September 25, 2009

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

Excellence and Equity in Public Education through School Board Leadership

Office of Advocacy

- *C.H. "Sonny" Savoie President*
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Re: School Improvement Grants – Notice of Proposed Requirements Docket ID ED–2009–OESE–0010

Dear Secretary Duncan:

The National School Boards Association (NSBA) on behalf of the nation's 95,000 local school boards, appreciates this opportunity to comment on the Department of Education's August 26, 2009 Federal Register Notice of proposed requirements regarding School Improvement Grants (SIG). In developing these comments, we invited our 50 state school boards associations and territories to provide us with their input as well.

Overall, NSBA believes that the design of the SIG program will provide LEAs with an effective approach to significantly raise student achievement in the most academically under-performing schools in their state. To a great measure the success that we expect to improve achievement in these schools will derive from the resources that the Administration has pursued through the *American Recovery and Reinvestment Act* (ARRA) which provided $10 billion in added funding for 1) Part A of Title I, 2)$4.35 billion for Race to the Top, and 3) $3 billion for School Improvement Grants.

We recognize that this commitment to Title I schools generally, with a special emphasis to turn around the lowest achieving of those schools through SIG and Race to the Top (RTTT) grants, represents what may be a one time opportunity for these schools and certainly for the students who they currently enroll. Accordingly, it is vital that the detail of this effort—especially the design of the SIG program—works most efficiently to meet the diverse needs of the students and schools involved.

It is within that supportive context that we offer the attached comments to remove ambiguities, strengthen the focus on specific priorities, and address the significant problems that several of the requirements in the Notice will pose for many schools.

Generally, we are concerned that overly rigid eligibility criteria contained in the Notice will discourage LEAs from seeking funding or selecting the best turn-around approach for particular schools—thereby lessening the effectiveness of the program unless flexibility is provided through waivers or substantive adjustment. Similarly, the Notice contains requirements that may not be feasible or educationally desirable to implement and it fails to recognize the innovation and merit of turn-around models other than those prescribed in the Notice will produce the best result in some cases. Similarly, the Notice's rigid eligibility formulas for mandating multiple interventions in LEAs with more than nine schools in improvement status and for establishing an unqualified grant preference for LEAs with both Tier I and Tier II schools will be a barrier to serving otherwise high priority schools. We are also concerned that, especially in RTTT states which is targeted to many of the same schools as SIGs, there will be eligibility, operational, data, and reporting requirements placed on schools that will over-balance their expenditure of staff time and other resources on process at the expense of education programs.

Hence, in moving this important agenda forward, we urge the Department of Education (ED) to review the SIG programs to focus on the requirements and detail of greatest importance and provide the necessary flexibility needed when justified by local circumstances regarding compliance with several operational requirements. Further, we urge ED to review the SIG and RTTT programs in tandem to resolve the ambiguities between the two. Finally, we strongly believe that the success of the Department's effort would be significantly enhanced if there were strengthened coordination of health, community, and other services for children among a full range of local, state, and federal agencies. While that is not the focus of this Notice, we encourage ED to continue to expand its work with other federal agencies toward that end.

We are in full accord with several points that you made in your September 24 announcement regarding the *Elementary and Secondary Education Act* (ESEA) of which this SIG program is an inseparable part. Specifically, we are encouraged with the notion that the federal level should provide "national leadership but not at the expense of local control" and your view that "we should be tight on the goals…but…loose on the means for meeting these goals." To a great extent our comments are directed toward working with you to fulfill that approach in the SIG program.

We would be pleased to answer any questions that our comments raise and look forward to assisting the Department to maximize the success of this important initiative.

Sincerely,

Michael A. Resnick
Associate Executive Director

MAR: kc
G:FRN/Mike's shared work/letters/2009/Letter accompany SIG comments 9.14.09.doc

National School Boards Association
Comments on Proposed Requirements for School Improvement Grants (SIG) – American Recovery and Reinvestment Act of 2009; Title I of the Elementary and Secondary Education Act of 1965

September 2009

The National School Boards Association (NSBA) is pleased to offer the following comments related to specific proposed requirements and specific language contained in the Background:

Part 1 – NSBA Comments on Proposed Requirements

SEA Priorities in Awarding School Improvement Grants (Section I)

Defining Key Terms Section (IA)
SEA Authority to Establish Additional Criteria
Sec. IA1c gives SEAs the authority to establish additional criteria to encourage LEAs to differentiate among these schools in their use of school improvement funds and to use in setting priorities among LEA applications for funding.

NSBA Comment:
NSBA supports allowing SEAs that wish to add additional criteria to assure that the LEAs "most in need" would be selected. However, the provision, as drafted, could also result in an SEA developing criteria that could result in LEAs with less needy schools receiving a preference for the funds. Such criteria should ensure that the lowest-achieving schools are selected.

Therefore, while NSBA supports the flexibility for SEAs to add criteria, we recommend that the language be modified so that it is clear that the additional criteria that are designed will further advance the opportunities for the lowest-achieving schools with meritorious applications to receive the grants. Additionally, the requirements should provide an opportunity for LEAs, particularly those with the lowest-achieving schools, to review and comment on the state's proposed additional criteria before the criteria are formally adopted.

School Eligibility Determinations
Sec. IA establishes the framework for determining which schools are eligible to receive School Improvement Grants and the priority for their participation through the identification of Tier I, Tier II and Tier III schools, and further defines the intervention model that must be used.

NSBA Comment:
Overall, four distinct models to improve schools are set forth that are based on the eligibility concept that students, in effect, are going to be attending a "new" school. In designing these models, however, the Notice is overly rigid in the limited options it offers. And, in the case of the turn-around and transformational models it is overly prescriptive regarding specific requirements that we expect will be

unintended barriers to the use of these models in real world situations. Our specific comments are set forth below:

a) Turnaround Model. NSBA supports the turnaround model as an option for use in SIGs, with two recommendations.

First, NSBA is pleased that the treatment of governance in this Notice adequately addresses our strong objection to the manner in which this important component was addressed in the July 29, 2009 Notice for Race to the Top (RTTT) Grants. Specifically, rather than requiring an unqualified replacement of governance as the RTTT would, the SIG approach defines "a new governance structure" to include such innovations as the use of turnaround leaders and turnaround offices *within* the LEA. As a result, not only will this option be more likely to be utilized by elected and executive leaders at the local school district level, but it will produce their proactive involvement and responsibility for results. This contrasts sharply to RTTT which, without this clarification, would remove or greatly diminish the involvement of school district leader–especially in the case of takeover.

Accordingly, NSBA recommends retaining this Notice of Proposed Requirement's definition of "governance structure" to "include, but not be limited to" the factors that are listed as a means of promoting the innovation and local "buy in" by the school district's elected and executive leaders that is vital for success. Further, to the extent that SIG schools will also be RTTT schools, both the final SIG rule and RTTT guidance should explicitly state that the defining examples of "governance structure" provided in the SIG proposed requirements will also apply to the RTTT program.

Second, the Notice states that the turnaround model can only be utilized if the school principal and 50 percent of the staff are replaced. In rural areas, where recruitment is a significant challenge, replacing a principal or 50 percent of the staff may not be possible (nor may attracting a charter or EMO – or having the administrative capacity to do the transformational model). Schools facing that problem should not be excluded from participation. In other districts collective bargaining agreements and other legal constraints should similarly not block the use of the turn-around model – especially if it is the best option for a particular school. Likewise, while we understand the theoretical rationale for replacing 50 percent of the staff, what if the plan can be shown to work effectively by replacing some lesser percentage – which may be just one teacher?

To remedy the strict application of these staffing requirements to counter-productive situations such as these, we recommend that states have flexibility to grant a waiver from these absolute requirements where it can be shown that such factors as 1) the geography and size of the school and/or the LEA; 2) the cause for academic failure (including lack of resources); 3) the specific staff corrections and other solutions that are being proposed; and/or 4) the impracticality or barriers associated with the other options that would make the granting of such waiver the best strategy.

d) The Transformational Model. NSBA supports the transformational model and expects that it can be widely and successfully used—especially if the final rule expressly articulates the allowance for local flexibility, or at least provides LEAs a justified basis for obtaining a state waiver in how they may address the three "required activities" identified below:

First, with respect to measuring growth, we recommend that there be sufficient flexibility for LEAs to work with the state to identify the factors that will be considered in measuring growth and setting

annual growth rates to reach their multi-year goal of exiting improvement status—even if there is variation from the state's accountability plan.

Second, the Notice requires that teachers and other staff who improve student outcomes must be rewarded. NSBA supports performance pay and hopes that it will be utilized through the selection of this model. However, this provision should not be interpreted to require that those "rewards" must necessarily include performance pay since difficulties in the development and adoption of such a system could pose a serious barrier to the utilization of this option. For example, collective bargaining agreements and other legal requirements might have to be reworked and a certain amount of time may be needed to develop and implement a plan. Accordingly, we recommend that the term "reward" be defined to encourage, but not necessarily be limited to or require, performance pay among other rewards that may be available.

Third, consistent with our comments on the turnaround model, the rule should recognize that there are circumstances in which replacing the principal may not be the appropriate action to take or produce the best results. Here as in the transformational model, we recommend that flexibility be provided by state waiver or specific exceptions so as to not require the replacement of the principal in cases justified by 1) the size and geography of the school or LEA; 2) the cause for academic failure (including lack of resources); 3) the specific solutions being sought; and/or 4) the impracticality or barriers associated with the other options that would make the granting of such waiver or eligibility exception the best strategy.

In addition to our comments on the above "required activities," NSBA has two other important recommendations for the transformational model. First, especially since the transformational model is so detailed in what factors must or can be adopted, the utilization of technology is glaringly absent as a valued instructional strategy and use of SIG funding as a permissive activity. Accordingly, given the specificity of this section, we recommend that technology be included within the permissive activities, leaving to the LEAs the determination as to whether and how technology will be utilized.

Second, and very importantly, the totality of requirements associated with the transformation model are significant and potentially beyond the administrative capacity of many schools and LEAs—especially in light of all their other local, state, and federal administrative requirements, including those that will be participating in Race to the Top (RTTT) grants. Therefore, we recommend greater priority setting by ED in the selection of its requirement. In this regard, we were encouraged by Secretary Duncan's September 24, 2009 statement regarding the reauthorization of ESEA in which he spoke to setting clear achievement goals but being "loose on the means for achieving those goals" and not engaging in "interference" – which would be avoided by providing "national leadership but not at the expense of local control."

<u>The Missing Model</u>

Locally-developed innovations and plans to meet specific local conditions should be given greater value in the development of school improvement strategies. For example, while the summary background portion of the Notice encourages LEAs to partner with Educational Service Agencies (i.e., intermediate school districts), we are concerned that the specific models in the Notice do not provide the flexibility for the kinds of effective support arrangements that can be put into place without "forcing" other activities that might be irrelevant or counter-productive but necessary to fit the universal formula for SIG eligibility.

Many states are already partnering with their ESAs to leverage their capacity and expertise for school improvement. In Michigan, the state department of education and its regional educational service agencies began implementing an action plan in 2006 that works with high priority schools (those failing to meet AYP for two consecutive years). The regional educational services agencies are responsible for bringing in coaches, auditors, consultants and mentors to assist identified schools and school districts. In Wisconsin, ESAs play a significant role in providing support and training to all school districts by conducting regular meetings with representatives from the SEA and facilitating statewide communication through a collaborative council, which consists of key education stakeholders at the state level and provides advice to state leadership on improving student achievement. Ohio, Illinois and New York contract with their regional agencies to implement school improvement strategies with specific deliverables. These are only a few examples of the critical role ESAs are already playing in school improvement.[1]

In other instances, LEAs may have yet other effective strategies underway that don't fit into the four prescribed models and would not benefit from making the fundamental operational changes needed to meet SIG eligibility criteria. In such cases state waivers should be available upon a showing by the LEA that the approach that it has been taking will, with SIG support, produce effective results.

Therefore, NSBA recommends that LEAs be allowed to implement other options if they can demonstrate that these additional interventions would also have the potential for success.

"Start Over" Option for Title I Schools

Sec. IB2 allows Tier I schools that implement specific interventions (i.e. the Turnaround model and the Restart model) using the school improvement grants to "start over" in the school improvement timeline through a waiver process. This means that a school would no longer be identified as in need of improvement under NCLB even though it would receive school improvement funds. In addition, the school would no longer be required to provide school choice and supplemental educational services (SES/tutoring) to their students.

<u>NSBA Comment</u>:

Interventions should be decided based on the merit of the program to meet local needs, not on removing the school improvement label for some schools and not others. The goal of the school improvement grants is to help schools and school districts improve student performance. NSBA believes that schools that are improving their student performance should be given the same incentive to "start over" in the school improvement timeline no matter what interventions they choose to use. Therefore, we recommend that the Transformation model should also be qualified for schools to restart the school improvement timeline as long as the school and school district have worked diligently to implement the many interventions that the Transformation model requires. What is important is what strategies best serve the students and not making an arbitrary decision that prefers one approach over another.

Three-year Achievement Goals (Sections I and II)

LEAs are required to develop *three-year achievement goals* as part of their application. Reference to this requirement is made in three sections of the proposed regulations:

[1] *Assessing ESA Capacity, the Association of Educational Service Agencies, Fall 2008*

Sec. IA states that "…from among the LEAs in greatest need, the SEA must select…those LEAs that demonstrate the strongest commitment to ensuring that the funds are used to provide adequate resources to enable the lowest-achieving schools to meet, or be in track to meet, the *LEAs three-year student achievement goals in reading/language arts and mathematics*…

Sec. IIA7 requires an LEA to establish in its application, *three-year student achievement goals in reading/language arts and mathematics.* The LEA must hold each Tier I and Tier II school it commits to serve annually accountable for meeting, or being on track to meet, those goals with respect to the achievement of all students in each school as well as each subgroup to students identified in 34 CFR 200.13(b)(7), and for making progress on the leading indicators described in Sec III of this notice.

Sec. IIB3 requires an SEA to review and approve the LEAs *three-year student achievement goals* to ensure that they are sufficiently rigorous to hold each Tier I and Tier II school accountable for meeting, or being on track to meet, those goals with respect to all students in the school as well as each subgroup of students identified in 34 CFR 200.12(b)(7), and for making progress on the leading indicators described in Sec III of this notice.

NSBA Comment:
Clarification is needed as to the relationship of these three-year goals to the goals already established under ESEA and the Adequate Yearly Progress (AYP) provisions. As drafted, participating schools could have two different sets of achievement goals, one for AYP accountability and one for SIG grant compliance and renewal. If so, NSBA believes these could be confusing to schools and local communities where there are already serious misunderstandings related to the current AYP accountability requirements. Accordingly, NSBA recommends clarification regarding the relationship between the two requirements (AYP v. SIG), including any public reporting requirements associated with the academic "performance status" of such schools.

Further, in setting performance goals and activities, flexibility should be provided for LEAs to amend plans to accommodate the transition needed to meet the occurrence of their state's adoption of common standards and assessments during the plan period. Additionally, we recommend that states be allowed to provide LEAs a waiver from their state accountability plans to substitute a school's SIG annual performance goals for AYP purposes in appropriate instances.

Awarding School Improvement Grants to LEAs (Section II)
LEA Applications – Restrictions on Implementation of Interventions (Section IIA)
Sec. IIA2 requires that if an LEA has nine or more Tier I and Tier II schools, the LEA may not implement the same intervention in more than 50 percent of those schools.

NSBA Comment:
This requirement was designed to require LEAs serving a significant number of Tier I and Tier II schools to use multiple intervention strategies. Depending on the size of an LEA and its number of Tier I and Tier II districts, this formulation will undoubtedly work to cause some LEAs to make less than ideal decisions as to how many schools to serve, which schools to serve, and choosing a less promising intervention model. We see this being particularly problematic for LEAs having more than nine schools but not a much larger number of such schools. This provision will also be problematic for LEAs—including large urban districts—that already have effective plans underway that will be disruptive for some schools or prevent other schools from being designated to receive the benefit of receiving SIG funding. NSBA recommends that either 1) the nine school cap be raised; 2) the 50%

requirement be raised (at least for mid-sized school districts), and/or 3) the state be provided an opportunity to waive the restriction for an LEA upon its showing adequate justification to exceed the school and/or percentage caps.

Requirement to Sustain Interventions beyond Grants (Section IIA)
Sec. IIA8 requires an LEA applying for the school improvement grants to develop a budget that covers three years. In addition, it must establish three-year student achievement goals in reading/language arts and math and must hold each Tier I and Tier II school it serves accountable annually for meeting or being on track to meet those goals for all students and subgroups of students. In addition, the LEA must in its application demonstrate how it will sustain the interventions it will implement with the grant after the funding period for the grant has ended.

NSBA Comment:
NSBA is concerned about the language in the notice that requires an LEA to demonstrate it will sustain the interventions it proposes to implement after the school improvement grant funding period has ended. Given the current economic situation and other unforeseen conditions, school districts should not be penalized or excluded from being eligible to receive these grants because they cannot predict what their financial condition will be in three or more years. NSBA recommends removing the proposed language requiring LEAs to demonstrate or commit (absolutely) how they will sustain the interventions after the funding period ends. Instead, LEAs should be eligible for the grants if they can show in their application a meaningful effort in how they plan to continue the interventions for a continued period of time.

Because of the infusion of ARRA funds, some school districts will receive a significant one-time increase in funding under Title I Part A and school improvement under ESEA as well as under the Race to the Top program for their use in the next two years. Some of these school districts will need more flexibility in order to spend the funds effectively and sustain continued school reform efforts. NSBA supports the Department's decision to allow school districts to apply for a waiver to their SEAs to carry over beyond the 15 percent in Title I funds every three years (ED guidance for funds under Title I, Part A of the ESEA made available under ARRA April 2009). However, additional flexibility may be needed for some districts to subsequently adjust the amount they need to carry over or to accommodate for future federal funding. Therefore, NSBA recommends that the Department consider whether additional flexibility is necessary to enable school districts to amend their wavier so they can use their Title I funds as effectively as possible over a span of years in SIG schools.

SEA Responsibilities – Renewal for Two Additional One-Year Periods (Section IIC)
Sec. IIC requires an SEA to renew an LEA's school improvement grant for two additional one-year periods if the Tier I and Tier II schools served by the LEA are meeting the achievement goals or on track to meet these goals for all students and for each subgroup of students.

NSBA Comment:
It is confusing whether the school improvement grant is for a total of three years, including two renewals for the second and third year; or whether the grant is for three years (providing the school district can annually demonstrate their schools meet the three-year achievement goals) with the possibility of renewal for the fourth and fifth year. That ambiguity needs to be clarified and NSBA recommends that the funding period for the grant be three years and that the LEA will be funded for each of the three years with potential renewal for the fourth and fifth year (assuming additional federal

funding is available). This will allow the LEA to help the schools it serves with the school improvement grants meet the three-year achievement goals.

Evaluation (Section IIIB)
Sec. IIIB requires an LEA that receives a School Improvement Grant to participate in any evaluation of that grant conducted by the Secretary.

NSBA Comment:
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 stakeholder groups to comment on such factors as the scope and methodology and costs involved prior to ED implementing any proposed evaluation.

Part II – NSBA Comments on Background Language

Although not specifically included in the proposed requirements, there are several issues referenced under the Background Section of the Proposed Requirements that bear attention.

LEA Priority in Awarding Grants
Page 43103, column 1, paragraph 2 states that … "an LEA that wishes to receive a School Improvement Grant would submit an application to its SEA identifying which Tier I and Tier II schools it commits to serve. *The SEA would give priority to LEAs serving Tier I and Tier II schools.*"

NSBA Comment:
This provision fails to recognize that in various states there are LEAs with only elementary schools (or which don't have separate middle schools) and therefore don't have Tier II schools. Likewise, in those states there may be secondary school districts that are Tier II eligible but don't have Tier I schools (which tend to be elementary schools). Such a priority restriction could in practice eliminate those LEAs from receiving an otherwise justifiable share of School Improvement Grants. This provision should be modified so that LEAs having only elementary schools or only secondary schools would be exempt from having lower priority status so as not to be placed at a disadvantage.

LEA Approval before SEA can Implement Interventions
Page 43107, Column 2, paragraph 2 provides that with the approval of its LEAs, an SEA could also directly implement the proposed interventions in a Tier I or Tier II school and provide services in a Tier III school or arrange for their provision through other entities such as EMOs, school support teams, or educational service agencies.

NSBA Comment:
NSBA supports the provision that SEAs must have LEA approval as a condition for direct state involvement in the interventions at the LEA or school levels. Additionally, NSBA recommends that the summary provision be inserted in the actual program requirements rather than be only part of the general summary.

Charter Schools
SEA Responsibilities and Reporting Metrics
Page 43107, column 2, paragraph 3 encourages the states to eliminate such barriers as state laws, regulations or policies that limit the number of charter schools that may operate in the state. In addition, the language encourages states to consider changes to state laws, regulations that cap the number of charter schools.

NSBA Comment:
NSBA supports the use of charter schools when educationally justifiable provided they are authorized by the school board in the school district where they are located. However, we strongly object to an encouragement or guidance from the Department for states to remove or greatly raise their charter school caps in order to increase/promote their use in the absence of convincing evidence that good educational policy, practice, or necessity for a particular state and school district justifies doing so. In addition, placing a premium on encouraging states to remove caps on charters or greatly expand their use isn't supported by conclusive research that charter schools produce superior results in raising student achievement compared to traditional public schools.

In fact, a study released by the Stanford University in June 2009 on student achievement in charter schools found that charter school students are not faring as well as their peers in traditional public schools. Specifically, 37 percent of charter school students posted significantly lower math gains than their counterparts in traditional public schools; 46 percent saw gains that were no difference than the average growth of their counterparts; and only 17 percent experienced higher gains. In reading the average growth among students in charter schools was lower than that of students in traditional public schools.[2]

NSBA recommends removing the language on the emphasis of charter schools and on states expanding the number of charter schools in the summary portion of the proposed notice under "SEA Responsibilities" and "Reporting Metrics." Whether charter school should be part of a local school improvement program should be determined by the local school board based on the needs of the local school district and its schools and should not be singled out as a preferred intervention in their criteria for applying for school improvement grants.

[2] Stanford University. Multiple Choice: Charter School Performance in 16 states (June 2009) at 3, 6.)