



Arkansas Department of Education

Transforming Arkansas to lead the nation in student-focused education

July 29, 2016

Johnny Key
Commissioner

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

**State Board
of Education**

Mireya Reith
Fayetteville
Chair

Re: Notice of Proposed Rulemaking Regarding the Every Student Succeeds Act
Accountability and State Plan Provisions

Dr. Jay Barth
Little Rock
Vice Chair

Dear Secretary King:

Joe Black
Newport

The Arkansas Department of Education appreciates the rulemaking process which allows states to reflect on the clarifications provided in the United States Department of Education's (USDE) Notice of Proposed Rulemaking (NPRM) for the Elementary and Secondary Education Act (ESEA) of 1965, as Amended by the Every Student Succeeds Act (ESSA), on accountability and state plans and submit comments in response to the proposed regulations.

Susan Chambers
Bella Vista

Charisse Dean
Little Rock

Dr. Fitz Hill
Little Rock

Arkansas believes that ESSA allows opportunities to reassess the effectiveness of existing comprehensive standards, assessment and accountability systems. We believe the ESEA, as amended by ESSA, allows us to continue to work hand-in-hand with educational stakeholders to assess Arkansas' needs based on previous experiences as well as our work toward achieving our Strategic Vision. Although Arkansas has a constitutional standard of ensuring an adequate, equitable and efficient education for all students, we are not content with educational adequacy and are striving for educational excellence and equity for ALL students. We are working closely with innovative districts, schools and communities in order to implement an education system tailored to the interests and needs of each and every student. With the implementation of ESSA we will remain committed to our Vision of leading the nation in student-focused education. We believe that this vision will ensure all Arkansas students are prepared for college, career and community engagement. As we strive to develop and maintain a comprehensive accountability system, we want to ensure that there are no accountability requirements that impede the progress toward meeting the needs of each child. It is through that lens that we offer the following comments, and supporting data where applicable, to provide context for our comments.

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Goals for Progress in Achieving English Language Proficiency

Section (c) of proposed regulation 200.13 requires that the English language proficiency measure must set expectations that each English Learner (EL) will make annual progress toward attaining English proficiency within a period of time. The statutory provisions of ESSA require the measurement of progress in achieving English

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language proficiency to be defined by the state. The proposed regulations inquire as to whether it would benefit states to include regulations for a required maximum state-determined timeline for achieving English language proficiency. This proposed maximum timeline would create constraints which may indirectly or directly limit the state's flexibility to consider fully the best options for incentivizing English language acquisition from a student-focused perspective.

Recommendation: We believe that proposed regulations in 200.13 should not include a requirement for states to determine a maximum timeline for English language acquisition. States should have flexibility to define progress toward proficiency and attainment as intended by the statute.

Timeline for New Accountability Systems

(Section 200.19(d); Section 200.21(a). Clarification of the timelines, as proposed in the NPRM Sections 20.19(d) and 20.21(a), raises several concerns for us and for Arkansas education stakeholders. The language regarding the effective dates for revised accountability systems is unclear as put forth in ESSA. We appreciate USDE's efforts to clarify the effective dates for specific components of the law. However, the proposed timelines stated in the regulations are problematic. The requirement to identify schools for comprehensive support and improvement by 2017-2018 using data from 2016-2017 appears to be inconsistent with the intent of ESSA which states effective dates for the accountability system as 2017-2018. The reasons for our concerns are summarized below.

Transparency is an important tenet in effective accountability systems. Identification of schools using 2016-2017 data would hinder our efforts to be transparent in establishing a responsive accountability system under ESSA. First, the inclusion of several newly required indicators—progress of English Learners in acquiring English and school quality/student success indicators—necessitates a significant process for stakeholder input. This process includes research, evidence-informed stakeholder engagement and synthesis. Given that the lowest performing 5% of schools will be identified using new school rating systems, the proposed timing appears to undermine the stated intent of ESSA to ensure stakeholder engagement in the process of designing our plan, at least to the rich and evidence-based extent that we envision. Second, identifying the lowest performing 5% of schools for comprehensive support by the start of the 2017-2018 school year and based on data from 2016-2017 prevents us from providing transparency in the indicators and metrics for which schools will be accountable. We intend to submit our state plan for approval in the July 5 window. The Arkansas submission may not receive approval prior to the proposed time for the identification of schools. Schools would be held accountable within a blind system until approval is secured. We believe this incongruence in timing in the proposed regulations does not reflect the intent of ESSA to provide states with adequate time for transition to new accountability systems that reflect significant changes in how states will define the lowest performing 5% of schools as well as how states will meaningfully differentiate among schools. Certainly, our vision of equity and excellence for students must be modeled in how we establish and hold schools accountable. The proposed timeline makes it impossible to give due diligence to stakeholders in the design process and the students that are served in our public systems.

Recommendation: Use data from the 2017-2018 year to identify schools for comprehensive support and improvement in 2018-2019 year. This is consistent with the intent of ESSA which states the effective date for the accountability system is 2017-2018.

Identification of Schools for Targeted Improvement

Proposed regulation Section 200.19 provides language to clarify the identification of schools as per Section 1111(c)(4)(D) of ESEA, as amended by ESSA. This section of the statute requires states to

create a methodology based on the system of annual meaningful differentiation. The language in the proposed regulations removes states' flexibility in designing a system to respond to the unique context of its student population. Applying the definitions for low-performing subgroups proposed in the regulation, Arkansas would have a five-fold increase in the number of schools for targeted support and improvement as compared to 10% of schools that were identified as focus schools under ESEA flexibility waivers. Approximately 400 additional schools would be identified as targeted support and improvement schools using the proposed definition. Such a number would be well beyond our agency's capacity to support.

States differ in subgroup demographics, the levels of variation in school poverty and other educational risk factors, and the challenges associated with factors related to reducing achievement gaps. A single definition for low-performing subgroups conflicts with the intent of ESSA to allow states to formulate context-relevant solutions to address achievement gaps among underserved students. The regulations would result in identification that exceeds the capacity of state and local education agencies to provide quality supports to schools, and is reminiscent of the one-size-fits-all targets and consequences of No Child Left Behind (NCLB).

Recommendation: Reverse the recommendation and allow states to determine solutions that respond to the unique context of its student population while focusing on equity and achievement for all students.

Performance Levels and Summative Ratings

Section 200.18 of the proposed regulations would require states to identify a minimum of three distinct performance levels on all indicators, rather than just the academic achievement indicator as specified on page 18 of ESEA, as amended by ESSA. This requirement removes the flexibility for states to design systems that meaningfully differentiate among schools. States need the flexibility to consider a variety of options for how indicators are reported, as well as how they are combined and weighted to provide a single summative rating that signals meaningfully different judgments about schools. Rather than requiring reporting on three performance levels, states should be given the flexibility to use more creative and meaningful representations of how students have performed on an indicator and how that performance impacted the overall summative rating of the school.

Recommendation: Allow each state to develop a system that complies with statutory provisions requiring clear distinctions among schools on indicators and in the summative rating.

School Quality or Student Success Indicator

Section 200.14(b)(5) of the proposed regulations would require the School Quality or Student Success indicators to be disaggregated for each subgroup of students. This requirement is particularly constraining for School Quality indicators and as such should be removed. ESSA provides states with the flexibility to select one or more School Quality or Student Success indicators and provides sufficient clarity as to the specifications for these indicators. The criteria of valid, reliable, comparable and statewide School Quality/Student Success indicators are sufficient when coupled with the weighting requirements already specified in ESSA. To disaggregate these indicators to the subgroup level would make many of the metrics unstable at the school level, particularly in small rural schools in our state. This is counterproductive to the intent of including a School Quality indicator in particular, which by its very nature should be indicative of school level characteristics which are associated with improved academic achievement.

Recommendation: Allow states to build their own transparent meaningful system that complies with statutory provisions.

Resources to Support Continued Improvement

Section 200.24. The statutory language of ESSA allows states to determine how to administer the 7% set aside for school improvement activities and to have a system that makes a determination between eligible entities if resources are not sufficient to cover all requests. However, the proposed regulations require that a State Educational Agency (SEA) allocate a minimum of \$500,000 per year to each school identified for comprehensive support and \$50,000 per year to schools identified with targeted support. This minimum provides no differentiation based on the size or circumstances of each school. Under the proposal, a 200-person elementary school with one persistently underperforming subgroup could see the same minimum allocation as a 1,200-person high school which is failing to make sufficient progress on multiple metrics. This minimum leads to less per-pupil funding available for some schools than for others, and disproportionately favors small schools over large ones. Furthermore, that minimum amount may be far more than is necessary for some schools, leading to a surplus of funds there, while other schools may struggle to find ways to fund their improvement plans.

In Arkansas, the 7% school improvement set-aside would be insufficient to allocate the minimum amounts to each school identified for comprehensive and targeted support.

Final regulations should not provide a minimum allocation for schools in improvement, but instead should require SEA's to take into account a school's size, socioeconomic makeup, current state and local funding, and need in determining the amount of their allocations.

Recommendation: That the USDE reverse its recommendation to establish a minimum amount of funds per comprehensive/targeted support schools, and instead, allow Arkansas the flexibility to determine the most equitable method to disburse school improvement funds taking into account average daily membership, socioeconomic makeup, and needs of schools.

Report Card Requirements

Sections 200.30, 200.31, 200.32, 200.34, 200.35, 200.36, 200.37. Each SEA and Local Education Agency (LEA) are statutorily required to produce and disseminate a report card, containing information as a whole and detailed for each school in the LEA. There are additional requirements for reporting the progress of all students and subgroups of students on indicators as compared to targeted progress. Also, the report cards are required to include new information for subgroups including homeless students, students in foster care and students who are military dependents. Each state and LEA report card must include the number and name of each school identified for comprehensive and targeted support and improvement including the reason for identification. Additionally, each LEA report must include a performance level on each accountability indicator, results on each individual measure within each indicator and a summative rating. Other new requirements are post-secondary enrollment and post-secondary enrollment cohort.

All of these requirements seem contradictory to the statutory requirement that the state report card be concise and presented in an understandable and uniform format that is developed in consultation with parents. Additionally the timeline for the report card has been moved forward from late spring to December 31. To meet this deadline, numerous data cycles will need to be adjusted, if possible, to accommodate the proposed earlier reporting date. All of these will add a burden to state data collection and reporting.

Recommendation: We recommend that the final regulations include clarifications, rather than new requirements, to enable states to operationalize the statutory requirements. This would preserve the flexibility states will need to meet new statutory reporting requirements.

Thank you for the opportunity to comment on these proposed rules. We hope that USDE will refrain from writing rules and regulations that are more restrictive than the ESSA act itself and that would prohibit Arkansas from being innovative in our approach to excellence in education for all students.

Sincerely,

A handwritten signature in blue ink that reads "Johnny Key". The signature is written in a cursive, flowing style.

Johnny Key
Arkansas Commissioner of Education