



## State of New Jersey

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*Commissioner*

July 29, 2016

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

Dear Secretary King:

The New Jersey Department of Education (NJDOE) appreciates the U.S. Department of Education's (ED) commitment to collaboration and support as states transition to the implementation of the *Every Student Succeeds Act (ESSA)*. In particular, the NJDOE welcomes ED's outreach efforts, such as holding stakeholder sessions and receiving comments on where in the law the field needs clarity; undergoing and publishing in a timely manner all materials from this spring's negotiated rulemaking; and appearing before both House and Senate committees to explain how it plans to support the implementation of the *ESSA*.

The NJDOE's singular focus is to ensure all students, regardless of their background, are prepared for career and/or college demands beyond high school. Therefore, the NJDOE supports the *ESSA*'s continued emphasis on holding all students to high academic standards while acknowledging the importance of a well-rounded education.

Moreover, the NJDOE appreciates the increased flexibility the *ESSA* provides, particularly in the areas of accountability and assessment. Such flexibility provides greater opportunities for the NJDOE to work with local stakeholders to foster an aligned and equitable accountability and support system that identifies at-risk and underperforming students, and provides for appropriate, effective and timely supports to improve student outcomes.

While the regulations proposed by ED on May 31, 2016, maintain much of the flexibility established in law, the NJDOE is concerned that a few areas of the regulations overly prescribe how states must implement specific aspects of their accountability and support systems.

To ensure that each state, in consultation with its stakeholders, has the opportunity to establish an accountability and support system that meets its needs, the NJDOE offers the following recommendations and requests for clarity:

1. **How to include participation rate in states' accountability systems:** Proposed § 200.15(b)(2) would require a school failing to have 95% of all students or a subgroup of students take a statewide academic assessment to:
  - Receive a lower summative rating in the accountability system;
  - Receive the lowest possible rating on the academic achievement indicator;
  - Be identified as in need of targeted support; or
  - Be subject to an equally rigorous state-determined action.

While the proposed regulations allow for an “equally rigorous” state-determined action, listing prescriptive actions to which a state-determined action must be compared could cause confusion, because what is considered “equally rigorous” could be subjectively interpreted. Also, requiring a state-determined action to be “equally rigorous” to the first three actions assumes that the first three actions are themselves “equally rigorous.” This does not appear to be the case, since receiving a lower summative rating, the lowest academic achievement rating, or being identified as in need of targeted support may not have the same effect on the rating of a school’s overall performance or require the same corrective action. To prevent such confusion, the NJDOE recommends ED allow states to explain how they will factor participation rates into their accountability systems, rather than listing prescriptive actions.

2. **How states meaningfully differentiate among schools:** Proposed § 200.18(b)(4) and § 200.31(b)(2)(ii)(A) would require each state’s accountability system to result in summative ratings for schools and for each school’s summative rating to be prominently displayed on local educational agency (LEA) report cards. The NJDOE supports the annual meaningful differentiation of schools required under *Section 1111(c)(4)(C)* of the *ESEA* as amended by the *ESSA* and is committed to reporting on a variety of school quality and performance measures to promote rich dialogue about each school’s successes and areas for growth. However, a single summative rating would undermine this effort to promote a comprehensive look at school performance, and therefore, the NJDOE recommends ED allow states to explain how they will meaningfully differentiate between schools, rather than requiring a summative rating.
3. **Notifying LEAs of targeted and comprehensive schools:** Proposed § 200.19(d)(2), § 200.21(a), and § 200.22(a) combined would require each state to use the immediately preceding school year’s data in its accountability calculations and notify LEAs of identified schools by the start of the following school year. The NJDOE is committed to informing LEAs of identified schools as early as possible in order to provide maximum planning time for the development and implementation of meaningful interventions. *Section 1111(d)(1)(A)* and *(2)(A)(i)* require only that each SEA notify LEAs of identified schools. The law does not prescribe a date by when such notification must occur. Due to different constraints regarding when the data needed for identifying schools is available in each state, the NJDOE requests that ED allow states to articulate in their state plans their timelines for accountability calculations, LEA notifications, and improvement plan development and implementation, instead of prescribing when SEAs must notify LEAs of identified schools.

4. **Graduation rate for identifying comprehensive schools:** Proposed § 200.19(a)(2) would require states to use only the four-year graduation rate when determining whether a high school failed to graduate at least 67% of its students and, consequently, be identified as in need of comprehensive support and improvement. The NJDOE supports using the four-year graduation rate to identify schools in need of comprehensive support and improvement, but believes flexibility is needed for unique circumstances, specifically for students whose Individualized Education Plans (IEPs) specify that they be allowed five years to graduate. With this in mind, the NJDOE recommends ED work with states to collaborate across offices at the federal level to ensure that such circumstances are taken into account and schools are not unfairly penalized for serving a high percentage of high-needs students.
5. **Date for releasing SEA and LEA report cards:** Proposed § 200.30(e)(1) would require state and LEA report cards to be released by December 31 of each year. The NJDOE is committed to getting accurate and useful information on school performance released to educators, parents, and other stakeholders as soon as possible each year. However, requiring a uniform deadline for doing so may lead to the release of inaccurate or incomplete information, as states would release data when they have to rather than when it is ready after undergoing careful quality checks. In consideration of differences in each state's data collection and quality assurance processes, the NJDOE recommends that ED require states to articulate in their state plans when they will release report cards each year, rather than establishing a deadline for doing so.
6. **Date on which enrollment must be determined for per-pupil expenditure calculations:** Proposed § 200.35(c)(2) would require per-pupil expenditures to be calculated using student enrollment data as of October 1 of each year. Due to variation in states' school start dates and differences in when states collect enrollment data—for instance, New Jersey collects its enrollment data on October 15<sup>th</sup> of each year—this deadline will be disruptive to states' data collection processes without a clear benefit. The NJDOE recommends ED require states to describe in their state plans their procedure for calculating per-pupil expenditures, including the date used for determining a school's enrollment.
7. **Exit criteria from English learner (EL) status:** Proposed § 299.19(c)(3)(iii) would prohibit states from including performance on “academic content assessments” in its exit criteria for English learners. Since academic content assessment is not defined in either statute or regulations, it would be helpful if ED clarified what academic content assessment means in this context.
8. **Exit criteria for targeted school:** Proposed § 200.22(e) would require LEAs to set exit criteria for schools identified as in need of targeted support and improvement due to consistently underperforming subgroup(s). While the NJDOE supports having LEAs approve and monitor the implementation of improvement plans for such schools, it recommends ED designate SEAs, which would work in collaboration with LEAs and other stakeholders, as the entities responsible for setting exit criteria for these schools. Forcing LEAs to set these criteria could be incredibly onerous, especially for smaller New Jersey

school districts that have limited district-level capacity. Establishing SEAs as the entities responsible for setting these exit criteria will ensure consistency and prevent undue burden on school districts.

The NJDOE thanks Secretary King and the U.S. Department of Education for your thoughtful consideration of these and other stakeholder concerns as you move toward final regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hespe", with a long horizontal flourish extending to the right.

David C. Hespe  
Commissioner

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