



JOY HOFMEISTER

STATE SUPERINTENDENT *of* PUBLIC INSTRUCTION  
OKLAHOMA STATE DEPARTMENT *of* EDUCATION

August 1, 2016

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:

On behalf of the Oklahoma State Department of Education (the "OSDE"), included herein are public comments on the United States Department of Education's (the "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").

Generally, it is well understood that the intent of Congress in enacting ESSA was to allow states to have flexibility in designing their plans and systems to implement the requirements pursuant thereto. The OSDE commends the Department for moving ahead expeditiously with the implementation of ESSA. The new law, if administered in a manner consistent with Congressional intent, will give states, school districts, and schools greater flexibility in implementing programs that meet their particular needs, while ensuring a strong focus on improving educational outcomes for students. We appreciate the Department's effort to ensure that regulations are promulgated in a timely manner in order to extend the benefits of the new law to families as quickly as possible. There are provisions of the proposed regulations that we support, as well as provisions that we believe need revision. Our comments are on the specific provisions that are most important to Oklahoma and its students. As such, we respectfully request the Department give serious consideration to the issues described below.

**I. Timeline for Implementation of New Accountability Systems**

ESSA provides that the revised accountability requirements of Title I "shall take effect beginning with the 2017-2018 school year." Many found this language unclear, because it does not specify when states would have to begin identifying new schools for support and improvement, and through the proposed regulations the Department appropriately sought to dispel this confusion. Unfortunately, the policy recommendations put forward in the proposed regulations will likely be unworkable in Oklahoma.

The proposed regulation would require Oklahoma to identify schools by the beginning of each school year. The initial identifications would be made before the beginning of the 2017-2018 school year and “data from the 2016-2017 school year [would] inform identification for the 2017-2018 school year.” However, **we will need time** to revise our new accountability system based on the new law, including the addition of new indicators of English language proficiency and school quality or student success, agreement on indicator weights and establishment of criteria and procedures for school identification. This effort will need to be carried out in close collaboration with the long list of stakeholder interests identified in the statute and regulations. Subsequently, we will need to collect the data needed for school identification, including data for indicators that might not yet exist. This process **will take substantial time** and effort, and require legislative or administrative actions. Stated otherwise, we will need the 2016-17 school year to design a new accountability system such that 2017-18 would be the first year of initial data collected under the new system, and 2018-19 the first year issuing accountability determinations under the new system (based on 17-18 data).

While we will make progress before the Department publishes the final regulations, it is certain that we would be working under **unreasonable time constraints** following publication of the final rules as we work to develop and submit Oklahoma’s state plan in March or July of 2017. Meanwhile, schools and districts would, under the proposed timeline, proceed through much of the 2016-2017 school year without having clear, final information on a state’s long-term goals, interim measures and annual indicators, which will limit their ability to align local programs and strategies with the goals, measures and strategies states will use to identify and improve underperforming schools under ESSA. Simply, **the proposed timeline is unworkable**.

Further, the Department has proposed that SEAs submit their consolidated state plans, which will include descriptions of their accountability systems, by March 6 or July 5, 2017. Assuming, for present purposes, that the Department uses the 120-day period provided in ESSA for review of state plans, a state that submits its plan in the second window will not receive the Department’s approval, or request for revision, of the plan until October. This seems likely given the length and complexity of the Department’s proposed requirements for those plans. Those states would thus have to identify schools, including placing some schools into at least a three-year cycle of continuous support and improvement, before knowing whether the Department has found their accountability systems meet the requirements within the law and regulations. While the proposed language allowing states to add indicators over time seeks to remedy this problem, at least one indicator in each of the five indicator categories would need to be in place at the time of the initial determinations.

A related concern is the timing for identification of high schools for comprehensive support and improvement and support based on their graduation rates. Under the statute, cohort graduation rates are calculated by including, in the numerator, 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. Because of the inclusion of the summer graduates, it will not be possible to calculate graduation rates for 2016-2017 until the end of summer 2017, the same time at which SEAs would be required to identify schools.



**Recommendation:**

We appreciate Secretary King’s recent comments that the Department is open to reconsidering timelines. In support of these comments, we recommend that the Department allow states to identify schools prior to the 2018-2019 school year under ESSA’s new accountability system, using data for 2017-2018 and prior years. This is consistent with ESSA and will allow for states to implement high-quality accountability systems in 2017-2018 and use these systems to effectively identify underperforming schools.

**II. Participation in Assessments – Proposed §200.15**

Proposed regulations, at Section 200.15(c), provide:

*To support the State in meeting the requirements of paragraph (a) of this section-- (1) A school that fails to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that-- (i) Is developed in partnership with stakeholders (including principals and other school leaders, teachers and parents); (ii) Includes one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years; (iii) Is approved by the LEA prior to implementation; and (iv) Is monitored, upon submission and implementation, by the LEA; and (2) An LEA with a significant number of schools that fail to assess at least 95 percent of all students or 95 percent of each subgroup of students must develop and implement an improvement plan that includes additional actions to support effective implementation of the school-level plans developed under paragraph (c)(1) and that is reviewed and approved by the State.*

**Recommendation:**

The OSDE respectfully requests that the Department reconsider the imposition of a penalty for failure to meet the ninety-five percent (95%) test participation mandate, given the frequency with which test participation can be below ninety-five percent (95%), particularly for one subgroup. Simply, the imposition of such a penalty for one instance of a subgroup failing to meet the mark, particularly considering the foreseeable occurrences of this occurring, is too prescriptive and harsh.

**III. High School Graduation Rate Used to Identify Schools for Comprehensive Support and Improvement – Proposed §200.19**

ESSA requires SEAs to identify, for comprehensive support and improvement, any public high school that fails to graduate one-third or more 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 student populations including adjudicated youth, returning dropouts and other groups that, by their nature, need additional time to finish school. This proposal would also affect schools that enroll significant numbers of students who are “under-credited” when they begin high 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. The Congress implicitly endorsed that decision in ESSA by permitting states to use both rates in their long-term goals, measures of interim measures of progress and annual indicators. Further, the proposed regulation also negatively impacts schools that serve students with disabilities who need longer than four years of high school to be adequately prepared for post-secondary life. The proposed rule is contradictory to the Individuals with Disabilities Education Act of 2004’s (IDEA) requirement that States must provide a free and appropriate public education to students with disabilities ages 3-21 (34 CFR 300.101). Schools are required to serve students with disabilities through age 21 based on the individual needs identified in their Individualized Education Program (IEP) yet are also required, under this rule, to ensure that those students graduate within four years.

Under the Department’s proposal, many if not all of these schools would be identified for comprehensive improvement (essentially given a label of failure, even if they are successful); forced to divert their resources from educating students to developing a new improvement plan; and then have to implement new interventions (even if what they are already doing is highly successful), all because of the demographics of their students or their educational missions rather than their performance. In addition, the proposed rule would disproportionately identify high schools when funds may be spent more effectively addressing the failure of elementary and middle schools to prepare students to succeed in high school. According to the Notice of Proposed Rulemaking (NPRM), the Department bases its proposal on an apparent need for uniformity (even though it would create inconsistency between the graduation rate measure a State uses for its long-term goals, interim measures of progress and annual indicators versus the measure used to identify schools) and a desire to “signal the importance of on-time graduation as a key determinant of school and student success” (as though “on-time” graduation, defined as graduation by age 17 or 18, is often not a meaningful concept for the populations these schools serve). This proposed requirement instead works at cross purposes to the intent of the statute: Using the four-year adjusted cohort graduation rate as the sole trigger for identifying high schools for comprehensive interventions would systematically misallocate scarce intervention resources.

The Department’s proposal would be harmful to the missions of many successful high schools, both charter and non-charter. State departments of education should have the ability to look deeper into the specifics of a school’s graduation performance in order to better target scarce intervention resources to those high schools that actually require intervention, and not to those schools that simply serve populations such as credit-deficient students who became credit-deficient at a different school. The four-year adjusted cohort graduation rate is not fine-tuned enough for this purpose, which is why the statute permits a state to use an extended rate for its long-term goals, interim measures of progress and annual indicators.



**Recommendation:**

We strongly recommend that the Department grant states as much flexibility as permitted in the statute, which does not define the rate to be used, since even using extended-year rates might systematically penalize dropout recovery programs that serve over-age students. If there must be parameters on the definition in the final rule, we urge that, at minimum, it permit States to use the four-year adjusted cohort rate or an extended-year rate, or a combination of both.

**IV. Procedures for Annual Meaningful Differentiation and Identification – Proposed §200.20**

Section 200.20 of the ESSA Regulations states:

*“In calculating school performance on each of the indicators for the purposes of annual meaningful differentiation under §200.18 and identification of schools under §200.19, a State must include all students who were enrolled in the same school within an LEA for at least half of the academic year. A State may not use the performance of a student who has been enrolled in the same school within an LEA for less than half of the academic year in its system of annual meaningful differentiation and identification of schools...”*

Section 1111(c)(4)(F) of ESSA states:

*(F) PARTIAL ATTENDANCE. – (i) In the case of a student who has not attended the same school within a local educational agency for at least half of a school year, the performance of such student on the indicators described in clauses (i), (ii), (iv), and (v) of subparagraph (B) – “(I) may not be used in the system of meaningful differentiation of all public schools as described in subparagraph (C) for such school year; and “(II) shall be used for the purpose of reporting on the State and local educational agency report cards under subsection (h) for such school year.”*

The statute appears to give State and local educational agencies the ability to determine the minimum percentage of attendance required for students whose performance shall be used in the system of meaningful differentiation of all public schools. However, the regulations limit that ability by stating “the performance of any student enrolled for at least half of the school year must be included on each indicator of the accountability system...”

**Recommendation:**

Oklahoma defines Full Academic Year (FAY) status as a student enrolled within the first twenty (20) instructional days of the school year without a lapse of ten (10) consecutive instructional days through the remainder of the school year. As such, we believe that Oklahoma’s methodology for defining the students who are included in the accountability system indicators more accurately captures school performance than that which would be required by proposed Section 200.20.

## V. Comprehensive Support and Improvement – Proposed §§200.21-200.23

The regulations should clarify that states and districts can implement comprehensive improvement efforts that address not only a school in need of comprehensive support and improvement but also the schools that feed students into that school. For example, a middle school identified for comprehensive support and improvement should be able to partner with the local educational agency (LEA) or state educational agency (SEA) to also address needs of the elementary school or schools that have been identified for targeted improvement and that feed into the middle school so that turnaround efforts can be sustained over a longer period of time. Labels should not constrain improvement efforts or the use of Sec. 1003(b) funds.

### **Recommendation:**

Specifically, we recommend the addition of the following language to the proposed regulations:

In section 200.21(d), renumber paragraphs (5) through (7) as (6) through (8), respectively, and insert a new paragraph (5) reading as follows:

**“(5) if the school is a high school or middle school, may address the needs of schools that feed students into that school, notwithstanding whether those ‘feeder schools’ are identified for comprehensive support and improvement;”**

In section 200.22(c), renumber paragraphs (5) through (8) as (6) through (9), respectively, and insert a new paragraph (5) reading:

**“(5) if the school is a middle or high school, may address the needs of schools that feed students into that school, notwithstanding whether those ‘feeder schools’ are identified for comprehensive support and improvement;”**

## VI. Funding to LEAs for School Improvement – Proposed §200.24

ESSA requires states to utilize the Title I reservation for school improvement to provide funding to eligible LEAs and ensure that “allotments are of sufficient size to enable a local educational agency to effectively implement selected strategies.” The proposed regulation would define these allotments as at least \$500,000 for Comprehensive Support and Improvement schools and \$50,000 for Targeted Support and Improvement schools, unless a district agrees to accept less funding. Assuming that Oklahoma’s allocation increases to approximately seven million dollars (\$10,000,000) based on the set-aside of seven percent (7%) and continues to designate five percent (5%) of schools for school improvement, at \$500,000 per school, we would only be able to fund approximately twenty (20) schools. By way of comparison, Oklahoma currently designates approximately 625 schools for school improvement.<sup>1</sup> Stated otherwise, under the proposed regulations, Oklahoma would only be able to fund *less* than five percent (5%) of schools designated for comprehensive improvement at the level the Department would require.

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<sup>1</sup> More particularly, the 625 schools are comprised of 260 Priority, 362 Focus, and 3 Targeted Intervention.



**Recommendation:**

The OSDE recommends that the Department strike provisions related to minimum dollar amounts for school improvement awards and allow states to determine the financial needs of identified schools to implement necessary interventions and the appropriate distribution of funding among identified schools within the state.

**VII. Defining Military-Connected Students – Proposed §§200.30-200.33**

*Branches of Service and Active Duty*

Section 200.30(f)(1)(iv) defines the “Armed Forces” as the Army, Navy, Air Force, Marine Corps and Coast Guard, and it defines “active duty” as full-time duty in active service in one of these branches. Although these definitions will help us identify students whose family life and education history have been or may be affected by a parent’s military service, we believe they exclude students who face similar circumstances due to a parent’s service in activated National Guard or Reserve units.

The Military Interstate Children’s Compact Commission, to which all 50 states and the District of Columbia have signed on, defines active duty more broadly as “full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Section 1209 and 1211.”

**Recommendation:**

For consistency with existing state and national efforts to support students of military families, we recommend revising the definition of active duty service to include National Guard and Reserve personnel.

*Definition of Parent*

It is unclear from Section 200.30 whether a “parent” can include a stepparent or legal guardian serving in the Armed Forces. We anticipate cases in which a student lives in a household with a stepparent serving in the military, as well as cases where a student has a non-resident military parent. It is also possible for a student to live with a non-parent legal guardian as a result of a parent’s deployment or other military duty. All of these situations can affect a student’s home life, mobility and school enrollment history.

**Recommendation:**

For these reasons, we recommend expanding the definition of this subgroup to include students with a parent or legal guardian in the Armed Forces. Including guardians will allow us to capture more broadly the population of students who live with or have other close family relationships with military personnel.

### *Timeframe of Military Service*

As proposed, Section 200.30 does not indicate whether a student is considered to be a child of a military personnel if that parent was on active duty at a specific point during the school year, or at any time during the school year. Because a parent's duty status can change over the course of a school year, we request that the timeframe for qualifying military service be clearly defined to ensure consistent reporting within and across states.

#### **Recommendation:**

We recommend adding language to Section 200.30 clarifying that students are considered to be a child of military personnel if the parent or legal guardian is on active duty at any point during the school year.

### **VIII. Reporting Student Achievement and Progress – Proposed §200.33**

Section 200.33 of the ESSA Regulations states:

*Under proposed § 200.33(b), the determination of whether all students and each subgroup of students met or did not meet these State measurements of interim progress (based on the percentage of students meeting or exceeding the State's proficient level of achievement) would be calculated using the method in proposed § 200.15(b)(1), in which the denominator includes the greater of—*

- *95 percent of all students and 95 percent of each subgroup of students who are enrolled in the school, LEA or State, respectively; or*
- *the number of all such students participating in these assessments.*

#### **Recommendation:**

It is respectfully requested that the Department clarify whether the “95 percent of all students” is meant to include only Full Academic Year (FAY) students (as defined) or both FAY and Non-FAY students.

### **IX. High School Graduation Rate - §200.34**

The proposed regulations define “regular high school diploma” as:

“the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of



attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals that are not fully aligned with the State’s grade-level academic content standards.”

Further, the Department proposes that the four-year cohort is to be calculated as follows:

(1) The numerator must consist of the sum of—

- (i) All students who graduate in four years with a regular high school diploma; and
- (ii) All students with the most significant cognitive disabilities in the cohort, assessed using an alternate assessment aligned to alternate academic achievement standards under section 1111(b)(2)(D) of the Act and awarded a State-defined alternate diploma.

(2) The denominator must consist of the number of students who form the adjusted cohort of entering first-time students in grade 9 enrolled in the high school no later than the date by which student membership data is collected annually by the State for submission to the National Center for Education Statistics.

**Recommendation:**

We believe the regulation should explicitly state that meeting goals on an Individualized Educational Plan (IEP) should **not** be a determining factor for receiving a high school diploma. IEPs are not designed to be qualifying documents for obtaining a regular high school diploma; they are intended to be student-centered documents that are individually developed to provide information on specific goals, special education and related services and accommodations as necessary. We strongly urge the Department to ensure that there is a clear delineation between a diploma and meeting IEP goals. We also urge the Department to clarify what is meant in ESSA by developing an alternate diploma based on alternate academic achievement standards.

In addition, we believe the regulations should provide additional clarification around waivers of the one percent cap for students taking an alternate assessment. ESSA states that local districts should not exceed having more than one percent of students take an alternate assessment based on alternate academic achievement standards, but that they can do so by providing an explanation to the state education agency. The OSDE supports having a one percent cap on the number of students in a local school district who take the alternate assessment. However, we believe that there are circumstances at both the local and state levels that may require school districts to exceed the cap and in some instances may therefore also cause the state to exceed the cap. For example, a school that serves a number of students with significant cognitive disabilities may well exceed the one percent cap, particularly if said school is designed to predominantly serve such a student population. We recommend that the OSDE, just as other SEAs, work closely with any of their LEAs that exceed the cap and maintain waivers granted on file. In addition, the Department should, at a minimum, provide guidance as to what steps we need to take to request a waiver from the Department if the state exceeds the cap.

## **X. Per-Pupil Expenditures - §200.35**

The proposed regulation at §200.35 requires, in part, that the annual report cards for public schools include the current funds received by a public school, excluding those received from *private sources*. It is unclear what is within the classification of “private sources” such that it would be beneficial to Oklahoma, and other states, to define the term. Further, the proposed regulation would require the financial information to be reported by December 31. Oklahoma does not receive final audited financial reports and complete data regarding the receipt and expenditure of funds until December 15 such that it would be an undue burden on the OSDE to comply with the December 31 mandate. Finally, the proposed regulations do not clearly articulate whether the required financial reports and information must identify Pre-Kindergarten program receipts and expenditures of funds.

### **Recommendation:**

The OSDE respectfully requests that the Department define “private sources” so that Oklahoma, and other states, uniformly understand what is required to be excluded from the required financial reports. Additionally, the OSDE recommends that the Department require the financial information to be reported by June 30, not December 31, so as to not force an undue burden on the State. Finally, we respectfully request the Department to clearly identify whether Pre-Kindergarten programs are to be included, or excluded, from the required financial reports and information.

## **XI. Contents of the Consolidated State Plan – Proposed §§299.13-299.19**

While the OSDE 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” (emphasis added). This language has been in the statute since the consolidated plan authority was created as part of the 1994 ESEA reauthorization. Since 1994, the Department has rightly taken this language very seriously, winnowing down the planning requirements under the individual programs and creating a bare-bones list of requirements consistent with Congressional intent that the consolidated plan be a mechanism for streamlining administration and reducing burden.

In its proposed ESSA regulations, however, the Department has proposed adding numerous, burdensome requirements that are not found in the statute and, it appears, has ignored statutory language calling for the plan to include only what is absolutely necessary. For example, proposed Section 299.14(c) would require the OSDE 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). In addition to this unnecessary burden, it is illuminating that none of these descriptions are required under ESSA.

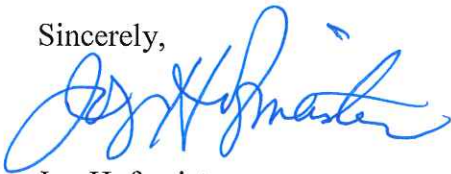


**Recommendation:**

The OSDE welcomes a true consolidated plan – one that includes the elements previously required but not one that is more time-consuming and burdensome than to submit each of the individual program plans. As such, we recommend that that Department take an approach consistent with the Department’s strategy after the 1994 and 2002 reauthorizations: allowing states to submit streamlined plans that capture essential elements of a consolidated plan without adding planning requirements that go beyond what is called for in the statute.

Thank you for the opportunity to provide the OSDE’s views on the proposed regulations. Again, we find many positive features in the proposed regulations, along with a number of provisions that we urge the Department to revise. If you would like to further discuss the issues proposed, please do not hesitate to contact me.

Sincerely,



Joy Hofmeister  
Oklahoma State Superintendent of Public Instruction