the possibility to ignore recommending class size reduction in these high need low performing schools.

CFE and AQE believe that through this legislation should take the opportunity to reduce class size in the city's low performing schools that have space and could consider utilizing Contract money to support that effort. We also need to rethink the strategies to enable overcrowded schools to reduce class size through rezoning of existing schools and new school buildings as they come on line.

CFE and AQE strongly advise retaining the original language.

This pertains to Section 100.13(d)(2)(i)(1)(iv)(C)(2)(i) also.

Section 100.13(e) Public Process

1. The N.Y. Education Law § 211-d(4) addresses Public Participation in the development and comment on the Contracts for Excellence. The clear intent of the legislature in incorporating public participation was to give the general public without exclusion the right and the opportunity to participate in both the development of the contract and meaningful comment on the district's proposed contract. In § 211-d(4)(a), the legislature's inclusion of specific groups in the development process was not intended to limit public comment and consultation, but, instead to ensure, at a minimum, that certain groups were consulted. In § 211-d(4)(b), when the legislation refers to "such process", it is referring to the development and comment on the Contract, and specifies a public hearing without restriction on what constitutes the public. The State Education Department's reading of the law restricting both the development and public hearing provisions to the enumerated groups flies in the face of the clear intent and language of the law. Based on our research, we also believe the Open Meetings law applies.

Suggested language:
100.13(e)(2) *" . . . a school district's contract for excellence for the academic year two thousand eight--two thousand nine and thereafter, shall be developed through a process <u>open</u>*

to the general public, which involves, but is not limited to, consultation with parents or persons in parental relation, teachers, administrators, and any distinguished educator appointed pursuant to section Education Law section 211-c, which shall include at least one public hearing to solicit comment from the general public. Any and all public hearings held in conjunction with the development of a district's contract for excellence shall be held in compliance with Article 7 of the Public Officers Law. In a city school district in a city of one million or more inhabitants, a public hearing shall be held within each county of such city. A transcript of the testimony presented at such public hearings shall be included when the contract for excellence is submitted to the commissioner, for review when making a determination pursuant to subdivision two of this section."

2. **100.13(e)(ii)(a)(1)** The law fully intended that a public hearing also be held by the community district education council. So the regulation should read: "*In the city school district of the city of New York, a public hearing shall be held within each county of such city. In addition, each community district contract for excellence shall be consistent with the citywide contract for excellence and shall be submitted by the community superintendent to the community district education council for review and comment at a public meeting.*

3. Section 100.13(e) states at the outset that each schools district's contract for excellence should be developed through a public process. Yet, there are no requirements in the proposed regulation to allow for the public to participate in the development of each district's contracts. The proposed regulation only allows for a public process once the contracts have already been developed by each district. The public process in the development of the contracts should be at least as strong as that in the pre-existing budget development processes in each district. There are two different types of education budget planning processes in New York State: independent (education budget is developed separately from municipal budget) and dependent (education budget is part of municipal budget). The regulation should take the differences between the two types of budget planning processes into account. In New York City, the public should have an opportunity to provide input on the allocations to schools, district wide initiatives, as well as the program allocations once the funds are distributed at the school level, as is the case with the general budgetary process. This same type of input should also be required in the other dependent districts if applicable.

4. Under the proposed regulation, there is no requirement that school districts use the existing knowledge and expertise in each community, and in particular the community's expertise as it relates to targeted student populations in need, and consult with community members with such expertise as the contracts are being formed. During the contract planning process, each school district should be required to consult with local professional educators, community based organizations, and local education experts to ensure that planning properly addresses the needs of Limited English Proficient and English Language Learners, students in poverty, students with disabilities, and students with low academic achievement.

5. The public must have sufficient notice of the public comment period in order to prepare and present their comments to the districts. Section 100.13(e)(2)(i)(b) requires only that there be reasonable notice of such public comment period, but does not define what reasonable notice means. This gives too much leeway to the districts to determine what reasonable notice means and may leave districts without a clear understanding of how to fulfill this requirement

of the regulation. The regulation should either detail the criteria for when notice qualifies as reasonable, or specifically state a time period for how much notice should be given, such as 15 days.

6. The proposed regulation does not require that the notice of the public comment period include information about the planning and approval process for contracts for excellence. The public should be aware of how contracts are finalized and approved in order to ensure transparency. Transparency helps to encourage public participation because it allows the public to better understand their role in making comments and the whole contract for excellence process. This notice should also include a brief description of how the public's comments will be taken into consideration, i.e., that the districts will create a public comment assessment where they review the comments made by the public and either make changes based on them or explain why they decided not to do so. This is necessary to ensure that the public understands why the public comment period is important and that their comments will be recorded and considered by the districts.

7. As written, the proposed regulation requires only the city of New York to provide a transcript of the public hearing and submit such transcript with the contract to the commissioner for approval. Other school districts throughout the state should also be required to transcribe their public hearings and submit the transcript to the commissioner.

8. The proposed regulation does not require districts to record the persons or organizations making comments and include this information in the public comment assessment created by each district. The public comment assessment should be as transparent as possible so that the public, the school district, and the commissioner are aware of who provided comments in each district. The public comment assessment should therefore include a list of all persons or organizations that provided oral or written comments.

Section 100.13(f)Complaint Procedures

1. The complaint process should make clear that groups of parents and representatives of parents can file complaints. In some instances, parents may feel more comfortable filing complaints through parent associations or through authorized representatives rather than individually

2. School districts should be required to consult with parent and community organizations when developing the standardized complaint form. The complaint form should also be made available for public review and comment for a 30-day period prior to finalization.

3. The proposed regulations require school districts to make complaint forms only available on the school district website, which is not sufficient. Section 100.13(f)(4)(c) of the proposed regulations should be revised to state that *"[a] school district must use additional methods to provide notice, including, but not limited to, making copies of the complaint notice and complaint form available in schools and school district offices, and including such copies in school district mailings."*

4. The proposed regulation provides the school districts with too much flexibility to set a deadline for filing complaints. Complaints about a school district's failure to comply with its Contract for Excellence should be allowed to be brought at any time during the school year of the Contract that is the subject of the complaint. Many parents are not informed of school district decision-making in a timely manner. Accordingly, allowing school districts to require that complaints be brought within a specified number of days from the decision or action that forms the subject of the complaint presents an unreasonable bar to complaints.

5. When a school district fails to investigate and respond to a complaint within the required 30-day period, the school district should be required to provide a written response to the allegations in the complaint on appeal. Otherwise, the school district's failure to respond deprives the complainant of information that she or he would have been able to use to support his or her case on appeal.

6. The regulations should specify that no reprisal of any kind may be taken by a school district or any employee of a school district against any person bringing a complaint under this procedure. Parents could reasonably fear that filing a complaint about their child's school with the principal or the superintendent of schools might negatively impact their child's education. An alternative to stipulating that reprisals are not permitted would be to allow parents to file complaints anonymously, as can parents in California under Cal. Educ. Code § 35186.

7. The school district shall be required to publicly report the nature and resolution of all complaints. The report should include the number of complaints by general subject matter with the number of resolved and unresolved complaints. For complaints designated as resolved, the report should state how the complaint was resolved. For complaints designated as not resolved, the report should state why the complaint was not resolved. This information is needed in order for the public and the SED to track whether there is a pattern of a particular type of complaint being filed.

8. The regulations should make clear that the use or availability of the procedure provided in this section shall not be construed as limiting exercise of any of the rights or remedies available to any person under state or federal law. Without such an implicit statement, the use or existence of the complaint procedure could be construed to limit parents' use of other potential remedies to resolve the problem about which complaints have been or could be filed.