July 20, 2016

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

Re: Notice of Proposed Rulemaking [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

Dear Ms. Miller,

The Association of California School Administrators (ACSA) and California School Boards Association (CSBA) would like to thank you for this opportunity to comment on the Accountability and State Plan programs under the Every Student Succeeds Act (ESSA). We are appreciative of the opportunity afforded us to respond to rule making and commend the Department for taking action to ensure a smooth transition for the states, districts, and schools that are already taking steps to meet the requirements of this new law.

On behalf of ACSA's more than 17,000 school leader members and CSBA's more than 5,000 locally-elected school board members, we are writing to share our recommendations for the Accountability and State Plan Notice of Proposed Rule Making (NPRM) for ESSA, with a specific focus on policies that will best meet the needs of California's diverse education community.

Our two associations were strong advocates for passage of the Every Student Succeeds Act, and we continue to use our collective voice to champion many of the ESSA priorities, including the alignment of state standards with the requirements for students to enter an institution of higher education without the need for remediation, along with the continued focus on identifying and closing achievement gaps. We heralded the bipartisan agreement reached by Members of the U.S. House and Senate to return much of the decision-making and responsibility regarding student assessments, school accountability, and the selection of evidence-based strategies for improving student and school performance, back to state and local leaders.

It is with these things in mind that we write to share our concerns with regard to a number of specific proposals included within the NPRM.

1. **The Department should not seek to impose additional restrictions on the selection of accountability system indicators.**

   ESSA defines five types of indicators that must be used as part of a State's accountability system, including at least one measure of school quality or student success. Congress further imposed

criteria on the selection of any school quality or student success measure, specifically requiring that it allows for meaningful differentiation in school performance; is valid, reliable, comparable, and statewide (with the same indicator(s) used for each grade span), and includes one or more measures from a list that includes: student engagement, educator engagement, student access to and completion of advanced coursework, and other measures. The NPRM (Section 200.14) expands on the statutory criteria and further restricts a state's ability to select measures that appropriately reflect student growth and state priorities within locally developed accountability systems.

2. **States and LEAs should determine any consequences to be required for schools that miss the 95 percent test participation requirement.**

   After much debate, Congress included within ESSA the requirement that each State's accountability system annually measure the achievement of not less than 95 percent of all students, and of all subgroups of students, on statewide assessments. The law also requires that States provide a clear and understandable explanation of how test participation will be factored into the statewide accountability system. We believe it was not coincidental that the annual measurement of achievement (test participation) requirement was left out of the list of accountability system indicators enumerated in Section 1111(C)(4)(b) and the related requirements on the weighting of indicators. The NPRM (Section 200.15) would require that States impose at least one consequence on schools that miss the 95 percent participation requirement, from among a list of Department-prescribed consequences. The NPRM would continue to prohibit the systematic exclusion of students from required assessments, and appropriately so. However, the mandated imposition of consequences, which includes assigning a school the lowest performance rating on the statewide assessment indicator, has the effect of prescribing significant weight to this measure. We strongly recommend that the Department revise the rule to limit the requirements for annual measurements of achievement only to those spelled out in the law. States and LEAs should have the discretion to determine how best to address test participation rate challenges that may occur across a state or in one or more communities within a state.

3. **The Department should abandon efforts to require that each school receive an annual summative rating.**

   The proposed requirement (Section 200.18) that each State's system for the annual, meaningful differentiation of schools results in a single rating from among at least three distinct rating categories for each school to describe the schools summative performance, exceeds the requirements of ESSA and deprives States of the discretion Congress intended them to have with regard to the design of systems for meaningfully differentiating the performance of schools. Mandating that state systems assign a summative rating to each school every year, from among at least three ratings categories, not only greatly exceeds the Department's regulatory authority, and the limitations Congress expressly defined with regard to Department action, it also would deprive SEAs of a significant opportunity to define new and innovative approaches to school accountability and improvement. We recommend that this requirement be eliminated from the Department's regulation.

4. **The Department should not encroach on the authority given to SEAs and LEAs by establishing additional reporting and notification requirements.**

- **Two-Calculation Methods for Reporting on Student Achievement.** ESSA requires that State and LEA report cards include information on student achievement with full disaggregation, as well as data comparing student and LEA progress at the district and state levels. It also requires that State and Local report cards include information on the progress of students toward State-designed long-term goals, with full disaggregation. Further, State and Local report cards are required to include the percentage of students assessed and not assessed, with full disaggregation. However, the NPRM (Section 200.33) would require State and LEA report cards to present the percentages of students performing at each level of academic achievement, disaggregated by each grade and subgroup, using two calculation methods defined in the NPRM. This requirement exceeds the statutory requirement of ESSA. It creates a significant burden on SEAs and LEAs and, we believe, will lead to confusion among parents and other stakeholders who are presented with two different data points for the same variable. We read the relevant provisions of ESSA to mean that Congress intended for States and Districts to be fully transparent in report cards with regard to the percentage of students assessed and not assessed so that parents and other stakeholders could make fully informed judgments and inferences about student performance data, not that States and Districts should have to use two calculation methods in reporting that data.

- **Single Statewide Approach for Reporting Per-Pupil Expenditures.** ESSA requires that State and LEA report cards include the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures, disaggregated by the source of funds (Federal, State, and local). The NPRM (Section 200.35) goes further and would require the development of a single statewide approach for reporting LEA per-pupil expenditures and a single statewide approach for reporting school-level per-pupil expenditures. Although we appreciate that the Department seeks to "increase the likelihood that LEAs within a State will publicly report expenditure data in a manner that is informative, accurate, comparable, and timely…," there is no ESSA requirement for a single statewide approach. California's Local Control Funding Formula is premised on local decision-making and allows for variability in funding from one LEA to the next in direct response to student needs. As such, we strongly object to the Department's intention to mandate an approach to data collection and reporting that exceeds the requirements of the law and that would, at best, require the State of California and its local school districts to bear significantly more burden.

- **Additional Report Card Elements.** The NPRM (Section 200.30) also requires that each state report card include, at a minimum, the information required under section 1111(h)(1)(C) of ESSA. This includes, under section 111(h)(1)(C)(xiv), "any additional information that the State believes will best provide parents, students, and other members of the public with information regarding the progress of each of the State's public elementary schools and secondary schools, which may include the number and percentage of students attaining career and technical proficiencies…" But NPRM Section 200.30 further requires that State report cards include data on how students in each charter school compare with students served by the LEA or LEAs from which the charter school draws a significant portion of its students, both in terms of the percentage of students in each subgroup and their academic achievement. ACSA and CSBA are strong proponents of State and Local report cards and the importance of providing parents and others with clear, effective, and timely data. However, we oppose any regulatory requirements that exceed those established in the statute and the requirements with regard to reporting on charter schools falls into that category. The desire of the Department to see more and better data reported on charter schools is best addressed through guidance, not regulation.

- **Parental Notice of Identification for Targeted Support and Improvement.** Under ESSA, States must notify each LEA of any school served by the LEA in which any subgroup of students is consistently underperforming. The NPRM (Section 200.22) would further require each LEA that receives notification that they have subgroups of students that are underperforming to immediately give notice to the parents of each student enrolled in the identified school. This additional requirement harkens back to the approach Congress and the Department took under No Child Left Behind and which, we believe, Congress expressly abandoned with the passage of ESSA. It is in direct conflict with ESSA's Section 1111(e)(1)B)(i) prohibition of the establishment of conditions for the approval of State plans that require a State to add any requirements that are inconsistent with or outside the scope of Section 1111. States and districts should be able to work together to determine any requirements for providing parents with notice on identification of schools for Targeted Support and Improvement, beyond the information required to be included in school and district report cards.

5. **The Department should adjust the ESSA implementation timeline to allow data collected for the first time in 2017-2018 to be used for the initial identification of schools.**

   While we applaud the Department's quick work to meet the requirements established for implementation of the new law, and to provide timely guidance on transition issues, we share the concerns expressed by Senator Lamar Alexander, Kentucky State Superintendent Stephen Pruitt, and others, that the implementation timeline should be adjusted. Senator Alexander recently suggested that the Department take action to make 2016-17 a transition year, with 2017-18 as the first year for collecting school data under new state accountability systems, and with 2018-19 being the first year schools would be identified as needing improvement. We believe this proposal will offer States and districts a more realistic window in which to address the complexities of transitioning to the new federal law.

We are thankful for the opportunity to provide input on these important aspects of ESSA implementation.

Sincerely,

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