

Docket ID ED-2016-OESE-0032: Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act: Accountability and State Plans

July 27, 2016

The South Dakota Department of Education (SD DOE) appreciates the opportunity to comment on the proposed rules relating to accountability under the Every Student Succeeds Act (ESSA). Overall, the SD DOE is concerned that the proposed rules erode Congressional intent to give flexibility back to the states to determine the best educational strategies for each state's students.

The SD DOE would like to highlight areas that are of particular concern regarding the U.S. Department of Education's (US ED) vision of how a small state like South Dakota should implement the law.

Timelines for School Improvement Identifications (Section 200.19(d); Section 200.21(a)). The proposed rules spell out that states are expected to make the first school improvement identifications under ESSA at the start of the 2017-2018 school year, with data from the 2016-2017 school year. This violates the spirit of the ESSA language, which stipulates that the accountability portion of the law is to take effect with the 2017-18 school year, *not* the 2016-17 school year.

Accelerating the timeline poses particular problems for South Dakota as we have already begun a thoughtful process with significant stakeholder input to ensure our system is in the best interest of our children. This takes time. The system will not be ready before the start of the 2016-17 school year, if even at its end. Forcing states to make determinations on 2016-17-year data, when schools do not even know to what standard they are being held accountable, is disingenuous and a violation of the trust between the SD DOE and our public school districts.

Under the proposed rules, the alternative is to shortchange stakeholder input and discourage innovation in systems. US ED gratefully acknowledges that accountability systems may not be fully in place in time to meet this designation timeline; this also is unfair to schools that will be placed into a four-year school improvement process based on an incomplete system.

We recommend, as we noted in our February public comment, that states use the 2017-18 year as the first data year, in line with ESSA's language, and 2018-19 as the first designation year.

Requirements for the Student Success/School Quality Indicator (section 200.14(c), 200.18). ESSA requires this indicator to be given lower priority in accountability systems than other academic indicators. In regulating significantly beyond that concept, the proposed rules create unintended consequences. States should be free to determine what constitutes substantial weight for academic indicators, consistent with the law, to avoid these consequences.

The timeline outlined gives states little room to innovate in determining what measurements will get to the heart of their reason for school improvement. In encouraging states to continue with what "other" indicators they already have in place because of these truncated timelines, it limits exploration of other meaningful indicators that can contribute to school and student success.

South Dakota's accountability system is based on a 100-point index with multiple performance indicators, including a "College and Career Readiness Indicator," which falls into this category. College, career and life readiness is our guiding principle and ultimate goal, and it is critical that our accountability system reflect that. However, if the Student Success/School Quality indicator cannot be important enough to keep a school "out of" or place a school "in to" improvement, it devalues this indicator in comparison with standardized test scores and contradicts our message as a state education agency (SEA).

Finally, the requirement to disaggregate every indicator in this category by subgroup precludes consideration of indicators that would measure strong teacher mentoring programs, opportunities such as dual credit (funded by the state at a cost to students of approximately \$50/credit), et cetera. These could be meaningful measures in our accountability system. SD DOE would propose that so long as a state has one of its indicators of School Quality/Student Success aggregated by subgroup, that it could add additional ones that are not disaggregated.

Sanctions for Not Meeting 95% Participation (Section 200.15). The language as written does not take into account varying circumstances for why a school may fail to meet participation and as such, ultimately, it should be left to the state to determine consequences – outside of those already prescribed by ESSA – that will be most effective in encouraging full participation on mandated assessments.

Because of the small size of many of South Dakota's schools and districts, during the 2014-15 school year, several schools and districts missed the 95% bar simply because one or two families refused to allow their children to participate in the assessment.

States should have the flexibility to determine whether additional steps – beyond adjusting the denominator and a remediation plan – are needed when schools miss the 95% participation rate. Being forced to penalize schools further – such as being designated for school improvement – because of the actions of as few as one family is a one-size fits all approach that does not necessarily translate well for a state with such small schools and districts.

Creating "Levels" for Each Indicator (Section 200.18). This is outside the scope of ESSA and appears to argue for a criterion-based system. States, including South Dakota, must be free to determine a system that is understandable and meaningful to the public – be it criterion-based, normative-based, or a dashboard approach.

Definition of Underperforming Groups of Students and Requirements for School Designation (Section 200.19(b)). While the law gives flexibility on this issue, the proposed rules eliminate that flexibility. Based on the definitions outlined in proposed rule, South Dakota would have identified an additional 260 Title I schools out of the 2014-15 school year data for targeted support. This number would overwhelm our Title I staff of two who support schools in improvement. The effect would be watered down SEA-level support to schools, counter to the intention of the law. Let states determine how to set this criteria, consistent with the law.

Funding for Schools in Improvement (Section 200.24). The proposed rules stipulate that the SEA must provide at least \$500,000 to schools in comprehensive support and at least \$50,000 to schools in targeted support. As a minimally funded state, this means the SD DOE could support roughly six schools. Although we acknowledge the provision whereby states can award a smaller figure if it has

insufficient funds, the criteria for doing so should be up to the state to determine. To meet the requirements in rule, South Dakota would need a 10-fold increase in funding (\$2.7 million to nearly \$30 million).

Maximum Timelines for Schools in Improvement (Sections 200.21 and 200.22) – As written, a targeted school with a low-performing subgroup not exiting after three years must enter into comprehensive support; a comprehensive support school not exiting after four years must have stricter sanctions. Based on years of experience in supporting schools in improvement, schools currently labeled as Priority or Focus can make tremendous progress over several years while still facing more to accomplish in order to meet exit criteria. Defining appropriate exit criteria timelines and interventions should be a state decision.

Disallowing “High School Completion” Indicator (Section 200.14(b)(3); Section 200.34(b-d)). Under our current accountability system, South Dakota reports both a Four Year Cohort Graduation Rate and a “High School Completion” indicator – giving schools credit for supporting students to meet graduation requirements, even if it takes up to seven years, and for getting students to complete alternate pathways, including high school equivalency. Schools strive to get all students across the finish line within the Four Year Cohort definition, but at times this simply is not possible. The narrow definition in the proposed rules appear to disallow continuance of this indicator, a point about which both the SEA and our stakeholder groups are passionate. Schools must continue to gain recognition for finding alternatives that help students who otherwise would simply drop out.

Equity in Per-Pupil Funding (Section 200.35 and others). The proposed requirements appear to overstep the ESSA requirement that the federal government cannot mandate equalization of per-pupil funding be equalized at the state, district or school level. South Dakota also has concerns about the ability to collect financial information at the school level. In South Dakota, financial information is collected at the LEA level, not at the school level, and many of our LEAs have a single building, housing three different “schools” serving the entire K-12 population. These K-12 systems share costs related to staffing, operations, maintenance of plant, transportation, food service, and supplies. Attempting to separate funding costs to differentiate between “schools” (Elementary, Middle, High School) in these circumstances is unrealistic and runs contrary to the operations in these LEAs. Additionally, there are concerns about the manner in which funding sources are to be disaggregated. Beyond Impact Aid, there are other federal funding sources that rural districts utilize, such as Taylor Grazing and Mineral Leasing funds, that are not tracked in a manner that allows reporting of these dollars. The proposed rules are also unnecessarily ambiguous about the definition of private funds. It is unclear whether foundations, parent-teacher organizations, booster clubs and similar entities would be excluded under these rules, which is necessary to do as states do not collect this information from LEAs or from their schools.

Equity of Resource Allocation (Section 299.18(c)(2)(i)). South Dakota has in place a robust equity plan and will continue to work to prevent low-income and minority children in Title I schools from being disproportionately taught by ineffective, out-of-field, and inexperienced teachers. The proposed regulations would go well beyond the statutory language. The definitions and reporting timelines lead to a conclusion that states should include teacher salaries in this evaluation and also appear to implicitly require teacher evaluation systems – a point expressly absent from ESSA. Additionally, the proposed regulations go beyond the statutory language by including the requirement to conduct “root cause analyses” of the disproportionality. This will be an expensive and heavy lift to update and integrate in data systems and requires significant staff time. South Dakota will continue to address this challenge, but the level of detail in the rules is unnecessary and overly prescriptive.

LEA-Level Funding and Intervention Reporting (Section 200.24 and 299.19(a)(3)). The proposed rules require the state to include on its report card the LEAs and schools receiving school improvement funds, the amounts received, and the interventions undertaken with that funding – something that can more easily and appropriately be done at the LEA level. Additionally, the state plan must include a review, *on an LEA-by-LEA basis*, of districts’ budgeting and resource allocations in four separate areas. These requirements unnecessarily increase the state level of red tape and place an additional demand on already scarce staff time.

Onerous and Excessive State Plan Requirements (Sections 299.13 through 299.19, inclusive). The volume of information US ED is proposing to require in consolidated state plans will be onerous to compile – in particular by March 6. This includes numerous requirements not found in statute and appears to ignore statutory language calling for the plan to include only what is absolutely necessary. For example, all states, not just those exempting students from the regular middle school math assessment, would need to submit a plan to ensure all middle school students have the opportunity to take advanced math coursework. If the proposed rule stands to use data from the 2016-17 school year to designate schools for support and improvement in 2017-18, South Dakota’s ability to inform schools to what standard they will be held accountable may well be delayed by the requirement to include such disparate information into the plan.

Estimates of Fiscal and Time Resources (Regulatory Impact Analysis). We find the estimates submitted to the Office of Management and Budget to be wildly out of sync with the efforts the SD DOE will need to undertake to integrate data systems and report the required data. In particular, this is true because there are not decreased reporting requirements in other areas. This will be a significant feat, in particular for a state that is minimally funded and minimally staffed; the burden compliance will place on our staff should not be underestimated.