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August 1, 2016

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

Re: Proposed Rules and Regulations: ESSA Accountability

Dear Secretary King:

The North Dakota Department of Public Instruction (NDDPI) submits the following comments regarding the U.S. Department of Education (USDE), Notice of Proposed Rule-Making (NPRM), on the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) – Accountability and State Plans, [Docket ID ED-2016-OESE-0032], published on May 31, 2016.

The NDDPI appreciates the opportunity to comment on the proposed rules relating to accountability under the ESSA. The NDDPI is pleased with the overall reauthorization of the ESEA and generally with the majority of the proposed rules. However, the NDDPI is concerned that some of the proposed rules erode Congressional intent to give flexibility back to the states to determine the best educational strategies for each state's students. ESSA was intended to provide state educational agencies (SEAs) and local educational agencies (LEAs) discretion to design an accountability system and a state plan that is most likely to meet the needs of students and schools identified for support.

Specifically, the NDDPI objects to five areas of the Proposed Rules, which are outlined within this letter.

■ *Issue 1: State Obligation to Fund LEAs with Schools in Comprehensive or Targeted Support*

ESSA directs states to determine how they will administer the 7% set aside for school improvement activities and to determine between eligible entities if resources are not sufficient to cover all requests.

In the proposed rules, USDE requires that states fund each school at \$500,000 to “adequately support” school improvement efforts.

Problem: North Dakota is a small, minimally funded state. Our estimated allocation under ESSA for school improvement is approximately \$2.6 million. At \$500,000 per school, we would only be able to fund five schools needing comprehensive support and wouldn’t be able to fund any schools needing targeted support. In addition, many of our schools have less than 100 students, making a requirement to provide \$500,000 in improvement funding excessive. There is no basis in statute for the amounts required by the proposed rule. Adding such requirements minimizes state flexibility, innovation, and inhibits local need from driving appropriately funded allocations.

Recommendation: We recommend that the USDE strike provisions related to minimum dollar amounts for school improvement awards and allow districts and 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.

■ *Issue 2: Timeline for Implementation of New Accountability Systems*

ESSA states that the identification of schools will be based on meaningful differentiation of schools under the state accountability plan, and will begin in the school year 2017-18 and occur at least once every three years.

In the proposed rules, the USDE has interpreted this to mean that determinations will need to be in place for the 2017-18 school year, based on data accumulated in the 2016-17 school year. The USDE has also identified that determinations for support need to be made prior to the start of each school year.

Problem: The proposed rule imposes an unreasonable timeline and adds requirements that do not have a basis in statute. North Dakota is developing an approach to accountability based on a broad, comprehensive, and thorough process. States have until July 2017 to submit their plan. It is unreasonable to ask states to have their accountability plan in place and identify schools for improvement when they will not even have an approved state plan in place.

Recommendation: North Dakota recommends that USDE reverse this recommendation and allow states to make the first determination under their new accountability systems in the summer of 2018 for the results of data accumulated during the 2017-18 school year.

▪ *Issue 3: Differentiating Between Schools and the Summative Rating*

ESSA requires that states develop accountability systems that meaningfully differentiate between schools.

In the proposed rules, the regulations are too specific in requiring a published single rating.

Problem: Because states will be required to identify their lowest performing schools, they will need to create a metric that does that, but also may need to display more information such as a dashboard. The final regulations need more flexible language that would allow for a variety of state systems, so long as they comply with statutory provisions requiring clear distinctions among schools, both on the individual indicators and in the summative rating.

Recommendation: North Dakota requests the USDE reverse this recommendation and allow states flexibility to clearly articulate how they will communicate to the public the performance of their schools and allow the use of a dashboard to display multiple data for each school.

▪ *Issue 4: Excessive State Plan Requirements*

ESSA allows states to submit one consolidated state plan that encompasses all required elements for the various federal programs within the statute.

In the proposed rules, states would be required to include numerous requirements not found in statute and the proposed rules appear to ignore statutory language calling for the plan to include only what is absolutely necessary.

Problem: The volume of information the USDE is proposing in the required consolidated state plan will be onerous to compile – in particular by the established deadlines. In addition, the proposed rules require more from states than what the statute mandates.

Recommendation: We recommend that the USDE take an approach consistent with the USDE'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.

▪ *Issue 5: The Division of State Homeless Liaison and Foster Care Liaison*

ESSA includes amendments to Title I, Part A designed to provide school stability and immediate enrollment to children in foster care.

In the proposed rules, it is explicitly noted the SEA McKinney-Vento coordinator cannot be the foster care coordinator.

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Problem: North Dakota is a small state with minimal department staff. While there are differences and distinctions between these positions, there is also a great deal of overlap. By assigning the portfolios to two separate individuals, more work will be created at the state increasing the personnel and financial burden on the NDDPI. The North Dakota McKinney-Vento coordinator is best suited to assume the responsibilities of the state foster care liaison. The state's goal for the education of homeless children and youth and foster care youth both require the necessary supports in place to experience academic achievement. NDDPI is confident that one state administrator is sufficient to uphold the rules and regulations for both the McKinney-Vento program and the foster care program.

Recommendation: We recommend that the USDE allow states the flexibility to identify staff to serve as the Homeless and Foster Care liaisons and to decide if it is feasible for one person to assume both roles.

In closing, we strongly urge the USDE to refrain from writing rules and regulations that are more prescriptive or directive than the ESSA itself. In addition, we urge the USDE to avoid being overly prescriptive in ways that make it difficult for states to achieve ambitious goals with respect to monitoring school and state progress with respect to equity and quality, and with respect to supporting systems improvements.

Sincerely,



Kirsten Baesler
State Superintendent

Cc: U.S. Senator John Hoeven
U.S. Senator Heidi Heitkamp
U.S. Representative Kevin Cramer
Chris Minnich, Executive Director, Council of Chief State School Officers
Peter Zamora, Director of Federal Relations, Council of Chief State School Officers