

Matthew G. Bevin
Governor



Hal Heiner
Secretary
Education and
Workforce Development Cabinet

Stephen L. Pruitt, Ph.D.
Commissioner of Education

KENTUCKY DEPARTMENT OF EDUCATION

Capital Plaza Tower • 500 Mero Street • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov

July 29, 2016

Submitted Via Federal eRulemaking Portal: www.regulations.gov

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

RE: Comments for Agency Docket ID: [ED-2016-OESE-0032] *Notice of Proposed Rulemaking Elementary and Secondary Education Act of 1965 as amended by the Every Student Succeeds Act – Accountability and State Plans.*

Dear Ms. Miller:

The Kentucky Department of Education (KDE) has reviewed the United States Department of Education's (USED) 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) which was published in the Federal Register on May 31st of this year.

KDE appreciates USED's quick response in drafting regulations on the implementation of ESSA and releasing them in a timely manner for public comment. The purpose of this letter is to transmit KDE's comments regarding the proposed regulations on accountability and state plans contained within the NPRM.

Items within the ESSA Proposed Rulemaking with which we agree

KDE shares USED's goal of supporting all students by providing them with equitable access to a well-rounded and supportive education. In KDE's opinion, the language recognizing the importance of career and technical education (*Section 299.19 (a) –p. 34620*) is long overdue. Education and the economy are inextricably linked. For many of our students, career and technical education represents their best pathway to a successful future, and it is time we recognized it as such through challenging standards and rigorous coursework. The business community of the Commonwealth of Kentucky is very enthusiastic about the possibilities entailed in this regulation of developing a workforce better prepared to meet the evolving challenges of our state's economy.

We also appreciate the statutory provision and the congruent regulatory guidance on Subgroups of Students (*Section 200.16(b)(i) – p. 34600*) that maintains the inclusion of English Language Learners in accountability up to 4 years to provide a more accurate picture of how schools are continuing to support these students.

Additionally, allowing students with alternate diplomas (*Section 200.34(a)(1)(ii), p. 34612*) to be counted in the graduation rate is a much-needed change. Formerly, only students graduating with a “regular” diploma counted in the graduation rate, which discounted the hard work of students participating in an alternate assessment program. We are happy to see that change reflected in the statute and the proposed regulation.

Items within the ESSA Proposed Rulemaking with which we have concerns

But, a law is only as good as its regulations and implementation. Unfortunately, we see several instances where the proposed regulations are unaligned from and not reflective of the intent of ESSA.

Item 1 – Identification of Schools in Need of Comprehensive Support and Improvement
Statutory Summary: *Section 5(e)(1)(B)* indicates that states which receive Title I funding must develop and implement a single, statewide accountability system beginning with school year 2017–18. *Section 1111(c)(4)(D)* of the ESEA, as amended by ESSA, requires states to begin identifying schools in need of comprehensive support and improvement in the 2017-18 school year and to do so at least once every three years.

The proposed regulation would: Require states to use data available in 2016-17 that was generated under the current accountability system to identify schools for comprehensive and targeted support and improvement under the new system beginning in 2017-18.
(*Section 200.19(d)(1) – p.34603*)

Comment: Implementing a new accountability system in 2017-18 is already a monumental task on an aggressive timeline. KDE is concerned that states will not be able to implement new systems that take full advantage of ESSA by the 2017-18 school year. Instead, states will be forced into continuing to use their current systems with, at best, the ability to make only minor tweaks to those systems.

Instead of using data from our current accountability system to identify schools for comprehensive support and improvement under the new system as the proposed regulations would require, it would be prudent to wait until the end of the 2017-18 school year to identify schools based on the measures of the new system.

If states are forced to identify schools in need of comprehensive support prior to the new system being approved by USED, schools might not be accurately identified under the new system. This means those schools that most need intensive help may be prohibited from getting it, while others not really needing additional resources could receive them.

Such misidentification can create confusion among educators, parents and students and erode confidence in the accountability system. For example, when Kentucky transitioned to its current accountability model, one high school was identified as a Priority School under the former system. However, under the new system it has shown to be high performing and has continued to improve. Since there was no “reset” based on the measures of the new system, this school is simultaneously identified in the bottom 5 percent and the top 5 percent – sending mixed signals and creating distrust of the current accountability system. We do not want to repeat this problem in the transition to a new accountability system under ESSA.

Identifying schools for comprehensive support and improvement using data generated under the new accountability system would be fairer for our schools, allow a clean transition to the new system, and eliminate the extra resource consumption and mixed signals resulting from operating two systems during the transition year. In the meantime, we would continue to support our currently identified low performing schools.

Item 2 – Annual Differentiation of School Performance: Performance Levels and Summative Ratings

Summary of the Statutory Language: Section 1111(c)(4)(C) requires that a state, on an annual basis, meaningfully differentiate its schools using all the indicators in the state accountability system.

The proposed regulation would require that state accountability systems provide a single summative rating from multiple measures of school performance. (Section 200.18 (4) – p 34601)

Comment: While the proposed regulations claim to replace No Child Left Behind’s (NCLB) narrow definition of school success with a more comprehensive picture of school performance, the requirement of a single summative score seems to go well beyond what ESSA calls for and would limit states’ ability to leave data at a dashboard level, which is a broader, fairer and more accurate representation of school performance. While composite indices tie up school performance in a neat little package, reporting school performance as a single number – like reporting different student groups as one group – can mask true performance on the various indicators.

In Kentucky, we found that a summative score leads to ranking and creates an unhealthy sense of competition rather than collaboration and collegiality among our schools and districts. We also found that, in some instances, it takes the focus away from decisions based on what’s best for students. Instead, it becomes more about adults chasing points and trying to “game” the system to manage the appearance of performance, rather than actual performance. This is not good for students and is diametrically opposed to Kentucky’s desire to provide a transparent system on which people know they can count to get accurate information about school performance.

This is supported in research, including analysis from A.A. Lipnevich and Jeffrey Smith that demonstrates that the use of a summative score does not spur improvement, whereas, quality feedback on multiple indicators leads to greater improvement.

Item 3 – Annual Differentiation of School Performance: Weighting of Indicators

Summary of the Statutory Language: Section 1111(c)(4)(B) requires state accountability systems to include certain indicators. Most of those are academic indicators (e.g., results on reading and math assessments, high school graduation rates), but states also are required to have one or more additional indicator(s) of school quality or student success. Section 1111(c)(4)(C)(ii) specifies that each academic indicator has to receive “substantial” weight in the state’s accountability system, and that in the aggregate, “much greater weight” than the school quality indicators in the aggregate.

The proposed regulation: Requires states to perform back-end checks to demonstrate their weighting systems meet the “substantial” and “much greater” standards required in the law, even though the regulations do not prescribe the weight or offer a range of weights for states to assign to each indicator, or the aggregate weights for the academic and school quality or student success indicators. (Section 200.18 (b)(d)(1-3) – p 34602) For example:

- A school that gets the lowest score on one of the academic indicators must get a different summative rating than a school performing at the highest level on every academic indicator.
- A school identified for statutorily-defined comprehensive support (bottom 5 percent, high schools with graduation rates below 67 percent, and schools with very low performing subgroups) or statutorily-defined targeted support (consistently underperforming subgroups) cannot be removed from those categories based on the performance on school quality or student success indicators unless significant forward progress is happening on one of the academic indicators. The proposal does not, however, define “significant forward progress,” thereby leaving that determination up to states.

Comment: The regulation goes beyond the scope of the statute and adds additional provisions to what is supposed to be a state determination. The back-end checks negate a state’s ability to determine the impact that “substantial” and “much greater” weights have in the overall accountability system. The intent of the quality school measure was to go beyond the basic test score mentality in communicating about school performance. However, the requirement that quality school measures be disaggregated by subgroup limits greatly the measures that can be used. Whole school program evaluations would be prohibited from this category.

Item 4 – Identification of Schools – Schools identified for comprehensive support and improvement

Summary of the Statutory Language: Each state must create a methodology, based on a system of annual meaningful differentiation, for identifying certain public schools for comprehensive support and improvement and must include three types of schools:

- The lowest-performing 5 percent of all Title I schools in the state;
- Any public high school failing to graduate one-third or more of its students; and
- Title I schools with a consistently underperforming subgroup that, on its own, is performing as poorly as all students in the lowest-performing 5 percent of Title I schools and that has failed to improve after implementation of a targeted support and improvement plan.

The proposed regulations would: Reiterate the statutory requirement for identifying three specific types of schools for comprehensive or targeted support and improvement. They do not extend the authority of states to identify schools for improvement beyond what is in statute. The regulation should provide states further guidance on how they may be able to provide support to schools in need beyond those currently recognized. (Section 200.19(a)(1-3) – p. 34602)

Comment: Currently states are able to identify schools for supports if they are Title I eligible. However, due to the prescriptive nature of the proposed regulations, states are no longer afforded that option. Since many, if not all, districts run out of Title I money before getting to high schools, the result would be there would be middle and high schools that would not receive assistance, in spite of really needing it.

Item 5 – Identification of schools – Methodology to identify consistently underperforming subgroups

Summary of the Statutory Language: Section 1111(c)(4)(C)(iii) provides that each state must establish and describe in its state plan a methodology to identify schools for targeted support and improvement and leaves the determination of consistently underperforming up to the state.

The proposed regulation would: Define consistently underperforming as failing to make progress for 2 years. (Section 200.19(c)(1) – p. 34602)

Comment: The regulation oversteps the bounds of the statutory language which leaves the definition of consistently underperforming up to the states. The regulation further prescribes for targeted support the identification of ALL schools that have at least one subgroup that performs as low as the “all students” subgroup in any school identified in the lowest 5 percent in the state. The regulation does not discuss whether states can cap the number of schools that can be identified to 5-10 percent and does not provide for states to devise systems that are both technically better and more sensitive to the state’s own goals.

Item 6 – Resources to Support School Improvement

Summary of the Statutory Language: The statute authorizes the SEA to reserve 7 percent of the State’s Title I allocation to serve schools identified for Comprehensive or Targeted Support and Improvement. At least 95 percent of these funds must flow through to local education agency’s (LEA) unless the state education agency (SEA) and an LEA agree to have improvement activities carried out by the SEA or an outside provider. The statute provides other requirements regarding local applications and the targeting of these funds.

The proposed regulations would: Require that the SEA, in allocating funds, provide at least \$50,000 for each Targeted Support and Improvement School and at least \$500,000 for each Comprehensive Support and Improvement School, unless the SEA can conclude (based on a demonstration by the LEA in its application) that a smaller amount would suffice. (Section 200.24 (9)(c)(2)(ii) – p. 34608)

Comment: With the proposed regulation setting an arbitrary minimum allocation of \$500,000 for Comprehensive Support and Improvement Schools, there is no consideration of student

population. For small rural schools, this would likely be more than they need, but the state would have no discretion in awarding less unless the district requested and justified less, which few are likely to do. The result would be less money for schools that may have larger student populations and need more than the \$500,000 to effect comprehensive improvement, thus creating a funding inequity.

Furthermore, the state should not be forced through the onerous process of establishing a \$500,000 minimum, to have each LEA either apply for the \$500,000 or request and justify an exception, and then consider each such request on a case-by-case basis – all when the state knows from the beginning that \$500,000 will be more than needed in many cases.

By setting the minimum allocations in regulation, states do not have the autonomy to make decisions based on actual school needs.

Item 7 – Report Cards

Summary of the Statutory Language: The law requires that each LEA participating in Title I produce and disseminate a report card, containing information for the LEA as a whole and for each of its schools.

The proposed regulations would: Require that the local report card (for the LEA as a whole and for each school) begin with a clearly labeled and prominently displayed overview section, be developed with parental input, include certain information and be distributed to parents on a single piece of paper. (*Section 200.31 (3)(d)(2)(i) – p 34610*)

Comment: With the volume and complexity of the reporting requirements, a single sheet of paper is not adequate if we are to use a font size that we expect parents and others will be able to read.

Item 8 – Contents of the Consolidated Plan and the Peer Review Process

Summary of the Statutory Language: Section 1111 (e)(1) prohibits the Secretary from adding new requirements and criteria outside the scope of the statute.

Section 9302 (b)(3) states that “the Secretary shall require only descriptions, information, assurances..., and other information that are absolutely necessary for the consideration of the consolidated state plan or consolidated state application.”

Section 1111(a)(4) provides that the Secretary establish a peer-review process to assist in the review of state plans. The purpose of peer review is to maximize collaboration with each state; promote effective implementation of the challenging state academic standards through state and local innovation; and to provide transparent, timely and objective feedback to states designed to strengthen the technical and overall quality of the state plans.

The proposed regulations would: Require states to undertake burdensome, time-consuming documentation not required in statute to provide detailed descriptions, reviews and evidences on multiple elements within the consolidated state plan – presumably to support the peer review process.

Comment: We applaud the law's intent to provide collaboration between state and federal education agencies through the peer review process and provide feedback designed to strengthen state plans. However, history has shown that the peer review process, as it currently operates, is subjective, secretive and often results in inconsistent interpretations of the law.

The documentation that states must provide under the proposed regulations on items such as challenging state academic standards, performance management systems, strategies, timelines and funding sources goes beyond the intent of the assurances required in statute. As such, we have a concern that though prohibited in law, the peer review process could be manipulated to allow the USED to promote its agenda outside of the regulatory process.

Also, the requirement to provide massive amounts of documentation, again presumably to support the peer review process, adds many additional staff hours and expense. Recently, the Kentucky Department of Education was required to spend more than \$500 and countless hours assembling boxes and boxes of hard copy documentation for the assessment peer review. This does not seem to support the collaborative process intended in the law and a trust in states to do the right things for their students.

Thank you for the opportunity to provide the Kentucky Department of Education's views on the proposed regulation. Please contact me at any time to discuss further.

Sincerely,

A handwritten signature in cursive script that reads "Stephen L. Pruitt".

Stephen L. Pruitt, Ph.D.
Commissioner of Education