

Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW, Room 3C106
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

I am writing to provide the comments of the Council of Chief State School Officers (CCSSO) on the Department of Education's (Department) Notice of Proposed Rulemaking (NPRM) on accountability and state plans under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). CCSSO is a nonpartisan, nationwide, nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education Activity, the Bureau of Indian Education, and five U.S. extra-state jurisdictions.

CCSSO sees a role for strong state leadership in the implementation of ESSA to ensure that every student has an opportunity to succeed. There are numerous aspects of the proposed regulations that give state educational agencies (SEAs) flexibility to create their own Title I accountability systems, in cooperation with stakeholders, while providing appropriate "guardrails" to ensure that state actions are consistent with the objectives and provisions of ESSA. CCSSO and our member states appreciate the additional clarification offered in certain areas of the regulations, such as in describing the long-term goals, interim performance measures, and annual indicators that states must establish, the procedures for identifying schools in need of support and improvement, and the actions to be taken to support and improve those schools. The proposed regulations also helpfully clarify a number of terms and provisions that are unclear in the statute.

While we thus commend the overall approach taken in the regulations, and many of the individual provisions, there are a number of significant provisions that chief state school officers strongly believe need to be revised before the regulations are finalized. We request the Department give serious consideration to the issues described below.

I. Timeline for Implementation of New Accountability Systems

ESSA provides that the revised accountability requirements of Title I "shall take effect beginning with the 2017-2018 school year." The statute requires new accountability systems to be in place for the 2017-18 school year such that the first round of identifications may be made at the end of that year based on new accountability systems if a state chooses.

The proposed regulation would require that states identify schools by the beginning of each school year. The initial identifications would be made before the beginning of the 2017-2018 school year and "data from the 2016-2017 school year [would] inform identification for the 2017-2018 school year." However, all of our states will need time to revise their new accountability systems based on the new law, including by adding new indicators of English language proficiency and of school quality or student success, agreeing on indicator weights, and establishing criteria and procedures for school identification. This effort will need to be

carried out in close collaboration with the long list of stakeholder interests identified in the statute and regulations. States will then need to collect the data needed for school identification, including data for the indicators that might not yet exist. This process will take substantial time, effort, and require legislative or administrative actions in many states. While states will make some progress before the Department publishes the final regulations, states would be working under unreasonable time constraints following publication of the final rules as they work to develop and submit state plans in March or July of 2017. Meanwhile, schools and districts would, under the proposed timeline, proceed through much of the 2016-2017 school year without having clear, final information on a state's long-term goals, interim measures, and annual indicators, which will limit their ability to align local programs and strategies with those goals, measures, and strategies that states will use to identify and improve underperforming schools under ESSA. Simply put, the proposed timeline is unworkable.

Further, the Department has proposed that SEAs submit their consolidated state plans, which will include descriptions of their accountability systems, by March 6 or July 5, 2017. While states appreciate the flexibility of having two submission windows cued to state readiness, those states that submit plans in the second window may not receive the Department's approval, or request for revision, of the plan until October 2017 (assuming that the Department uses the full 120-day period provided in the statute for review, as seems likely given the length and complexity of the Department's proposed requirements for those plans). Those states would thus have to identify schools, including placing some schools into at least a three-year cycle of continuous support and improvement, before knowing whether the Department has found their accountability systems meet the requirements within the law and regulations. While the proposed language allowing states to add indicators over time seeks to remedy this problem, it falls short according to our reading, as at least one indicator in each of the five indicator categories (including student achievement, graduation rates for high schools and another indicator for elementary and middle school, English Language Proficiency, and school quality or other indicator of student success) would need to be in place at the time of the initial determinations.

A related concern is the timing for identification of high schools for comprehensive support and improvement and support based on their graduation rates. Under the statute, cohort graduation rates are calculated by including, in the numerator, students who graduate at the conclusion of the school year as well as those who graduate at the end of the summer session that follows the school year. Because of the need to include summer graduates, it will thus not be possible to calculate graduation rates for 2016-2017 before the beginning of the 2017 school year, when SEAs would be required to identify schools.

Recommendation:

We appreciate Secretary King's comments at the July 29 Senate HELP Committee hearing that the Department is open to reconsidering timelines. We recommend that the Department allow states to either identify schools in 2017-2018 based upon data available in 2016-2017, or identify schools prior to the 2018-2019 school year based upon data from 2017-2018 and prior

years and continue ongoing efforts under ESEA flexibility or prior law to improve currently identified schools during the 2016-2017 and 2017-2018 school years. This is consistent with the ESSA statute and will allow for states to implement high-quality accountability systems in 2017-2018 and use these systems to identify underperforming schools. With respect to the graduation-rate issue, it would be appropriate to allow states to use data from one year earlier (e.g., use 2016-2017, averaged at state option with data from one or two or three previous years as appropriate, to identify schools for 2018-2019).

II. Summative School Ratings

ESSA requires that states develop accountability systems that meaningfully differentiate between schools and identify underperforming schools, but the proposed regulations are too specific in requiring a published single rating for each school. To comply with the ESSA statutory requirements, states will need to create a set of decision rules for differentiating schools and determining which schools to identify for comprehensive and targeted support and improvement. There are various methods, from index ratings to dashboards, that a state may choose to use to calculate and report the required differentiated school determinations. Each method can provide valuable information to parents, educators and the public about school performance. It is unnecessarily restrictive to require a single approach for all states, and stands in contrast to the spirit of ESSA regarding state flexibility and innovation.

Some states have developed innovative ways to identify schools for intervention without utilizing a single summative score for each school. Utilizing a dashboard approach, for example, will enable states to provide intervention and continuous improvement supports with greater accuracy, based on the specific areas of identified need for each school. Under such a system, the lowest-performing schools (at least 5 percent of the Title I schools in the State) could be identified based on their performance and progress on all indicators, not an average of performance across all indicators. For example, a state could meaningfully differentiate schools and identify underperforming schools based upon the number of indicators in which the school has failed to reach the state's expectations without combining these indicators into a single score. Other states may wish to publish a single summative score to ensure that stakeholders can easily understand the overall performance of their schools; this approach should also be allowable under ESSA but not required for all states.

Recommendation:

We recommend that the final regulations include clearer and more flexible language that would allow a variety of state systems so long as they comply with statutory provisions requiring clear distinctions among schools in the identification of schools for intervention. Providing comparison information about performance to other schools, districts, or the state is sufficient to meet the statutory requirement for differentiation. The final regulation should be clear that it is at the discretion of the state to use a dashboard to display performance and progress on multiple indicators or use a single summative rating.

Further, if states choose to use summative ratings to identify schools, it should be up to the state whether and how to report that rating on report cards. Neither the requirement for a single summative rating nor the requirement that the rating be prominently reported is a statutory requirement of ESSA.

III. High School Graduation Rate Used to Identify Schools for Comprehensive Support and Improvement

ESSA requires that SEAs identify, for comprehensive support and improvement, any public high school that fails to graduate one-third or more of its students. While the law does not specify a particular methodology to be used in calculating graduation rates for school identification, the proposed regulations would require that all states use the four-year adjusted cohort rate.

This proposed requirement would disproportionately impact high schools set up specifically to enroll student populations including recently arrived immigrants, adjudicated youth, returning dropouts, and other groups of students who, by their nature, may need additional time to finish school. This proposal would also affect schools that enroll significant numbers of students who are “under-credited” when they begin high school. Under the proposal, all of these schools would likely fall into comprehensive improvement status, not because of their educational performance and progress but because of the student populations they serve.

Furthermore, the proposal would create incentives for schools to encourage or allow students who cannot graduate in 4 years to leave school early (as these students typically depress other indicators of school performance) and would discourage schools from seeking out and re-enrolling students who have had to leave high school for various reasons.

The Department recognized the need for flexibility in this area when, under the 2008 Title I regulations, it allowed states to use both the four-year adjusted cohort rate and an extended-year adjusted cohort rate in their accountability systems. The Congress implicitly endorsed that decision in ESSA by permitting states to use both rates in their long-term goals, measures of interim measures of progress, and annual indicators.

Recommendation:

We recommend that states be allowed to use, at states’ discretion, either the four-year adjusted cohort rate, an extended-year adjusted cohort rate, or both in their identification of schools for Comprehensive Support and Improvement.

IV. Contents of the Consolidated State Plan

While CCSSO is generally supportive of the proposed regulations in the area of accountability, we have concerns with the proposed requirements for the consolidated state plan.

The statute specifies that, in establishing requirements for the consolidated state plan, the Secretary may “require only descriptions, information, assurances..., and other information that

are *absolutely necessary* for the consideration of the consolidated application” (emphasis added). This language has been in the statute since the consolidated plan authority was created as part of the 1994 ESEA reauthorization. In the past, going back to 1994, the Department has rightly taken this language very seriously, winnowing down the planning requirements under the individual programs and coming up with a bare-bones list of requirements consistent with Congressional intent that the consolidated plan be a mechanism for streamlining administration and reducing burden.

In its proposed ESSA regulations, however, the Department has proposed adding numerous, burdensome requirements that are not found in the statute and, it appears, has ignored statutory language calling for the plan to include only what is absolutely necessary. Some examples of this are:

- Under proposed Section 299.14(c), the SEA would be required to describe its performance management system for “each component required” under Sections 299.16 through 299.19. Each of these descriptions must include six discrete elements. Because sections 299.16 through 299.19 include some 40 different components (individual requirements), it appears that the states would have to include 240 separate descriptions of their performance management systems, as well as additional performance information required under Sections 299.17(e) and 299.19(b). None of these descriptions is required under the statute.
- While the law requires SEAs to describe how low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers, and to describe how they will report on and evaluate the state’s progress in this area, the proposed regulations would go well beyond the statutory language, calling for new definitions and reporting timelines that are different from those included in the proposed annual report card requirements. Another aspect of the proposed regulations that goes beyond the statutory language includes the requirement to conduct “root cause analyses” of the disproportionality. We appreciate the Department’s desire to have states continue the progress they have made under their teacher equity plans, but building so much (sometimes confusing) detail into the regulations is unnecessary and overly prescriptive.
- Under section 299.19(a)(ii), the SEA’s description of how it will support a well-rounded and supportive education for all students would be required to include the state’s strategies (and the rationales for those strategies), timelines, and funding sources for providing equitable access to rigorous courses in 17 separate subject areas, as well as in other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented. There is no statutory requirement for this description of this plan in general, and much less so for a requirement to provide four types of information on at least 17 subjects.

- Under proposed section 299.19(a)(3), the plan would be required to include a review, *on an LEA-by-LEA basis*, of districts' budgeting and resource allocations in four separate areas. There is no requirement to include a review in the statute.
- Under proposed Section 299.16(b)(3), the plan would include a description of the SEA's strategies for providing all students in the state the opportunity to be prepared for and to take advanced math coursework in middle school. This language is taken from the negotiated rulemaking committee agreement on assessments, but unlike the language approved by that committee, which would apply the requirement only to states that elect to exempt certain students from the regular middle-school math assessment, this language would apply to *all* states.

States would welcome a true consolidated plan; one that includes the elements previously required, but not one that is more time-consuming and burdensome than to submit each of the individual program plans.

Recommendation:

We recommend that that Department take an approach consistent with Department's strategy after the 1994 and 2002 reauthorizations: allowing states to submit streamlined plans that capture essential elements of a consolidated plan, without adding planning requirements that go beyond what is called for in the statute.

V. Funding to LEAs for School Improvement

ESSA requires that states utilize the Title I reservation for school improvement to provide funding to eligible LEAs and ensure that "allotments are of sufficient size to enable a local educational agency to effectively implement selected strategies." The proposed regulation would define these allotments as at least \$500,000 for Comprehensive Support and Improvement schools and \$50,000 for Targeted Support and Improvement schools, unless a district agrees to accept less funding. In many states, this will result in awards that will exceed the capacity of schools to spend funds wisely and will limit states' ability to distribute the funds according to need and ESSA's statutory provisions.

As noted by Dr. Rebecca Holcombe, Secretary of Education in the State of Vermont, in comments in response to this NPRM, "Our allocation is estimated to allow \$2,421,000 for school improvement efforts. At \$500,000 per school, we would only be able to fully fund fewer than 5 schools needing improvement. However, we have just over 300 schools and would be required to identify 15 schools for comprehensive improvement – only a third that can be funded at the level the Department requires."

Recommendation:

We recommend that the Department strike provisions related to minimum dollar amounts for school improvement awards and allow states to determine the financial needs of identified

schools to implement necessary interventions and the appropriate distribution of funding between identified schools within the state.

In addition to the recommendations above, CCSSO is pleased to comment in response to the following questions posed in the NRPM:

- I. **Whether [USED] should retain, modify, or eliminate in the Title I regulations the provision allowing a student who was previously identified as a child with a disability under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and, if so, whether such students should be permitted in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time. (§200.16)**

As the NPRM points out, the situation with regard to students formerly receiving special education and related services is not completely analogous to that of former ELs (as the educational goal for students with disabilities is not always or necessarily to exit disability status). However, there are important parallels.

As the Department notes, immediately removing students from the students with disabilities subgroup as soon as they no longer need services results in a distorted picture of a school's performance in serving that subgroup, perhaps making it appear that the school is underperforming only because some students are progressing so well that they no longer need special education. For that reason, states have welcomed the language in the current regulations that allows a student formerly in need of special education or related services to be included in the disability category for up to two years after no longer receiving those services. The Department should retain this provision in the new regulations, and should consider making the maximum time limit the same as the limit applicable to former ELs (four years).

- II. **Whether, in setting ambitious long-term goals for English learners to achieve English language proficiency, states would be better able to support English learners if the proposed regulations included a maximum State-determined timeline (e.g., a timeline consistent with the definition of "long-term" English learners in section 3121(a)(6) of the ESEA, as amended by the ESSA), and if so, what should the maximum timeline be and what research or data supports that maximum timeline. (§200.13)**

We recommend that the Department not establish a maximum timeline for attainment of English language proficiency (ELP) to which all states would have to adhere. As the NPRM notes, in the discussion on Section 200.13, the English learner (EL) population is extremely diverse, varying in such areas as a student's age and ELP at the time he or she enters school, the student's native-language proficiency, his or her previous educational background, and other factors. The proposed regulations appropriately call for states to develop long-term ELP goals in

a manner that considers these factors and is sensitive to the diversity of the population. We believe that states will likely set different long-term goals based on differences in student populations, and that they should be given the flexibility to do so.

We are not aware of compelling research supporting a single maximum time limit that should apply to all students in all states. The five-year threshold included in section 3121(a)(6) will be useful for reporting purposes but would be inappropriate as a one-size-fits-all expectation covering all students.

Thank you for the opportunity to provide CCSSO's views on the proposed regulations. Again, we find many positive features in the proposed regulations, along with a number of provisions that we urge the Department to revise. If you would like to further discuss the issues put forward, please do not hesitate to contact me.

Sincerely,

Chris Minnich
Executive Director