



STATE OF CONNECTICUT
BOARD OF EDUCATION



August 1, 2016

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

Dear Ms. Miller:

We submit the following comments in response to the U.S. Department of Education's (ED) proposed regulations for the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the Every Student Succeeds Act (ESSA) regarding Accountability and State Plans ([Docket # ED-2016-OESE-0032-3159ESSA](#)).

We concur with President Obama that many of the priorities that were put forward by his administration through the ESEA Flexibility process were subsequently incorporated into the bi-partisan bill that became ESSA. These priorities have enabled states like Connecticut to design systems that freed themselves from the constraints of the one-size-fits-all accountability approach of the No Child Left Behind Act. Over the past four years, we have collaborated with educators to design and implement thoughtful, balanced, creative, and accurate accountability systems. We have successfully focused collective attention on key indicators of equity and excellence. These efforts have renewed the confidence of administrators, leaders, and teachers in state-level accountability systems. We are very pleased that ESSA has now statutorily codified many of these administration priorities and explicitly situated the authority for accountability systems at the state level.

The proposed regulations, in some instances, provide the right amount of clarity. However, in other areas, we believe that some of the proposed regulations are in conflict with the intentional and explicit flexibilities afforded to states under President Obama's administration's ESEA flexibility policies, which were subsequently codified into ESSA. Furthermore, these regulations unnecessarily complicate ESSA making implementation more burdensome.

We strongly recommend the following modifications to the proposed regulations. These changes will better advance and strengthen the implementation of key provisions of ESSA. In particular, we urge ED to revisit and modify:

1. **§ 200.18 – Requiring Three Levels of Performance for All Indicators and their Use in Meaningfully Differentiating Schools**
 - a. ESSA¹, § 1111(b)(1)(A), requires three levels of performance for academic achievement only.

¹ <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>

- b. The USED proposed regulations** require three distinct levels for all indicators in the accountability system and prescribes a specific approach for using multiple indicators to differentiate schools.
- c. Problem:** Classification systems that segment continuous measures into categories/levels are inherently problematic, especially for those on either side of the cut value between two levels. The underlying unit of measure is more accurate². Categorical approaches to a measure can lead to a hyper-focus of improvement efforts to only those students that fall at the “bubble.” This was one of the major flaws of NCLB. By extending this approach to encompass all indicators, these regulations undermine the positive accountability shifts fostered by ESEA Flexibility and possibly under ESSA.

Furthermore, the draft regulations require that these levels factor into the process of deriving the summative rating for a school. We are concerned that this will compound the undesired consequence of the proposed classification system.

Additionally, the proposed regulations require states to use these “levels” on the “substantially weighted” indicators in school classification decisions. They also prescribe in great detail how schools should manage the weights of the substantially weighted indicators in instances where the minimum N-size for English learners is not met.

Recommendation: The CSDE requests that the USED delete this requirement entirely and any other requirement in § 200.18 that either relies on “levels of performance” for the indicators or otherwise limits state flexibility to meaningfully differentiate school performance.

Connecticut’s Next Generation Accountability System that is described in its ESEA Flexibility request and approved by USED utilizes continuous scales for all indicators. Achievement proficiency on state assessments is reported as a continuous performance index that is derived from the underlying scale scores. A more continuous approach for all indicators has been received very favorably because it rewards incremental improvement and keeps the focus on all students, not just those on the “bubble.” It is also enabling a more nuanced, clear understanding of school performance.

2. § 200.18 School Quality or Student Success Indicators

- a. ESSA, §1111(c)(4)(B)(v)(I),** requires the school quality and student success indicators to be valid, reliable, comparable, and statewide.

² Ho, Andrew Dean. (2008). The problem with proficiency: Limitations of statistics and policy under No Child Left Behind. *Educational Researcher*. 37, 6, p. 351.

- b. The USED proposed regulations** extend beyond ESSA to require that each measure be supported by research that performance or progress on such measures is likely to increase student achievement or graduation rates.
- c. Problem:** The regulations minimize success/quality indicators, limit the possible choice of available indicators, and could lead to an inadvertent overemphasis on test scores. We are concerned that this measure would be counterproductive to building more holistic accountability systems as expressed throughout ESSA. Research demonstrating a direct link to improved achievement or graduation rates may not exist for some very worthwhile indicators that are believed to be important components of providing a well-rounded education for students. States should be provided the flexibility to incorporate such measures.
- d. Recommendation:** The CSDE requests that the USED strike § 200.18(d)(2) and make other requisite adjustments in the regulatory language to remove this limitation and provide states flexibility regarding the choice of indicators *and* the weights assigned to them.

3. § 200.13 Progress toward English learner proficiency --- focus on progress, not proficiency

- a. ESSA, § 1111(c)(4)(B)(iv),** defines this indicator as progress in achieving English learner proficiency with *“progress being measured against the results of the assessments described in subsection (b)(2)(G) taken in the previous grade.”* It requires states to incorporate an indicator of progress toward English proficiency and affirms that this indicator is “as defined by the state.” It is clear from the statute that this indicator is about the *progress* achieved on English proficiency assessments by the same students from one grade to the next and not about the English proficiency rates of English learners in a particular year on English proficiency assessments as was the case with NCLB Title III.
- b. The USED proposed regulations** impose a requirement that states establish long-term goals for both progress and proficiency.
- c. Problem:** English proficiency attainment may have a differential impact across districts and schools based on human migration patterns because proficiency rates compare different students across years. While it is laudable to allow for the inclusion of covariates to adjust proficiency expectations, some states may find such approaches more desirable for a research study or for general reporting purposes as required in section 3121(a)(6), not for a formal school/district accountability system. States may be concerned that adjustments based on multiple factors could create a statistical “black box” and reduce transparency.
- d. Recommendation:** Consistent with ESSA, the USED should require that states incorporate a “progress” indicator in their accountability systems. However, the

incorporation of an English “proficiency” indicator should be optional and left to the states.

4. § 200.13 English learner growth approach --- do not limit or endorse approach

- a. **ESSA**, § 1111(c)(4)(B)(iv), requires that the progress toward proficiency indicator be valid and reliable.
- b. **The USED proposed regulations** mandate use of the composite score on the English proficiency assessment for the progress indicator for certain students with disabilities who cannot be assessed in a particular domain due to their disability. They also endorse a particular growth approach i.e., student growth percentiles.
- c. **Problem:** It is unclear if the prescription to utilize the composite score for certain students with disabilities will also be extended to all English learners. In addition to the composite score, the four subject area scores (i.e., reading, writing, listening and speaking) may be grouped into the two domains of Literacy (reading and writing) and Oral (listening and speaking). Such domain level scores may offer a more actionable, yet reliable, approach to incorporate all four subject areas for growth calculation purposes. The compensatory nature of a composite score does not adequately emphasize each of the two key skill domains of literacy and oral. In terms of a growth model, states may select other growth approaches that are quite different from the normative approach of the student growth percentiles.
- d. **Recommendation:** The USED should delete the prescription to use the composite score for certain English learners with disabilities. It should retain the requirement that states demonstrate how they will include all English learners in this indicator, including those who cannot be assessed on all domains due to a disability. The USED should also strike reference to student growth percentiles or any particular growth approach from the regulatory language.

5. § 200.19 Identification of Schools for Targeted Improvement and Support

- a. **ESSA**, § 1111(c)(4)(C)(iii), states that the criteria and methodology for identification of Title I schools with a consistently underperforming subgroup should be “as determined by the state.” Moreover, § 1111(e)(1)(B)(iii)(V), prohibits the Secretary from prescribing “the specific methodology used by States to meaningfully differentiate or identify schools.”
- b. **The USED proposed regulations** define a low-performing subgroup of students as any group which earns a summative rating that is lower than the summative performance of all students in the lowest performing five percent of schools. They add several other prescriptive criteria for school identification when such prescription is expressly prohibited in ESSA.

- c. **Problem:** Connecticut is extremely committed to reversing low subgroup performance. It has lowered its minimum N size to 20, utilized a high needs supergroup to shine the light on thousands of ELs and students with disabilities who were previously excluded from accountability calculations, and even identified non-Title I schools with low subgroup performance. We are concerned that the identification rules in these proposed regulations are unnecessarily complex and would be very burdensome to implement. They will result in frustration among districts and stakeholders and undermine goodwill that has been developed over the past few years under ESEA Flexibility.
- d. **Recommendation:** The regulations in 200.19 should not prescribe methods or rules for the identification of Title I schools with a consistently underperforming subgroup. Rather, states should retain the authority and flexibility to determine such methods that are best suited for each state's own context.

6. § 200.19 Identification of Low Graduation Rate High Schools for Comprehensive Support

- a. **ESSA, § 1111(c)(4)(D)(i)(II),** requires the identification of “all public high schools in the State failing to graduate one third or more of their students” for comprehensive support and improvement.
- b. **The USED proposed regulations** extend beyond ESSA to require the use of the four year, on-time graduation rate.
- c. **Problem:** Based on extensive feedback from district and school leaders, Connecticut transitioned to using the six-year cohort graduation rate standard of less than 70% to identify schools for comprehensive support based on low graduation rate. This approach to identifying priority and focus schools was approved by USED under ESEA Flexibility in August 2015. The six-year rate does not penalize districts for students who may need an extra year or two to finish high school. It also incents high schools to retain over-aged under credited students through alternative pathways and enable them to graduate with a regular high school diploma.
- d. **Recommendation:** The regulations should be expanded to allow the use of an extended graduation rate with a higher standard (e.g., 70%) in lieu of the four-year graduation rate standard of 67%.

7. § 200.19 Effective Date of Implementation

- a. **ESSA** requires states to establish a methodology and identify schools for comprehensive support beginning with the 2017-18 school year.
- b. **The USED proposed regulations** are interpreting this to mean that the 2017-18 school year is in which the classifications must occur.

- c. **Problem:** Connecticut identified priority and focus schools based on ESEA Flexibility in March 2016 and those schools will begin interventions for a minimum of two years in 2016-17 and 2017-18. Having to re-identify schools in 2017-18 for a three year period will be problematic.
- d. **Recommendation:** Connecticut requests that USED interpret 2017-18 as the “data” year and not as the year of implementation.

8. **§ 200.35 Per-Pupil Expenditures**

- a. **ESSA** requires states to report per-pupil expenditures at the school level, disaggregated by source of funding and includes personnel and non-personnel expenditures.
- b. **The USED proposed regulations** require states to develop a uniform procedure to be used by both the SEA and LEAs for calculating per-pupil expenditures and prescribe certain design requirements.
- c. **Problem:** We applaud the intent of the regulations and strongly believe that greater transparency in resource allocations and expenditures helps inform meaningful dialogue at both the local and state level. However, the regulations as proposed do not appear to provide allowance for certain types of expenditures, such as in-kind services provided by a local municipality, or employee benefits to be allocated. Section 200.35(c) of the proposed regulations includes transportation and net food service specifically as types of expenditures that should be reported for each school, however we are concerned that these might prove impractical to allocate at the school level, especially for districts with complex transportation systems.
- d. **Recommendation:** Given that structures and mechanisms for education funding vary greatly by state, states should be granted wide latitude in determining which expenditures should be reported at the school level and which expenditures are best reported at the district level.

9. **Directed Question: Whether we should retain, modify, or eliminate in the title I regulations the provision allowing a student who was previously identified as a child with a disability under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and, if so, whether such students should be permitted in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time. (§ 200.16)**

Since ESSA added this provision for English learners but not for students with disabilities, at a minimum, the current regulatory provision that allows students with disabilities who no longer receive special education services, to be included in the students with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, should be permitted at

least for up to two years, but ideally for up to four in the spirit of equal treatment to both student subgroups.

10. Directed Question: Whether we should standardize the criteria for including children with disabilities, English learners, homeless children, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate, and suggestions for ways to standardize these criteria. (§ 200.34)

No. This decision should be left to the states to determine based on the local context in each state.

In closing, we offer the following comments in the spirit of continuing the excellent partnership, innovation, and creativity that was fostered by USED through ESEA Flexibility under ESSA. We sincerely thank the USED for the opportunity to provide comments and thank you in advance for their thoughtful consideration of our recommendations. In general, we encourage USED to retain the regulatory language only if it clarifies an existing provision within ESSA and if that clarification is absolutely necessary as a matter of regulation and cannot be handled as a matter of policy. We hope that any regulation that adds new rules/procedures over and above those explicitly stated or prohibited in ESSA will be removed before these regulations are finalized.

Sincerely,



Dr. Dianna R. Wentzell
Commissioner of Education