



NEBRASKA

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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:

We are writing to provide the comments of the Nebraska Department of Education and the State Board of Education (NDE) on the U. S. 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).

There are numerous aspects of the proposed regulations that give state educational agencies like NDE flexibility to create their own Title I accountability systems, in cooperation with stakeholders, while providing appropriate minimum requirements to ensure that state actions are consistent with the objectives and provisions of ESSA. The proposal is not overly prescriptive in describing the long-term goals, interim performance measures, and annual indicators that states must establish, the weighting given to the annual indicators, the procedures for identifying schools in need of support and improvement, and the actions to be taken to support and improve those schools. The proposed regulations also clarify a number of terms and provisions that are unclear in the statute.

There are, however, a number of significant provisions that we strongly believe need to be revised before the regulations are finalized.

Nebraska, like many rural states, has a number of school districts and schools that serve a small population. Due to these small numbers, many of the required disaggregated subgroups will not have sufficient numbers that can be reported for a school, and we urge consideration be included in any of the proposed regulations to permit Nebraska to deal with these small numbers in a manner that increases achievement the Nebraska way instead of the NCLB "one size fits all" methodology. We also request the Department give serious consideration to the issues described below.

Implementation of Accountability

ESSA provides that the revised accountability requirements of Title I "shall take effect beginning with the 2017-2018 school year." NDE reads this language as meaning that information from the 2017-18 school year would be the beginning for any new accountability system under ESSA. Unfortunately, the policy put forward in the proposed regulations will be unworkable in our state and most likely states everywhere.

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The proposed regulation would require that states identify schools by the beginning of each school year with initial identifications being 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.” Nebraska will need time to revise our accountability system based on the new ESSA, including adding new indicators of English language proficiency and of school quality or student success, agreeing on indicator weights, and establishing 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 new ESSA statutes and proposed regulations along with any requirements under Nebraska law. NDE will then need to collect the data needed for school identification, including data for the indicators that might not yet exist. This process will take substantial time, effort, and require administrative actions in Nebraska that cannot be accomplished in less than one (1) year.

While NDE will make some progress before the Department publishes the final regulations, we would be working under unreasonable time constraints following publication of the final rules as we work to develop and submit state plans in July of 2017. Meanwhile, Nebraska schools and districts would, under the proposed timeline, proceed through much of the 2016-2017 school year without having clear, final information on Nebraska’s long-term goals, interim measures, and annual indicators, which will limit their ability to align local programs and strategies with those goals, measures, and strategies that will be used to identify and improve underperforming schools under ESSA. The timeline proposed mirrors the failed NCLB thinking and any regulations should permit states to make initial identifications under ESSA accountability provisions based upon data from the 2017-18 school year.

Per-Pupil Expenditures Reporting.

ESSA requires state and LEA report cards to include the per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual non-personnel expenditures, disaggregated Federal, State and local funds. The NPRM (Section 200.35) significantly expands this requirement by calling for a single statewide approach for reporting LEA per-pupil expenditures and a single statewide approach for reporting school-level per-pupil expenditures. Although we appreciate that the Department seeks to “increase the likelihood that LEAs within a State will publicly report expenditure data in a manner that is informative, accurate, comparable, and timely...,” there is no ESSA requirement for a uniform approach.

Performance level Indicators

ESSA requires that states develop accountability systems that meaningfully differentiate between schools. Once again, the proposed regulations continue the failed NCLB thinking and are too specific in requiring a published single rating. The proposed requirement that each state utilize a single rating from among at least three distinct rating categories for each school to describe the schools summative performance, greatly overreaches ESSA’s authority and deprives States of the discretion Congress intended them to have with regard to the design of systems for meaningfully differentiating the performance of schools. This approach would deprive Nebraska of a significant opportunity to promote more innovative approaches to school accountability and improvement.

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Instead, we recommend that the final regulations include clearer and more flexible language that would allow a variety of state systems so long as any state system complies with statutory provisions requiring clear distinctions among schools, both on the individual indicators and in the summative rating. The final regulation should also be clear that it is at the discretion of the state to use dashboards to display data or a single rating.

High School Graduation use in Accountability

ESSA requires that Nebraska identify, for comprehensive support and improvement, any public high school that fails to graduate one-third or more of its students. While the new 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.

Nebraska has implemented and uses a seven (7) year graduation rate that is designed to enroll and educate student populations, such as recently arrived immigrants, adjudicated youth, returning dropouts, and other groups who, by their nature, need additional time to finish 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 and the schools initiatives to meet the requirement of the Nebraska Constitution to educate all persons between the ages of five (5) and twenty-one (21) years.

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. ESSA Sec. 1111(c)(4)(D) is clear that states must identify comprehensive support schools, including low graduation rates schools, “based on the system of meaningful differentiation” using “all indicators in the State’s accountability system” under Sec.1111(c)(4)(B), which includes at the State’s discretion, the extended year adjusted cohort graduation rate.

Consolidated State Plans

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. In the past, going back to 1994, the Department has rightly taken this language very seriously, winnowing down the planning requirements under the individual programs and coming up with 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. Some examples:

- 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.
- Under proposed Section 299.16(b)(3), the plan would include a description of the SEA’s strategies for providing all students in the state the opportunity to be prepared for and to take advanced math coursework in middle school. This language is taken from the negotiated rulemaking committee agreement on assessments, but unlike the language approved by that committee, which would apply the requirement only to states that elect to exempt certain students from the regular middle-school math assessment, this language would apply to all states.

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Nebraska would welcome 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.

Fund to districts for school improvement


ESSA requires that states 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. Once again, these proposed regulations continue the failed NCLB thinking that one size fits all, and will cause Nebraska to award funds that will exceed the capacity of some schools to spend funds wisely and will limit Nebraska's ability to distribute the funds according to need and ESSA's statutory provisions. The final regulations must allow states to determine the financial needs of identified schools to implement necessary interventions and the appropriate distribution of funding between identified schools within the state.

We also encourage you to remove the NPRM's proposed prescriptive consequences for school districts that fail to achieve ESSA's 95% assessment participation rate and instead follow Congress's decision to defer decisions about how to best maintain high assessment participation rates to state and local leadership and judgment.

Conclusion

We appreciate the opportunity to provide comments and continue working with the Department on making sure ESSA requirements fit within Nebraska's Accountability for a Quality Education System, Today and Tomorrow (AQuESTT).

Sincerely,


Matthew L. Blomstedt, Ph.D.
Commissioner of Education


Rachel Wise, President
Nebraska State Board of Education