

January 21, 2016

Ms. Deborah Spitz  
U.S. Department of Education  
400 Maryland Ave. SW, Room 3E306  
Washington, DC 20202

Dear Ms. Spitz:

On behalf of AASA, The School Superintendents Association, representing more than 13,000 school system leaders across the country, I write to provide our response to the Request for information on Implementing Programs under Title I of the Elementary and Secondary Education Act (ESEA). As the U.S. Education Department (USED) moves forward with its work to determine the regulations and guidance, it should prioritize to guide implementation of the Every Student Succeeds Act (ESSA) in a manner consistent with the spirit of the law.

When it comes to ESEA reauthorization, our members prioritized an approach that preserved a federal focus on equity that strengths and supports—rather than prescribes and dictates to—our nation’s schools. In ESSA, Congress delivered both. By working to avoid any tendency to unnecessarily prescribe and dictate, the Department can and must work to implement ESSA in a manner that reflects the expanded authority and flexibility now granted to the education experts at the state and local level.

ESSA makes clear Congress’ intent that states be solely responsible for the development and implementation of, and decisions regarding, all aspects of their State accountability systems. Section 1111(e) clearly states the Secretary may not add any requirements or criteria outside the scope of this Act, and further says the Secretary may not take any action that would “be in excess of statutory authority given to the Secretary. This is an idea with broad bipartisan support, as the conference report itself writes, “While it is the intent of the Conferees to allow the Secretary to issue regulations and guidance to clarify the intent and implement the law, Conferees intend to prohibit any such regulation that would create new requirements inconsistent with or outside the scope of the law.”

ESSA represents the first time in 15 years that state and local education agencies can demonstrate what they can do in the accountability and assessment arena absent federal overreach and prescription, while preserving student-sub group accountability and graduation rate data. AASA urges the Department to start its regulatory process by remembering that state and local educators are in the business of education to serve children and that they are professionals much better positioned to know the intricacies of local systems and implementation, and to practice restraint in designing their regulations to ensure that USED efforts do not overstep the intent of ESSA or move to recreate elements of the broken No Child Left Behind (NCLB).

When it comes to ESSA implementation, we strongly encourage USED to engage state and local stakeholders—including state agencies, school districts, administrators, school boards, school leaders, teachers, parents and the general community—before issuing guidance, regulations, best practices and technical assistance. Given the significant shift in autonomy and flexibility to the state and local level under ESSA, feedback from the ‘ground level’—much like this Request for Information—should be an ongoing, organic occurrence, and feedback from the field should be the driving force in shaping whatever resources USED makes available.

As the national voice for more than 13,000 public school superintendents, our organization is well positioned to reflect the opportunities and obstacles our nation’s schools and the communities and students they serve will work through and grapple with as they progress through ESSA implementation. As such, we submit these comments, in part, to formally indicate our strong interest in being appointed to the Department’s negotiated rulemaking panel for topics related to ESSA Title I.

**ACCOUNTABILITY:** As regulations for ESSA are crafted, AASA encourages USED to grant state and local education agencies broad flexibility. Discretion and flexibility will be of critical importance to ensuring state and local education that have transformed elements of their accountability systems through waivers are able to support further redesign. The nation’s public school system is a collection of 14,000 smaller systems, and as such, any regulations, guidance or technical assistance issued by USED must remember that one size does not fit all, and that when it comes to federal policy—whether related to assessment, accountability, standards, a specific student subgroup, teachers, or another factor—one size does NOT fit all, and there is not one ‘best’ system or model that will serve all students and all schools.

- As it relates to academic and non-academic indicators within the accountability construct, USED should not establish a specific threshold, weight or range to distinguish between the two. For all intents and purposes, the closest USED should come to defining ‘much more than’ as it relates to academic indicators is to say ‘at least 51 percent’.
- Any regulations crafted by USED must ensure that state and local education agencies are free to look at a broad range of multiple measures as it relates to evaluating student/school performance.
- USED must resist any temptation to establish or define a minimal n-size. N-size is the size of the group that needs to be tested to get statistically sound results. Between a nation with more than 14,000 school systems and statute that is clear in its prohibition against the Secretary establishing an n-size, USED must NOT issue guidance or regulations that address n-size in any manner beyond reiterating that state education agencies determine the n-size element of their accountability workbook.
- ESSA requires state and local education agencies to identify those schools where traditionally underserved/overlooked students are “consistently underperforming”. ESSA establishes the federal role, which is to require state and local agencies to identify the schools; it remains the responsibility of the state and local agencies to determine what defines ‘consistently underperforming’ and the schools within their states that meet that qualification.
- As it relates to interim and long-term performance goals, USED should not identify or determine any specific measure of progress. That is, state and local education agencies should work together to determine and assess progress toward the goals, including continuous improvement.

**STUDENTS IN FOSTER CARE:** AASA is pleased that the term “awaiting foster care placement” is eliminated in ESSA effective this December and urges the Department to restrain from issuing any regulations or guidance as to how schools should treat students who are “awaiting foster care placement.” The variation in how the term is defined across states coupled with the new educational provisions in ESSA

pertaining to students in foster care will undoubtedly lead to meaningful reflections about educational needs and services for students in foster care that should be managed at local level based on unique community circumstances. With regards to transporting students in foster care so they may remain in their school of origin, AASA urges the Department to not meddle with Congressional intent which was to ensure that districts and child welfare agencies discuss payment for transportation and in a case that the district is not willing to pay in part or in full for transportation, the onus to pay for transportation is on the child welfare agency since they are responsible for all other costs associated with the child in foster care. In addition, AASA asks that the Department not impose regulations regarding the educational point of contact for the child welfare agency. It should be locally determined based on the personnel available in the LEA who would be the appropriate child welfare contact in a case where child welfare has a point of contact for the LEA.

**ALTERNATE ASSESSMENTS:** AASA asks the Department not to regulate on the alternate assessment provisions in the law as guidance is more appropriate. Any proposed criteria for determining what a state must do in order to be granted a waiver for exceeding the 1% participation cap should be based on prior regulations the Department issued related to NCLB. Specifically, they should include, at most,

- An explanation of circumstances that result in more than 1 percent of all students statewide having the most significant cognitive disabilities and who are participating in the alternate assessment;
- Data showing the incidence rate of students with the most significant cognitive disabilities; and
- Information showing how the state has implemented alternate achievement standards.

**ENGLISH LEARNERS:** We urge the Department to maintain the English Learner (EL) subgroup as consisting of former and current EL students and not issue regulations instructing states or districts to disaggregate by this subgroup beyond what are listed in statute. Because the EL subgroup suffers from a revolving door effect, as more proficient students exit the group and less proficient students enter, school districts cannot accurately gauge how well their former EL students are performing compared to their peers or how well their EL program is working as a whole. More importantly, school districts are consistently being judged by the weakest of their EL students, rather than the performance of the subgroup as a whole. This is not the case for any other subgroup. Stabilizing the EL subgroup is key to enabling school districts to collect and synthesize more accurate information about performance and progress of the whole subgroup (both former and current EL students) and will allow for better service delivery to students at all levels of English proficiency. We are pleased with the inclusion of former EL students into the subgroup and urge against further disaggregation. The state should have to demonstrate in the state plan that they are identifying languages other than English that are present to a significant extent in the state's student population and demonstrate they are making annual assessments available to districts in the relevant languages.

**SCHOOL DISCIPLINE:** It would be completely inappropriate if the Department decided to issue regulations based on, or primarily related to, the U.S. Departments of Education and Justice, Dear Colleague Letter: Nondiscriminatory Administration of School Discipline (January 8, 2014). ESSA urges States and districts to reduce exclusionary discipline practices and limit out-of-school absences throughout the statute, and it would be inappropriate to have guidance focused on the questionable practice of determining disparate impact, incorporated into ESEA. As the Dear Colleague clearly states, the purpose is to ensure compliance with Titles IV and VI of the Civil Rights Act of 1965, not to ensure compliance with ESEA. It is AASA's view that ESSA regulations requiring districts to take action when implementing facially neutral policies and practices would be wholly inappropriate.

Congress was intentional in passing ESSA without any discussion of seclusion and restraint. Despite the hundreds of amendments in both chambers that were offered, not a single vote related to seclusion and restraint practices in schools occurred. It would be wholly inappropriate for the Department to insert any regulations, guidance or technical assistance pertaining to seclusion and restraint given the deliberate decision by policymakers to not address these practices during the ESEA reauthorization.

Thank you for the opportunity to submit these comments. Our goal in replying is to express the importance of ensuring that state and local education agencies have options to look through, consider, and choose among as they design and build more sophisticated accountability systems that move away from a high-stakes testing climate toward a more in-depth, holistic school evaluation process. The federal regulatory process is an opportunity for USED to support state and local education experts by providing clarity and flexibility, and we remain optimistic that the final product will strike an appropriate balance under which the responsibilities at each level remain reasonable, flexible and not unduly burdensome.

Please do not hesitate to contact us for additional information. We can be reached via email: Noelle Ellerson ([nellerson@aasa.org](mailto:nellerson@aasa.org)) and Sasha Pudelski ([spudelski@aasa.org](mailto:spudelski@aasa.org)). We look forward to working with USED throughout the ESSA implementation process.

Sincerely,



Noelle Ellerson  
Associate Executive Director



Sasha Pudelski  
Assistant Director