ESEA FLEXIBILITY
Amendment Submission

Dear Assistant Secretary:

I am writing on behalf of the Michigan Department of Education to request approval to amend the State's approved ESEA flexibility request. The relevant information, outlined in the *ESEA Flexibility Amendment Submission Process* document, is provided in the table below.

Flexibility Element(s) Affected by the Amendment	Brief Description of Element as Originally Approved	Brief Description of Requested Amendment	Rationale	Process for Consulting with Stakeholders, Summary of Comments, and Changes Made as a Result
2.A, 2.C, 2.D, 2.E	Inclusion of center-based programs/schools in Top-to-Bottom ranking	Michigan proposes to exempt special education centers/ center-based programs from identification on the Priority, Focus, and Reward Schools lists and from the top-to-bottom ranking.	The reform models and reform principles required by ESEA Flexibility do not appropriately address the academic improvement for special education centers/center-based programs. The schools will still receive scorecard ratings based on the same growth model for all schools, and will address improvement concerns through monitoring of the School Improvement Plan.	The initial amendment developed for submission to USED exempted special education centers/center-based programs from identification on the Priority, Focus, and Reward Schools lists and maintained the special education centers/center-based programs on the top-to-bottom ranking. We sent an email to all LEAs and ISDs/ESAs on June 20, 2013 and posted a public memo on our website inviting comment on this proposed amendment through June 27, 2013. On June 18, we convened the Community of Practitioners for a virtual meeting specifically to discuss and solicit feedback on the proposed amendment. We received three responses to the solicitation for comment, representing three ISDs. Feedback from the Committee of Practitioners was supportive of the amendment as

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0581.

Flexibility Element(s) Affected by the Amendment	Brief Description of Element as Originally Approved	Brief Description of Requested Amendment	Rationale	Process for Consulting with Stakeholders, Summary of Comments, and Changes Made as a Result
				proposed. All three ISDs responded to public comment with the threat of litigation should the MDE submit the amendment as proposed, arguing through their legal representation that doing so would be in violation of a Stipulated Order of Dismissal Without Prejudice entered into in January 2013. All comments received through this public comment are attached to this document. In response to public comments received, the MDE revised the proposed amendment to remove special education centers/center-based programs from the Priority, Focus, and Reward Schools lists and from the top-to-bottom ranking. The revised amendment will be available for public comment from July 11 – July 18, 2013. A summary of comments received will be forwarded to USED upon close of this second public comment period.

Attached to this letter is a redlined version of the pages from our approved ESEA flexibility request that would be impacted with strikeouts and additions to demonstrate how the request would change with approval of the proposed amendment[s]. Please contact Abbie Groff-Blaszak at groff-blaszaka@michigan.gov or by phone at 517-335-0011 with a copy to Venessa Keesler, Deputy Superintendent/Chief Academic Officer at keeslerv@michigan.gov and Joseph Martineau, Deputy Superintendent at martineauj@michigan.gov if you have any questions regarding these proposed amendment[s].

The Michigan Department of Education acknowledges that the U.S. Department of Education may request supplementary information to inform consideration of this request.

Michael P. Flanagan, State Superintendent

7/2/13

Date

Groff-Blaszak, Abigail (MDE)

From: Pritchett, Judy <jpritchett@misd.net>
Sent: Thursday, June 27, 2013 12:09 PM
To: ESEAFlexibility
Subject: Comments Related to the Michigan Proposed Amendment to the Approved ESEA Waiver
Attachments: Legal Response 6-27-13.pdf

Importance: High

To: Michigan Department of Education

In response to Michigan Department of Education's June 20, 2013 Notice of Public Comment Period for the Michigan Proposed Amendment to the Approved Request for ESEA Flexibility, the Macomb Intermediate School District (MISD) is submitting our comments to the proposed amendment. Specifically, we are notifying MDE that the proposed amendment would violate the Stipulated Order Of Dismissal Without Prejudice entered by the Ingham County Circuit Court on January 17, 2013 which confirmed that MCL 380.1280c does not apply to center programs and, therefore, these program cannot be included on the Michigan Top to Bottom ranking list. Please see the attached letter from our lawyers to the Attorney General's office.

Judith P. Pritchett, PhD
Chief Academic Officer
MISD
586-228-3470

Groff-Blaszak, Abigail (MDE)

From: Andrea Murphy <andrea.murphy@monroeisd.us>
Sent: Thursday, June 27, 2013 12:22 PM
To: ESEAFlexibility
Subject: Public Comment to Proposed Amendment to MI Request for ESEA
Attachments: Monroe County ISD to Proposed Amendment to MI Request for ESEA.pdf

Please see the attached comment from the Monroe County ISD.

Andrea Murphy
Administrative Assistant to the Superintendent
Monroe County Intermediate School District
1101 S. Raisinville Road
Monroe, MI 48161
734.242.5799, ext. 1010

Groff-Blaszak, Abigail (MDE)

From: Janet Timbs <timbsj@sisd.cc>
Sent: Thursday, June 27, 2013 4:42 PM
To: ESEAFlexibility
Cc: Richard Syrek; Terri Haswell
Subject: Flexibility amendment language
Attachments: Legal Response 6-27-13.pdf

To Whom It May Concern:

In response to your June 20, 2013 Notice of Public Comment Period for Proposed Amendment to Michigan's Approved Request for ESEA Flexibility, we (the Saginaw Intermediate School District) are submitting our comments on the proposed amendment. The proposed amendment would violate the Stipulated Order of Dismissal Without Prejudice entered by the Ingham County Circuit Court on January 17, 2013 which confirmed that MCL 380.1280c does not apply to center programs. Please see the attached letter from our lawyers to the Attorney General's office.

Janet Timbs
Director of Special Education
Saginaw ISD
(989)249-8708
timbsj@sisd.cc

Founded in 1852
by Sidney Davy Miller

MICHAEL J. HODGE
TEL (517) 483-4921
FAX (517) 374-6304
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June 27, 2013

Mr. Raymond O. Howd
Michigan Department of Attorney General
P. O. Box 30758
Lansing, MI 48909

via email and U.S. mail

Re: Inclusion of Center Programs in Michigan Department of Education ("MDE") "Top to Bottom" List and Accountability

Dear Mr. Howd:

We are writing about *Macomb Intermediate School District, Wayne Regional Educational Service Agency, Monroe Intermediate School District and Saginaw Intermediate School District v. Michigan Department of Education and Michael P. Flanagan*, Ingham Circuit Court Case No. 12-930-CZ, and what appears to be an attempt by the MDE to circumvent the Stipulated Order of Dismissal Without Prejudice, dated January 17, 2013 (the "Order") (Attachment 1).

On June 20, 2013, MDE posted a public comment period for a proposed amendment to Michigan's approved request for ESEA Flexibility (Attachment 2). The purpose of the proposed amendment (Attachment 3) is to exempt center programs from identification on the State's Priority, Focus and Reward Schools lists. The same notice indicates that "Special education centers/center-based programs will remain included on the annual State top to bottom ranking," and the proposed amendment further indicates that center programs whose ranking is in the bottom 5% will be required to:

> conduct a facilitated, comprehensive data analysis of their appropriate state assessments, prepare a plan to improve instruction and student achievement, identify these Teaching and Learning Priorities in the State's School Improvement website, ASSIST, and incorporate them into their school improvement plans.
>
> MDE will review the School Improvement Plans and Annual Education Reports of these center programs annually to monitor the center program's implementation of the Teaching and Learning Priorities and improvement activities as well as their required reporting activities. MDE will provide support over multiple years to enable center programs to make progress in student achievement. In this way, MDE will ensure that

there is accountability for student learning in the center programs. (Proposed Amendment, Attachment 3, p. 2)

The proposed amendment directly violates the Order, which states, in pertinent part, that "Section 1280c of the Revised School Code, MCL 380.1280c, does not apply to special education 'center programs.'" Section 1280c is the source of MDE's legal authority to create any list which ranks school performance. To include any center program on the Top-to-Bottom Ranking or any calculation of performance percentiles or any attempt to impose any other provision of Section 1280c on center programs violates this Order.

As MDE's own proposed amendment indicates, center programs "are designed to meet the specific academic, social and transition goals of students with disabilities with more intensive programming than those offered in traditional school settings. Center programs, by design, are organized to meet unique needs of a very specific population of learners." (Proposed Amendment, Attachment 3, p. 1) The individualized education plans ("IEPs") of the students enrolled in center programs drive both the curriculum for and the assessment for each student. Any form of assessment for these students is inherently subjective. Placing the results of these assessments, which are also, by their terms, subjective, in a ranking which includes general education students, and other special education students, belies the uniqueness of each IEP, and does not provide a meaningful indication of that student's progress, in addition to violating the Order.

The range of these students' disabilities makes any comparison of the performance and progress of students among the various center programs or general education schools problematic. Center programs cannot be compared effectively or in any reliable or valid manner to general education schools because the special needs students have such severe and varying physical, cognitive, and/or emotional disabilities that their performance and progress through education curricula are evaluated differently. Further, MI-ACCESS was not created to compare performance of schools or to measure student achievement; it was created as a diagnostic vehicle for students with disabilities. This means that one student's performance cannot be compared to another's.

We agree that measuring progress toward the goals and objectives of a student's IEP is important in evaluating the success of a student's program. Any assessment must be consistent and compliant with IDEA. What we object to is the effort to use meaningless or misleading comparisons among students with varying disabilities or among students with disabilities and the general education populations to drive that assessment and accountability.

Further, MDE's proposed amendment continues to ignore the fact that No Child Left Behind does not apply to non-Title I schools. MDE has no authority under Michigan law to use the waiver process to impose new requirements, not based in Michigan law, on non-Title I

schools. MDE continues to ignore the legal framework within which both it and the intermediate school districts are operating. Instead, MDE continues to try to make law through the waiver process.

Further still, the process MDE is using to promote the proposed amendment is designed to subvert any opposition. The notice of public comment period was posted on Thursday, June 20, 2013. Comments are requested by 5:00 p.m. on Thursday, June 27, 2013. The draft amendment submission indicates that "On June 18, [MDE] convened the Community of Practitioners for a virtual meeting specifically to discuss and solicit feedback on the proposed amendment." We do not know how MDE defines the Community of Practitioners or who was invited to participate in this meeting.

To our knowledge, none of the litigants, who among them are responsible for center programs serving a significant percentage of the special education students in Michigan, was invited to participate in this meeting.

For the foregoing reasons we request that you inform MDE that it must continue to comply with the Order and direct it not to submit the proposed amendment to the U.S. Department of Education. Please contact us to discuss these concerns so that we can avoid the need to seek the Court's intervention.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: _____
Michael J. Hodge

Attachments

cc: Mike DeVault, Macomb ISD
Chris Wigent, Wayne RESA
Don Spencer, Monroe ISD
Richard Syrek, Saginaw ISD

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ATTACHMENT 1

STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT COURT
COUNTY OF INGHAM

MACOMB INTERMEDIATE SCHOOL DISTRICT, WAYNE REGIONAL EDUCATIONAL SERVICE AGENCY, MONROE INTERMEDIATE SCHOOL DISTRICT, and SAGINAW INTERMEDIATE SCHOOL DISTRICT,

Plaintiffs,

vs.

Case No. 12-930-CZ

Hon. Clinton Canady III

MICHIGAN DEPARTMENT OF EDUCATION and MICHAEL P. FLANAGAN, in his official capacity as Superintendent of Public Instruction,

Defendants.

/

Michael J. Hodge (P25146)
Scott R. Eldridge (P66452)
David G. King (P73451)
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
Attorneys for Plaintiffs
One Michigan Avenue
Suite 900
Lansing, MI 48933
(517) 487-2070

Raymond O. Howd (P37681)
Michigan Department of Attorney General
Health, Education & Family Services Division
Attorney for Defendants
PO Box 30758
Lansing, MI 48909
(517) 373-7700

/

STIPULATED ORDER OF DISMISSAL WITHOUT PREJUDICE

At a session of said Court held in the City of Lansing,
County of Ingham, State of Michigan,
this 17 day of January, 2013

PRESENT: The Honorable Clinton Canady III
Circuit Court Judge

The parties hereby agree: to the entry of an order dismissing Plaintiffs' claims without prejudice, and without fees or costs to any party; that Defendants will not include special

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

education center programs ("center programs") on its list of the lowest achieving 5% of all public schools in this State under Section 1280c of the Revised School Code, MCL 380.1280c ("Section 1280c"); and that "center programs" are not subject to the authority of the State School Reform/Redesign Officer under Section 1280c for the reason that Section 1280c does not apply to "center programs." This Agreement applies to all "center programs," including but not limited to, the Maple Lane School (Sterling Heights, Michigan), the Glen H. Peters School (Macomb Township, Michigan), the John A. Bozymowski Center for Education (Sterling Heights, Michigan), the Burger Development Center for Students with Autism (Garden City, Michigan), the Madison School (Wyandotte, Michigan), the Beacon Day Treatment Center (River Rouge, Michigan), the Educational Center (Monroe, Michigan), and the Melvin G. Millet Learning Center (Saginaw, Michigan); and the Court being fully advised in the premises;

NOW THEREFORE;

1. IT IS HEREBY ORDERED that Plaintiffs' claims are DISMISSED WITHOUT PREJUDICE;

2. IT IS HEREBY ORDERED that each party shall bear his/her/its own fees and costs; and

3. IT IS HEREBY ORDERED that Section 1280c of the Revised School Code, MCL 380.1280c, does not apply to special education "center programs," including but not limited to, the Maple Lane School (Sterling Heights, Michigan), the Glen H. Peters School (Macomb Township, Michigan), the John A. Bozymowski Center for Education (Sterling Heights, Michigan), the Burger Development Center for Students with Autism (Garden City, Michigan), the Madison School (Wyandotte, Michigan), the Beacon Day Treatment Center (River Rouge, Michigan), the Educational Center (Monroe, Michigan), and the Melvin G. Millet Learning Center (Saginaw, Michigan).

APPROVED AS TO FORM:

By: _____

Michael J. Hodge (P25146)
MILLER, CANFIELD, PADDOCK
and STONE, PLC
Attorneys for Plaintiffs
One Michigan Avenue, Suite 900
Lansing, MI 48933-1609

Dated: January 16, 2013

By: _____

Timothy J. Haynes (R41196)
Michigan Department of Attorney General
Health, Education & Family Services Division
Attorney for Defendants
PO Box 30758
Lansing, MI 48909

Dated: January 9, 2013

IT IS SO ORDERED.

Pursuant to MCR 2.602, this is a final order that resolves the last pending claim and closes the case.

JOYCE DRAGANCHUK
for
CLINTON CANADY III

Hon. Clinton Canady III
Circuit Court Judge

20,683,231.3\054936-00037

ATTACHMENT 2

STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING

RICK SNYDER
GOVERNOR

MICHAEL P. FLANAGAN
STATE SUPERINTENDENT

June 20, 2013

MEMORANDUM

TO: Local and Intermediate School District Superintendents and Public School Academy Directors

FROM: Venessa Keesler, Ph.D.
Deputy Superintendent, Education Services
Joseph Martineau, Ph.D.
Deputy Superintendent, Accountability Services

SUBJECT: Public Comment Period for Proposed Amendment to Michigan's Approved Request for ESEA Flexibility

In July 2012, the U.S. Department of Education (USED) approved Michigan's request for flexibility in implementing certain requirements of the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act of 2001 (NCLB).

This flexibility approval allows local school districts more freedom in how they use some federal dollars to improve student achievement and close achievement gaps; recognizes schools that are meeting or exceeding achievement goals; ensures that all students have access to effective educators; and includes a new accountability scorecard to measure student achievement and growth in schools and districts. Moreover, the approved ESEA flexibility alleviates the impending consequences of the NCLB requirement that 100% of students demonstrate academic proficiency by 2014, replacing the mandate and subsequent consequences with an appropriate timeline and targeted supports to meet student growth and proficiency goals.

As part of the request, Michigan pledged to continuously monitor the implementation of the ESEA Flexibility and make changes as necessary in order to best serve students, families, and educators. Two amendments to the approved ESEA Flexibility Request were approved in December 2012, and three additional amendments were approved in February 2013.

STATE BOARD OF EDUCATION

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Ongoing implementation of the ESEA Flexibility, and continued discussions with stakeholders, have highlighted the need for one additional amendment to the approved request to make improvements that will facilitate and refine the implementation process. If approved, this amendment will exempt special education centers/center-based programs from identification on the Priority, Focus, and Reward Schools lists. Special education centers/center-based programs will remain included in the annual statewide top-to-bottom ranking.

Michigan's Proposed Amendment to the approved Request for ESEA Flexibility is now available for review and public comment at http://www.michigan.gov/mde/0,4615,7-140-37818_60094---,00.html.

Public comment will be open through 5:00 p.m. on Thursday, June 27, 2013.

All comments should be submitted to ESEAFlexibility@michigan.gov.

Cc: Michigan Education Alliance

ESEA FLEXIBILITY
Amendment Submission

Dear Assistant Secretary:

I am writing on behalf of the Michigan Department of Education to request approval to amend the State's approved ESEA flexibility request. The relevant information, outlined in the *ESEA Flexibility Amendment Submission Process* document, is provided in the table below.

Flexibility Element(s) Affected by the Amendment	Brief Description of Element as Originally Approved	Brief Description of Requested Amendment	Rationale	Process for Consulting with Stakeholders, Summary of Comments, and Changes Made as a Result
2.A, 2.C, 2.D, 2.E	Inclusion of center-based programs/schools in Top-to-Bottom ranking	Michigan proposes to exempt special education centers/ center-based programs from identification on the Priority, Focus, and Reward Schools lists. Special education centers/center-based programs will remain included in the top-to-bottom ranking.	The reform models and reform principles required by ESEA Flexibility do not appropriately address the academic improvement for special education centers/center-based programs. The schools will still receive scorecard ratings based on the same growth model for all schools, and will address improvement concerns through a specialized diagnostic analysis of data and targeted components and monitoring of the School Improvement Plan.	We sent an email to all LEAs and ISDs/ESAs and posted a public memo on our website inviting comment on the proposed amendment. On June 18, we convened the Community of Practitioners for a virtual meeting specifically to discuss and solicit feedback on the proposed amendment. (Summary of Public Comments received will be inserted here prior to submission to USED.)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0581.

ATTACHMENT 3

Accountability Designation Considerations and Supports for Center Programs

Throughout Michigan, there are center programs that are designed to meet the specific academic, social and transition goals of students with disabilities with more intensive programming than those offered in traditional school settings. Center programs by design, are organized to meet unique needs of a very specific population of learners. Center programs serve students through age 25, require an accountability system that aligns with the types of programming offered for students with disabilities. Center programs are designated as individual schools for the purpose of data tracking, and have a separate building code.

Michigan assures that all students, including those in center programs, are assessed, using appropriate state approved assessments. These center programs are included in the Top-to-Bottom ranking, using the specialized assessments identified for each student within their individual education program (IEP). The specific set of interventions and requirements identified for the "Priority" or "Focus" accountability designation are not appropriate for center programs in Michigan, due to the unique nature of these schools. Although reward schools do not require interventions that are problematic, the designation of "reward" does not align with the measures that should be used to identify progress and achievement in center programs.

A litigation settlement between the MDE and a number of these center programs in 2013 removes these designations and the placement of such schools under authority of the School Reform Office for the purposes of developing and implementing a reform/redesign plan or similar efforts.

Since center programs are not considered identified as Priority or Focus Schools, nor placed under the supervision of the School Reform Office, alternate mechanisms are needed to include them in Michigan's accountability system.

Center programs whose Top-to-Bottom ranking is in the state's bottom 5% will therefore be required to conduct a facilitated, comprehensive data analysis of their appropriate state assessments, prepare a plan to improve instruction and student achievement, identify these Teaching and Learning Priorities in the state's School Improvement website, ASSIST and incorporate them into their school improvement plans.

MDE will review the School Improvement Plans and Annual Education Reports of these center programs annually to monitor the center program's implementation of the Teaching and Learning Priorities and improvement activities as well as their required reporting activities. MDE will provide support over multiple years to enable center programs to make progress in student achievement. In this way, MDE will ensure that there is accountability for student learning in the center programs.