



SUPERINTENDENT OF PUBLIC INSTRUCTION

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August 1, 2016

The Honorable Meredith Miller
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

As Washington's State Superintendent of Public Instruction, I appreciate the opportunity to submit comments regarding the U.S. Department of Education's (ED) Notice of Proposed Rulemaking (NPRM) on accountability and state plans under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). Washington serves 1.1 million students in over 2,100 schools. We need to have the flexibility in ESSA rules to provide districts the supports they need to prepare students for college, career and their future lives. After a review of proposed regulations, I believe that a number of these would eliminate state and district flexibility. In some instances, it seems like a return to the archaic measures required under No Child Left Behind (NCLB). The populations of our districts range from Seattle (52,800) to Benge (14), with over two-thirds of our students housed in rural and remote areas. There are a number of proposed regulations that will provide clarity on instituting ESSA. However, there are some that go well beyond the intent of Congress. I have expressed many of my concerns with Senator Patty Murray and her staff, and now bring these concerns to ED.

Washington state's concerns with the ESSA proposed regulations and recommendations are:

I. Performance Levels for Indicators and Summative Ratings (Proposed Section 200.18(b) and (b)(4))

Currently in Washington, we have a workgroup that is reviewing the ESSA requirement that states develop accountability systems that meaningfully differentiate between schools. The State believes that ED has gone beyond their authority and has proposed regulations that are too specific in requiring a published single rating. Washington will be required to identify their lowest performing schools. We will need to create a metric that does that, and our ESSA Consolidated Plan may include how information be portrayed through a dashboard. The requirement for a single measure is more restrictive than necessary as it is not part of the ESSA statute.

The State's ESSA Accountability System Workgroup has been discussing which data are important for differentiating between schools/districts. Washington is moving toward creating a fair and understandable method of evaluating school success but ought to retain flexibility of how to do so, within the constraints of including the multiple measures.

As State Superintendent, I have required my staff to change their thinking from the NCLB model of telling schools in the bottom five percent that they are failing, to tell these schools that there are supports and resources available to assist the schools in meeting their improvement goals. In addition, the State is concerned about the mandate in the proposed rules to designate three levels of performance across each indicator. This requirement is not found in the statutory language of ESSA, instead it has been created by ED and mirrors earlier policies under waivers of ESEA. The U.S. Department of Education should not require that states provide ratings based on three levels of performance. Some states may prefer to place schools in one of multiple performance levels, while other states may find it best to provide schools' actual scores on a particular metric and then note whether or not the school will be identified for improvement. Both options would clearly differentiate between schools and provide adequate information to parents, teachers, and other stakeholders.

Recommendation:

A state should have the authority to make the decision as to how they will evaluate school success—be it the use of a single summative rating or through multiple ratings, so long as they comply with statutory provisions requiring clear distinctions among schools. The final regulation should also be clear that it is at the discretion of the state if the state selects to use a dashboard to display data or a single rating. States should also have the discretion to determine how many performance levels are appropriate across measures and overall.

II. Timeline for Interventions (Proposed Section 200.19(d)(2) Identification of schools)

The Every Student Succeeds Act proposed rules require that Title I accountability requirements go into effect in the 2017–18 school year. This means that the schools in need of interventions are required to be identified the summer of 2017 based on data from the 2016–17 school year. This isn't feasible for Washington, as some of that data are not yet available in the window of time between the end of one school year and the beginning of the next. There must be time to finalize each measure, such as graduation rates which are not calculated in Washington until the fall of the subsequent year so districts have time to submit, review, and update their data. Similarly, the assessment results are compiled in late summer. The proposed timeline does not allow OSPI time to compile the underlying measures, nor does it allow for preparation of the data metrics or index to be used in the identification of schools, nor school review of the information.

Recommendation:

Washington proposes that this rule be changed to allow states to either identify schools in 2017–18 based upon data available in 2016–17, or allow states to either identify schools prior to the 2018–19 school year based upon data from 2017–18 and prior years and continue ongoing efforts under prior law to improve currently identified schools during the 2016–17 and 2017–18 school years.

III. Allocation of School Improvement Funds (Proposed Section 200.24)

As noted earlier in the beginning of this document, Washington has major population differences among the States' 295 school districts and over 2,100 schools. Presently we have a school identified as a Priority school that has 208 students, while in another district, a Priority school has 869 students. There are some of our districts that have one school that is identified as a Priority

school and in another district there are eight Priority schools. Washington has a major concern with the way this regulation is written. The proposed regulations requires a state to allocate a minimum of \$500,000 per year to each school identified for comprehensive support, and \$50,000 per year to schools identified with targeted support. This minimum provides no differentiation based on the size or circumstances of each school.

Because of the differences in Washington's school populations, the minimum amount may be far more than is needed for some schools and may be the right amount for others. Historically, Washington has had some issues with schools not spending their school improvement funds because they received more funding than was needed. In other instances, a school found that they needed additional funds to accomplish their improvement goals. States need the flexibility to work with schools identified as comprehensive or targeted.

Additionally, in Washington the seven percent school improvement set-aside would be insufficient to allocate the minimum amounts required to each school identified for comprehensive and targeted support.

Recommendation:

Remove this regulation and replace with a provision that allows a state, in consultation with the schools that have been identified as comprehensive or targeted, including consultation with said schools district, to determine the financial needs of identified schools to implement necessary interventions and the appropriate distribution of funding between identified schools within the state.

IV. Per-pupil Expenditure Reporting (Proposed Section 200.35)

Washington is concerned about the timeline for including per-pupil expenditure data in the State and local report cards. My agency has spent the last few years developing sophisticated data systems. These systems focus on student achievement rather than dollars. Currently, we are working to design a system that can be used to collect and report school site per-pupil expenditure data of federal, State, and local dollars.

Existing data collection systems which are available for use may not be sufficiently accurate, and may not differentiate in enough detail between types of funding.

Drafting policies for data reporting, setting up systems for data collection, and monitoring the collection of this data will, in many cases, not be possible in the 2017–18 school year or even in the succeeding fiscal year (noting the allowance that the proposed regulations have provided). Instead, this will be a multiyear development process in most States which will take a backseat to the development of substantive state and district plans and interventions. That should be acknowledged in the final regulations.

Recommendation:

Washington strongly supports ED to take steps to reduce the administrative burden in this reporting. Please consider creating an exemption for some districts. For example, an exception from this reporting requirement could be made for LEAs with fewer than 1,000 students, or districts could report this same data by grade span. This has some precedent within ESEA. For example, small/rural districts are not required to conduct comprehensive

needs assessments under Section 4106. Such exceptions would ensure that most districts provide the data required, but that this requirement would not impose an outsized administrative burden on those districts least able to meet it, either in terms of staff or technology.

V. Timeline for the Submission of State Plan (Proposed Section 299 State Plans)

Washington had intended to submit the ESSA Consolidated Plan to ED by the end of November. This was based on the fact that the law gave ED a 120 day timeline for approval of the plan. Districts need time to plan for program implementation, staffing, and many other activities for the next school year. Our districts start that process in January. If the plan was approved by the first part of March, districts would have ESSA program information to allow them to effectively plan for the 2017–18 school year. The March and July dates for submission will not give the State or districts the time to plan and implement ESSA to begin in the 2017–18 school year.

Additionally, Washington is working towards providing a consolidated federal and state program plan for districts. This will assist districts in meeting the ESSA goals to best use their federal programs to meet the goals that a district sets to provide appropriate education and support services to their students. If the State has to wait for approval of the ESSA Consolidated Plan based on either the March or July submission dates, districts would not have the opportunity to design their district consolidated applications before the beginning of the 2017–18 school year.

The State and districts would then be operating under an assumption that all provisions of the State’s Consolidated Plan would be approved.

Furthermore, a district would have to craft a comprehensive intervention plan for State approval before the State plan is even finalized. A district’s comprehensive intervention plan would be developed without the knowledge of the types of support structures the State would provide, the amount of school improvement funds that would be awarded, and even more important—the reasons why the school was identified comprehensive and what were the State’s determined metrics against which improvement was measured?

Recommendation:

In order to address these issues, Washington proposes that states be allowed to submit their ESSA plans as early as December 1, 2016.

VI. State Plan Requirements (Proposed Section’s 299.14(c) and 299.16 through 299.19)

The U.S. Department of Education has also asked states to undertake a massive amount of analysis and planning with these Consolidated Plans. The requirements for drafting these plans, and the factors which must be considered, go far beyond the legislative language. In fact, the language of ESSA clearly states that the Secretary may “require only descriptions, information, assurances...” The proposed regulations in sections of 299, further add to the reporting burden.

Some specific examples of ED going beyond the statute are as follows:

- Under proposed Section 299.14(c), the SEA would be required to describe its performance management system for “each component required” under Sections 299.16 through 299.19. Each of these descriptions must include six discrete elements. Because sections 299.16 through 299.19 include some 40 different components (individual requirements), it appears

that the states would have to include 240 separate descriptions of their performance management systems, as well as additional performance information required under Sections 299.17(e) and 299.19(b). None of these descriptions is required under the statute.

- While the law requires SEAs to describe how low income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers, and to describe how they will report on and evaluate the State's progress in this area, the proposed regulations would go well beyond the statutory language, calling for new definitions and reporting timelines that are different from those included in the proposed annual report card requirements. Another aspect of the proposed regulations that goes beyond the statutory language includes the requirement to conduct "root cause analyses" of the disproportionality. We appreciate ED's desire to have states continue the progress they have made under their teacher equity plans, but building so much (sometimes confusing) detail into the regulations is unnecessary and overly prescriptive.
- Under Section 299.19(a)(ii), the SEA's description of how it will support a well-rounded and supportive education for all students would be required to include the state's strategies (and the rationales for those strategies), timelines, and funding sources for providing equitable access to rigorous courses in 17 separate subject areas, as well as in other subjects in which female students, minority students, English learners, students with disabilities, and low-income students are underrepresented. There is no statutory requirement for this description of this plan in general, and much less so for a requirement to provide four types of information on at least 17 subjects.
- Under proposed Section 299.19(a)(3), the plan would be required to include a review, on an LEA-by-LEA basis, of districts' budgeting and resource allocations in four separate areas. There is no requirement to include a review in the statute.
- Under proposed Section 299.16(b)(3), the plan would include a description of the SEA's strategies for providing all students in the state the opportunity to be prepared for and to take advanced math coursework in middle school. This language is taken from the negotiated rulemaking committee agreement on assessments, but unlike the language approved by that committee, which would apply the requirement only to states that elect to exempt certain students from the regular middle school math assessment, this language would apply to *all* states.

States would welcome a true consolidated plan; one that includes the elements previously required, but not one that is more time-consuming and burdensome than to submit each of the individual program plans.

Recommendation:

Allow a state to submit a streamlined plan that includes essential elements of a consolidated plan, without adding planning requirements that go beyond the statute.

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Thank you for the opportunity to provide Washington's comments and recommendations on the U.S. Department of Education's Notice of Proposed Rulemaking on accountability and state plans under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). If you need clarification on any of the comments made in this letter, please contact me at 360-725-6115 or email randy.dorn@k12.wa.us. The agency TTY number is 360-664-3631.

Sincerely,

A handwritten signature in cursive script that reads "Randy Dorn".

Randy I. Dorn
State Superintendent
of Public Instruction