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

Re: Docket ID ED-2016-OESE-0032, ESSA Accountability and State Plans

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I am writing to you on behalf of the Board of Directors, Delegate Assembly, and members of the New York State Association for Bilingual Education to provide comments on the United States Department of Education's (USDOE) Notice of Proposed Rulemaking (NPRM) on accountability, data reporting, and state plans under the Elementary and Secondary Education Act (ESEA), as amended by the ***Every Student Succeeds Act*** (ESSA).

The New York State Association for Bilingual Education (NYSABE) represents over 1000 educators, parents, members of community-based organizations, private agencies, and institutions of higher education as well as advocates involved in the education of English language learners/bilingual students in New York State. In existence for the past forty (40) years, we have provided leadership, advocacy, and professional development in the field of bilingual education in our state and at the national level. One of the main goals of NYSABE is to advocate for equitable and meaningful educational opportunities for our students. As such, we have a great stake in the implementation of the ***Every Student Succeeds Act***, which will guide New York State educational policies for years to come. We thank the Department of Education for the opportunity to submit comments on the above-referenced Notice of Proposed Rulemaking for Accountability and State Plans under the Every Student Succeeds Act (ESSA) based on our years of leadership in the field.

Delegates-at-Large

Dr. Tamara Alsace
Gregory Halzen
Dr. Marguerite Lukes
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We believe ESSA holds great promise for advancing practices that support schools and districts as they work to promote academic achievement for English Learners (ELs). We applaud the Secretary for including a number of provisions in the proposed regulations that support this goal. For example, the proposed regulations permit the inclusion of former English learners in the English learner subgroup for up to four years after they have exited the subgroup. Including students previously identified as English learners in the subgroup would allow schools to be recognized for the progress they have made in supporting such students toward meeting challenging State academic standards over time. In addition, the proposed regulation § 200.13(c) would require States to consider students' English language proficiency level in setting goals and measurements of interim progress and allow the consideration of additional research-based student factors. This recognizes that the time it takes an English learner to attain proficiency can be affected by multiple factors, such as age, level of English proficiency, and educational experiences in a student's home language.

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We also believe that there are areas where the proposed regulations could be improved to further support schools and districts in their work with English learner populations. We have identified these areas in the paragraphs that follow, including providing alternative approaches, and ask you that you consider including them in the final regulations.

1. The proposed regulations § 200.14(b)(4) require, for all schools, the Progress in Achieving English Language Proficiency indicator to be based on English learner performance on the English language proficiency assessment required under section 1111(b)(2)(G) in each of grades 3 through 8 and in the grades for which English learners are assessed in high school to meet the requirements of section 1111(b)(2)(B)(v)(I);

Recommendation: The regulations should allow criteria beyond the English language proficiency assessment to determine language proficiency.

Individual student performance on the state English language proficiency (ELP) assessment is used by many districts and schools to determine readiness for English learners to exit the subgroup. In fact, according to a working paper from the ELL Working Group and the Council of Chief State School Officers, 29 of the 50 states and the District of Columbia, exclusively use the ELP to determine a student's reclassification to former English learner status. However, several of the states, and others, also use additional criteria to assist with reclassification. For example, Montana, New Jersey, Pennsylvania and Utah consider teacher input and evaluation in addition to the ELP, while Michigan, Rhode Island and Wisconsin use individual performance on the academic content assessment in addition to the ELP. Additionally, New York has begun to use proficiency on the English Language Arts assessment in addition to high levels of proficiency on the ELP assessment to exit students from EL status in Grades 3-8 and high school. The proposed regulations should encourage states to use criteria in addition to the ELP assessment to determine language proficiency, growth, and reclassification.

Assessing language proficiency is a complex undertaking as students must demonstrate proficiency in written formats and orally, as well as in multiple subjects, including math, social studies and science, which often require discipline-specific language. Allowing, but not requiring, states to use multiple means of assessing proficiency while also using the ELP both ensures comparability, while also acknowledging the importance of educator input and performance on state content assessments. The ultimate goal of English proficiency is to ensure English learners are able to fully participate and succeed in academic, economic and civic life, not merely to pass an English language proficiency test. Thus, their performance on content assessments, success in college and other academic classes, and other real-world achievements provide invaluable information as to their progress in learning and actual, actionable, and practical proficiency in English.

2. Relatedly, Section § 200.14(b)(4) requires that the Progress in Achieving English Language Proficiency indicator take into account a student's English language proficiency level and, at a State' discretion, additional student-level characteristics of English learners in the same manner used by the State under proposed § 200.13; use objective and valid measures of student progress such as student growth percentiles (although the indicator may also include a measure of English language proficiency); and align with the State-determined timeline for attaining English language proficiency under proposed § 200.13.

Recommendation: In order to ensure that the accountability structure does not create disincentives for schools to fulfill their legal obligation to admit late-arriving English learners, the Department should provide states with greater guidance around the inclusion of measures beyond the ELP to develop this indicator. Measures such as age of arrival and length of time in the US; home language skills; level of and/or gaps in formal education received in native country or other countries of residence (i.e., in refugee camps); age at time of EL designation and/or grade at entry to a US school system; special education status and nature of disability; each provide more rich and nuanced data that should be considered.

3. (§ 200.13) The proposed law does not require states to set a maximum timeframe for attaining English language proficiency. The USDOE is requesting commentary on this item.

Recommendation: Long-term goals should be based on research and practice and should not be overly prescriptive. It is important to consider multiple measures to minimize and/or eliminate disincentives to schools for admission of late-entry English learners in order to avoid potential negative impact on accountability measures. Further, measures such as the reclassification rate, if not thoughtfully designed, could result in a "rush to reclassification" in an effort to increase performance in the overall accountability system and result in premature removal of necessary linguistic supports for English learners. Rather than prescribe a set timeline for attaining English proficiency, the regulations

should require states to include a plan for addressing the unique needs of long-term English language learners, including research-based strategies to promote the development of academic language.

4. High School Graduation Rate Used to Identify Schools for Comprehensive Support and Improvement

We support the New York State Education Department (NYSED) Comments:

“ESSA requires that SEAs identify for comprehensive support and improvement any public high school that fails to graduate at least 67 percent of its students. This proposed requirement that all states use the four-year adjusted cohort rate would disproportionately impact high schools that enroll student populations such as recently arrived immigrants; under credited and overage students; and other groups that may need additional time to finish school. Under the proposal, these schools would likely be identified for Comprehensive Improvement, not because of their educational performance, but because of the student populations they serve. This is particularly distressing because previously states were allowed on a “case-by-case” basis to exclude such schools from identification if they were able to demonstrate that they were successfully serving their at-risk populations even if their completion rates were less than 60 percent.”

Recommendation: Like NYSED, we strongly recommend that states be allowed to use either the four-year adjusted cohort rate or an extended-year adjusted cohort rate in determining which schools must be identified for Comprehensive Support and Improvement based upon graduation rate.

Finally, proposed § 200.13 would require each State to establish ambitious long-term goals and measurements of interim progress for academic achievement that are based on grade-level proficiency on the State's academic assessments and set separately for reading/language arts and mathematics.

5. English learners may be able to demonstrate their capacity in language arts and/or in mathematics through assessments in their home languages. Given the global nature of today's world, capacity in two languages is an asset and state accountability systems should recognize students who have high reading and language arts ability in their home language and/or are participating in bilingual program and making progress in reading and language arts in a language other than English.

Recommendation: To encourage states to consider this option, the regulations should refer explicitly to this potential option. Research has demonstrated that proficiency in one language is highly transferable and achievements in mathematics may be better measured in student's home language(s), particularly in educational settings that use those languages for instruction.

Thank you again for allowing NYSABE the opportunity to provide these comments. We trust that the USDOE will consider all commentary in developing the final regulations.

Sincerely,



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References

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