



*Excellence and Equity  
in Public Education  
through School Board  
Leadership*

November 9, 2009

The Honorable Arne Duncan  
Secretary  
U.S. Department of Education  
400 Maryland Avenue SW  
Washington, DC 20202

**Re: *Investing in Innovation – Notice of Proposed Priorities, Requirements,  
Definitions and Selection Criteria  
Docket ID ED-2009-OII-0012***

Dear Secretary Duncan:

The National School Boards Association (NSBA), representing over 95,000 local school board members through our state school boards associations across the nation is pleased to submit comments on the Notice of Proposed Priorities, Requirements, Definitions, and Selection Criteria under the Investing in Innovation Fund.

We applaud your efforts and commitment to promote innovation among LEAs. Tapping into locally-based creativity to address the wide range of unique circumstances should serve as a core principle in the implementation of the Innovation Grants Program. However, we caution you to refrain from overly proscriptive eligibility requirements that in fact preclude the promotion of proven strategies simply because the LEA is not operating within an “ideal” environment (i.e., adequate funding, demonstrated academic progress for all students, capacity to support expansion of existing strategies, existing partnerships with non-profit or private entities, etc.).

As you are aware, at the recent ED Stakeholders Meeting on October 21, 2009, a panel of experts (Jim Shelton, Warren Simmons, and Susan Patrick) talked about what real innovation means. They focused on a few concepts such as “disruptive innovation” and the elimination of “replication.” Given their presentations, we urge to ensure that the language and tone of the final Notice are in fact consistent with the powerful points presented to the stakeholders.

### **General Design and Framework**

NSBA generally supports the proposed priorities, design and framework for the competitive grants that provide separate competitive streams based on the degree of research evidence, potential impact, magnitude of the effect, and geographical scope. Such a design appears to maximize the opportunity for highly successful LEAs to successfully compete, since their proposals will be evaluated among similarly situated LEAs.

We would, however, recommend that you clarify the authority of LEAs to include school district leaders and key personnel within the scope of the application, particularly as it relates to *Proposed Absolute Priority 1*. These provisions state that prospective applicants may misinterpret the requirement to exclude school district leaders and key personnel. It seems highly unlikely that any proposed innovation would exclude school district leaders and other key personnel, since successful implementation would involve both school leaders and school district leaders and key personnel. Therefore, we urge you to clarify language that would include school district leaders and key personnel as long as there would be clear demonstration that such inclusion is aligned and consistent

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with improving the percentage of highly effective teachers and school leaders through innovations addressing recruitment, placement, rewards, retention, evaluation and/or development, outlined in the proposed requirements.

Additionally, NSBA supports the effective use of data on student achievement and growth to improve instruction. We recognize that additional data collection would be necessary at the LEA level to support the goals outlined in the proposed priorities. However, since many LEAs rely primarily on states to provide technical and financial support to improve their data collection capacity, we urge you to emphasize the importance for states, particularly those applying for the Race to the Top funds, to plan and describe how they will help LEAs with data development and collection.

NSBA supports the use of rigorous state-developed standards and state-developed assessments. While the proposed language states that “the Department would provide funding for practices, strategies, or programs that support States’ efforts to transition to college-and-career readiness standards and assessments...” we believe that LEAs will play a major role in such development. Therefore, NSBA urges the Department to clarify that funding would be made available to LEAs, not only states, to support rigorous standards and high quality assessments aligned to those standards.

### **Eligibility**

NSBA recognizes the need to establish eligibility criteria. However, we are concerned that the proposed eligibility for LEAs is directly tied to achieving AYP for two or more consecutive years – particularly when Secretary Duncan has publically stated that the current accountability system is unfair and fails to accurately measure school or school district performance.

Although ED officials have said there may be a different eligibility requirement that would not include AYP when the *Elementary and Secondary Education Act* (ESEA) is reauthorized, it would not give LEAs that are currently not eligible to apply sufficient time to prepare their proposals for i3 funds since the proposed time for passage of the reauthorization remains unclear. We understand that the AYP requirement is in the *American Recovery and Reinvestment Act* (ARRA) and could be removed under pending legislative action. However, there is no guarantee that the AYP eligibility requirement would be removed in the end. NSBA recommends that ED take immediate action through a “pilot program” option or waiver option that would remove the AYP requirement and enable more LEAs to apply if they are able to demonstrate successful innovation strategies.

Additionally, the proposed Notice states that if an LEA did not make AYP for two or more consecutive years, it could be eligible if it can demonstrate “success in significantly increasing student achievement for *all* groups of students” through another measure such as NAEP. NSBA urges you to clarify whether the intent is to offer NAEP as an example of another measure that can be used, or the intent to establish NAEP as an alternate measure. NSBA does not believe that the NAEP is an appropriate measure of performance at the LEA level since not all LEAs participate in NAEP (in fact, only 11 LEAs take NAEP) and NAEP is not aligned to state standards. NSBA recommends that a broad range of measures of performance be authorized to include, but not be limited to, graduation rates, college enrollment rates, Advanced Placement/International Baccalaureate course completion, and value-added measures to enable LEAs to demonstrate success in significantly increasing student achievement for all groups of students.

Given these proposed eligibility requirements, NSBA believes that a majority of the LEAs would not have the opportunity to participate under the Innovation Grants Program - especially when accompanied by insufficient levels of resources from their states and/or local communities, or located in rural isolated areas across the country.

NSBA is also concerned that eligibility requires a demonstration of established partnerships with the private sector. In many communities such partnerships may not exist for reasons beyond the control of the LEAs. Further, even when such partnerships exist, these partners are not always in a position to provide matching funds as required by these proposed provisions. Therefore, as a minimum, the Secretary should be granted authority to grant waivers when it can be determined that the lack of such established partnerships have not adversely affected the implementation of such successful strategies.

The intent of the Innovation Grants is to take full advantage of successful practices currently being implemented. However, by requiring applicants to be in full compliance with all existing requirements and to meet or exceed all goals, the creativity and innovation being implemented in less successful schools would never be recognized. Therefore, NSBA urges you to modify the eligibility requirements to permit LEAs to compete for such grants as long as the LEA can demonstrate significant improvements for targeted populations without the need to exceed annual measures of progress for all students.

### **Proposed Definitions**

The proposed Notice offers several proposed definitions of a highly technical nature. NSBA recognizes the need to clarify terms. However, it is equally important to be able to communicate with the general public and with the LEA staff in a way that is easily understandable without the need to hire highly technical researchers for interpretations. Therefore, NSBA urges you to modify the definitions to enable the general community to understand both the intent and spirit of the requirements. Further, NSBA urges you to modify and expand these definitions to reflect the challenges facing LEAs such as funding, access to technology, facilities, and the unique operational conditions.

Additionally, we are particularly concerned with the proposed definitions of “highly effective schools leader” and “highly effective teacher” – that appear to be solely based on the ability to demonstrate annual rates of academic achievement beyond a single year. While academic achievement growth should be considered, it should not be the sole criteria for determining teacher and school leader effectiveness. Other aspects of the teaching and learning environment should also be considered such as the use of adaptive technology and instructional methodology.

Further, any requirements directed at measuring teacher effectiveness must recognize the barriers that many LEAs face when re-distributing teachers or letting go ineffective teachers stemming from collective bargaining agreements or other legal requirements. NSBA recommends that the Department include language that recognizes that some of these issues related to teacher effectiveness may require the elimination of state requirements and/or will involve significant investments in time.

In addition, these requirements should acknowledge that several states have laws or policies that would prohibit the use of student data when evaluating teacher and principal effectiveness. LEAs in these states should not be penalized or denied i3 funding if their state can demonstrate that it is taking steps to modify state legislation or policy to connect student progress and teacher/principal

effectiveness, or if it can demonstrate the reasons why the current statute/policy should remain in place.

Further, NSBA is concerned that the proposed definitions of student achievement for tested and non-tested grades and subjects are unclear and too restrictive. We recommend the following: 1) clarify section (a) under the definition of student achievement so that LEAs have the flexibility to use other indicators as deemed appropriate by the state, in addition to state assessments, when referring to student achievement; 2) clarify the language in section (b) that non-tested subjects refers to STEM related academic subjects, given the priority of advancing STEM. This would eliminate any confusion or concern over the provision's application to all academic and non-academic subjects.

### **Proposed Selection Criteria**

NSBA has similar concerns with the proposed selection criteria, particularly related to the experience of the applicant, the capacity of the applicant to support new practices, as well as the ability to sustain the project beyond the length of the grant. While these criteria are important, innovative projects with the potential for significantly improving academic performance could be identified also in LEAs that have not had success with all category of students or the extensive capacity to support a programs and practices supporting all students. Therefore, NSBA urges the establishment of waiver authority for the Secretary in those instances where an LEA lacks extensive authority or capacity to scale.

### **Evaluation**

NSBA recommends clarification regarding LEA participation in any evaluations. Specifically, the federal level should pay the LEA cost of participation and provide estimates of any local costs and staff time that would be associated with implementation of the evaluation. To ensure that evaluations will be as effective and efficient as possible, an opportunity should be provided for stakeholders to comment on such factors as the scope, methodology and costs involved prior to ED implementing any proposed evaluation.

### **Conclusion**

In summary, we believe that the commitment to promote true innovation must be accompanied by a framework that supports innovation and recognizes that there must be appropriate incentives for creativity – which rarely evolve from a highly-structured, overly proscriptive set of eligibility guidelines.

Thank you for the opportunity to share our concerns and recommendations. Question regarding our comments may be directed to Reginald M. Felton, director of federal relations at 703-838-6782; or by e-mail at [rfelton@nsba.org](mailto:rfelton@nsba.org).

Sincerely,



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G:Adv/Regulations/2009/11.06.09InnovationComments