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John H. Ashley, Executive Director

August 1, 2016

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

**Re: Docket ID: ED—2016—OESE—0032**  
**Notice of Proposed Rulemaking on Accountability and State Plans under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act**

Dear Ms. Miller:

The Wisconsin Association of School Boards (WASB), representing 421 locally elected school boards and approximately 2,800 locally elected school board members from throughout the state of Wisconsin, would like to thank you for this opportunity to comment on the Department of Education's (ED) proposed regulations governing the Accountability and State Plan programs under the Every Student Succeeds Act (ESSA) published by the Department on May 31, 2016. On behalf of the WASB, I write to affirm separate comments submitted by the National School Boards Association (NSBA) and to express the WASB's own concerns.

While we are mindful of ESSA's roots as civil rights legislation, we are also mindful that a clear intent of Congress when it enacted this historic bipartisan legislation was to restore local governance of public education. ESSA reaffirms the role of local and State education officials, including school board members, as leaders well-positioned to oversee and improve public education, by returning much of the decision-making and responsibility related to student assessments, school accountability and the selection of evidence-based strategies for improving student and school performance to state and local leaders.

We are concerned that, in many respects, the proposed regulations appear to contradict or contravene both the expressed provisions of ESSA and Congressional understanding of those provisions, as evidenced by comments made in post-enactment hearings conducted by both the Senate Health Education and Pensions Committee and the House Education and the Workforce Committee. It is clear from our reading of the statutes, and bolstered by the comments of the respective committee chairmen and others, that the intent of Congress remains that decisions regarding the implementation of accountability systems are, in the main, reserved for state and local education officials.

The WASB is concerned that the Department's proposed regulations infringe on the authority of state and local education agencies by prescribing substantive requirements that go beyond what the ESSA requires and encroach on duties and functions that were reserved for state and local determination. Another way the proposed regulations do this by establishing timetables for implementation that will significantly impede, if not prevent, state and local authorities from exercising their prerogatives under ESSA. A primary concern of ours is that the timelines set forth in the proposed rules will drive the other policy determinations. We believe it should be the other way around and we thank you for the opportunity to express these concerns.

#### **I. Timelines for Implementation of Accountability Systems (§200.19)**

ESSA requires Title I provisions surrounding accountability to "take effect beginning with the 2017-18 school year." Although this language arguably may be interpreted broadly, the proposed regulations, as written, would require all states to make their initial identifications of schools under the new accountability system before the beginning of the 2017-18 school year using data from the 2016-17 school year.

We share concerns expressed by Senator Lamar Alexander and others that the implementation timeline should be adjusted. As written, the proposed regulations will pose significant problems in Wisconsin, which like many states, is still early in the process of consulting with stakeholders and the public regarding what that the accountability system should look like.

Wisconsin will likely need a significant amount of time to create its plan as significant discussions still need to occur around the selection of indicators for English language proficiency, school quality and student success, the weight that should attach to those indicators, and around establishing criteria and procedures for identifying schools. Our SEA, the Wisconsin Department of Public Instruction (DPI), indicates it will likely need to utilize the later submission date of July, and likely will not have a plan submitted until after the 2016-17 school year ends, let alone have the plan approved by the beginning of the 2017-18 school year.

In addition, because we do not know what indicators will be part of our new system, it will be next to impossible to collect the data in 2016-17 necessary for identifying schools in 2017-18.

Further, our SEA, the DPI, indicates the requirement to use cohort graduation rates in the identification of schools poses additional problems. These rates are calculated by including students who graduate at the conclusion of the school year as well as those who graduate at the end of the summer session that follows the school year. The DPI indicates it cannot calculate those graduation rates for 2016-17 until the mid-fall of 2017, by which time SEAs are required to identify schools.

While we appreciate the Department's speed in assembling these proposed regulations, we believe the implementation timeline is problematic and should be adjusted.

**Recommendation: The Department should adjust the ESSA implementation timeline to allow data collected for the first time in 2017-2018 to be used for the initial identification of schools. At the very least, the Department should adjust the ESSA implementation timeline for states that will need to utilize the later July submission date to permit 2017-18 data to be used to identify schools and districts for improvement. Ideally, such a change would call for notification to occur by December 31, 2018. This would allow schools and districts to plan in spring 2019 for implementation of improvement activities in 2019-20. (See also next recommendation, below.)**

## **II. Timelines Surrounding School Improvement (§200.19 (d)(2))**

The proposed regulations would require that each State identify schools for comprehensive and targeted support and improvement by the beginning of the school year for which a school is identified. As noted in the submission from our SEA, the DPI, this timeline is impractical given its implications for interventions and planning. Given that ESSA sets a December 31 reporting timeline, the notification timeline should be aligned with the reporting deadline, with school improvement implementation expected the following school year. Wisconsin administers annual spring assessments to more accurately gauge student achievement for the year. Our SEA, the DPI, in its submission indicates it cannot reconcile how it would use data prior to the start of the school year to identify schools when that data is not ready to be posted until the end of the calendar year.

**Recommendation: The Department should align notification and reporting requirement timelines to December 31 in order to leave the latter half of the school year open for school improvement planning to be implemented in the following school year.**

## **III. Accountability Indicators (§200.14)**

The proposed regulations are unnecessarily prescriptive in terms of specifying the components of the accountability system and, in so doing, does not follow the intent of Congress to allow states to have flexibility in designing accountability systems.

The ESSA states that nothing in the Act shall be construed to “authorize or permit the Secretary. . . when promulgating any rule or regulation on the development or implementation of a statewide accountability system established under this section that would”—

- i. “add new requirements that are inconsistent with or outside the scope of this part;”
- ii. “add new criteria that are inconsistent with or outside the scope of this part; or”
- iii. “be in excess of the statutory authority granted to the Secretary.”

*ESSA, Title I, Section 1111(e)(1)(A) (20 U.S.C. § 6311)*

The Secretary is prohibited from “requir[ing] a State to add any requirements that are inconsistent or outside the scope of [the law]” as a “condition of approval of the State plan.” Furthermore, ESSA addresses specific aspects related to state accountability systems for which the Secretary is prohibited

from prescribing, including numeric long term goals or measurements of interim progress, indicators, the weight of any measure or indicator, or the methodology used to meaningfully differentiate schools within a State, to name a few. **The intent of Congress is clear: decisions regarding the implementation of accountability systems are reserved for state and local education officials.**

The ESSA defines five types of indicators that must be used as part of a State's accountability system, including at least one measure of school quality or student success. Congress further imposed criteria on the selection of any school quality or student success measure, specifically requiring that it allows for meaningful differentiation in school performance; is valid, reliable, comparable, and statewide (with the same indicator(s) used for each grade span), and includes one or more measures from a list that includes: student engagement, educator engagement, student access to and completion of advanced coursework, and other measures.

The proposed regulations expand on the statutory criteria and further restrict a state's ability to select measures that appropriately reflect student growth and state priorities within locally developed accountability systems.

Consider these examples cited in the submission of our SEA, the DPI:

- a) The proposed regulations refer to including students who are in a school one-half of a school year. This is significantly different from the full-academic-year definition, (FAY) that Wisconsin currently uses. Our DPI notes "this poses a real problem for continuity of data moving forward, not to mention myriad technical questions regarding the definition of half-year and the data collection to that effect. It also raises potential face validity issues in that schools and districts are used to being held accountable for the assessment performance only of students who have been enrolled for the full academic year."
- b) The proposed regulations require sub-section scores that each have level ratings with at least three levels. The levels would then all roll up into a single score. This level of detail is extreme in prescribing how a state system would work. This is not just a problem for Wisconsin, but other states who do not have existing systems with subscores and ratings, or do not have an overall summative score. Prescribing this level of detail inhibits our ability to engage meaningfully with stakeholders, including school boards, on the design of the accountability system.
- c) All indicators must measure performance for all students and for all subgroups meeting cell size under the proposed regulations. Requiring that everything is based on all students and subgroups results in schools with more diversity having increased chances of missing goals or having lower scores by nature of having more groups of students. In Wisconsin, our state report cards are currently designed in such a way that, while we report on subgroup performance in all priority areas, we do not calculate an indicator score at a subgroup level. Building all scores around subgroup calculations could introduce a lot of challenges, particularly with reliability of the results with small groups.

- d) Subgroup performance for identifying targeted support schools may take into account performance on accountability indicators over no more than two years. When examining subgroup performance, especially for high-stakes accountability, it is critical to balance reliability with action. It seems the priority here is to identify immediate need and act, but perhaps at the expense of ensuring the results are valid and reliable. These are small groups of students and using just two years of data could increase the chance of erroneously identifying a school. For Wisconsin's existing report cards we calculate our closing gaps priority area using three to five years of data. We urge that the Department not limit states in the number of years of data they may use in calculating subgroup performance, but, instead, challenge states to demonstrate that their identification of targeted support schools is accurate, appropriate, and timely.
- e) Under the proposed regulations states are limited to using three years of data to identify comprehensive support schools. This should not be the case for the same reason noted above in (d). Again, these timeframes are not contained in ESSA.
- f) The proposed regulations require a different measure for the school quality and student success indicator than used elsewhere in the system. What if a state wanted to use the same measure but in a different way than in another indicator? For example, we may include ACT proficiency in one indicator, but for a measure of student success, we may want to count the number of students who meet the ACT college and career readiness benchmark in three or more content areas. States should be allowed to demonstrate that, even if using the same data source for an indicator as used elsewhere in the system, they are using the data in a different manner that allows for further meaningful differentiation of schools.
- g) The proposed regulations would prevent accountability systems from using attendance as a non-academic indicator. Attendance is mentioned as an example of an indicator that does not "meaningfully differentiate" schools. Wisconsin uses this indicator. Attendance matters. It appears the regulations in this instance are assuming that an indicator is not meaningful if many schools or districts do well on it. If schools are doing well on something we should be allowed to recognize it in our accountability system.

**Recommendation: The proposed accountability regulations are too prescriptive. The Department's proposed regulations define components of state accountability systems in a manner that infringes on the authority granted by ESSA to state and local educational agencies. The Department should not seek to impose additional restrictions on the selection of accountability system indicators.**

#### **IV. Participation in Assessments and Annual Measurements of Achievement (§200.15)**

After considerable debate, Congress included a requirement in the ESSA that each State's accountability system annually measure the achievement of not less than 95 percent of all students, and of all subgroups of students, on statewide assessments. The ESSA also requires that States provide a clear and understandable explanation of how test participation will be factored into the statewide accountability system. We believe it was not an accident that the annual measurement of achievement (test participation) requirement was left out of the list of

accountability system indicators enumerated in Section 1111(C)(4)(b) and the related requirements on the weighting of indicators.

The proposed regulations, however, would require that States impose at least one consequence on schools that miss the 95 percent participation requirement, from among a list of Department-prescribed consequences. Further, the mandated imposition of consequences, which includes assigning a school the lowest performance rating on the statewide assessment indicator, has the effect of prescribing significant weight to this measure.

**Recommendation: States and LEAs should have the discretion to determine how best to address test participation rate challenges that may occur across a state or in one or more communities within a state. Based on our background in a state that allows opt-outs, we strongly recommend that the Department revise the proposed regulation to limit the requirements for annual measurements of achievement only to those spelled out in the law. At a very minimum, the Department should amend subsection (c)(1) and (c)(2) of proposed §200.15 to eliminate the actions a State must take involving schools and districts that fail to assess at least 95 percent of all students and students in each subgroup. The mandatory outcomes prescribed in subsection (b)(2) that dictate the manner in which the State will factor the 95 percent participation rate into the State’s accountability system should similarly be eliminated. Instead, each State, through meaningful consultation with local school boards, should independently determine how it should factor the 95 percent threshold and Departmental review of a State’s proposal should be limited to the peer review process based solely on statutory compliance with ESSA.**

## **V. Annual Meaningful Differentiation of School Performance (§200.18)**

The requirement in the proposed regulations that each State’s system for the annual, meaningful differentiation of schools must result in a single rating from among at least three distinct rating categories for each school to describe the schools summative performance, exceeds the requirements of ESSA and deprives States of the discretion Congress intended them to have with regard to the design of systems for meaningfully differentiating the performance of schools.

Mandating that state systems assign a summative rating to each school every year, from among at least three ratings categories, not only greatly exceeds the Department’s regulatory authority, and the limitations Congress expressly defined with regard to Department action, it also would deprive SEAs of a significant opportunity to define new and innovative approaches to school accountability and improvement. We recommend that this requirement be eliminated from the Department’s regulation.

**Recommendation: Amend the proposed regulations to allow States to choose the specific method by which meaningful differentiation occurs, apart from federal regulatory restrictions or requirements. To ensure that meaningful differentiation occurs within a State, the Department could utilize the peer review process or existing review procedures to ensure a State’s system of meaningful differentiation meets ESSA requirements and results in actual differentiation of public schools based on indicators in the accountability system. However, the State should determine, through meaningful consultation with local school board members, how to best “meaningfully differentiate” schools, without federal limitation or restriction.**

## **VI. High School Graduation Rates (§200.19)**

The ESSA requires that school districts (SEAs) identify, for comprehensive support and improvement, any public high school that fails to graduate one-third or more of its students. Graduation rate methodology, however, is undefined.

Under the proposed regulations, however, states are required to use the four-year adjusted cohort rate. Due to this lack of flexibility states will be identifying a large number of alternative high schools created specifically to serve certain student populations regardless of their performance on extended year graduation rates. For instance, our SEA, the DPI would like the ability to allow exemptions for schools that are centers for dropout recovery students.

**Recommendation: Remove the requirement to use the four-year cohort rate. Allow states to determine whether to use that rate or an extended-year graduation rate in identifying schools for comprehensive support and improvement.**

## **VII. Report Card Requirements—Dual Calculations for Reporting on Student Achievement (§200.33)**

The ESSA requires that State and LEA report cards include information on student achievement with full disaggregation, as well as data comparing student and LEA progress at the district and state levels. It also requires that State and Local report cards include information on the progress of students toward State-designed long-term goals, with full disaggregation. Further, State and Local report cards are required to include the percentage of students assessed and not assessed, with full disaggregation.

The proposed regulations, however, would require State and LEA report cards to present the percentages of students performing at each level of academic achievement, disaggregated by each grade and subgroup, using two calculation methods defined in the NPRM. This requirement exceeds the statutory requirement of ESSA. It would create a significant burden on SEAs and LEAs and, we believe, will lead to confusion among parents and other stakeholders who are presented with two different data points for the same variable.

We read the relevant provisions of ESSA to mean that Congress intended for State and school district report cards to be fully transparent in with regard to the percentage of students assessed and not assessed so that parents and other stakeholders could make fully informed judgments and inferences about student performance data, not that States and Districts should have to use two calculation methods in reporting that data.

**Recommendation: The Department should not encroach on the authority given to SEAs and LEAs by establishing additional reporting and notification requirements.**

#### VIII. Report Card Requirements—Expenditure Reporting (§200.35)

The amount of detail required by the proposed regulations goes well beyond the requirements of the statute. ESSA requires that State and LEA report cards include the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures, disaggregated by the source of funds (Federal, State, and local). The proposed regulations, however, go much further. As part of the report card requirements for states and LEAs, the proposed regulations describe a uniform per pupil spending calculation requirement that will require each State to develop a single statewide procedure to calculate and report LEA current expenditures per pupil and a single statewide procedure to calculate and report school-level current expenditures per pupil. The proposed regulations appear to go so far as to even prescribe what must constitute the numerator and denominator in those calculations. In addition, each State report card must also separately include, for each LEA, the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

Although we appreciate that the Department seeks to “increase the likelihood that LEAs within a State will publicly report expenditure data in a manner that is informative, accurate, comparable, and timely...,” there is no ESSA requirement for a single statewide approach or for prescribing a specific date on which the State and LEAs must count students (October 1).

The proposed regulations will impose a particular hardship on Wisconsin schools as Wisconsin does not currently collect financial information at the school-building-by-school-building level. In order for Wisconsin schools to comply with the timeframe currently specified in the proposed regulations, Wisconsin school districts would need to be reporting this information to our SEA, the DPI, in the 2016-17 school year. However, the DPI, indicates that, given requirements to develop a reporting system, in a best case scenario, it may be able to create a system in 2016-17, collect audited information from that system in 2017-18 and report it out in 2018-19.

The proposed regulations, as written, would also require Wisconsin schools to add a third student count date on top of the two count dates already required by state law. The state has long-required that the third Friday in September be used as one of these count dates. We note how close in proximity this date is to October 1. That said, by far the costlier and more onerous requirement would be the costs and amount of work that would be needed to comply with the school-building-level expenditure reporting requirements under the proposed regulations.



**Recommendation:** The Department should not encroach on the authority given to SEAs and LEAs by establishing additional reporting and notification requirements. At the very minimum, the Department should amend the proposed regulations to allow states to determine the manner in which per pupil expenditures from federal, state, and local funds will be reported, provided that such expenditures are reported in a uniform manner as determined by the state. The Department should also adjust the timeline to allow states and local school districts, such as those in Wisconsin that need to develop their school finance reporting systems to capture this information, an additional year to comply with this requirement.

#### **IX. Overview of State Plan Requirements: Foster Care Transportation Requirements (§299.13)**

Under the proposed regulations school districts are responsible for costs of transportation of foster care students to school districts of origin even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation. This will likely create additional disincentives when school districts are making decisions regarding transporting students.

ESSA does not assign the payment of transportation costs for foster children to the LEA. Simply put, the proposed regulations do not reflect the legal requirements established in ESSA. The proposed regulations expand legal obligations of local school districts by placing the cost of transportation squarely on the local school district. This may have a significant financial impact on school districts, particularly because the district responsible for transportation is receiving neither State nor federal funding to assist in covering transportation costs. Furthermore, the proposed regulations weaken the responsibility of local child welfare agencies to collaborate with local school districts by creating a potential incentive for disagreement between local child welfare agencies and local school districts. Under the proposed regulations, there is no fiscal incentive for cooperation between child welfare entity and LEA. This raises concerns about the impact on students who maintain enrollment at their school of origin due to excessive transportation costs that would be permanently required.

Additionally, the proposed regulations do not recognize that transportation expenditures are often dictated by State law. The proposed regulations disregard State policies and statutes that govern the transportation of students outside of district boundaries and other state-level transportation funding provisions.

**Recommendation:** Amend the proposed regulations to reflect the statutory requirement in ESSA that child welfare agencies collaborate with local school districts to determine how transportation costs will be covered. The proposed regulations should also be modified to require collaboration with local child welfare agencies, and if appropriate, the school of origin. The regulations should expressly State that such collaboration or consultation is not a basis for requiring school districts to incur transportation costs not otherwise authorized under State law.

The regulations issued by the Department must not impede the authority granted to state and local education officials. Federal regulations should empower state and local leaders to make decisions. Requirements that strip local-decision makers of the authority to govern will be detrimental and significantly impede local school districts' ability to utilize, to the fullest extent, the opportunity and flexibility authorized by ESSA. This is an opportunity for the Department to promulgate federal regulations that assist states and school districts in implementing provisions of ESSA and to reaffirm ESSA's clear directive to restore local governance and community ownership of public education.

On behalf of the Wisconsin Association of School Boards, it is our hope that the Department will ensure restoration of local governance of public education and amend the proposed regulations and the peer review process to allow state and local education leaders the flexibility and authority to make decisions regarding the accountability system that best meets the needs of the districts within their state.

Sincerely,

A handwritten signature in black ink that reads "Dan Rossmiller". The signature is fluid and cursive, with a large initial "D" and "R".

Dan Rossmiller  
Government Relations Director  
Wisconsin Association of School Boards