

**LETTER TO HONORABLE CECIL J. PICARD IN RESPONSE TO
LOUISIANA'S REQUESTS FOR FLEXIBILITY**

September 21, 2005

Honorable Cecil J. Picard
Superintendent of Education
State Department of Education
626 North 4th Street, 12th Floor
Baton Rouge, Louisiana 70804

Dear Superintendent Picard:

Thank you for sending me the details of how Louisiana is responding to the educational challenges brought about by Hurricane Katrina. I have traveled to the Gulf Coast area since the hurricane and am inspired by the resolve of everyone who has been impacted by this disaster. I am especially touched by the hope and commitment of students and their families to move forward and recover from these devastating events. I also appreciate your kind words about our work with the States affected by this tragic situation.

I am responding to your letter to me dated September 14, 2005, in which you describe your specific requests for flexibility in light of the disruption and damage caused by Hurricane Katrina. As you know, I have designated Assistant Secretary for Elementary and Secondary Education Henry Johnson to serve as this Department's liaison between our two agencies for additional follow-up. We appreciate the cooperation of your office in arranging for his September 13 visit with you and your staff. I also receive regular reports from my staff, including Hudson La Force, who is representing the Department in Louisiana, about the efforts you are making to ensure that educational services are restored as quickly as possible to your students. I trust his presence in Louisiana has been helpful to you in this regard. Be assured that the Department of Education staff and I continue to stand with you throughout the recovery.

We have reviewed the specific requests you outlined in the conference calls, the September 13 meeting, and the follow-up letter, and I am pleased to respond. First, with respect to additional funding, and in recognition of the additional expenses that Louisiana school districts and other districts around the country will incur in serving your State's and Mississippi's children, the Administration is proposing up to \$1.9 billion in funding similar to the Impact Aid program to school districts, including charter schools, enrolling at least 10 displaced children. This funding would reimburse districts for the unexpected cost of educating these new children for the 2005-06 school year. This funding would be granted to districts based on the number of displaced students enrolled multiplied by up to 90 percent of the State's average per pupil expenditure for education, with a maximum payment of \$7,500 per child for the 2005-2006 school year. In addition, the Administration has also requested \$488 million in private-school reimbursements for the many families who have been displaced by the hurricane and have already chosen to enroll their children in private schools. I have enclosed a fact sheet that provides further information on the proposal (<http://www.hurricanehelpforschools.gov/0916-factsheet.html>). For Louisiana (and Mississippi as well), we have requested that the funding will go to the State, rather than directly to school districts. We believe this structure will give Louisiana the flexibility

to divide the money between districts enrolling displaced students and districts within the severely impacted areas that are working to reopen schools as quickly and effectively as possible. We will notify you of further developments as they become available.

Second, with respect to your waiver requests, I have grouped the Department's responses into five categories: (1) Waivers To Be Granted; (2) Flexibility in IDEA and NCLB timelines, reporting and monitoring; (3) State Flexibility Is Available: Federal Waivers Not Needed; (4) No Current Legal Authority; and (5) Additional Information Needed.

WAIVERS TO BE GRANTED

You requested waivers of the obligation deadlines for Fiscal Year (FY) 2003, 2004, and 2005 funds, and a similar waiver for the respective liquidation periods. The Department is granting an immediate 12-month extension of the time within which Louisiana and its districts have available to obligate funds that have been awarded under the Elementary and Secondary Education Act of 1965 (ESEA) and for which the period of availability expires on September 30, 2005. We are also extending by 12 months the liquidation period for the FY 2003 funds. We will continue to work with you and your staff on the funding deadlines for other affected fiscal years if additional relief is needed as those deadlines occur. Unfortunately, we do not have the current authority to extend the obligation period for non-ESEA programs, although the Administration is proposing specific Hurricane Katrina-related waiver authority to enable us to respond more fully to this request.

In addition, you requested a waiver of the maintenance-of-effort requirements for all applicable Federal programs for all impacted school districts and schools and the State Department of Education. While the impact of the hurricane will generally not affect the maintenance-of-effort requirements under covered programs of the ESEA including Title I (Education of the Disadvantaged) until the 2007-2008 school year, the Department will grant your request for appropriate waivers for the affected school districts. We will also waive the Individuals With Disabilities Education Act (IDEA) State-level maintenance-of-effort requirement as permitted under section 612(a)(18)(C) of the IDEA. We will work with you and your staff to obtain additional information, such as the names of these school districts and other relevant fiscal data, that will help complete this portion of the waiver process as the actual deadlines occur. Please let us know of any other requests for waivers of maintenance-of-effort requirements under other Department programs that you may wish us to consider.

You requested a waiver of the Title I carryover limitation and the three-year time limitation for all impacted school districts and schools. As you know, Louisiana has authority to waive the 15 percent carryover limitation in Title I, as provided under § 1127(b) of the ESEA, but your representatives indicated that, in some cases, the State agency has already waived these provisions in the most recent three-year period, and that the statute does not permit a State agency to waive this provision more than once in the three-year period. Under the circumstances, I will waive the limitation of the waivers for Title I carryover funds that your agency may grant in a three-year period.

We are also granting your request for a waiver of the requirement under section 2416(a) of the ESEA that 25 percent of Enhancing Education Through Technology Grant (EETT) (Title II, Part

D) funds must be spent on professional development. This waiver will apply to any available funds that you have received under this program for FYs 2004 and 2005.

FLEXIBILITY IN IDEA AND NCLB TIMELINES, REPORTING AND MONITORING

You requested an extension of timelines relating to State and local educational agency (LEA) reporting and postponement of on-site monitoring, reports, and reviews of Louisiana. I am open to extending timelines and to rescheduling on-site monitoring for the Louisiana Department of Education. To ensure this is a feasible and workable solution that can be managed efficiently, I have listed those timelines and monitoring visits that will be extended or rescheduled. If there are others, not mentioned below, for which you would like extensions, please contact us and we will work with you to accommodate your request.

- The Title I (Education for the Disadvantaged) monitoring visit, originally scheduled for April 2006, has been postponed.
- Submissions for the NCLB Consolidated Performance Report will not likely be due until late January or February 2006. We will work with you to extend the deadlines if you determine that additional time is needed.
- Louisiana is scheduled currently to have its standards and assessment system peer-reviewed in February 2006. We can arrange for you to submit this information during our May 2006 review instead. If additional time is needed beyond this, please contact Zollie Stevenson at (202) 260-1824.
- Data collection for the Education for Homeless Children and Youth is due October 1, 2005. If additional time is needed, please work with the program office (Gary Rutkin at (202) 260-4412) to determine when the data may be submitted.
- Data collection for the Migrant Child Count is due December 1, 2005. If additional time is needed, please work with the program office (Francisco Garcia at (202) 260-1127) to determine when the data may be submitted.
- The Annual Performance Report (APR) under IDEA may be submitted along with the State Performance Plan (SPP). Both will be due December 4, 2005.

Finally, my staff will contact you to discuss the extensions needed for the School Improvement Plans for Schools in School Improvement Two or Higher.

STATE FLEXIBILITY IS AVAILABLE: FEDERAL WAIVERS NOT NEEDED

You requested a waiver regarding the reallocation of federal funds from affected districts that are not operational to districts absorbing displaced students through an interagency agreement. We are not authorized to waive allocation formulas to States, school districts, or other recipients. However, Louisiana has considerable authority to accomplish its goal in Title I, Part A without a waiver. Under § 1126(b) of the ESEA, a State educational agency (SEA) may allocate Title I, Part A (Education of the Disadvantaged) funds, without any action by us, among affected LEAs in the State, if an LEA provides free public education for children who reside (or resided) in another school district. Moreover, under § 1126(c), if an LEA determines that the amount of Title I, Part A funds an LEA would receive is more than the agency will use or if other unused Title I, Part A funds are available, the SEA may, without any action by us, reallocate those funds among

districts in the State on the basis of need in accordance with criteria established by the SEA. If you are also exploring the transfer of some allocations from Louisiana districts to districts in other States that are serving children who resided in Louisiana, we will be glad to work with your agency and affected districts on that issue.

With regard to other programs, such as Title II, Part A (Teacher Quality); Title IV, Part A (Safe and Drug-Free Schools); and Title V, Part A (Innovative Programs), as noted above, we do not have the authority to waive allocation amounts in these programs. However, in each of these cases, Louisiana can work with school districts to reach formal agreement(s) on the transfer of funds, from one district to another, where the second district serves students who reside or resided in the first district. As to the specific four-step proposal you outline, we will continue to work with you on those details as you consider this issue and, should the broader waiver authority be granted, we will work with you to develop a reasonable approach.

NO CURRENT LEGAL AUTHORITY

You requested addressing issues such as "supplement, not supplant" requirements for all impacted districts, schools, and the Louisiana Department of Education that might arise as districts seek available funds to handle increased costs. Under the ESEA waiver authority, we are specifically prohibited from waiving the "supplement, not supplant" requirements (see § 9401 of the ESEA). You also asked for a waiver of the excess cost requirement under the IDEA. While the Department does not have legal authority to waive this IDEA requirement, we will contact you to discuss your concerns to see if there are other ways of addressing the issue.

As you are aware, the McKinney-Vento Homeless Education Act requires that State and local educational agencies adopt policies and practices to ensure that homeless children be educated in the regular school environment and not be segregated on the basis of their status as homeless. We do not currently have the legal authority to waive the McKinney Act. Accordingly, the Department expects that those districts receiving students displaced by Hurricane Katrina will take steps necessary to enroll immediately these students in school and mainstream them into the regular school environment.

I know that many Louisiana school districts are facing tremendous increases in the number of homeless students displaced by the hurricane. These districts are working tirelessly to address the numerous logistical and practical concerns raised by the rapid and substantial increase in their student enrollment. Due to Hurricane Katrina's extensive impact, some districts may need to provide educational services, temporarily, to homeless students in a separate setting. The Department understands that, in certain instances, it may take longer than one might otherwise expect for districts to provide educational services to homeless students in the regular school environment.

You requested a waiver of the IDEA State Performance Plan (SPP) submission deadline. The Department currently does not have legal authority to delay the deadline for the SPP. Section 616(b)(1)(A) of the IDEA requires States to have performance plans "in place" no later than December 4, 2005.

The Administration is proposing specific Hurricane Katrina-related waiver authority that would enable us to better meet the education needs of the Gulf Coast region and other affected areas. The limited waiver authorities we currently possess are unlikely to be sufficient for us to respond as fully as we would like in this extraordinary situation. Should Congress grant additional authority, we will contact you to discuss how that authority might be used to address your needs.

ADDITIONAL INFORMATION NEEDED

There are a number of items for which we need more information. You requested permission to begin obligating carryover funds as well as new funds under the current year grants for ESEA Titles I; II; III; IV; V; IDEA, Part B; and IDEA Preschool without receiving, in all cases, substantially approvable plans from the LEAs. Louisiana has considerable flexibility regarding this issue and we are prepared to work closely with you so that you can take advantage of this flexibility. My staff has a conference call scheduled for Thursday, September 22, with your staff and will discuss that issue during the conference call.

You requested that adequate yearly progress (AYP) for school year 2005-2006 be calculated only for students who are continuously enrolled at the same school for two years (2004-2005 and 2005-2006) and that no additional sanctions be imposed based on 2005-2006 calculations. As you know, AYP is the linchpin of the No Child Left Behind accountability system, and I am reluctant to waive, even partially, AYP or approve broad changes in State AYP definitions at this time. We appreciate, however, that you are not requesting a complete waiver of AYP, and we will contact you in the coming days to discuss your specific proposal in more detail.

You also requested a one-year extension for meeting the requirement that "all core academic subjects are taught by a teacher who meets the NCLB highly qualified requirements." You describe your proposal as allowing Louisiana an additional year by which to meet the mandate. We are currently reviewing this topic in general and also want to talk with you in more detail about your specific proposal as well.

You have asked the Department to permit LEAs to offer supplemental educational services (SES) instead of choice in those schools identified for their first year of improvement. I am not prepared to offer a waiver to Louisiana on this point, but do offer the following guidance. With regard to offering choice, LEAs must make available to all students enrolled in a Title I school identified for improvement, corrective action, or restructuring, the opportunity to transfer to another school in the district not identified for improvement. See section 1116(b)(1)(E)(i) of ESEA. LEAs have the discretion to close the transfer enrollment period after giving parents a reasonable amount of time to apply. An LEA may decide that any student, including a student displaced by Hurricane Katrina, who enrolls in an eligible school after the choice window has closed may not be eligible to transfer in the 2005-06 school year. While I understand there may be some logistical and practical complications of offering and implementing public school choice, if a displaced student enrolls in a Title I school in improvement while the choice window is still open, that student is eligible to transfer to a school not identified for improvement.

As to your request regarding the E-rate program waivers and a special filing window, we will assist you in working with the Federal Communications Commission (FCC) to determine what additional flexibility may be available with respect to that program and its services. In addition,

you asked for policy waivers regarding Reading First (Title I, Part B), English Language Acquisition (Title III), and the National Assessment of Educational Progress 2006. Your letter also references a waiver for other Federal agencies to approve cost allocation plans to allow payment of additional administrative costs. We are continuing to review your requests in these categories in greater detail and will contact you in the near future to discuss further.

Again, thank you for contacting me and sharing your requests and concerns. Be assured that the Department remains committed to working hand-in-hand with you and your staff in the days ahead on the remaining issues, as well as any new ones that may develop as we continue through this process. Finally, please know of my personal commitment to you and the children of Louisiana and feel free to contact me at 202-401-3000, or Assistant Secretary Johnson at 202-401-0113, for any additional follow-up or assistance that you require.

Sincerely,

/s/

Margaret Spellings

Enclosure