



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF EDUCATION

July 29, 2016

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

Dear Ms. Miller:

The Pennsylvania Department of Education (PDE) appreciates the opportunity to submit public comment concerning the U.S. Department of Education's (USDE) proposed Accountability and State Plans rulemaking under the Every Student Succeeds Act (ESSA). I also wish to thank you and your team for your active, ongoing efforts to gather public feedback on the law's implementation, and for the proposed rules' emphasis on meaningful, ongoing stakeholder engagement during the planning, development, and adoption of State Plans; these discussions are vital safeguards against the significant unintended consequences associated with the prior reauthorization of the Elementary and Secondary Education Act (ESEA).

First, we wish to applaud certain positive aspects of this rulemaking. The regulations proposed by USDE represent a good first step towards fulfilling ESSA's promise of ensuring that all students, from pre-kindergarten to postsecondary, as well as low-income students, students of color, students with disabilities, English learners, and other historically marginalized students – have access to a world-class education that prepares them for college, career, and life. PDE especially appreciates the flexibility the proposed regulations would provide for states when designing evidence-based interventions for low-performing schools identified for comprehensive or targeted support and improvement. USDE's recognition that schools require smart, innovative, and tailored supports is welcome.

Our comments relate to the systems that will lead to the identification of these schools in the first instance and a concern that the proposed rulemaking, while well intentioned, may deprive states from taking full advantage of the spirit of flexibility that accompanied the reauthorization. It is important to note that PDE shares a belief expressed by many state chiefs, leading education organizations, and countless education stakeholders regarding what appears to be an overreach of USDE's statutory authority. However, as a career-long public school educator, I would prefer to focus on the practical impact of the proposed rulemaking, and the ways in which this approach would risk a repeat of the overly prescriptive No Child Left Behind-era reforms. We will focus our comments in five key areas:

1. The timeline for identification of schools for comprehensive and targeted support and improvement (Proposed § 200.19);
2. The focus on grade-level proficiency as the primary indicator of academic achievement for accountability purposes (Proposed § 200.14);
3. The weighting and selection criteria for School Quality or Student Success indicators (Proposed § 200.14 and § 200.18);
4. The requirement that indicators within a state’s system of annual meaningful differentiation be tied to “at least three distinct levels of performance” (Proposed § 200.18); and
5. The use of four-year adjusted cohort graduation as a default accountability measure for all high schools (Proposed § 200.13 and § 200.34).

We outline our concerns in each of these areas below, and suggest alternative approaches for consideration by USDE.

1. **Timeline for identification of schools for comprehensive and targeted support and improvement** (Proposed § 200.19)

The most important test of a fair accountability system is whether schools, systems, and states have both a clear understanding of expected performance and the resources necessary to meet those expectations. Proposed § 200.19 fails to meet this standard by requiring that states begin identifying schools for comprehensive and targeted support for the 2017-2018 school year based “at a minimum, on...performance in the 2016-2017 school.”

This proposal is problematic as it would require a state to identify schools for support and improvement prior to USDE approval of the state’s Single Statewide Accountability Plan and well ahead of full implementation of the resources and strategies tied to that plan. This timeline will be confusing for states and districts, and risks a rushed, compliance-driven approach to the important work of designing strong accountability systems.

Recommended Approach: PDE believes states should be able to freeze current focus and priority lists for the 2016-2017 and 2017-18 school years, to ensure sustained focus on these high-need schools and provide important breathing space to design new accountability systems that incorporate well-researched and carefully-vetted indicators. This approach would ensure that identification of schools is forward-looking, responsive to USDE review of State Plans, and based on school years in which expectations and resources are well-aligned.

2. **Grade-level proficiency as the primary indicator of academic achievement for accountability purposes** (Proposed § 200.14)

The proposed regulations' focus on measuring academic achievement based on "grade-level proficiency" reinforces an unintended consequence of No Child Left Behind: a disproportionate focus on students on the cusp of proficiency at the expense of students at lower achievement levels. In addition, this focus on proficiency often masks important differences between schools identified as low-performing through state accountability systems. For example, under a proficiency-focused accountability system, the percentage of students who score "basic" and "below basic" is not deemed relevant in determining school performance, relegating schools that have made significant progress in moving students out of the lowest proficiency level to the same category as schools that have made no such progress. Through its discussions with educators and stakeholders in efforts to redesign the PA School Performance Profile, PDE heard a clear and repeated need to move beyond proficiency rates as the sole or primary measure of school success, and therefore contemplated weighting movement from "below basic" to "basic" (as well as additional credit for moving students from "proficient" to "advanced"). Such an approach incentivizes providing support to all students, and ensures that schools achieving success with larger proportions of low-achieving students are not unfairly disregarded through narrow accountability indicators.

Recommended Approach: PDE recommends that USDE revise its proposed regulations to permit the use of scale scores or indexes that allocate points for schools based on multiple levels of performance.

3. **Proposed weighting and selection criteria for School Quality or Student Success indicators** (Proposed § 200.14 and § 200.18)

PDE believes the inclusion of indicators of student success and school quality represents a welcome change from the previous iteration of ESEA that relied solely on snapshot achievement data measured by standardized assessments.

The ESSA also supports the direction the commonwealth has adopted regarding standardized tests – namely, that they can be a useful tool and benchmark, but should not be the sole indicator of success. Over the past year – and prior to the ESSA's enactment – PDE has engaged thousands of teachers, school leaders, advocates, community members, and policymakers in a robust dialogue concerning the metrics Pennsylvania currently uses to measure school performance. In these conversations, stakeholders have voiced enthusiastic support for measures of school quality and student success including college and career readiness indicators, access to advanced coursework, student engagement, and partnerships and programs designed to extend the reach of high-quality early childhood programs. We believe strongly that these and other indicators can more fully describe schools' impact on students and that drive targeted improvements.

USDE’s proposed regulations regarding the selection of non-academic indicators would limit the potential for statewide accountability systems under the ESSA to be based on more than point-in-time achievement as measured by standardized assessments. And the requirement in proposed §200.18 that these same non-academic indicators are peripheral for purposes of identifying schools for comprehensive or targeted support and improvement is contrary to the original spirit of ESSA, and increases the likelihood that states will opt not to invest in the difficult but necessary work of refining and validating measures that can broaden conceptions of school performance.¹ From either perspective, this is another clear instance of the proposed rulemaking eroding the spirit of flexibility that accompanied the ESSA.

Recommended Approach: USDE should allow states to demonstrate adequate systems for meaningful differentiation for all indicators, including non-academic indicators, by requiring that states define and demonstrate adequate variability among schools; USDE would evaluate the proposed definition and demonstrations through its review of State Plans. In addition, states should be permitted to demonstrate how selected indicators aid in the implementation of comprehensive and targeted school improvement strategies, including research and evidence supporting the connection of those indicators to improving student achievement and outcomes.

4. Requirement that indicators within a state’s system of annual meaningful differentiation be tied to “at least three distinct levels of performance” (Proposed § 200.18)

PDE believes that this requirement is overly prescriptive and harkens back to the false precision and gamesmanship that characterized the NCLB era. Evidence and experience tell us that there is likely no meaningful difference in performance between a school that falls just above an arbitrary cut point and a school that falls just below it; at the same time, there are likely very real differences between schools that sit at opposite ends of the same performance level. In this way, performance levels can simultaneously label schools unfairly and mask important distinctions.

Recommended Approach: States should be afforded flexibility in describing and differentiating school performance, to include descriptive data and data dashboards.

5. Use of the four-year adjusted cohort graduation as the default accountability measure for all high schools (Proposed § 200.13 and § 200.34)

PDE believes strongly that high school graduation rate is a vital part of any robust accountability system. We are concerned, however, that the specific requirement for the use of the four-year cohort rate would systematically, disproportionately, and unfairly impact schools that serve high numbers of

¹ Section 1111(c)(4)(B)(v) of ESEA, as amended by ESSA, requires that any indicator(s) of school quality or student success selected by states for accountability purposes “allows for meaningful differentiation in school performance” and “is valid, reliable, comparable, and statewide.”


returning students, adjudicated youth, refugee populations, and other vulnerable populations who may require additional time and resources to earn a diploma. While the proposed regulations allow for inclusion of an extended-year graduation rate, the requirement that states using this metric establish “more rigorous” long-term goals than those based on the four-year rate is unclear.

Recommended Approach: USDE should clarify expectations regarding “more rigorous” long-term goals for states that report both four- and extended-year cohort graduation rates for accountability purposes.

SUMMARY

PDE would like to reiterate its strong support for many aspects of the ESSA, especially as it relates to flexibility for states in the design and implementation of interventions for low-performing schools. We are concerned, however, that significant elements of the proposed rules are simply too prescriptive to work well across our commonwealth’s 500 diverse school districts, and will prevent our educators and stakeholders from tailoring policies to align with the local context that was too often obscured by the last wave of top-down federal reform. In other words, the ESSA can be a powerful tool for improving educational access, opportunity, and outcomes in communities across Pennsylvania and nationwide—but only if those same communities have voice and a choice in its implementation. A timeline that allows for fair and coherent introduction of school performance indicators, state flexibility in the area of specific performance determinations, and the ability to utilize more holistic measures of school quality and student success are vital for meeting these goals and honoring the spirit of flexibility that defined the law’s reauthorization.

Sincerely,



Pedro A. Rivera
Secretary of Education

CC: Governor Tom Wolf
PA Congressional Delegation
Members, PA Senate and House Education Committees