July 29, 2016  
Meredith Miller  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 3C106  
Washington, DC 20202-2800  

Re:  Docket ID: ED—2016—OSE—0032  
Title of Collection: Elementary and Secondary Education Act of 1965, As Amended by the  
Every Student Succeeds Act—Accountability and State Plans  

Dear Ms. Miller:  

I am writing on behalf of the Minnesota School Boards Association to reaffirm the comments filed  
by the National School Boards Association (NSBA) in response to the U.S. Department of  
Education’s (“Department”) Notice of Proposed Rulemaking, Elementary and Secondary Education  
Act of 1965, As Amended by the Every Student Succeeds Act—Accountability and State Plans, ED—  
2016—OSE—0032, published by the Department on May 31, 2016.1  

The Minnesota School Boards Association applauds the historic reauthorization of the Elementary  
and Secondary Education Act, as amended by the Every Student Succeeds Act (“ESSA”) and the  
law’s clear directive to restore local governance and community ownership of public education.  
ESSA includes several provisions aimed specifically at limiting the role of the federal government in  
local and state-level decisions.  

ESSA states that nothing in the Act shall be construed to “authorize or permit the Secretary. . .  
when promulgating any rule or regulation on the development or implementation of a statewide  
accountability system established under this section that would”—  
i. “add new requirements that are inconsistent with or outside the scope of this part;”  
ii. “add new criteria that are inconsistent with or outside the scope of this part; or”  
iii. “be in excess of the statutory authority granted to the Secretary.”  
ESSA, Title I, Section 1111(e)(1)(A) (20 U.S.C. § 6311)  

The Secretary is prohibited from “requir[ing] a State to add any requirements that are inconsistent  
or outside the scope of [the law]” as a “condition of approval of the State plan.”2 Furthermore, ESSA  
addresses specific aspects related to state accountability systems for which the Secretary is

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1 Notice, 81 Fed. Reg. 34,540 (May 31, 2016)  
2 ESSA, Title I, Section 1111(e)(1)(B)(i) (20 U.S.C. § 6311)
prohibited from prescribing, including numeric long term goals or measurements of interim progress\(^3\), indicators\(^4\), the weight of any measure or indicator\(^5\), or the methodology used to meaningfully differentiate schools within a State\(^6\), to name a few. **The intent of Congress is clear: decisions regarding the implementation of accountability systems are reserved for state and local education officials.**

The proposed accountability regulations are too prescriptive. The Department’s proposed regulations define components of state accountability systems in a manner that infringes on the authority granted by ESSA to state and local educational agencies. The requirements in the proposed regulations strip authority from state and local education leaders by prescribing aspects of the accountability system reserved for the state and local school district determination. As outlined in more detail in NSBA’s response to public comment, the Minnesota School Boards Association provides these specific recommendations regarding the prescriptive nature of the Department’s proposed accountability regulations as well as several issues of general concern.

I. **§ 200.15 Participation in Assessments and Annual Measurement of Achievement**  
**Recommendation:** Amend subsection (c)(1) and (c)(2) of proposed regulation §200.15 to eliminate the actions a State must take involving schools and districts that fail to assess at least 95 percent of all students and students in each subgroup. The mandatory outcomes prescribed in subsection (b)(2) that dictate the manner in which the State will factor the 95 percent participation rate into the State’s accountability system should similarly be eliminated. Instead, the State, through meaningful consultation with local school boards, should independently determine how it should factor the 95% threshold and Departmental review of a State’s proposal should be limited to the peer review process based solely on statutory compliance with ESSA.

II. **§ 200.18 Annual Meaningful Differentiation of School Performance**  
**Recommendation:** Amend proposed regulations to allow States to choose the specific method by which meaningful differentiation occurs, absent federal regulatory restrictions or requirements. To ensure meaningful differentiation occurs within a State, the Department may utilize the peer review process or existing review procedures to ensure a State’s system of meaningful differentiation meets ESSA requirements and results in actual differentiation of public schools based on indicators in the accountability system. However, the State should determine, through meaningful consultation with local school board members, how to best “meaningfully differentiate” schools, without federal limitation or restriction.

III. **§ 200.17 Disaggregation of Data/N-Size Restrictions**  
**Recommendation:** Amend proposed regulations to remove limitations on the N-size selected by States. The State, through meaningful consultation with local school board

\(^3\) ESSA, Title I, Section 1111(e)(1)(B)(iii)(I) (20 U.S.C. § 6311)  
\(^4\) ESSA, Title I, Section 1111(e)(1)(B)(iii)(II) (20 U.S.C. § 6311)  
\(^5\) ESSA, Title I, Section 1111(e)(1)(B)(iii)(III) (20 U.S.C. § 6311)  
\(^6\) ESSA, Title I, Section 1111(e)(1)(B)(iii)(IV) (20 U.S.C. § 6311)
members, should determine an appropriate N-Size for school districts in the State, without federal regulatory limitation or restriction.

IV. § 200.23 State Responsibilities to Support Continued Improvement

**Recommendation:** Amend proposed regulations to remove the authority granted to States to develop an “exhaustive list” of State-approved interventions. States should not have the authority to limit school districts in selecting and implementing evidence-based interventions and/or improvement plans aimed at increasing student achievement or attaining school improvement. There is no statutory basis for limiting the evidence-based interventions a local district may choose to implement. The proposed regulations should encourage and permit local school districts to implement evidence-based interventions without restriction or limitation.

V. § 299.13 Overview of State Plan Requirements: Foster Care Transportation Requirements

**Recommendation:** Amend proposed regulations to reflect the statutory requirement that child welfare agencies collaborate with local school districts to determine how transportation costs will be covered. The proposed regulations should also be modified to require collaboration with local child welfare agencies, and if appropriate, the school of origin. The regulations should expressly State that such collaboration or consultation is not a basis for requiring school districts to incur transportation costs not otherwise authorized under State law.

VI. § 299.13 Overview of State Plan Requirements: Meaningful Consultation with Stakeholders

**Recommendation:** Amend the proposed regulations to affirmatively state the need for increased consultation at the state-level to ensure meaningful stakeholder involvement and encourage continued communication with local school board members. Furthermore, increased and consistent consultation between State leaders and local school board members diminishes the need for overly prescriptive federal regulations. The proposed regulations should be amended to secure additional and consistent opportunities for stakeholder engagement.

VII. § 200.19 – Implementation Timeline

**Recommendation:** The Department should reconsider the implementation timeline to ensure a fair and streamlined transition to ESSA accountability system requirements and continue discussions and meaningful consultation with stakeholders, including local school board members, to determine transition options that ensure the successful implementation of ESSA.

The Department should provide for a multi-tiered implementation of newly approved State accountability systems, beginning in the 2017-2018 school year, with the first ESSA-based identification and meaningful differentiation of schools occurring at the beginning of the
2018-2019 school year, based on data collected in the 2017-2018 school year. Operationally, this would provide that all schools and districts are fully implementing support and improvement plans, as required by ESSA, at the beginning of the 2018-2019 school year.

For the 2017-2018 school year, the Department should offer States the following options: 1) “Freezing” current lists of priority and focus schools and maintaining current identifications; or 2) Exiting schools and identifying new priority and focus schools based on more recent data, similar to the options provided to States during the 2016-2017 school year.

If the Department opts to maintain the timeline in the proposed regulations it should, at a minimum, require States to allow identified schools to have a planning year to prepare for the implementation of an improvement plan that meets the requirements of ESSA, to be fully implemented in the 2018-2019 school year.

The regulations issued by the Department must not impede the authority granted to state and local education officials. Federal regulations should empower state and local leaders to make decisions. Requirements that strip local-decision makers of the authority to govern will be detrimental and significantly impede local school districts’ ability to utilize, to the fullest extent, the opportunity and flexibility authorized by ESSA. This is an opportunity for the Department to promulgate federal regulations that assist states and school districts in implementing provisions of ESSA and to reaffirm ESSA’s clear directive to restore local governance and community ownership of public education.

On behalf of the Minnesota School Boards Association, it is our hope that the Department will ensure restoration of local governance of public education and amend the proposed regulations and the peer review process to allow state and local education leaders the flexibility and authority to make decisions regarding the accountability system that best meets the needs of the districts within their state.

Sincerely,

Kirk Schneidawind, Executive Director
Minnesota School Boards Association

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cc: Senator Amy Klobuchar
Representative Timothy Walz
Representative Erik Paulsen
Representative Keith Ellison
Representative Collin Peterson
Commissioner Brenda Cassellius

Senator Al Franken
Representative John Kline
Representative Betty McCollum
Representative Tom Emmer
Representative Rick Nolan