



NEW YORK CITY DEPARTMENT OF EDUCATION
OFFICE OF THE CHANCELLOR
52 Chambers Street, Room 320
New York, NY 10007

July 9, 2019

Committee of New York City Religious and Independent Schools
Attn. Rabbi David Zwiebel
Agudath Israel of America
42 Broadway, 14th Floor
New York, New York 10004

Dear Committee:

This letter sets forth the parties' agreement to resolve the appeal submitted on December 28, 2018 (the "Appeal") to the United State Department of Education ("USDOE") of the Response of the Ombudsman (the "ESSA Ombudsperson") at the New York State Education Department ("NYSED") regarding Title I services for students in nonpublic schools in New York City, and the initial ESSA complaint filed with NYSED by the Committee of New York City Religious and Independent Schools, hereinafter referred to as Nonpublic School Officials ("NPS Officials"). This agreement was reached after extensive consultation between the New York City Department of Education (NYCDOE) and the NPS Officials. In consideration of the agreement by the NYCDOE to take the actions described below, the NPS Officials will promptly take all steps to withdraw the Appeal.

Background:

In November 2018, NPS Officials filed a complaint with the New York State Education Department (SED). In the complaint, the NPS Officials claim that the consultation process between them and the NYCDOE for the 2017-2018 and 2018-2019 school years was inadequate and failed to achieve its intended goal of reaching agreement on how to provide equitable and effective Title I programs for eligible private school children. The NPS Officials sought restitution for the years in which the allegedly inadequate consultation had prevented them from obtaining Title I services from third-party providers, funding for all Title I-eligible private school children, and the addition of other services allowed by ESSA for students (such as mentoring). Following consultative meetings among the NPS Officials, the NYCDOE and the SED ESSA Ombudsperson, in December 2018, the ESSA Ombudsperson issued a response to the complaint (the

“Response”). The Response identified problem areas that needed to be addressed and suggested methods for resolving those problems.

In January 2019, a majority of the NPS Officials filed an appeal of the Response to the United States Secretary of Education. Since then, the Committee and the NYCDOE have continued to meet and consult in an effort to resolve the issues in the Complaint. This letter reflects the resolution of the Complaint and sets forth agreements pertaining to the model for delivery of Title I services, Title I fund allocation methodologies, and associated restitution payments. The DOE enters into this letter of agreement without any admission of fault or liability.

Delivery of ESSA Title I Services:

NYCDOE agrees to transition the delivery of Title I instructional services to a model in which services are provided by third party vendors. During the Fiscal Year (FY) 2020¹, approximately 70-80% of the budgetary allocation for Title I instructional services will be allocated to third party providers. During FY2021, 100% of the services will be provided by third party vendors. NYCDOE will continue to maintain administrative staff to oversee the delivery and ensure the quality of these services.

Student Counting Methodology (Funds Generation):

Student Counting Methodology

This agreement represents the culmination of intensive efforts by the DOE to align the methodologies, including the provision to the NPS Officials of extensive data and information. DOE will continue working collaboratively with NPS officials to review and, if possible, improve the nonpublic school student counting methodology to ensure as close as possible alignment with those used to count public school students.

The NYCDOE will use a methodology to compute the number of students in nonpublic schools who are eligible to generate Title I funding that closely parallels the public school counting methodology. The NYCDOE will use four data sources to identify Title I-eligible nonpublic school students: form nominations, NYC Human Resources Administration (HRA) direct certifications, New York State Student Information System (NYSSIS) Bulk Search Direct Certifications, and, starting with FY2020, NYSSIS Child Nutrition direct certifications.

Form Nominations (BEDS Cap)

In addition, the NYCDOE will discontinue use of the Basic Education Data Survey (BEDS) for nonpublic schools counting methodology. NYCDOE also agrees to retroactively make

¹ For purposes of this letter, the parties acknowledge that a fiscal year commences on September 1, in accordance with the ESSA grant period.

increased allocations for both FY2019 and FY2018. The NPS Officials acknowledge that DOE previously allocated additional Title I funding to the nonpublic school budget in proportion to the effect of the BEDS Cap for FY18 and FY19 to account for the impact of the BEDS Cap during those years. DOE will allocate additional funding for the remaining years of the five year lookback period (FY2015 - FY2017). This equates to a \$5,326,948 allocation for FY2015, and a \$4,559,330 allocation for FY2017. The BEDS Cap was not applied during FY2016, so there is no recalculation required for that year.

Direct Certification (HRA Matching Differential)

NYCDOE agrees to apply the same business rules for the process of matching student data to NYC Human Resources Administration ("HRA") data for the nonpublic schools as is used for public schools. NYCDOE will increase allocations for the potential effect of the difference in business rules for the five year look back period (FY2015 - FY2019), in an amount of \$6,841,055.

All Methodologies

The NPS Officials agree they will not make any further challenge to the methodology in this agreement concerning the look back period (FY15-FY19) or to any other methodology used during this period.

Use of Title I Funds (CSE Psychologists):

NYCDOE will allocate \$3,017,958 in additional Title I funding to the nonpublic school budget to account for payments made by the nonpublic schools to school psychologists in FY15, FY16, and FY17. The NPS Officials acknowledge that DOE previously allocated additional Title I funding to the nonpublic school budget to account for payments made in FY2018 and FY2019 with Title I funds to school psychologists who reported to Committees on Special Education.

Carryover:

The NYCDOE agrees that, if, due to the increase in Title I funding resulting from restitution payments or other factors discussed in this agreement, the Title I funds allocated to NPS cannot be obligated within the year in which the allocation is made, this will be deemed to be an extenuating circumstance requiring carryover of funds. DOE agrees to engage in further consultation with NPS Officials to discuss how such funds would be obligated in the following school year, provided, however, that any such funds designated for services to students in nonpublic schools will be reserved for use for services for students in nonpublic schools. The NPS Officials reserve the right independently to seek guidance from the USDOE, on notice to NYCDOE, on whether carryovers may be authorized on a multi-year basis on the basis of reasonably foreseeable long- term extenuating circumstances.

Timely and Meaningful Consultation Requirement Met for 2019-2020 With Respect to Matters Addressed in this Letter and the Complaint/Appeal:

The NPS officials agree that, as to the matters addressed in this letter and in the complaint/appeal, the DOE has, over the course of the 2018-19 school year, engaged in timely and meaningful consultation.

Restitution Payments Sufficient:

The NPS Officials agree to relinquish all claims for any further restitution, beyond that agreed to in this document, for any of the past five years (FY15-19), and agree they will not make any further challenge to the amount of funds provided pursuant to this agreement (\$19,745,290). NYCDOE affirms that the funds provided pursuant to this agreement will not be deducted from the total NYC FY2020 Title I allocation, nor will they diminish the per pupil allocation for nonpublic students in FY2020.

The NYCDOE and the NPS Officials will continue the monthly consultation meetings. Any proposed changes to the methodologies for student counting and other terms in this agreement will be the subject of timely and meaningful consultation between the NYCDOE and the NPS Officials.

For the New York City Department of Education:



Karin Goldmark

For the Committee of New York City
Religious and Independent Schools:



David Zwiebel

Copy:

NYSED (Christina Coughlin, Jason Harmon)