

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

Dear Ms. Miller:

I am writing on behalf of Chiefs for Change to provide comments on the Department's proposed regulations regarding accountability and state plans under the Elementary and Secondary Education Act (ESEA) as reauthorized by the Every Student Succeeds Act (ESSA).

Chiefs for Change is a nonprofit network of state and district education Chiefs dedicated to preparing all students for today's world and tomorrow's. Chiefs for Change is supportive of many elements of the Department's proposal, as provided in the May 31 Notice of Proposed Rulemaking (NPRM). In general, the proposed rules strike a careful and appropriate balance between, on the one hand, providing state and local leaders with the flexibility they need to implement ESSA in a manner aligned to state and local circumstances, needs, and priorities and, on the other, providing certain "guardrails" to ensure that the new law enables a better education for all students.

For our members, the legislation and regulations do not represent a significant departure from current practice in many key areas, and we are generally comfortable with the Department's proposals on the structure and weighting of performance indicators, the inclusion of subgroups, the summative evaluation of school performance, and the identification of schools. For example, we support:

- Provisions clarifying the weights that states may give their annual indicators of school performance, which gives greater meaning to language that is vague in the statute and would ensure that states' school differentiations are based mainly on academic outcomes;
- The language on incorporation of the 95 percent assessment participation rate rule into state accountability systems, which allows state educational agencies (SEAs) to select from a number of options, including the option of coming up with their own, state-determined action;
- Language authorizing SEAs to develop lists of evidence-based interventions, from which schools implementing comprehensive support and improvement plans may draw;
- Language providing for continuation of the efforts states have undertaken under their educator equity plans, particularly around teacher and leader effectiveness; and
- The use of a single summative rating to provide clear information to parents and educators about school performance.

We encourage the Department to retain these proposals in the final regulations.

We do believe that the Department should consider certain changes to the proposal. We specifically recommend revisions in the following areas.

Timeline for implementation of new accountability systems

ESSA provides that the new state accountability systems under the law are to take effect beginning with the 2017-2018 school year. Our members have found that language unclear, because it does not specify exactly what is to happen during that year (that is, whether the new accountability indicators could be phased in during 2017-2018, or whether schools would actually have to be identified for improvement and begin implementing interventions in that year). The Department has appropriately sought to clear up this confusion in its proposal, but we have found the language in the NPRM to be problematic.

The Department's proposal is that states make the first school identifications under the new law before the beginning of 2017-2018, using data from 2016-2017 (which could be averaged with earlier data). While we understand the potential benefits of that approach in terms of the urgency of supporting the current schools who are most in need of improvement and providing an impetus for states to act quickly, the timeline is challenging for several reasons. The biggest issue with this approach is that many states will not submit their ESEA consolidated plans (which will include descriptions of their accountability systems) until the July 5, 2017 deadline, and will not receive the Department's approval or requests for changes until, perhaps, early October, well after the proposed deadline for identifying schools. SEAs would thus have to identify schools without knowing whether their criteria for identification are acceptable to the Department. Schools identified for comprehensive and targeted support and improvement would begin planning and implementing improvement plans and interventions without knowing whether their identifications will be sustained, which puts states in an untenable position.

In order to ensure a logical and thoughtful process, we recommend that the Department allow states to delay identifying new schools until the beginning of the 2018-2019 school year, and to provide options such as continuing their ongoing improvement efforts in currently identified schools until that time or refreshing their lists of identified schools using prior metrics until new systems are approved.

Use of high school graduation rate to identify schools in need of comprehensive support and improvement

ESSA requires that states identify, for comprehensive support and improvement, any public high school that fails to graduate one-third or more of its students. The proposed regulations would require that all states use the four-year adjusted cohort graduation rate in making these identifications. We believe this unnecessarily limits the ability of states to use extended cohort rates in ways that align with the rest of their accountability metrics.

According to the NPRM, the Department bases this proposal on a desire for consistency across the states and a belief that the "on-time" rate is the only appropriate measure for all of the nation's schools and students. Based on the reasons outlined in this section, we

disagree with that approach and recommend that SEAs be allowed to use the four-year cohort rate, an extended-year rate, or a combination of these when identifying schools.

In our member states, we have a number of schools specifically established to enroll and meet the needs of such student populations as recently arrived immigrants, adjudicated youth, re-enrolling dropouts, and other students who can graduate but, under these circumstances, need additional time to do so. (For example, many of the recently arrived immigrant students will have had limited – if any – English language exposure and some will have had little formal schooling, before entering middle or high school). These schools can and do succeed in graduating their students; they just don't succeed in graduating two-thirds of their students by age 17 or 18. We see schools that do graduate these students, even if in more than four years as a great plus, not a minus, because the economic returns to earning a high school diploma (and the other benefits of high school completion) will be comparable and real whether these students graduate “on time” or a year or two later. Historically, many students in these groups have not graduated at all. But under the Department's proposal these schools would be placed in comprehensive improvement status, and have to make changes to their often very effective programs entirely because of the demographics of the students they were designed to serve.

While there is a potential for states to propose different methods of differentiating school performance for certain types of schools (including alternative schools) in Section 299.17, it is not clear whether this flexibility would also extend to the requirements for which schools are identified for comprehensive support and improvement based on four-year cohort graduation rates. Additionally, it is not sufficiently clear from the language that various types of schools that serve newcomer students, under-credited/overage students, etc. would be included. We recommend that the Department clarify this by broadening the types of schools included in this exemption to clearly include these schools that serve specific at-risk populations and by also specifically allowing the use of extended-cohort graduation rates in identifying schools in need of support and improvement in this category.

In addition, requiring the use of only the four-year adjusted cohort graduation rate in certain contexts may skew the composition of schools in the comprehensive improvement category toward high schools, rather than elementary and middle schools. For example, in DC, the 2014-15 statewide four-year adjusted cohort graduation rate was 65.4 percent, meaning that the majority of the District's high schools would be automatically identified for comprehensive supports under the NPRM. DC recognizes that this graduation rate is troubling and must be addressed and that the requirement to identify five percent of Title I schools for comprehensive support is a floor, not a ceiling. That said, there is a limit to the number of schools that states can effectively support through comprehensive improvement, and skewing that number heavily toward high schools would deemphasize the building of strong foundations through improving elementary and middle schools and could be harmful in the long run.

Because graduation rates are calculated for the purposes of long-term goals, interim performance measures, annual indicators, and school identifications, we also recommend that a student's subgroup status at the time he or she enters high school be used in the graduation rate calculation for that subgroup. Adding such language would clarify how the

calculations treat students who may move in or out of low-income, English learner (EL), or disability status. The law and proposed regulations are currently silent on this issue.

Inclusion of students formerly identified as having a disability within the “students with disabilities” subgroup

In the NPRM, the Department asks whether the regulations should retain, modify, or eliminate current regulatory language that allows students exiting disability status to be counted within the “students with disabilities” subgroup (for the purpose of calculating the academic achievement indicator) for a period of up to two years.

Based on the experience of our states and districts in implementing accountability systems, we recommend that those systems be allowed to include students who were formerly identified as disabled within the disability subgroup for up to two years as is currently permitted. This would ensure that schools are not penalized for an unintended policy consequence of their success in enabling students to exit disability status and to no longer require special education and related services. Further, we recommend that this flexibility extend across all of the indicators (not just the academic achievement indicator) and to identification of schools for targeted support and improvement. As with the EL subgroup, former students with disabilities who are included in the disability subgroup should also be counted in calculations of whether a school’s disability subgroup exceeds the state’s “N size.”

Performance levels for annual indicators and summative ratings

The proposed regulations would require that a state establish at least three performance levels for each annual indicator and at least three levels for a school’s single summative rating. This proposal could be read as intending that all states adopt a Red/Yellow/Green or an “A through F” rating system, even though a wider variety of systems and strategies can be effective. For example, some of our states use a continuous measure of performance, such as a score of zero to 100 for an indicator or for a school’s summative rating. We are not sure whether these systems would be allowable under the proposed regulations. (In other words, does a zero-to-100 mechanism generate 101 discrete performance levels for an individual indicator?) We recommend that the final regulations permit a variety of state systems to operate, so long as they provide for clear distinctions among schools on the individual indicators and in the summative rating. We support the use of a single summative rating and believe it would provide parents and families, students, and educators with clear information about the performance of their schools. We suggest that the Department provide examples of various existing models that could meet this requirement (but not require states to use any particular system).

Charter schools as an option for students in schools identified for comprehensive support and improvement

The regulations appropriately provide that converting a school identified for comprehensive support and improvement to a charter school would be an appropriate and allowable intervention to address the needs of the students enrolled in such a school. We also believe that there could be other ways of making charter school opportunities available to those students. For example, an SEA could use Section 1003 funds to seed

the establishment of new charter schools, run by charter management organizations with a track record of high performance, that would be available to serve students who would otherwise attend a low-performing school. This type of initiative would give parents more choices and could bring successful models into communities where there may be few high-quality choices available.

Toward that end, we recommend that the Department revise proposed Section 200.24(d)(2) by adding a new clause (iii) reading as follows:

“(ii) Using funds that it reserves under section 1003(a), directly provide for the creation of new charter schools to serve students enrolled in schools identified for comprehensive support and improvement, and other students in the local community, provided that:

“(A) The State receives LEA approval to undertake such an action; and

“(B) Such charter schools will be established and operated by non-profit entities with a demonstrated record of success (particularly in serving students from communities similar to those who would be served by the new charter schools), which the State shall determine through a rigorous review process.”

State and local report cards

ESSA has added many new requirements related to annual state and local report cards. We strongly agree with the policy of providing parents and families and other members of the public with as much useful information as possible, but also note that creating and implementing new data collection instruments and reporting and analytical mechanisms will be costly for state and local educational agencies.

For that reason, we believe that regulatory requirements for the report cards should go no further than what is required by statute. Specifically, we recommend that the Department withdraw the proposal that state and local report cards include information comparing demographic and achievement data for charter schools with the same data for the local educational agencies (LEAs) or geographic areas from which the charter schools enroll students. These data could be very challenging to collect (for example, because while charter schools may draw students from specific neighborhoods within a city, demographic and achievement data are typically not available on a neighborhood-by-neighborhood basis) and could lead to invalid, misleading comparisons among schools.

We are also concerned about the proposed requirement that state and local report cards report student achievement and progress in two different ways: (1) based on a calculation in which the denominator includes either 95 percent of all students (or 95 percent of students in a subgroup) or the actual number of students participating in the assessment, whichever is greater; and (2) based on a calculation in which the denominator is the number of students with valid assessment scores. Our members have found this language confusing (as it is not clear what the difference is between a student participating in an assessment and a student who has received a valid score on that assessment, or why this distinction is important) and believe it would be complicated and burdensome to

implement. We thus recommend that states and LEAs be permitted to select one of the two methods, rather than having to do both.

Reporting of data on teacher distributions

The reauthorized ESEA has two different, and somewhat inconsistent and confusing, requirements related to equitable access to effective teachers. First, it calls for each SEA to describe, in its Title I plan, how low-income and minority children enrolled in Title I schools are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. Secondly, it calls for each state and local report card to include data, broken out for high- and low-poverty schools, on the professional qualifications of teachers, including on the number and percentage of inexperienced teachers, principals, and other school leaders; teachers teaching with emergency or provisional credentials; and teachers who are not teaching in the subject or field in which they are certified or licensed. We refer to these requirements as somewhat inconsistent and confusing because the three categories of educators listed in the first requirement overlap with but are not the same as the three categories in the second, and because of the inclusion of a reference to principals and other school leaders within a requirement for data on teachers.

In the NPRM, the proposed regulations and accompanying explanation make no mention of the statutory requirement for inclusion of teacher distribution data in the report cards, but do provide that the initial report cards must be disseminated by December 31. Thus, each SEA and LEA must begin reporting its teacher distribution data by that date, unless the SEA requests and receives a one-year extension.

Regarding the state planning requirement, the proposed regulations would require states to report the mandated teacher distribution data *through the state report card*, except that if the SEA cannot report the data *at the time it submits its state plan*, it may request a two-year delay by submitting such a request within eight weeks of the effective date of the regulations. These requirements, considered together, are unclear, as the initial state report cards, as noted above, are not due until December 31, 2018, while the state plans will be due on March 6 and July 5 of 2017.

We strongly recommend that the regulations clarify that all data to be included in the report card, including the data that the Department is requesting pursuant to ESEA §111(g)(1)(B), be disseminated on the same schedule, that is by December 31 of each year, with the first one due on December 31, 2018. We further recommend that the Department clarify the statutory confusion by providing a streamlined, common-sense set of reporting requirements in this area. For example, it makes sense to report on the effectiveness of teachers and principals, but there is no reason to require, as the proposed regulations would do, that states report on the employment of both “out-of-field” teachers and of “teachers who are not teaching in the subject or field for which the teacher is certified or licensed,” when there is no clear difference between the two terms.

Consolidated state plans

Under the statute, an SEA may either submit an individual state plan for each of the ESEA state formula grant programs or a consolidated plan covering multiple programs or all of them. In the past, ever since the consolidated plan requirement was added to the statute

in 1994, almost all states have submitted only a single consolidated plan, in part because the law calls for the Secretary to “require only descriptions, information, assurances... and other information that are absolutely necessary for consideration of the consolidated application.” The Department previously has abided by that statement of Congressional intent by permitting states to submit a reasonably small number of descriptions and other information, which has streamlined and rationalized planning and eliminated administrative burden.

We believe that the state plan requirements included in the proposed regulations go beyond what is necessary. Some of the most burdensome and, we believe, unnecessary requirements are:

- The plan would be required to include an LEA-by-LEA review of districts’ budgeting and resource allocations in four separate areas (per-pupil expenditures, educator qualifications, access to advanced coursework, and the availability of preschool). This would mean, as examples, 340 separate descriptions in the plan for Louisiana, 652 in Mississippi’s, and 356 in New Mexico’s.
- The proposal would require states to include a six-part performance management discussion for each component of the plan. Because the plan would be required to have some 40 components, this requirement would necessitate some 240 separate descriptions for each state.
- The plan would be required to include descriptions of how the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and in providing instruction based on the needs of students, including strategies for teachers, and principals and other school leaders, in schools with 13 separate categories of students. This language thus appears to call for an additional 13 descriptions (unless the Department’s intent is that states provide separate descriptions for teachers and then for principals and other school leaders, in which case the number would be 26).

We strongly urge the Department to abide by the spirit of the statute and develop a more limited and targeted list of regulatory requirements. We would be pleased to work with the agency in developing that list.

Thank you for the opportunity to provide Chiefs for Change’s views on the proposed regulations. If it would be useful to discuss our comments further, or if I can be of any assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Magee', with a stylized flourish at the end.

Michael Magee, Ph.D.
Chief Executive Officer