

August 1, 2016

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

RE: Comments regarding Notice of Proposed Rulemaking on Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act – Accountability and State Plans (ED-2016-OESE-0032)

Dear Mr. Secretary:

The undersigned organizations are writing to provide recommendations to the U.S. Department of Education (the Department) regarding its Notice of Proposed Rulemaking for regulations implementing the Every Student Succeeds Act (ESSA) that was published on May 31, 2016.

ESSA offers an important opportunity to help all students graduate from high school truly college and career ready by advancing deeper learning, including rigorous academic content, critical thinking and problem solving, collaboration, effective communication, self-directed learning and academic mindsets. We appreciate that ESSA and the regulations offer positive movement in the direction of deeper learning, such as the use of multiple measures for accountability and a commitment to college and career ready standards. However, there are some areas where we believe the regulations must be strengthened to drive toward the kind of learning all students need and deserve.

Through ESSA regulations, the Department has the opportunity to support state and local innovation that will promote deeper learning for all students and accelerate success for disadvantaged students. It is to advance these goals that we offer the following comments.

Issue #1: Summative Rating

Section §200.18 of the proposed regulation requires states' system of annual meaningful differentiation to result in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator. Per the regulation, this rating must be included as part of the description of the state's system for annual meaningful differentiation on LEA report cards. We ask the Department to remove the proposed requirement within section §200.18 for schools to receive a single summative rating, and instead clarify that the law requires a single classification of schools for targeted or comprehensive support and intervention. We are concerned that the Department's proposed regulatory language requiring a single summative rating might unnecessarily narrow the approaches that states take to their statewide accountability system. The proposed language seems to assume or imply that states will use a weighted index to combine indicators into a numerical score and a letter grade or similar rating scheme. However, there are a wide variety of methods beyond indices that states could use to comply with ESSA's weighting provisions and the law's requirements for identifying schools. For example, states could use a matrix approach that does not assign specific

weights to indicators, or decision rules that result in school classifications without weightings. There are advantages and disadvantages to each of these methods, and the Department should leave this decision to the states to encourage innovation. In the final regulation, the Department should clarify that these, and other, non-index methods of classifying schools are acceptable.

Additionally, the Department should not require states to have an additional “summative rating”, such as an A-F or star rating system, beyond the classifications of schools required in the law. Section 1111(c)(4)(D) of ESSA requires states to establish a system of meaningful differentiation based on all indicators in the state's accountability system and use this system to identify schools that are performing in the bottom 5 percent and schools with chronically low-performing subgroups for comprehensive support and improvement and schools with consistently underperforming subgroups for targeted support and improvement. Accordingly, the Department should allow states to use different approaches to reach these classifications, so long as they reflect all of the indicators in the state's accountability system. Many states may choose to have an A-F or similar index system, but the Department should leave open the possibility of non-index systems of school identification – such as matrix or decision-rule approaches – that include a robust data dashboard to provide information to stakeholders and inform improvement efforts.

Issue #2: Subgroup Performance in School Classifications

It is critical that the performance of student subgroups be meaningfully represented in any method used by states for school classification. This is important because subgroup performance can be masked when multiple indicators are aggregated together to yield a summative score. As a result, the summative score may provide a simple way to communicate school performance; however, the score may not necessarily reflect low performance among student subgroups. For example, in one state with an A-F system, the average proficiency rate for African American students in schools that received an A rating was only 58 percent.¹ In another state, 183 high schools received the highest rating while having at least one subgroup with a graduation rate in the 60s or below.² Therefore, the Department’s regulations should require states to demonstrate how the presence of a consistently underperforming subgroup of students as defined under §200.19(c)(3) is meaningfully reflected in school classifications.

Issue #3: Indicators of School Quality or Student Success

1) Performance assessments: Both ESSA section 1111(c)(4)(B) and section §200.14(c)(1) of the proposed regulations require that the indicators of School Quality or Student Success be “valid, reliable, and comparable across all LEAs in the State.” Many educators and researchers are working together to create performance tasks that measure skills beyond traditional “academic subjects” such as reading and math that reflect these characteristics. Performance tasks have potential to better measure important skills such as critical thinking, complex problem solving and collaboration. Over time they may be further developed and validated to measure motivational and self-regulation factors such as academic mindsets, belonging and persistence. To that end, it is important that “comparability” for the purposes of the School Quality or Student Success indicator not be regulated or defined too narrowly such as to preclude the use of these evolving and valuable measures. There is significant research demonstrating that performance tasks can be comparably scored across schools in ways that should make them

allowable for these purposes so long as they have been demonstrated to be valid and reliable measures of the indicator for which they are used.

2) Research basis for indicators: Section §200.14(d) requires that a State demonstrate that each measure selected for the School Quality or Student Success indicator is supported by research that performance or progress on such measures is likely to increase student achievement or, for high school measures, graduation rates (section §200.14(c)(1)(d)) and aids in meaningfully differentiation of schools (section §200.14(c)(1)(e)). We support these clarifications, however we believe that they are overly narrow for the purposes of college and career readiness that are central to ESSA. As such, we recommend that the Department expand this regulation to also allow a measure to be used for the School Quality or Student Success indicators if research supports that performance or progress on such measure is likely to increase student achievement, graduation rates, persistence and completion of postsecondary education, or career success.

3) Continuous improvement: We applaud the proposed regulation's invitation to states to amend their state plans and add additional accountability indicators over time. States should take the opportunity ESSA offers to develop more nuanced accountability systems that include additional indicators, and they should continue to improve those systems and adjust indicators over time as more indicators are tested and evidence emerges that they are valid and reliable for purposes of accountability. The Department should make the option of amending and continuously improving accountability systems as inviting as possible so that states neither rush to include measures irresponsibly now because they think the window is closing, nor fail to make improvements to their systems as more is learned and additional valuable measures emerge.

Issue #4: Proficiency

We recommend that the regulation be adjusted to allow states to incorporate multiple levels of proficiency and growth in their accountability systems, rather than relying on a single measure of proficiency. This will enable states to incentivize the attainment of higher order thinking skills as demonstrated by performance above a single determination of proficiency and avoid the unintended consequence of focusing on students performing on the cusp of the proficient cut score at the expense of lower performing students. It is also consistent with Congressional intent, as ESSA requires state standards to include multiple levels of achievement (i.e., no fewer than three). Therefore, the Department's regulation should allow for the use of average scale scores or multiple levels of proficiency as utilized on state assessments, including the Smarter Balanced and Partnership for Assessment of Readiness for College and Careers (PARCC) assessments³ in addition to requiring a determination of grade-level proficiency as required under the statute.

Thank you for the opportunity to share these concerns. We encourage the Department to make these changes to the final regulations so as to maximize the opportunity provided by ESSA implementation for better education through deeper learning.

Sincerely,

Alliance for Excellent Education
American Youth Policy Forum

Buck Institute for Education
Center for American Progress
ConnectEd: The California Center for College and Career
EdLeader21
EducationCounsel LLC
Envision Education
Internationals Network for Public Schools
Jobs for the Future
Learning Policy Institute
Los Angeles Area Chamber of Commerce
National Association of State Boards of Education
New Tech Network
Partnership for 21st Century Learning
Stanford Center for Assessment, Learning, & Equity
Summit Public Schools

¹ N. Ushomirsky, D. Williams, and D. Hall, *Making Sure All Children Matter: Getting School Accountability Signals Right* (Washington, DC: Education Trust, 2014), <https://edtrust.org/resource/making-sure-all-children-matter-getting-school-accountability-signals-right/> (accessed July 22, 2016)

² Unpublished analysis of state accountability data conducted by the Alliance for Excellent Education, School Year 2013–14; additional information available upon request.

³ The Smarter Balanced assessment has four achievement levels (i.e., Level 1, Level 2, Level 3, and Level 4); each state names the achievement levels differently, such as “novice, developing, proficient, and advanced.” The PARCC assessment has five performance levels: “did not yet meet expectations, partially met expectations, approached expectations, met expectations, and exceeded expectations.”