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Commissioner

July 27, 2016

John B. King, Jr., Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: ESSA Proposed Rules for Accountability and State Plans
Docket ID: ED-2016-OESE-0032

Dear Secretary King:

Thank you for the opportunity to comment on the U.S. Department of Education's proposed rules for accountability and state plans under the Every Student Succeeds Act (ESSA) that were published in the Federal Register on May 31, 2016.

In passing the Every Student Succeeds Act last December, Congress continued the goal of the Elementary and Secondary Education Act of 1965 of improving equity and educational outcomes for our nation's most vulnerable youth. I believe that the U.S. Department of Education will need to exercise the resolute leadership that ESSA permits if we are to eliminate the uneven educational opportunity and attainment that increasingly handicap our nation's future. To that end, I applaud the leadership you are providing in focusing the nation on the needs of our most vulnerable and underserved students.

I believe that ESSA provides substantial room for the administration to err on the side of too much leeway (by intervening only in the most blatant disregard for state obligations under ESSA) or too much stringency (constraining state policy by aggressive regulation). To that end, my review employs an assessment of whether the rules provide sufficient guardrails to prevent states from shirking the law's central goals while avoiding over-prescription and constraint of reasonable policy approaches.

In general, I agree with the approach taken in the proposed rules. In this letter, I am not commenting on the bulk of rules with which I agree. Rather, I am limiting my comments to concerns about certain requirements that the proposed rules for accountability and state plans would establish, as outlined below.

1. 200.19: Timeline for identification of low performing schools

The proposed rules would require states to first identify schools for comprehensive support and

improvement, and targeted support and improvement by the beginning of the 2017-2018 school year, using data from the 2016-2017 school year. This timeline is unworkable for several reasons. ESSA requires that each state redesign its school and district accountability system in close collaboration with the broad range of stakeholder groups identified in the law. For many states, this process may take much of the 2016-2017 school year as they deliberately listen to and collect input from stakeholders, carefully model potential design options, share proposed models with stakeholders, engage in legislative or other rulemaking actions, and build understanding and buy-in with schools, districts, and other stakeholders. States will need to wait for the U.S. Department of Education's publication of final regulations before finalizing their plans, and in spring or summer of 2017 must submit their plans for review and approval. Further, if adding new indicators to its system, a state may have insufficient years of data to generate reliable and valid determinations by the beginning of the 2017-2018 school year.

Recommendation: Require the initial identification of schools for comprehensive support and improvement, and targeted support and improvement by the beginning of the 2018-2019 school year, using data from the 2016-2017 and 2017-2018 school years, as appropriate. For states that are unable to implement initial identification by the beginning of school year 2017-2018, allow those states to employ protocols approved under ESEA Flexibility or the requirements of No Child Left Behind to identify schools as well as to continue efforts to support low-performing schools and districts through the 2017-2018 school year.

2. §200.18: Annual meaningful differentiation of school performance

The proposed rules for ESSA's required annual meaningful differentiation of school performance, requiring at least three distinct levels of school performance which must be reported separately for each indicator included in the determination, and which must result in a single rating from at least three distinct rating categories, are overly prescriptive. The ESSA statute calls only for a state to use the law's required indicators in its annual meaningful differentiation for all students and all student subgroups, establishes general requirements for the weighting of indicators, and requires the identification of underperforming subgroup performance based on the included indicators. It seems to me that states can meaningfully differentiate between schools on an annual basis, without requiring the uniform approach that the proposed rules would create.

Recommendation: Remove the prescriptive requirements contained in the proposed rules and instead require each state to clearly describe how it will meet ESSA's requirements for annual meaningful differentiation of school performance through a non-ambiguous summative rating or categorization schema, as well as how the state will communicate school performance to stakeholders and the general public.

3. §200.13: Long-term goals and measurements of interim progress

The proposed rules would require that the required academic achievement indicator within a state's annual meaningful differentiation of school performance be measured by grade-level proficiency on the state's annual assessments. If codified in regulation, this would appear to require a state to focus solely on the proportion of students who demonstrate proficiency at their

grade level, and would prevent a state from using a measure of academic achievement that better describes a continuum of student performance. As has been widely discussed since the passage of the No Child Left Behind Act, a narrow focus on grade-level proficiency can result in a school narrowly tailoring its supports to those students who score near the proficiency cut-point on the state's assessment rather than focusing on improving the performance of all students in the school.

Recommendation: Require each state to clearly define and describe its measures of grade-level proficiency on state assessments, but allow states to utilize additional academic achievement metrics, such as average scale scores and proficiency or performance indices, within their annual meaningful differentiations of school performance.

4. §200.20: Averaging of data across school years

The proposed rules would establish three school years as the maximum number of years a state may include when averaging data for the meaningful differentiation and identification of schools. A state should be provided the flexibility to include data from more than three years if the state determines that doing so will provide a more accurate performance trend than if data were limited to three years.

Recommendation: Allow states to average data over multiple years for the purposes of determining the meaningful differentiation and identification of schools, but remove the language in the proposed rules that limits the averaging to three school years.

5. §200.24: Allocation of school improvement funds to LEAs

The proposed rules would establish minimum school improvement award amounts of \$500,000 per year for each school identified for comprehensive support and improvement, and \$50,000 per year for each school identified for targeted support and improvement, that successfully applies for funds. The only exception to these minimum award amounts described in the proposed rules would occur if an LEA demonstrated that a lesser amount would be sufficient to support effective implementation of a school's improvement plan. The statutory language of ESSA, on the other hand, simply requires that school improvement awards be of sufficient size to enable an LEA to effectively implement selected strategies. The minimum amounts contained in the proposed rules would greatly reduce the flexibility that states will need to provide appropriate fiscal support to their neediest schools, and will result in certain schools receiving larger allocations than they are able to effectively use within the course of a single year and, due to the large size of the allocations, will at the same time limit the number of schools that a state will annually be able to support.

Recommendation: Remove the minimum school improvement allocation amounts from the proposed rules and allow states the flexibility to determine the size of annual awards to schools identified for comprehensive support and improvement, and targeted support and improvement. As well, allow states to combine school-level allocations where a zone approach to managing turnaround of two or more identified schools is implemented.

6. §200.30 & 200.31: State and LEA report cards

The proposed regulations would establish an annual deadline of December 31 for the dissemination of state and LEA report cards. I expect that each year Massachusetts will be able to publish report cards by the end of December that contain most data elements required by the law, however it is possible that per-pupil expenditure data as required under §200.35 may be unavailable for each of Massachusetts' LEAs by that date.

Recommendation: Clarify that states and LEAs must publish report cards by December 31 each year, and that any data elements unavailable by the December 31 deadline should be added to report cards as soon as they are available.

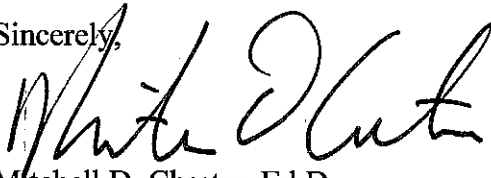
7. §299: Consolidated state plan requirements

I support the concept of a consolidated state plan, and believe that the impact of federal funding streams will be enhanced when states and school districts begin with a coherent improvement plan (and not multiple plans) and then identify federal programs that support strategies that are central to those plans. I believe the rules should allow states with coherent plans to identify the plan's strategies and relevant federal funding streams while avoiding a level of detail that would obfuscate the plan's coherence. I am concerned that the proposed rules for development and submission of consolidated state plans may result in plans that are unnecessarily complicated and difficult for the general public and interested stakeholders to review and, in the process, result in the "forest being hidden by the trees."

Recommendation: Provide states the opportunity to submit consolidated or individual state plans that identify a coherent approach to using multiple federal funding streams to secure the academic improvement of schools that educate the most underserved students without requiring overly complex and detailed descriptions. Require that states identify the essential elements and strategies to be employed, and the way in which these elements and strategies reflect the requirements of the federal program funding streams.

Thank you again for the opportunity to comment. I appreciate the efforts you and your staff are undertaking to help states and school districts prepare for implementation of the new law.

Sincerely,



Mitchell D. Chester, Ed.D.

Commissioner of Elementary and Secondary Education