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

Docket ID: ED-2016-OESE-0032

To Whom It May Concern:

I am writing to provide comments in behalf of the Utah State Board of Education (USBE) on the Department of Education's (ED) Notice of Proposed Regulations on accountability and state plans under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). USBE appreciates the opportunity to provide comment. However, USBE respectfully requests an extension of the public comment period generally.

There are numerous aspects of the proposed regulations that gives Utah the flexibility to create Title I accountability systems, in cooperation with stakeholders, while providing "guardrails" to ensure that the state's actions are consistent with the objectives and provisions of ESSA. The proposal does not appear to be overly prescriptive in allowing states to identify specific metrics. However, much of what states are required to report and create is categorically prescriptive. While USBE similarly values what the Department has required, in terms of what to measure, USBE feels that each state should be allowed the opportunity to determine the specific indicators for reporting purposes.

While recognizing ED's efforts to capture the intent of ESSA, there are a number of significant provisions that USBE strongly believes should be revised before the regulations are finalized. USBE requests that ED capture in the revision of the proposed regulations the state's rights to articulate through state statute, rules and policy the appropriate provisions for equitable education. Specifically, USBE requests ED give serious consideration to the issues described below.

I. Performance Levels for Indicators, Summative Ratings, Assessment, and Participation

ESSA requires that states develop accountability systems that meaningfully differentiate between schools. The proposed regulations are too overreaching by requiring specific indicators for summative ratings. The proposed regulations are also too prescriptive in the

methods in which the State, LEAs, and schools are to report the accountability findings. The proposed regulations are overreaching in the assessment requirements and punishments that are not required in ESSA. Under the proposed regulations, USBE would be required to assign a penalty to schools who have less than 95 percent participation even though the law and proposed regulations allow for parental exclusion of statewide assessments. Per the proposed regulations, a school that has less than 95 percent assessment participation for all students or for one or more subgroup will be assigned one of the following:

- A lower summative rating
- Assigned the lowest performance level on the state’s accountability system
- Identify the school for targeted support and improvement

The proposed regulations also require states to provide a single summative score for each school although no mandate exists in the law.

Recommendation:

USBE recommends that the final regulations allow more flexibility in determining specific indicators as well as language that would allow accountability systems to be defined by individual states. State accountability systems would still be required to draw clear distinctions among schools, both on the individual indicators and in the summative rating. The final regulation should be clear that it is at the discretion of the state to use multiple public reporting methods, such as dashboards to display data or a single rating.

ED should omit any language in the proposed regulations regarding participation penalties and allow states to determine how to reconcile the 95% participation requirement and parents’ rights to opt their students out of statewide assessments as written in state law.

ED should allow states to decide whether or not to use a single “score” when publishing accountability results. ED should also allow states to determine whether or not to use “levels” when identifying schools for improvement.

II. Implementation of Accountability Systems

ESSA provides that the revised accountability requirements of Title I “shall take effect beginning with the 2017-2018 school year.” This language seems unclear as it does not specify when states would have to begin identifying new schools for support and improvement. The policy and timeline as currently drafted in the proposed regulations will likely be unrealized in Utah.

The proposed regulation would require USBE 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, USBE will need more time to revise our accountability systems, if the proposed regulations remain unchanged, by adding the 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.

USBE needs time to collect the data for school identification, including data for the indicators that might not yet exist. This process will take substantial time, effort, and require legislative or administrative actions in Utah. 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 our ability to align local programs and strategies with those goals, measures, and strategies that will be used to identify and improve underperforming schools. Simply put, the proposed timeline is unworkable.

Further, ED has proposed that USBE submit a consolidated state plan, which will include descriptions of our accountability system, by March 6 or July 5, 2017. USBE would likely submit a consolidated plan in the second window and will not receive ED's approval, or request for revision, of the plan until early October. USBE would have to identify schools, including placing some schools into at least a three-year cycle of continuous support and improvement, before knowing whether ED has found our accountability system as meeting the requirements within the law and regulations.

A related concern is the timing for identification of high schools for comprehensive support and improvement and support based on graduation rates. Under ESSA, 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 late September, 2017. This timeline does not allow sufficient leeway to identify schools for improvement.

Recommendation:

We recommend that the ED 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, and continue ongoing efforts under ESEA flexibility or prior law to improve currently identified schools during the 2016-2017 and 2017-2018 school years. This is consistent with the ESSA statute and will allow for states to implement high-quality accountability systems in 2017-2018 and use these systems to identify underperforming schools. With respect to the graduation-rate issue, it would be appropriate to allow states to use data from one year earlier (e.g., use 2016-2017, averaged at state option with data from one or two or three previous years, to identify schools for 2018-2019).

III. High School Graduation Rates

ESSA requires that USBE 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 recently arrived immigrants, adjudicated youth, returning dropouts, and other groups who, by their nature, need additional time to finish school. This proposal affects schools that enroll significant numbers of students who are “under-credited” when they begin high school. This also negatively counts students with disabilities who stay in the educational system longer, per IEP determinations, in many cases until the student reaches the age of twenty-two. 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. This may also compromise the validity of graduation results of those schools who may be on the borderline of school improvement by not reaching the two-thirds graduation rate according to the proposed timeline.

ED 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.

Recommendation:

We strongly recommend that states be allowed to use both the four-year adjusted cohort rate and an extended-year adjusted cohort rate in our identification of Schools for Comprehensive Support and Improvement. States should also be allowed to determine the accountability measures for alternative high schools.

IV. 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, unless an LEA agrees to accept less funding. In Utah, this will result in awards that will likely exceed the capacity of schools to spend funds wisely and will limit our ability to distribute the funds according to need and ESSA’s statutory provisions.

The proposed regulations are unclear on how to allocate certain costs, such as those for administration, transportation, maintenance of plant, and others at a school level. USBE recommends that the Department of Education make explicit that states will determine how these types of LEA-wide costs will be allocated to schools.

It is also unclear in the proposed regulations how separating expenditures between federal funds and state and local funds allow for allocations of expenditures to be based on total revenues in a certain program. For example, in the case of food service program expenditures, there are federal funding sources and state funding sources that are utilized. It is unclear whether LEAs or the state may allocate expenditures to each funding source based on the percentage of revenue in the program each year.

The denominator found in §200.35 states the following: Aggregate number of students in elementary and secondary schools to whom the State and LEA provide free public education on October 1. The proposed regulations are unclear if this also incorporates Pre-K students.

The proposed rule §200.35 also requires the reporting of current expenditures per pupil from Federal, State and local funds, for the preceding fiscal year by December 31, both in total (i.e. Federal, State and local funds) and Disaggregated by:

- Federal Funds
- State and local funds (including Title VII (Impact Aid) funds)), which must not include funds received from private sources.

Please provide more definition related to private sources. Please provide additional definition related to local sources. Do local sources include items such as rents/royalties, fees collected, etc.? Also, please define whether or not Medicaid reimbursements are considered a Federal, State or Local revenue since they are a reimbursement.

The proposed rule §200.35 also states that each LEA report card must include the following:

- (1) Current expenditures per pupil from Federal, State and local funds for the preceding fiscal year, consistent with the timeline, in 200.31 (e), for the LEA and each school served by the LEA-
 - (A) In the aggregate (Federal, State, and local funds); and
 - (B) Disaggregated by source of funds, including –
 - a. Federal funds (excluding Impact Aid Funds), and
 - b. State and local funds combined (including Impact Aid Funds), which must not include funds received from private sources

Section (c) of this proposed rule further requires a State to develop a single statewide procedure to calculate LEA current expenditures per pupil and a single statewide procedure to calculate school-level current expenditures per pupil.

- (2) Each LEA report card must also separately include the amount of current expenditures per pupil that were not allocated to public schools in the LEA.

Recommendation:

USBE recommends that ED remove 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 between identified schools within the state.

A uniform standard for costs should not be defined by the proposed regulations (§200.35.) States should be allowed to define those uniform standards that are equitable.

V. Consolidated State Plan

The statute 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 proposed ESSA regulations ED has proposed adding numerous, burdensome requirements that are not found in the statute and has potentially ignored statutory language calling for the plan to include only what is absolutely necessary. Some examples of this are:

- Under proposed Section 299.14(c), USBE 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 USBE would have to include 240 separate descriptions of our 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 USBE 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 we will report on and evaluate our 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.
- 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.

USBE would rather submit 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.

Recommendation:

USBE recommends that ED take an approach consistent with 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.

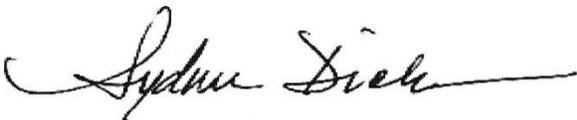
VI. Summary

Thank you for the opportunity to provide some of USBE's views on the proposed regulations. While we appreciate the Department of Education's approach to securing the intent of ESSA, we feel that ED has interjected greater limitations upon states that are not explicitly found in ESSA. USBE suggests that states have the greatest amount of latitude allowable in ESSA to determine the best course of action to secure an equitable and quality education for Utah's students and that ED explicitly articulates that latitude in the regulations.

Sincerely,



David L. Crandall, Chair
Utah State Board of Education



Sydnee Dickson, Ed.D.
State Superintendent of Public Instruction