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July 29, 2016

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

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

The Maryland State Department of Education (CDE) submits the following comments on the Department of Education's (Department) Notice of Proposed Rulemaking (NPRM) on accountability and State plans under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA), Docket ID ED-2016-OESE-0032, published on May 31, 2016. The State of Maryland has a reputation for excellence in education and a long history of systems of accountability for school and student performance. Maryland's mission is to provide every student with a world-class education that ensures readiness for college and careers.

Overall, the proposed regulations appear to strike an appropriate balance between providing states and local school systems with the flexibility needed to implement ESSA in a manner that recognizes individual state and local circumstances, while providing guardrails to ensure the law leads to a better education for all students. While we commend the overall approach taken in the regulations, and many of the individual provisions, there are a few provisions that we believe need to be revised before the regulations are finalized. We request the Department give serious consideration to the issues described below.

1. Timeline for Implementation of New Accountability Systems

The proposed regulation requires states to make their initial identification of schools for support and improvement before the beginning of the 2017-18 school year using data from the 2016-2017 school year, which could be averaged with earlier data. This means Maryland would be identifying schools for improvement using an old accountability system, rather than the new accountability system we are currently developing that embraces the flexibility provided by ESSA and fully considers the valuable input being received from stakeholders through the considerable consultation requirements of ESSA. Maryland is making every attempt to submit its ESSA application by the first deadline of March 6, 2017. Considering the 120-day turnaround for approval of our state ESSA plan, we may not receive approval until the beginning

of July 2017. In order to take full advantage of the flexibility provided in ESSA, our new accountability system may include data points that we do not currently collect from our LEAs. Those data collection systems would need to be put in place during the 2017-2018 school year. Therefore, we would be unable to identify schools for improvement using our new ESSA accountability system until late summer following the 2017-2018 school year (before the beginning of the 2018-19 school year).

We understand the urgency of supporting schools that are most in need of improvement, as many of the schools states are serving had been identified using data that has become outdated. However, Maryland recently identified a new list of priority and focus schools for the 2016-2017 school year given the flexibility provided by the Department to ESEA Flex States in ESEA Renewal. To identify another list of schools for comprehensive support and improvement for school year 2017-2018 that is not based upon the new accountability system, and then a third list of schools for comprehensive support and improvement for the 2018-2019 school year using the new accountability system does not seem reasonable and would cause tremendous confusion in our school communities.

We recommend the Department permit states the option to delay identifying new schools for comprehensive support and improvement until the beginning of the 2018-19 school year, and to continue their improvement efforts in currently identified schools until that time.

2. Timing of Cohort Graduation Rate Data

Related to the request to delay the identification of schools for comprehensive support and improvement is a request to add clarifying language that permits states to utilize “lagged” cohort graduation rates for the identification of high schools with graduation rates less than 67 percent. Maryland counts as graduates for a particular cohort, those students who completed their high school graduation requirements during the summer immediately following their senior year. There is not sufficient time for MSDE to receive this data from local school systems and verify its accuracy prior to the beginning of the next school year. Therefore we are unable to identify high schools with cohort graduation rates less than 67 percent for the immediate preceding year. While the regulations permit an averaging, they do not specifically provide for the use of “lagged” data.

We recommend the Department include specific language in the regulations permitting states to use “lagged” cohort graduation rates to identify, for comprehensive support and improvement, high schools with graduation rates less than 67 percent.

3. Four-Year Cohort Graduation Rate for Identification of Low-Performing Schools

As noted above, ESSA requires that SEAs identify, for comprehensive support and improvement, any public high school that graduates less than 67 percent of its students. While the law does not specify a particular methodology to be used in calculating graduation rates for

school identification, the proposed regulations would require that all states use the four-year adjusted cohort rate.

This proposed requirement would disproportionately impact high schools set up specifically to enroll certain at-risk student populations including returning dropouts, adjudicated youth, and other groups who, by their nature, need additional time to finish school. Under the proposal, all of these schools would likely fall into comprehensive improvement status, not because of their educational performance but because of the student populations they serve.

The Department recognized the need for flexibility in this area when, under the 2008 Title I regulations, it allowed states to use both the four-year adjusted cohort rate and an extended-year adjusted cohort rate in their accountability systems. Congress implicitly endorsed that decision in ESSA by permitting states to use both rates in their long-term goals, interim measures of progress, and annual indicators.

We recommend that states be allowed to use both the four-year adjusted cohort rate and an extended-year adjusted cohort rate in their identification of schools for Comprehensive Support and Improvement.

4. Disaggregation of School Quality Indicators

Section 1111(c) of ESSA requires state accountability systems to include at least one “indicator of school quality or student success...” One specific measure that may be included is “student access to and completion of advanced coursework.” Section 200.14(b)(5)(i) of the proposed regulations also lists “student access to and completion of advanced coursework” as an indicator of school quality or student success. In consultation with Maryland education stakeholders, there seems to be an interest in including access to advanced coursework, as well as student access to other resources considered important for student success (such as the availability of school counselors, psychologists, a full array of course offerings in the arts, etc.) in the state’s accountability system. However, student access to various resources as a measure of school quality does not lend itself to disaggregation by student subgroup. These measures are associated with individual schools, but not necessarily with individual students.

We recommend that the Department permit states to include in their accountability systems important measures of school quality that cannot necessarily be disaggregated by student subgroup, such as student access to the resources considered necessary for student success.

5. Requirements for the Consolidated State Plan

While MSDE is generally supportive of the proposed regulations in the area of accountability, we have concerns with the proposed requirements for the consolidated state plan. ESSA clearly specifies that, in establishing requirements for the consolidated state plan, the Secretary may “require only descriptions, information, assurances..., and other information that are *absolutely necessary* for the consideration of the consolidated application.”

However, in the proposed regulations the Department has proposed adding numerous, burdensome requirements that seem to go well beyond what is absolutely necessary. Some examples of this include:

- Under proposed Section 299.14(c), the SEA would be required to describe its performance management system for “each component required” under Sections 299.16 through 299.19. Each of these descriptions must include six discrete elements. Because sections 299.16 through 299.19 include some 40 different components (individual requirements), it appears that the states would have to include 240 separate descriptions of their performance management systems, as well as additional performance information required under Sections 299.17(e) and 299.19(b). None of these descriptions is required under the statute.
- While the law requires SEAs to describe how low-income and minority children in Title I schools are not served at disproportionate rates by ineffective, out-of-field, and inexperienced teachers, and to describe how they will report on and evaluate the state’s progress in this area, the proposed regulations would go well beyond the statutory language, calling for new definitions and reporting timelines that are different from those included in the proposed annual report card requirements. Another aspect of the proposed regulations that goes beyond the statutory language includes the requirement to conduct “root cause analyses” of the disproportionality. We appreciate the Department’s desire to have states continue the progress they have made under their teacher equity plans, but building so much (sometimes confusing) detail into the regulations is unnecessary and overly prescriptive.
- Under section 299.19(a)(ii), the SEA’s description of how it will support a well-rounded and supportive education for all students would be required to include the state’s strategies (and the rationales for those strategies), timelines, and funding sources for providing equitable access to rigorous courses in 17 separate subject areas, as well as in other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented. There is no statutory requirement for this description of this plan in general, and much less so for a requirement to provide four types of information on at least 17 subjects.
- Under proposed section 299.19(a)(3), the plan would be required to include a review, *on an LEA-by-LEA basis*, of districts’ budgeting and resource allocations in four separate areas. There is no requirement to include a review in the statute.

We recommend that the Department take an approach consistent with Congressional intent allowing states to submit streamlined plans that capture essential, required elements, without adding planning requirements that go beyond what is called for in the statute.

The Maryland State Department of Education appreciates the opportunity to comment upon the proposed regulations. We urge the US Department of Education to give our recommendations serious consideration in promulgation of the final regulations.

Best Regards,

A handwritten signature in blue ink that reads "Karen B. Salmon, Ph.D." in a cursive style.

Karen B. Salmon, Ph.D.
State Superintendent of Schools