



January 21, 2016

Deborah Spitz  
U.S. Department of Education  
400 Maryland Ave., SW  
Room 3E306  
Washington, DC 20202

Re: Docket ID ED-2015-OESE-0130

Dear Ms. Spitz,

On behalf of The Leadership Conference on Civil and Human Rights and the 36 undersigned organizations, we would like to comment on the request for information regarding implementing programs under Title I of the Every Student Succeeds Act (ESSA) as published in the Federal Register on December 22, 2015. We appreciate this opportunity to respond and look forward to future opportunities to engage with the Department of Education as it seeks to implement ESSA.

The civil rights community has long recognized equal educational opportunity as central to our struggle to achieve equality for all Americans. Without a robust and thoughtful implementation of ESSA over the next decade, we will have missed a crucial opportunity and the students we represent will continue to be denied the full protections they need and are entitled to under federal law. Originally passed on the heels of significant civil rights legislation, including the Civil Rights Act of 1964, we believe that the Elementary and Secondary Education Act (ESEA) is a civil rights law and implementation of ESSA should preserve that legacy. For today's students—whether African American, Latino, Asian American, Native American students, students with disabilities, those who speak English as a second language, or those from low-income families—the challenges are different than they were in the 1960's, but the stakes are at least as high.

The civil rights community worked very hard to preserve the Department's authority to issue regulations and guidance, and to provide technical assistance for the implementation of ESSA. Despite spurious claims to the contrary, federal funds are still conditioned on thorough compliance with the law. The Department still has the weighty responsibility of developing regulations that are comprehensive enough and sufficiently detailed to ensure that state and local implementation is consistent with the intent of this law and the longstanding federal role in protecting the civil rights of all Americans.

*Parent and Community Engagement*

The consequences of failing to meaningfully include and respond to the students, parents and communities this law seeks to assist will be dire. The knowledge, perspectives and voices of community stakeholders must drive decisions about funding, accountability, supports, interventions, data reporting and assessment at the federal, state and local level. **Regulation, guidance, and technical assistance must ensure that low-income communities, communities of color, the disability community, immigrant communities, and tribes are**

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**included in decision-making.** While the law contains several consultation and engagement provisions, the Department should take the opportunity to emphasize the importance of stakeholder engagement as it considers every matter of policy.

In direct response to the request for information regarding regulations to implement programs under Title I of ESSA, as discussed in more detail below, we encourage the Department to propose regulations regarding accountability, assessment, supplement not supplant, educator equity, data reporting, and inter-district resource equity.

#### State Accountability Systems

**We believe the Department should propose regulations that ensure that state accountability systems are driven by the performance of groups of students and that support and intervention systems are developed with stakeholders and are implemented to raise achievement for consistently low-performing groups of students.** It will be crucial to reinforce that the use of so-called “supergroups,” or the aggregation of students by race, ethnicity, disability or income status, obscures important differences in history and identity and is not consistent with the law as written. Also, in order for disaggregated data to be meaningful, “n-sizes” must be kept low so as not to hide student performance, as had been a practice in the past. It will be important to ensure that regulations reinforce the statutory requirements of identification and intervention in schools in each of the three categories identified in the law—the bottom 5 percent, schools with grad rates below 67 percent and schools with consistently low performing groups of students is meaningful.

#### Assessments

Regulations to implement the assessment provisions of the law should ensure that the 95 percent participation requirement is enforced so that the performance of all students is taken into account. It must be affirmed that the 1 percent cap on the alternate assessment applies to student participation in the assessment by subject; and strict federal criteria must apply to any state seeking a waiver of the cap. Ensuring the valid and reliable assessment of English language proficiency and the inclusion of English learners in content assessments, with appropriate accommodations, is crucial to ensuring that these students have the supports they need for English language acquisition and content proficiency. In the instances where local assessments are permitted in the law, as a pilot of eventual statewide assessments and in some districts for the high school assessment, it will be imperative to ensure that assessments meet the highest standards of validity, reliability and comparability and that students with disabilities and English learners are fully included in the assessments with appropriate accommodations. **These assessments should not be an excuse to provide vulnerable students with lower quality assessments or obscure disparities in student outcomes.**

#### Supplement, Not Supplant

The supplement not supplant provision of the law has been a critical tool to protect against the egregious misuse of Title I funds to reinforce inequities in state and local services (documented especially in the 1969 report, *Title I of ESEA: Is it helping poor children?*). Any additional flexibility provided in this requirement must continue to ensure that federal dollars are supplemental. **If supplement not supplant is to allow greater flexibility in demonstrating compliance, it must presume and ensure an equal base of actual per-pupil funding before any federal funds can be considered supplemental.** In this provision and throughout regulations, the Department should reinforce the non-discrimination responsibility of schools, districts and states under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Title II of the Americans with Disabilities Act of 1990. The Department should also seek additional opportunities to

advance greater resource equity within and between school districts through meaningful enforcement of the teacher equity provisions, and thorough oversight of reporting of per-pupil expenditures, school discipline and climate, course access, and other resource issues.

Data Reporting

**All publicly reported data should be available and understandable to students, parents and communities to help inform their participation in decision-making.** Regulations to implement the data reporting requirements should promote universal access to cross-tabulated data and expand on the availability of data disaggregated by Asian American and Pacific Islander categories. Technical assistance should also encourage districts and states to collect and report data in this further disaggregated manner.

**The test of regulations, guidance, technical assistance and other implementation activities must be whether or not they advance educational equity and serve the interests of all students.** Low-income students, students of color, students with disabilities, English learners, and Native students deserve no less than robust and thorough regulation by this Department to close opportunity and achievement gaps.

We appreciate this chance to comment and look forward to many more opportunities to inform the implementation of this law at the federal, state and local level. The civil rights community is deeply invested in ensuring that this law is implemented in an inclusive way and that it drives towards equity. If you have any questions, please feel free to contact Liz King, Leadership Conference Senior Policy Analyst and Director of Education Policy at [king@civilrights.org](mailto:king@civilrights.org) or 202-466-0087 or Nancy Zirkin, Leadership Conference Executive Vice President at [zirkin@civilrights.org](mailto:zirkin@civilrights.org) or 202-466-3311. Thank you for your consideration.

Sincerely,

The Leadership Conference on Civil and Human Rights  
Alliance for Excellent Education  
American Association of University Women (AAUW)  
American-Arab Anti-Discrimination Committee (ADC)  
Association of University Centers on Disabilities  
Children's Defense Fund  
Council of Parent Attorneys and Advocates  
Disability Rights Education & Defense Fund  
Easter Seals  
Education Law Center - PA  
The Education Trust  
Judge David L. Bazelon Center for Mental Health Law  
Lawyers' Committee for Civil Rights Under Law  
League of United Latin American Citizens  
MALDEF  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National Association of Councils on Developmental Disabilities

National Center for Learning Disabilities  
The National Center for Special Education in Charter Schools  
National Council of La Raza  
National Disability Rights Network  
National Down Syndrome Congress  
National Indian Education Association  
National Urban League  
National Women's Law Center  
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