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July 29, 2016

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

Re: Comments to Docket ID ED-2016-OESE-0032

Dear Ms. Miller:

The Kansas State Department of Education (KSDE) thanks you for this opportunity to comment on the U.S. Department of Education's notice of proposed rulemaking to amend the regulations implementing programs under Title I of the Elementary and Secondary Education Act of 1965 (ESEA) to implement changes to the ESEA by the Every Student Succeeds Act (ESSA) enacted on December 10, 2015.

1) 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." This language is unclear, because it does not specify when States would have to begin identifying new schools for support and improvement, and the Department appropriately sought to dispel this confusion. Unfortunately, the policy put forward in the proposed regulations will be very difficult, if not impossible, for Kansas to implement.

The proposed regulation would require that States 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, States need time to revise the new accountability systems based on the new law, 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 statutes and regulations. KSDE will then need to collect the data necessary for school identification, including data for the indicators that might not yet exist. This process will take substantial time, effort, and may require legislative or administrative actions. While Kansas will make some progress before the Department publishes the final regulations, KSDE would be operating under unreasonable time constraints following publication of the final rules as KSDE works to develop and submit State plans in 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 KSDE's ability to align local programs and strategies with those goals, measures, and strategies that States will use to identify and improve underperforming schools under ESSA. Simply put, the proposed timeline is unworkable.

Further, the Department has proposed that SEAs submit consolidated State plans, which must include descriptions of their accountability systems, by either March 6 or July 5, 2017. Kansas intends to submit its plan in the second window and may not receive the Department's approval, or request for revision, of the plan until October 2017 assuming that the Department uses the full 120-day period provided in the statute for review, as seems likely given the length and complexity of the Department's proposed requirements for those plans. KSDE 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 KSDE's accountability system to meet the requirements within the statutes and regulations. While the proposed language allowing States to add indicators over time seeks to remedy this problem, it falls short, as at least one indicator in each of the five indicator categories including student achievement, graduation rates for high schools and another indicator for elementary and middle school, English Language Proficiency, and school quality or other indicator of student success 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 graduation rates. Under the statutes, 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 may not be possible to calculate graduation rates for 2016-2017 until the fall of 2017, after the time by which SEAs would be required to identify schools.

KSDE therefore recommends 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, 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 statutes 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).

1) Summative Performance Rating for Each School

Section 200.18 would require a State to determine a summative rating for each school in the state. ESSA requires that each State establish a system for meaningful differentiation of all public schools in the State each year. A State should have the flexibility to establish this system in the way that best meets the needs of relevant stakeholders in each individual state, while meeting all statutory requirements. There are a variety of ways that a State could establish a system for meaningful differentiation of all public schools without determining a summative rating for each school in the state.

It is KSDE's opinion that establishing a summative performance rating for each school is not required by ESSA and is not the best system for Kansas. A summative performance rating for each school essentially requires that States will be required to rank order schools. In the past, ratings of schools have caused an increase in teacher turnover, due to teachers choosing to move away from schools with lower ratings. This is an unintended, negative consequence of this proposed rule and one that the KSDE finds unacceptable in Kansas schools. Kansas' elected State Board of Education (State Board) recently adopted a new vision and mission that focuses on multiple measures of student success. Establishing a summative performance rating for each school, as prescribed by the proposed regulations, will directly contradict the Kansas State Board's current work and runs afoul of Congress's goal under ESSA of restoring control of education to states and local school districts.

KSDE has the ability to provide information or scores across multiple measures, through the building report cards posted on the KSDE website, but Kansas does not believe it would be best to assign a school an aggregate rating. Families should be provided with a great deal of information, across multiple measures, about the schools in Kansas. Families should be able to assign weight to various measures based on the priorities for that family. Kansas does not believe that this type of system would result in a State providing a dashboard of data with no meaningful indicator weighting and no clear signal of how a school is doing. By following the requirements of ESSA, States would create their own rating system and would determine their own weighting of relevant factors.

KSDE therefore recommends that the final regulatory language contain the same flexibility afforded to States by the ESSA. Each State should have the ability to establish its own system of meaningful differentiation so long as the system complies with relevant statutory provisions. The final regulation should also make clear that a State has the discretion to use a dashboard to display data or a single rating for each school.

1) Transportation for Students in Foster Care

Section 299.13 would require a state educational agency to ensure that each local educational agency (LEA) that receives Title I funds to provide children in foster care with transportation, "as necessary, to and from their schools of origin . . . even if the LEA and local child welfare agency do not agree on which agency . . . will pay any additional costs incurred to provide such transportation." This proposed requirement places the responsibility to transport children in foster care to their schools of origin squarely on LEAs in direct contradiction to the collaboration between LEAs and child welfare agencies that ESSA requires. In the event of a disagreement regarding transportation, the proposed rule puts the responsibility for transportation with LEAs. Aside from the proposed regulation contradicting the language of the statute, the proposed regulation could have the unintended consequence of discouraging a local child welfare agency from engaging in the meaningful collaboration envisioned by ESSA if, in the event of a disagreement, the LEA is required to pay for transportation.

KSDE therefore recommends that the final regulatory language contain all of the options for collaboration between LEAs and child welfare agencies as provided by ESSA. States should have the flexibility to determine how transportation of children in foster care will be paid for in the event of a disagreement, within the statutory bounds of ESSA.

2) Allocation of School Improvement Funds to LEAs

The proposed regulation prescribes a specific and exclusive method by which LEAs must apply for school improvement funds. As proposed, an LEA must fully serve all schools identified for comprehensive support before the LEAs may apply to serve any school identified for targeted support and improvement. This proposed requirement exceeds the Secretary's authority under ESSA, and unduly limits States and LEAs ability to smartly allocate resources to best meet the needs of schools under their charge.

KSDE therefore recommends that States and LEAs be afforded the flexibility intended by Congress and that Section 200.24(a)(2)(ii) of the proposed regulation be deleted.

1) Funding to LEAs 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 goes further and 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. In Kansas, this will result in awards that will exceed the capacity of schools to spend funds wisely and will limit KSDE's ability to distribute the funds according to need and ESSA's statutory provisions.

KSDE estimates an allocation of less than $4,000,000 for school improvement efforts in 2017-18. At $500,000 per school, Kansas would be able to fully fund fewer than eight schools identified for comprehensive support. However, Kansas has 666 Title I schools and would be required to identify thirty-three schools for comprehensive improvement – only a fifth that can be funded at the level the Department requires.

KSDE therefore recommends that the Department strike provisions in Section 200.24(c)(2)(ii) 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.

2) Per-Pupil Expenditures Reporting

As proposed, Section 200.35 Per-Pupil Expenditures, requires that per pupil expenditures be calculated and reported at the building level, and disaggregated by funding source. In addition, the state must establish a uniform methodology for the entire state.

In Kansas, the cost to retool each of the 286 school districts' accounting systems will impose a significant financial burden on both LEAs and the KSDE. However, KSDE has an even greater concern that the requirement to separately track and report on per pupil expenditures by disaggregated revenue sources at the building level will reinforce practices that result in children being served in more restrictive environments, including an increased use of pull-out models as administrators struggle to comply with an accounting requirement.

KSDE therefore recommends that Section 200.35 be revised to omit all requirements that aren't explicitly required by the statute. Furthermore, we request that the U.S. Congress consider amending the underlying statute, or suspend implementation of this section of ESSA until such time as additional stakeholder input may be collected and considered.

The Kansas State Department of Education stands ready to provide additional information or clarification upon request. Thank you for the thoughtful consideration of these comments, and we look forward to dissemination of the final rule.

Sincerely,

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