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

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,

On behalf of AASA, The School Superintendents Association, representing more than 13,000 school system leaders across the nation, I write in response to share our comments on the Department of Education's (Department) 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). AASA is the nation's professional organization for school superintendents, and represents school system leaders across the country.

ESSA represents a significant improvement over the No Child Left Behind Act (NCLB), which was the most recent authorization of the original underlying statute, the Elementary and Secondary Education Act (ESEA). ESSA takes the pendulum of federal overreach and prescription rampant in NCLB and swings it firmly back to state and local control. ESSA is clear to maintain that there is a role for the federal government in K12 education; importantly, though, ESSA clarifies that the role of the federal government is to support and strengthen our nation's schools, not prescribe and dictate to them.

In voting ESSA into law, Congress was very clear and deliberate to ensure that state and local education agencies—not the federal government—are in the driver's seat when it comes to making day to day decisions that impact both the implementation and success of education programs and offerings. The spirit and intent of ESSA are clear and consistent, and Congress was just as deliberate in defining the terms and concepts for which it included definitions and prescriptions as it was in providing flexibility for the terms and concept it structured more vaguely. Consistent with the framing principles of state and local control, in those instances where a term or concept is not defined and may need clarification, the federal government should proceed with restraint, issuing regulations and guidance in those areas where state and local education agencies agree federal clarification is helpful.

While AASA urges USED to issue regulations in a restricted manner, AASA strongly believes that USED is uniquely positioned to play a critical role in supporting state and local implementation of ESSA through non-binding guidance and technical assistance. The sheer volume of new practices, programs and approaches that state and local education agencies will be considering and adopting—coupled with the significant call for evidence-based approaches—means that state and local education agencies will have great demand for information. USED should provide both a list of the programs and practices that should be considered (and

how to implement them) as well as the research and data that can help a district understand the program's effectiveness and if it matches the community need. USED is best positioned to manage this clearing-house, and collect and organize best practices, programs and related research. We look forward to working with USED should it move forward to support state and local education agencies in this vital role.

AASA remains concerned that the proposed regulations represent a federal overreach, with the department providing prescription that is inconsistent with and beyond the intended scope of ESSA. Our priority concerns are outlined below:

- **N-Size:** USED proposes to leave the n-size determination up to the state, unless the state wants to go above 30, in which case the state will have to justify a larger n-size. AASA applauds USED for preserving the intended state flexibility around this provision, and is opposed to any regulation that would further lower the n-size cap.
- **95 Percent Participation:** ESSA maintains the requirement that 95 percent of students take the tests. USED's proposed regulations leave it up to the states to determine how to respond to/cope with schools that do not reach the threshold, and require states to take serious action, but stop short of federal prescription about what that action/consequence might be. AASA is opposed to any further prescription on this topic. This would include any effort to establish a role for USED beyond merely reviewing any state-determined "equally rigorous" state action. The final regulation must reserve true flexibility for states in determining state action, and establishing a role of USED to approve/deny any state proposal runs in direct conflict with the underlying statute.
- **Summative Indicator:** AASA is opposed to USED's regulation (200.18) that requires the state plan to include one summative rating from at least three distinct rating categories for each school. The statute requires evaluation of LEAs and schools on academic and non-academic factors, but stopped short of requiring each to be rated by a single indicator. This step away from reducing a school to a single letter or number score is important and provides flexibility and support for more nuanced state and district reporting, including the use of data dashboards. Reliance on a summative indicator mirrors current reporting requirements, blurs the nuance that comes from multiple and varied indicators, unnecessarily hinders the ability of state and local education agencies to consider new approaches and increases the likelihood of states just maintaining the status quo of the broken NCLB. AASA urges USED to revise its proposed regulation to more closely mirror the underlying statute, which preserves the flexibility to implement a variety of data indicators (sometimes referred to as a dashboard), which would allow state and local education agencies to provide intervention and continuous improvement supports with greater accuracy. The final regulation must clarify that the state retains the discretion in determining whether to use a data dashboard or a single summative indicator.
- **Timeline for Implementation for Comprehensive Supports:** AASA is opposed to the proposed regulation that would require all SEAs to identify LEAs in need of support/improvement for the *start* of the 2017-18 school year. It is very likely that states may not have their accountability plans finalized until well into the 2016-17 school year. This unnecessarily rushed timeline creates a scenario whereby a school in the first year of ESSA implementation will be labeled as needing support based on 2016-17 data, which is NCLB data. Given that 2017-18 is the first year of ESSA implementation, it follows that identification under ESSA would come only after ESSA-related data has been collected, at the end of the 2017-18 school year for the 2018-19 school year. AASA is concerned this proposal creates uncertainty as state and local education agencies may be unclear about which data is shaping their accountability status for 2017-18 (NCLB or ESSA?). AASA is concerned that this proposal, like the summative indicator, increases the likelihood that states maintain the status quo or, at best, implement only minor or peripheral changes to their systems. Further, USED's proposal requires states to submit their accountability plans by one of two dates (March 6 or July 5, 2017). AASA

appreciates the flexibility of having options, but we are concerned that states submitting under the second (July) deadline will not receive USED feedback (whether approval or call for revision) until after the start of the 2017-18 school year. This puts states in the position of having to identify states before they know if their accountability proposal has been approved. AASA proposes that USED treat the 2017-18 school year in a manner consistent with how it treated the 2016-17 school year after ESEA waivers expired, and freeze accountability ratings/labels. This approach gives state and local education agencies the opportunity to design, submit for approval and implement ESSA accountability constructs and to ensure that schools in need of intervention under ESSA are identified using ESSA data.

- **Foster Child Transport:** AASA strongly opposes USED's proposed regulation as it relates to the transportation of foster children. The USED proposal deems that when it comes to transporting children in foster care, if the child welfare agency and district cannot reach an agreement the LEA is fiscally liable to cover transportation costs. AASA agrees with the right of students in foster care to have transportation to their school of origin, but finds that USED's proposed regulation is an egregious overreach in direct conflict with the underlying statute. The ESSA statute requires a collaborative approach between child welfare agencies and LEAs and provides that if there are additional costs for transporting students in foster care, the district "will provide transportation" for the child if the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation; if the local educational agency agrees to pay for the cost of such transportation; or if the local educational agency and the local child welfare agency agree to share the cost of such transportation. It does not identify any specific entity as fiscally liable although AASA would argue that the agency that determines the placement for the child and is financially responsible for all other costs associated with the child in foster care should be required to pay for costs pertaining to transportation. USED's proposal directly undermines the collaborative, carefully negotiated language in ESSA and reduces the responsibility of the child welfare agency to meaningfully engage in discussions with the LEA. AASA reiterates that USED regulation in this area is unnecessary beyond simply underscoring that the LEA will provide transportation only in the three specified instances.
- **Previously Identified Child with a Disability:** AASA appreciates the Department's openness to including students who have exited special education within the special education subgroup for up to two years. When a student no longer requires an IEP, it does not mean the student no longer has a disability—it simply means they no longer require specifically designed instruction from special education personnel. The student may still very well be a struggling learner and need interventions to be successful. Additionally, the first two years after being exited a student is transitioning. When students are in special education and receiving services to support academics, the students are receiving a lot of scaffolding and accommodations to support their learning. Modifications in strategies, content and time are made to focus on the most critical skills for learning. When the student exits, those accommodations can change and students need to make adjustments. AASA believes it would be beneficial though, to align the subgroup criteria to English learners which would mean allowing districts to include former students with disabilities in the subgroup for up to four years.
- **Definition of Long-Term English Learners:** AASA does not believe research supports a single maximum time limit that would make sense for the diverse English learner population. Allowing States flexibility to establish a timeline for attainment of English language proficiency makes sense given that one State may, for example, have a significant population of newly arrived English learners than another State. Just as the Department provides for flexibility in setting long-term goals for English learners, it should maintain flexibility for determining proficiency.
- **Consistently Underperforming:** ESSA does not provide a federal definition for the term 'consistently underperforming'. In its regulations, USED proposes that as a state works to identify those schools

with subgroups that are consistently underperforming, that those determinations be made over a timeframe that does not exceed two years. AASA is opposed to this proposal as it is a partial definition on a term that ESSA intended to be crafted at the state and local level. AASA strongly believes that states should define consistently underperforming in the broader context of their accountability system and that such a definition includes any timeframe or constraints. AASA urges USED to revise its proposal around this term by removing any reference to timeline.

- **Evidence Based:** AASA understands the importance of ensuring, to the extent possible, that the programs and supports utilized by state and local education agencies are proven and ‘evidence based’. As a point of general concern, though, AASA would caution USED against requiring each academic progress and school quality or student success indicator in a state’s plan to be backed by research showing that progress on such measures is proven to “increase student academic achievement”. The underlying statute in ESSA is clear in its intent to empower state to exercise flexibility and implement new programs and policies after more than 15 years of compliance-based implementation under NCLB. AASA is concerned that the regulations, as proposed, tie the hands of state and local education agencies, limiting their options to those used under NCLB, as they will be the only programs with broad enough of an evidence base to meet the proposed requirement.
- **School Approval in Comprehensive Supports and Improvement Plans:** In 200.21, USED proposes that a school must approve the comprehensive support plan the LEA designs. AASA strongly supports the role of a school as a stakeholder informing the design of the support plan, but opposes the idea that the school must approve of the plan. When it comes to school governance, the school is part of a district, and the LEA is the governing entity. To the extent that the school is within a district, it is important to preserve the role of the district (at the superintendent/school board level) in ultimately approving/denying the approaches adopted for the schools it serves. We cannot provide the lowest-performing schools with a veto power over the LEA's improvement plan. It would be unusual and incongruous for ESSA to establish a "school" as an entity separate from the LEA; more troubling, such an interpretation could seriously interfere with LEAs' efforts to provide the quality education students in these schools deserve. AASA encourages USED to rewrite the regulation to ensure that schools are meaningfully engaged in the process of designing the support plan but stop short of requiring the school to explicitly approve the comprehensive support plan.
- **Four-Year Graduation Rate:** AASA supports flexibility as it relates to calculation of graduation rates. In a time of increased personalized education, coupled with the realities of legal obligations for high school experiences that last more than four years, and the realities of schools doing great work to support struggling students, we are concerned about the possible requirement that only the four-year graduation rate be used to determine which high schools must be identified for interventions if the rate falls below 67 percent. This regulation seems in direct conflict with ESSA language, which is clear to identify state and local control as critical for success. State and local education agencies must have the ability to accommodate extended learning timelines for especially at risk students, students with disabilities and English language learners. AASA urges USED to revise its position and ensure section 200.13 maintains states discretion and authority to determine and use a graduation rate beyond four years.
- **Overview Section in LEA Report Cards:** Section 200.30(b)(2) and 200.31(b)(2&3) require that SEA and LEA report cards must contain full accountability information and a clearly labeled ‘overview’ section. This is not specified in the statute. The regulations specify what must be in the overview section, and are quite comprehensive. The LEA report cards must have an overview section that is limited to 2 pages, which could prove limiting depending on the design of a state’s accountability system. While the regulation allows reporting additional subgroups (including migrant, gender, homeless, foster and active military duty) in a separate section, it could prove confusing to have it reported in a separate section. While AASA appreciates the intent to make the most important information easily available to parents and the public, we recommend that the decision on how to create an overview section for

the report cards be left to the state and local education agencies, and if USED feels the need to provide any additional information, that it be done through non-binding guidance rather than regulation.

- **Mailing LEA Report Cards Overview:** In section 200.31(d)(3), USED proposes that the LEA must mail the overview section for the LEA Report Card and for each school report card to parents directly. This creates a cost for LEAs, who could distribute the information directly to parents in other ways, including through email, in person at parent meetings, or through handouts to students to take home. AASA recommends the regulation be removed, and that the final rule allow LEAs to comply with direct distribution to parents through other means, and not strictly by mail.
- **Root Cause Analysis:** Regulation 299.18(c)(6)(i)-(ii) prescribe the root cause analysis states must use to address disproportionate rates of ineffective, out of field or inexperienced teachers. The regulations exceed statutory requirement by suggesting four distinct levels that must be included in the analysis. The underlying statute (Sec 1111(g)(1)(B)) only asks states to describe how they will ensure that low-income and minority children enrolled in Title I schools are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and to describe the measures the state educational agency use to evaluate and publicly report the progress of the state educational agency with respect to such description. AASA recommends USED revise the regulation so that the final rule mirrors the statutory language and ensure states are able to determine the appropriate levels and method of analysis.
- **Support for Educators:** Regulation 299.18(b)(2)(i) requires states to describe how the state will improve the skills of educators specifically for twelve unique student categories. This is a significant increase beyond the requirements of the related statute (Sec 2101(d)(2)(J)), which lists only four specific student categories (students with disabilities, English learners, students who are gifted/talented, and students with low literacy rates). AASA recommends that the final rule be revised to reflect the underlying statute, and allow the statute to stand as written.

AASA appreciates the opportunity to USED's draft regulations. We respectfully submit these comments in an effort to ensure that in providing state and local education agencies additional information to support ESSA implementation, USED does not exceed statutory intent and that state and local education agencies retain the intended flexibility. We look forward to seeing the revised regulations.

Sincerely,



Noelle M. Ellerson
Associate Executive Director, Policy & Advocacy