

United States Senate

WASHINGTON, DC 20510

September 12, 2011

COMMITTEES:
COMMERCE, SCIENCE, AND
TRANSPORTATION
FOREIGN RELATIONS
SELECT COMMITTEE ON INTELLIGENCE
SMALL BUSINESS AND
ENTREPRENEURSHIP

The Honorable Arne Duncan
Secretary
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary Duncan:

As you may know, a rising number of parents, teachers and administrators from across our nation have expressed concerns regarding the Department of Education's recent announcements relating to the issuance of waivers from No Child Left Behind (NCLB); particularly the stipulations expected to be attached to those waivers. The issuance of conditional waivers is detrimental to our country's shared goal of educational success for every student.

Our principal concern is that the Executive branch does not possess the authority to force states into compliance with administration-backed reforms instituted through the issuance of waivers. We acknowledge that NCLB allows the Secretary to grant waivers for existing provisions under the law, but nowhere does the law authorize waivers in exchange for the adoption of administration-preferred policies. This initiative is an overstep of authority that undermines existing law, and violates the constitutional separation of powers. The responsibility for legislating lies with Congress, and forcing policy reforms through NCLB waivers violates this most basic of constitutional structures.

Furthermore, I am concerned that the administration's requirements for granting a waiver from NCLB would entail states having to adopt a federally-approved "college and career ready" curriculum: either the national Common Core curriculum standards, or another federally-approved equivalent. I am also concerned that the U.S. Department of Education has created, through its contractors, national curriculum materials to support these Common Core standards. Such activities are unacceptable; they violate three existing laws: NCLB, the Department of Education Organization Act, and the General Education Provisions Act. All three laws prohibit the federal government from creating or prescribing national curriculum. If you believe that conditional waivers tied to content standards do not violate these laws, I invite you to explain the reasoning underlying that belief.

Since legislating is a duty reserved for Congress, attaching administration-preferred reforms to NCLB waivers would counteract and inhibit meaningful education reform desperately needed to ensure that our children receive an education that will prepare them for the challenging global economic marketplace. I respectfully ask that due consideration be given to options that have been advanced through Congress and provide genuine flexibility to states, so that state and local lawmakers – those closest to children and families – can focus on high-quality education policies that will benefit our nation's children.

Sincerely

A handwritten signature in blue ink, appearing to read "Marco", with a long, sweeping horizontal line extending to the right.

Marco Rubio
U.S. Senator