



The Education Trust

Closing the gaps in opportunity and achievement, pre-k through college.

August 1, 2016

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

Docket ID ED-2016-OESE-0032

Dear Ms. Miller,

On behalf of The Education Trust — an organization dedicated to closing long-standing gaps in opportunity and achievement separating low-income students and students of color from their peers — thank you for the opportunity to provide comments on the notice of proposed rulemaking (NPRM) regarding the accountability, public reporting, and state plan requirements of the Every Student Succeeds Act (ESSA).

ESSA contains a number of meaningful levers that education leaders, parents, members of the business and civil rights communities, and advocates can use to advance educational equity, including:

- Clear requirements that statewide accountability systems must expect more progress for the groups of students who have been behind; base school ratings on the progress of all groups of students, and expect action when any group of students is consistently underperforming;
- A demand that states and districts report on and address inequities in the rates at which low-income students and students of color are assigned to ineffective, out-of-field, or inexperienced teachers; and
- Richer public reporting on academic outcomes and opportunities to learn for all groups of students, including — for the first time — school-level, per-pupil spending.

To be clear, none of these levers will guarantee gap-closing and improved achievement for all. No law, no matter how strong, could ever do that.

But taken together, they represent key building blocks for an equity-focused school system — one that sets high expectations for all students, provides resources necessary for meeting those expectations, measures and reports progress toward them, and ensures action when any school or any group of students falls off track.

The task ahead is to ensure that states and local communities take full advantage of the opportunity — and responsibility — afforded by these levers. The state and local flexibility built into the law can be an important part of that by allowing plans that meet unique contexts and promoting ownership and buy-in of those plans. But the U.S. Department of Education also has an important role to play through regulation, especially when it comes to ensuring that states and localities are living up to the purpose of Title I: expectations and supports for vulnerable students.

The proposed regulations bolster some of the key equity levers in the law, including:

- The requirement that all indicators in the accountability system be disaggregated by each group of students, so schools can't sweep the performance of some students under the rug.

- Clarity that “supergroups” can’t take the place of individual student groups, so progress among one group can’t mask stagnation or declines for another.
- The prioritization of academic outcomes, so the main purpose of school stays in focus.
- The expectation of full participation in the state assessment, and action when fewer than 95 percent of any student group participates, so schools can’t return to the old practice of opting out lower performers on test day.
- The requirement that all schools receive a summative rating based on each group’s performance on all the indicators, so parents get an at-a-glance view of school performance.

It’s important here to dispel the emerging narrative that we can have either summative ratings or rich public reporting, not both. That is decidedly untrue: Summative ratings can and should exist alongside rich public reporting of all the data that go into the rating, as well as of measures beyond those included in the rating.

- The expectation of statewide definitions and procedures for reporting on opportunities to learn, such as teacher qualifications and per-pupil expenditures, so that these critical data will be consistent from school to school and district to district.
- Clarity that equitable access to strong teachers for low-income students and students of color is a central part of each state’s ESSA plan, rather than something to be ignored — as it was for much of NCLB — or an on-the-side project as it’s been treated in recent years.

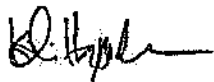
The importance of these rules to clarify and bolster ESSA requirements has been made clear in recent months as states have begun their implementation efforts. Already, some states have made suggestions for their new accountability systems that would undermine the law’s equity provisions, such as including indicators that can’t be disaggregated in their accountability system, using supergroups in place of individual student groups, or providing merely a dashboard of data with no meaningful indicator weighting.

But there are areas where the proposed regulations could actually undermine the potential of the law, especially when it comes to assured action when any group of students in any school is not making progress. Some of the proposed definitions of “consistent underperformance” for subgroups would undercut the idea — and the clear Congressional intent — that any group that is struggling in any school needs help and assured action, not just the very lowest performing groups or groups in a limited number of schools.

The following are our recommendations for what to retain in the proposed rules and what to make stronger. Throughout, our focus is on leveraging administrative action to build on the potential offered by ESSA and guard against risks to equity. All of these recommendations are consistent with statute and the purpose of Title I and are within the Administration’s ability to act.

Thank you for your attention. We look forward to continuing to work with the Administration to ensure that ESSA represents a step forward in the fight for educational justice.

Cordially,



Kati Haycock  
The Education Trust

## Accountability System Requirements

Strong accountability systems set a clear expectation that schools must raise the achievement of all of their students, not just some. They focus attention and resources on the full range of student groups, and they prompt action when schools don't meet expectations for any group.

We applaud the Every Student Succeeds Act's requirements that states put in place accountability systems that expect more progress for groups of students who have been behind, base ratings on the performance of all groups of students, and require action whenever a school consistently underperforms for any student group. The proposed regulations largely advance those requirements; however, there are some critical areas that need revision. Our recommendations are aimed at bolstering and clarifying the important equity levers in the law to guard against low expectations or inaction in the face of underperformance, and to support states that want to set their sights high for all students.

## Indicators

The Every Student Succeeds Act requires each state's accountability system to measure at least four distinct indicators for each school: Academic Achievement, Academic Progress or Graduation Rate, Achieving English Language Proficiency, and School Quality or Student Success. Under the law, each of these indicators, with the exception of Achieving English Language Proficiency, must be disaggregated by student group and measured annually. The proposed regulations strengthen the requirement for disaggregation, which is critically important for equity. Additionally, the proposed regulations reinforce the prioritization of academic outcomes, so the main purpose of schooling stays in focus.

***We support the following provisions and believe they should remain in the final regulations:***

1. **Require each state to use indicators that can be disaggregated by student group - §200.14(a) and §200.14(c)(3)**

Disaggregating indicators by student group is essential for an equity-focused accountability system. Schools cannot be able to sweep the performance of some students under the rug or use "supergroups" of students in place of individual student groups, allowing fast progress in one group to mask stagnation or declines in another. By reiterating statutory requirements that all indicators be disaggregated by student group, the proposed rules reinforce this critical equity lever. It must remain reflected in, and consistent throughout, the final regulations.

2. **Require state systems to prioritize student academic outcomes - §200.18(d)(1) and (2), and §200.14(d)**

A key function of a school accountability system is to communicate what is expected of schools both to the schools themselves and to the public. In order for a school accountability system to support improvement and gap-closing, these expectations have to be both rigorous and focused on student outcomes. The law requires that the Academic Achievement, Academic Progress or Graduation Rate, and Achieving English Language Proficiency indicators each carry "substantial weight" and that together, these indicators carry "much greater weight" than the School Quality or Student Success indicator. The proposed rules clarify and strengthen this requirement in two important ways:

- Not allowing the performance on the School Quality or Student Success indicator to “change the identity of schools that would otherwise be identified” for comprehensive or targeted support and improvement - §200.18(d)(1) and (2)
- Requiring measures “within the indicators of Academic Progress and School Quality or Student Success [to be] supported by research that performance or progress on such measures is likely to increase student achievement or, for measures within indicators at the high school level, graduation rates” - §200.14(d)

### **3. Meaningful inclusion of participation rates - §200.15**

States’ school accountability systems must annually measure the achievement of 95 percent of students, overall and in each student group, on state assessments. This 95 percent participation requirement is necessary to prevent schools from exempting struggling students from state assessments in order to boost their scores. The proposed rules underscore the importance of this statutory provision, ensuring assessment participation will be a meaningful part of the state accountability system and articulating potential actions a state could take for failure to meet the requirement.

### **School Ratings**

Statute requires states to design accountability systems that meaningfully differentiate between schools based on their performance on the required indicators, both for students overall and for each student group. Under the law, these systems must also differentiate schools that are consistently underperforming for any group of students.

The requirement that school accountability systems meaningfully differentiate between schools, based on how they are doing for all groups of students, is critical for advancing educational equity. The proposed regulations advance this objective by specifying that the system of meaningful differentiation must include a summative rating for each school. At the same time, a number of changes are needed in order to ensure that state accountability systems meaningfully reflect the performance of all groups of students, and demand action whenever schools fail to make progress for any student group.

***We strongly support the requirement that systems for annual meaningful differentiation for all public schools result in a single summative rating for each school - §200.18(b)(4)***

A key function of a school accountability system is to communicate to parents and community members how well a school is doing in meeting state expectations, overall and by student group. A summative rating for every school is critical to ensuring that the accountability system serves this function.

Of course there can — and absolutely should — be reporting of all the data that go into this summative rating, as well as of additional data to inform the improvement-planning process. But simply reporting school performance metrics in a data dashboard, with no clear signal of whether the school is meeting expectations, leaves parents and community members to do all of the work of interpreting the data and limits schools’ incentive to improve.

We urge the Administration to maintain this requirement.

Importantly, summative ratings must be based on how well schools are serving all students, as well as each student group. If a school is consistently underperforming for any group of students, its rating must reflect that fact. Otherwise, the Administration will enable schools to get high ratings even when they repeatedly miss expectations for one or more student groups. Below, we suggest a number of revisions to the proposed regulations to ensure that ratings reflect schools' performance for all groups of students.

***There are six provisions that should be revised:***

In order to both ensure that the system of annual meaningful differentiation reflects the performance of all groups of students and allows states the flexibility to design systems that work in their local context, a number of critically important changes are necessary.

**1. Require states to base the definition of "consistently underperforming" for any subgroup on the statewide goals and interim progress targets – §200.19(c)(3)**

The definition of "consistently underperforming subgroup" is critical to ensuring that all schools are held accountable for how they are serving all groups of students. To serve this purpose, this definition must include not just the lowest performing schools for a group of students, but schools anywhere along the performance spectrum that are not making progress for one or more groups.

We support the proposed regulatory requirement that in defining consistent underperformance, states consider schools' performance for each student group over no more than two years [§200.19(c)(1)]. However, we are concerned that several of the options for identifying consistent underperformance in §200.19(c)(3) — specifically options §200.19(c)(3)(ii) through (iv) — would result in methodologies that would flag only the lowest performing schools for intervention and support.

Instead of allowing states to base definitions of consistent underperformance on the size of achievement gaps with statewide averages or thresholds based on these averages, we recommend requiring states to base their methodology for identifying consistently underperforming schools on state goals and progress targets. Additionally, we recommend requiring that this definition be more expansive than the definition of "low performing subgroup."

***Recommendation: Strike §200.19(c)(3) and replace it with:***

***(3) Define a consistently underperforming subgroup of students in a uniform manner across all LEAs in the State such that this definition***

- (i) Is based on the state's long-term goals and measures of interim progress, as established under §200.13.***
- (ii) Includes more schools than the definition of "low-performing subgroup" under §200.19(b)(2).***

**2. Require that school ratings reflect the performance of all groups of students and differentiate schools that are consistently underperforming for any group - §200.18(b)**

The proposed regulations require states to assign performance levels to schools based on each indicator, before combining these indicator performance levels into a summative rating for each school. We have several concerns with this proposal.

First and foremost, it's not clear how or whether states have to include subgroup performance in summative ratings. While the proposed regulations do state that the system of meaningful differentiation needs to include the performance of all students and each student group on each indicator [§200.18(b)(1)], they do not require that the indicator performance levels in §200.18(b)(2) be based on how schools are doing on each indicator for each group of students. Because the proposed regulations require that the single summative rating be based on the indicator performance levels [§200.18(b)(4)], it is not sufficiently clear that subgroup performance must factor into these summative ratings.

In addition, statute is clear in that the system of meaningful differentiation must differentiate schools that are consistently underperforming for any group of students. The proposed regulations do not address this requirement. Because consistent underperformance triggers identification for Targeted Support and Improvement, ensuring that summative ratings differentiate schools that are consistently underperforming for a group of students is critical. Otherwise, the Administration will allow states to give schools high ratings even when they repeatedly miss expectations for one or more groups of students.

Lastly, the requirement for indicator-specific performance levels unnecessarily constrains the possible approaches that states could develop to design their rating systems. For example, some states may want to combine the indicators in their system in an index — something that may not be possible under the proposed regulations.

To ensure that school ratings are based on how schools are serving all groups of students, and to give states more flexibility for how to design their accountability systems, we recommend the following revisions to §200.18(b).

**Recommendation:** Strike §200.18(b)(1)-(4), replace with the following and renumber accordingly:

*(b) A State must define annual meaningful differentiation in a manner that —*

- (1) Results in a single rating from among at least three distinct rating categories for each school, based on the performance of all students and each subgroup of students in a school, consistent with §200.16, §200.17 and §200.20(c), on each of the indicators established in §200.14, including the performance of all students and each subgroup of students in a school on the long-term goals and measurements of interim progress described in §200.13.*
- (2) Ensures that a school that has at least one consistently underperforming subgroup gets a lower summative rating than it would have gotten if it did not have any consistently underperforming subgroups.*

**3. Streamline and strengthen the demonstration requirement so that it applies to schools across the performance spectrum, not just those receiving the highest rating - §200.18(d)(3)**

As written, the proposed demonstration requirement is both complex and insufficient to ensure that schools across the performance spectrum are held accountable for the results of all groups of students. To meet the proposed requirements, states could simply come up with an extra summative rating — e.g., an A+ grade — that only schools performing at the highest level on all indicators could receive. Moreover, as mentioned earlier, it is unclear whether or how these indicator performance levels have to include the results for all groups of students.

Rather than tying the demonstration in §200.18(d)(3) to indicator performance levels, we recommend reinforcing the requirement in the Every Student Succeeds Act that the system of meaningful differentiation differentiate any school that is consistently underperforming for any group of students.

**Recommendation:** Strike §200.18(d)(3) and replace with:

*(3) Demonstrate that a school that has at least one consistently underperforming subgroup, as described in §200.19(c)(3), gets a lower rating than it would have gotten if it did not have any consistently underperforming subgroups.*

**4. Require states to identify the first set of comprehensive support and improvement schools based on 2017-2018 data, not 2016-2017 data - §200.19(d)**

The proposed regulations require states to identify the first set of comprehensive support and improvement schools based on 2016-2017 data. Given that new state accountability systems will not be approved until 2017, this requirement would essentially mean that schools will be identified based on expectations that are not yet in place. This timeline risks undermining one of the key functions of a school accountability system — to communicate expectations and prompt improvement in schools that don't meet them.

**Recommendation:** *Revise §200.19(d)(1)(i) as follows:*

*(1)(i) A State must identify each type of school for comprehensive support and improvement under paragraphs (a)(i) through (3) of this section at least once every three years, beginning with identification for data from the 2017-2018 school year, except that identification of schools with chronically low-performing subgroups under paragraph (a)(3) of this section is not required for the 2017-2018 2018-2019 school year.*

*Additionally:*

- 1. In §200.19(d)(1)(iii), strike “for the 2017-18 school year” and replace with “for the 2018-19 school year.”*
- 2. In §200.19(d)(2), strike “data from the 2016-17 school year inform identification for the 2017-18 school year” and replace with “data from the 2017-18 school year inform identification for the 2018-19 school year.”*

### **Interventions and Supports**

The Every Student Succeeds Act requires states to provide strong, meaningful interventions for schools that underperform for any group of students. The law categorizes schools requiring interventions as Comprehensive Support and Improvement schools, Targeted Support and Improvement Schools, and Additional Targeted Support and Improvement Schools. The proposed regulations advance the objective of improving school performance for all students by creating differentiated regulations for each school improvement group. Our recommendations are aimed at furthering the proposed regulations to facilitate effective and sustainable school improvement that raises achievement for all groups of students.

***We support the following provisions and believe they should remain in the final regulations:***

- 1. The meaningful definition of resource equity included in the review of LEA and school-level resources - §200.21(d)(4) and §200.22(c)(7)**

Statute requires that improvement plans for Comprehensive Support and Improvement and Additional Targeted Support and Improvement schools identify and address resource inequities. The proposed regulations strengthen this requirement by specifying that the review of resource inequities must include disparities in teacher quality and per-pupil expenditures. We strongly support this requirement and provide recommendations for how to make it even more meaningful further in our comments.



**2. The prohibition against using improvement funds in schools identified for Targeted Support and Improvement based solely on assessment participation rates - §200.24(a)**

The proposed regulations clarify that schools identified for Targeted Support and Improvement under §200.15(b)(2)(iii) for low assessment participation rates shall not receive improvement funds that are intended to support schools that need them to increase achievement for all students and groups. We support the Administration's dedication to prioritizing funds for schools that need them most to improve student achievement.

**3. The requirement to review resource allocations between LEAs, focusing on LEAs with high numbers of Comprehensive Support and Improvement and Targeted Support and Improvement schools - §200.23(a)**

We support the requirement that states address resource inequities that could contribute to LEAs having a disproportionate number of schools in need of support and improvement. This requirement emphasizes the State's role and responsibility in reducing inequities and improving achievement for all students.

**4. There is a clear trajectory of escalating action and oversight for Comprehensive Support and Improvement schools that do not meet exit criteria - §200.21(f)(2)**

While schools that are struggling need time to improve, students cannot be left to languish in low-performing schools with no expectation of additional action. We support the proposed requirements for additional LEA action and increased SEA monitoring, support, and review of plan implementation in Comprehensive Support and Improvement schools that do not meet exit criteria.

***There are six provisions that should be revised:***

**1. Require that the review of LEA and school-level resource inequities include disparities in access to advanced coursework, preschool programs, and instructional materials and technology - §200.21(d)(4) and §200.22(c)(7)**

As mentioned previously, we strongly support the requirement that in identifying and addressing resource inequities, LEAs and schools consider disproportionate rates of ineffective, out-of-field, or inexperienced teachers, and per-pupil expenditures. We recommend expanding the definition of resource inequities to include the key resources listed in §200.21(d)(4)(ii) and §200.22(c)(7)(ii). Research shows that each of these resources — access to advanced coursework, high-quality early education programs, and instructional materials — are critical to student success. In identifying resource inequities, LEAs and schools should consider these key disparities.

***Recommendation:*** Following §200.21(d)(4)(i)(B) and §200.22(c)(7)(i)(B) insert:

*(C) Advanced coursework;*

*(D) Pre-school programs; and*

*(E) Instructional materials and technology.*

**2. Allow states the ability to select which additional indicators should be included in the needs assessment - §200.21(c)(4)**

The school improvement process should begin with a needs assessment that identifies school-based root causes of underperformance and informs specific strategies for improvement.

The proposed regulations explicitly grant LEAs discretion regarding additional indicators to be used in the needs assessment. This provision effectively undermines the state's ability to put a more thorough needs assessment process in place. States should be able to choose to allow LEAs to include locally selected indicators, but they should have the option to have uniform requirements for needs assessments used by LEAs.

**Recommendation:** Revise §200.21(c)(4) as follows:

*(4) At the LEA's State's discretion, the school's performance on additional, locally selected indicators that are not included in the State's system of annual meaningful differentiation under §200.18 and that affect student outcomes in the identified school.*

**3. Set more meaningful exit criteria for schools identified for Comprehensive Support and Improvement and Additional Targeted Support and Improvement - §200.21(f) and §200.22(e)**

Statute requires states to set exit criteria for schools requiring Comprehensive Support and Improvement and Additional Targeted Support and Improvement. A key purpose of exit criteria is to help determine whether schools have improved sufficiently to no longer require the specific level of support, or, conversely, whether that support needs to be escalated.

The exit criteria parameters in the proposed regulations set the bar far too low to serve this key function. The proposed parameters enable states to set exit criteria that would allow schools to exit improvement as soon as they no longer meet the criteria for identification as a Comprehensive Support and Improvement or Additional Targeted Support and Improvement school. In other words, a school could exit by moving from the 4.9 percentile for all students or a group of students to the 5.1 percentile. Having such a low exit criteria benchmark does not convey commitment to creating lasting and meaningful school improvement.

To ensure that exit criteria are meaningful, we recommend that the Administration require states to tie them to state goals and progress targets. Doing so will push states to set criteria that require schools to demonstrate they are on track to improve.

**Recommendation:** Strike §200.21(f)(1) and replace with:

- (1) *To ensure continued progress to improve student academic achievement and school success, the State must establish uniform statewide exit criteria for each school implementing a comprehensive support and improvement plan under this section. Such exit criteria must, at minimum —*
  - (i) *Necessitate meaningful, sustained improvement on the indicators in the system of meaningful differentiation for all groups of students; and*
  - (ii) *Be based on the state's long-term goals and measures of interim progress, as established under §200.13.*

Strike §200.22(f)(1) and replace with:

- (1) *With respect to any school participating under subpart A of this part that has one or more low-performing subgroups as described in §200.19(b)(2), the State must establish uniform statewide exit criteria that, at minimum—*
  - (i) *Necessitate meaningful, sustained improvement on the indicators in the system of meaningful differentiation for the subgroup identified as low-performing under §200.19(b)(2); and*
  - (ii) *Are based on the state's long-term goals and measures of interim progress, as established under §200.13.*

#### **4. Remove the requirement for LEAs to set exit criteria for Targeted Support and Improvement schools**

Statute does not require LEAs to set exit criteria for Targeted Support and Improvement schools. While we appreciate the Administration's desire to ensure that these schools have to show meaningful improvement in order to exit this identification status, we are concerned that directing LEAs to set exit criteria creates the possibility that schools in different LEAs will face different performance expectations. This approach could set a dangerous precedent that undermines the equity benefits of a statewide accountability system.

We support the proposed requirement that LEAs determine whether Targeted Support and Improvement schools have successfully implemented their improvement plans based on whether the group for which they were identified is still considered consistently underperforming [§200.22(e)(1)]. Rather than requiring LEAs to set additional exit criteria, we urge the Administration to require states to base their definition of “consistently underperforming subgroup” on their long-term goals and progress targets (as recommended on page 5). That way, schools would need to demonstrate meaningful improvement in order to no longer be considered consistently underperforming, rendering additional exit criteria for this set of schools unnecessary.

**Recommendation:**

- 1) *Require states to base their definition of consistent underperformance for any group of students on their goals and progress targets (see page 5).*
- 2) *Strike the requirement that LEAs set exit criteria for Targeted Support and Improvement schools in §200.22(e). Maintain the requirement in §200.22(e)(1) that LEAs have to determine whether these schools have successfully implemented their improvement plans based on whether or not they are still consistently underperforming for one or more groups of students.*

5. **Require Targeted Support and Improvement schools to work on improving outcomes for the group(s) of students identified as “consistently underperforming,” instead of focusing on just the lowest performing students in the improvement plan - §200.22(c)(2)**

The proposed regulations require that the improvement plan for Targeted Support and Improvement schools be “designed to improve student performance for the lowest-performing students on each of the indicators” that led to identification. This requirement does not address the reason for these schools’ identification. Targeted Support and Improvement schools are identified as such because they are consistently underperforming for one or more student groups. We urge the Administration to ensure that these schools and their LEAs design and implement plans to improve achievement for the group(s) of students for which the schools were identified.

**Recommendation: Revise §200.22(c)(2) as follows:**

*(2) Is designed to improve student performance for the lowest performing students on each of the indicators under §200.14 that led to the identification of the school for targeted support and improvement subgroup or subgroups for which the school is consistently underperforming, or, in the case of schools implementing targeted support and improvement plans consistent with §200.15(b)(2)(iii), to improve student participation in the assessments required under §1111(b)(2)(B)(v)(I) of the Act;*

6. **Clarify whether schools that do not meet exit criteria after the initial award period can receive additional school improvement funding - §200.24(c)(2)(iii)**

Currently, the proposed regulations state that funding awards are “not to exceed four years, which may include a planning year.” However, the regulations do not specify what occurs after the award period expires if the school has not met the defined exit criteria. The proposed regulations include requirements for an escalation of interventions beyond the initial four-year period, so they need to clarify what resources will be available to fund those interventions.

***Recommendation:*** Clarify school improvement funding mechanisms for schools that continue to require intervention beyond the initial four-year award. The regulations should be explicit as to how the funding will change in the event of escalation of interventions beyond the initial four-year period.

### **State and Local Educational Agency Report Cards**

Information on how all groups of students are performing academically, and whether all groups of students have access to key resources for learning, is a critically important tool. It helps parents make important decisions for their children and work with the community to spark necessary improvements in schools.

The Every Student Succeeds Act requires public reporting of powerful new indicators and emphasizes the importance of clarity and utility of this reporting. The proposed rules advance these objectives in several ways, but there are also changes that should be made to maximize the potential of state and LEA report cards.

***We support the following provisions and believe they should remain in the final regulations:***

- 1. For both state and LEA report cards, require an “overview section” - §200.30(b)(2) and §200.31(b)(2)**

The Every Student Succeeds Act increases the types and amount of data required to be reported. These changes represent a unique opportunity for greater transparency, but also a real risk that the most critical information will be lost in a deluge of data. Requiring a clear overview section on the state report card with statewide data, disaggregated by student group, for all of the indicators in the accountability system will ensure this information on student achievement is the primary focus. Likewise, on the LEA report card, providing information up front about a school’s summative rating and whether the school is identified as needing comprehensive or targeted support and improvement will better equip the community to advocate for needed improvements.

- 2. The requirement for “a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil” - §200.35(c)**

Recent attempts to collect school-level expenditure data have highlighted the need for uniform procedures within a state to ensure that these data are meaningful and comparable across schools and LEAs. School-level expenditure data collected under both the American Recovery and Reinvestment Act and the Civil Rights Data Collection requirements vary greatly in quality and

comprehensiveness. In many states, LEAs are reporting vastly different school-level expenditure data — a result of differences in accounting practices, rather than actual resources available to schools. This lack of comparability undermines the usefulness of the data and shows the need for this requirement in regulation.

**3. Define high-poverty and low-poverty schools for the purposes of disaggregating the professional qualification of educators in the State - §200.37(b)(1)**

By defining “high-poverty schools” as schools in the “top quartile of poverty in the State” and “low-poverty schools” as schools in the “bottom quartile of poverty in the State,” the proposed rules will ensure consistent reporting across LEAs. It will also reduce the ability of states and LEAs to select and report data that portray them in the best possible light, even at the cost of concealing disparities.

*There are three provisions that should be revised:*

**1. Details regarding the specific costs that do and do not need to be included in school-level, per-pupil expenditures - §200.35(c)(1)**

We support the Administration’s efforts to clarify which costs should and should not be included in per-pupil current expenditure reporting [§200.35(c)(1)(i) and §200.35(c)(1)(ii), respectively]. We are concerned, however, that some of the specific costs listed in §200.35(c)(1)(i) could lead to an inaccurate picture of the resources available to schools. Specifically, the inclusion of transportation expenditures could make it look like schools in sparsely populated areas have higher per-pupil expenditures than they actually do. Moreover, including building maintenance costs could also skew the expenditure data, particularly for older buildings and under-enrolled buildings. These costs should be excluded. Funds used for instructional materials and technology should be explicitly included.

At the same time, however, these costs should be included in LEA-level reporting of per-pupil expenditures. As such, we recommend the following revisions to ensure that LEA reporting is as comprehensive as possible, and that building-level reporting provides as accurate a picture as possible of the resources available to schools.

**Recommendation:**

- 1) Revise §200.35(c)(1)(i)-(iii) as follows, and re-number accordingly:

(i) At the LEA level, including, but not limited to, expenditures for administration, instruction, instructional support, instructional materials and technology, student support services, pupil transportation services, operation and maintenance of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities;

(ii) At the school level, including, but not limited to, expenditures for administration, instruction, instructional support, instructional materials and technology, student support services, operation of plant, fixed charges, and preschool, and net expenditures to cover deficits for food services and student body activities; and

(iii) Not including, at the LEA or the school level, expenditures for community services, capital outlay, and debt service.

- 2) In §200.35(b)(2) replace "that were not allocated to public schools" with "that were not included in school-level, per-pupil expenditure calculations for public schools."

**2. The inclusion of data for each authorized public chartering agency in the State – §200.30(a)(2)(ii)**

While transparency around which students attend charter schools and how those schools are performing is important, the requirement to include data comparing a charter schools' demographic makeup and achievement with its surrounding LEA or geographic community on state report cards is problematic. In states with many charter schools and multiple authorizers, these data have the potential to overwhelm state report cards and obscure other required, and critical, information. Moreover, states have vastly different laws governing charter schools and chartering agencies, and it may not always be easy or straightforward to define a "geographic community" for a charter that draws students from multiple LEAs. States will need additional guidance on how to address such situations.

**Recommendation:** Strike §200.30(a)(2)(ii). Require reporting of information referenced in §200.30(a)(2)(ii) on state websites, but not as part of state report cards. Provide guidance on how to identify geographic communities for charters drawing from multiple LEAs.

**3. The definition of the term "inexperienced" as it relates to the professional qualifications of educators in the State - §200.37(b)(2)**

The draft regulations require each state to adopt a "statewide definition of the term 'inexperienced.'" However, already states report teacher experience levels in vastly different ways: Some focus on average years of experience, others on teachers in their first half decade, and others on the most novice teachers in their first year. Without clear expectations for how to define

"inexperienced," states could choose widely varying definitions, some of which could obscure inequities instead of highlighting them.

We recommend defining in regulation "inexperienced" as "in the profession for the first year." While some first-year teachers and leaders are good from the start, most will improve substantially with experience. The first year on the job is incredibly challenging, and states and LEAs that concentrate their novice educators in their highest need schools should have to address these disparities.

**Recommendation:** Strike §200.37(b)(2) and replace with:

(2) "Inexperienced" means "in the profession for the first year"

(3) Each State must adopt, and the State and each LEA in the State must use, a statewide definition of the phrase "not teaching in the subject or field for which the teacher is certified or licensed."

The proposed rules do not address one issue, which should be included in the final regulations:

1. Clarify timelines for including on report cards the data currently reported to the Civil Rights Data Collection (CRDC).

The law requires that states and LEAs report several pieces of data that they have submitted to the CRDC on report cards. The required indicators include "rates of in-school suspensions, out-of-school suspensions, expulsions, school-related arrests, referrals to law enforcement..."

[§1111(h)(1)(C)(viii)] and several other elements. Because the CRDC data collection does not take place annually, we recommend the final regulations clarify the timelines for reporting these indicators on state and local report cards.

**Recommendation:** Clarify that states and LEAs can either a) report the required CRDC indicators the same year they submit data to the Office of Civil Rights and report the most recently submitted data in years when the collection is not taking place, or b) update the reported indicators each year, including in years the data are not submitted to the CRDC.

### Teacher Equity

Research confirms that teacher effectiveness is the most important in-school factor influencing student achievement; it also shows that low-income students and students of color have less access to strong teachers than their more affluent and white peers. The Every Student Succeeds Act provides several key levers to increase equitable access to strong teachers. The proposed regulations clarify and strengthen these requirements. At the same time, there are several elements of the regulations that could be made stronger or clearer.

**We support the following provisions and believe they should remain in the final regulations:**



**1. Require state plans to include timelines and funding sources for strategies to address inequitable access to strong teachers - §299.18(c)(6)(ii)**

The proposed regulations make it clear that to meet the law's requirements, states must go beyond identifying gaps; state plans must include timelines and funding sources for strategies to address inequitable access to strong teachers.

**2. Identify specific policy levers that states can use to push LEAs to act to address inequities - §299.18(c)(7)**

The proposed regulations highlight specific policy levers that states can use to push LEAs to act to address inequities: SEAs being able to direct LEAs to use Title II funds to address disparities or denying LEA applications for those funds if the LEA fails to describe how it will address disparities. Clearly identifying these policy levers provides states with important tools for helping translate good intentions into concrete action.

**3. Push for meaningful definitions of teacher quality indicators - §299.18(c)(2) and §200.37(b)(2)**

Calculations are only as good as the definitions on which they're based. The proposed regulations do several things to try to ensure meaningful definitions of ineffective, out-of-field, and inexperienced teachers. Each term must each use distinct criteria in their definitions so they provide different information. These definitions must be statewide, which is critical for ensuring meaningful comparisons across LEAs, particularly for the term "effectiveness," which may be based on evaluation systems that vary somewhat by LEA. We also support the requirement that states publish the percentage of teachers categorized in each effectiveness level in each LEA [§299.18(c)(4)]. These guardrails are important for helping ensure that states use meaningful definitions of the terms the law requires.

***There are three provisions that should be revised:***

**1. Set parameters for monitoring progress – §299.18(c)(6)**

§1111(g)(1)(B) of the Every Student Succeeds Act requires states to monitor progress toward eliminating disparities in assignment to inexperienced, out-of-field, and ineffective teachers for low-income students and students of color. Unfortunately, in the recent state teacher equity plans, many states call for monitoring that is disconnected from this goal. Instead of measuring progress toward the goal, states plan to measure progress toward implementing specific strategies, regardless of whether those strategies are actually effective. Some plans call for monitoring the distribution of teachers, but only commit to "improvement" without any indication of if and when the states expect to actually reach the full requirement. Without concrete targets for the rate at which states should expect progress on reducing disparities in access to strong teachers, states will

***Recommendation: Insert the following after §299.18(c)(6)(ii):***

***(iii) Describe concrete timelines and numeric progress targets for eliminating disproportionate assignment of low-income and minority students to inexperienced, out-of-field, and ineffective teachers.***

have nothing to measure their progress against or be able to identify when they need to revise their strategies in order to close gaps.

**2. Ensure that the analysis of statewide disparities is meaningful - §299.18(c)(3)(i)**

As the proposed regulations note, gaps in access to strong teachers are driven by three kinds of disparities: differences in staffing between LEAs, differences between schools (e.g., a higher concentration of brand new teachers in high-poverty schools than in wealthier schools), and differences in teacher assignment within schools. The last analysis has not been given nearly as much attention as it should, and we applaud the proposed regulations for bringing it to light.

By attempting to address both between-school and within-school inequities through a single calculation, however, the proposed analysis aimed at identifying statewide disparities [§299.18(c)(3)(i)] winds up addressing neither. The proposed regulations ask states to compare the rates at which low-income students and students of color are taught by ineffective, out-of-field, and inexperienced teachers in Title I schools with the rates at which higher income students and white students are taught by such teachers in non-Title I schools, respectively. Because it will be impossible to determine whether any identified disparities are the result of between school or within-school staffing issues, the results of the proposed required analysis will be both confusing and not actionable. In addition, given the requirement that the State report card include rates of professional qualifications in high-poverty and low-poverty schools, reporting data in different ways in different places may lead to further confusion.

We recommend requiring all states to analyze disparities in teacher quality in a way consistent with the requirements for public reporting: Comparing percentages of inexperienced, ineffective, and out-of-field teachers in the quartiles of schools serving the most versus the fewest low-income students and students of color. Then, we further recommend clarifying the proposed regulations around root cause analysis, which should be done in two steps: First, analyze the level or levels (staffing differences between LEAs, between schools within LEAs, or within schools) that contribute to the statewide disparity, and then examine the causes of the disparity at each level with gaps.

Given the importance of understanding within-school disparities in student assignment to teachers, we recommend providing guidance on how states, LEAs, and schools could look at their data to better understand this issue. For example, how should LEAs handle situations where a student has multiple teachers?

**Recommendation:**

1. Strike §299.18(c)(3)(i) and replace with:

(i) Each SEA must annually calculate and report, such as through a State report card, statewide rates at which —

(A) Students enrolled in high-poverty schools [as defined in §200.37(b)(1)] are taught by —

- (1) Ineffective teachers,
- (2) Out-of-field teachers, and
- (3) Inexperienced teachers; and

(B) Students enrolled in low-poverty schools [as defined in §200.37(b)(1)] are taught by —

- (1) Ineffective teachers,
- (2) Out-of-field teachers, and
- (3) Inexperienced teachers; and

(C) Students enrolled in high-minority schools (meaning schools in the top quartile of minority enrollment) are taught by —

- (1) Ineffective teachers,
- (2) Out-of-field teachers, and
- (3) Inexperienced teachers; and

(D) Students enrolled in low-minority schools (meaning schools in the bottom quartile of minority enrollment) are taught by —

- (1) Ineffective teachers,
- (2) Out-of-field teachers, and
- (3) Inexperienced teachers.

2. Strike §299.18(c)(6)(i), replace with the following, and re-number accordingly:

- (i) Disaggregate disproportionality data to determine the level at which inequities occur (e.g., between LEAs, between schools within LEAs, and within schools); and
- (ii) Describe the root cause analysis that identifies the factor or factors causing or contributing to the disproportionate rates demonstrated under paragraph (c)(1) of this section as informed by the level-specific disproportionalities identified under paragraph (c)(6)(i) of this section.

3. Provide guidance on how states, LEAs and schools can assess disparities in within-school student assignment to teachers.

**3. Clarify definitions of teacher quality indicators in educator equity requirements – §299.18(c)(2)**

Just as we recommend for state report cards (see page 15), we recommend defining “inexperienced” as “in the profession for the first year” for the purpose of the educator equity section.

In addition, we recommend clarifying the specific paragraphs within §200.37 that contain definitions for each of the indicators in §299.18.

**Recommendation:**

**1. Strike §200.37(b)(2) and replace with:**

*(2) “Inexperienced” means “in the profession for the first year”*

*(3) Each State must adopt, and the State and each LEA in the State must use, a statewide definition of the phrase “not teaching in the subject or field for which the teacher is certified or licensed.”*

**2. Revise §299.18(c)(2)(ii) and (iii) as follows:**

*(ii) A statewide definition of “out-of-field” teacher consistent with ~~§200.37~~ §200.37(b)(3);*

*(iii) A statewide definition of “inexperienced teacher” consistent with ~~§200.37~~ §200.37(b)(2);*

**3. Revise §299.18(c)(4)(iii) and (iv) as follows:**

*(iii) The percentage of teachers categorized as out-of-field teachers consistent with ~~§200.37~~ §200.37(b)(3); and*

*(iv) The percentage of teachers categorized as inexperienced teachers consistent with ~~§200.37~~ §200.37(b)(2).*