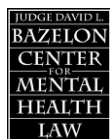


Civil Rights Accountability Framework for ESSA Implementation

April 2016



April 15, 2016

Dr. John B. King, Jr.
Secretary of Education
400 Maryland Avenue, SW
Washington, DC 20202

Re: Coalition Accountability Framework for ESSA Implementation

Dear Secretary King,

On behalf of the 22 undersigned organizations, we write to urge the U.S. Department of Education to implement a strong system of regulations and guidance around subgroup accountability to ensure that schools, districts, and states provide the necessary supports and interventions that all students of color, English learners, students with disabilities, and low-income students need to graduate high school, college and career ready.

Over the past year, the civil rights community has vigorously fought to ensure that the Every Student Succeeds Act (ESSA)¹ include requirements that states, districts, and schools meet the needs of historically underserved students in all schools, not just those students in the poorest performing schools. ESSA will not succeed in making all students college and career ready without enforcement of this requirement, and so we come together to make the following recommendations.

I. Indicators.

ESSA creates a system of at least five indicators for rating schools for comprehensive or targeted support and improvement, including (1) assessments of academic proficiency, (2) graduation rates in high schools, (3) an additional academic indicator in elementary and middle schools, (4) progress toward English language proficiency for English learners, and (5) at least one indicator of school quality or student success.² We call upon the Department to regulate four key principles for each of these indicators, and to deny any state plan that is not in line with this framework.³

a. Indicators must be disaggregated by subgroup, and reflect individual student experience.

ESSA requires that all indicators, except for progress toward English language proficiency, be disaggregated by subgroup.⁴ This requirement necessarily prohibits any indicator that would be based on school-wide averages or imputed outcomes, because they do not reflect the actual experiences of a student in an individual subgroup.

b. Indicators must be directly related to student academic outcomes.

The goal of ESSA is to provide all students a “significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”⁵ The accountability system in §1111 is the core mechanism for putting that goal into action. Therefore, it would be inconsistent with the purpose of ESSA for any indicator to be focused on anything other than student outcomes. Indicators must measure data that positively relate to improved academic outcomes, and that could be improved by the school, district, or state.

c. Indicators must differentiate between schools.

ESSA requires that each of the five indicators be used in a system of annual meaningful “differentiation.”⁶ Therefore, no indicator should be used that does not substantively differentiate between schools.

d. Indicators must be meaningful, and provide data that is valid and reliable.

Because ESSA requires that each indicator be used in a system of “meaningful” differentiation, each indicator must provide meaningful quality data that can be objectively used to rate the performance of a school. This data should be valid and reliable.

II. Annual Meaningful Differentiation.

ESSA creates a system by which states must identify their schools through “annual meaningful differentiation.”⁷ We request that the Department clarify and define five points within this section in regulations, and deny any state plan that is not in line with this framework.

a. Reinforce that §1111(c)(4)(C)(i) explicitly forbids the use of combined or “super” subgroups that remove accountability subgroups from state accountability systems.

Section 1111(c) requires that annual meaningful differentiation be “for all students and for each of subgroup of students.”⁸ During the period of ESEA Flexibility, the Department approved the waiver applications of many states who chose to combine subgroups into what was commonly described as super-subgroups, many of which corresponded with the removal of one or more accountability subgroups⁹ from state accountability systems.¹⁰ Because of this change in Federal policy, the Department should make it clear through regulations, guidance, technical assistance, and any other communications with state educational agencies, that ESSA explicitly forbids the removal of any subgroup from the accountability system and the aggregation of individual groups of students in accountability systems. Any state plan that does not include each individual subgroup in its accountability system, as required by the law, is inconsistent with the law and must not be approved.

b. Define the term “consistently underperforming” in §1111(c)(4)(C)(iii) to mean no more than two years.

ESSA requires that state accountability systems differentiate among schools “in which any subgroup of students is consistently underperforming.”¹¹ We understand this to mean any school in which an individu-

al group of students is underperforming for two years – the requisite amount of time to show that there is a consistent problem. The Department should therefore define “consistently underperforming” via regulations to mean two years.

c. For accountability purposes, require the use of summative differentiation, as opposed to a non-summative “dashboard.”

In defining annual meaningful differentiation, ESSA requires a system of summative differentiation of schools, by requiring a system where each public school in a state be meaningfully differentiated, and by requiring states to weigh some indicators more than others.¹² These summative ratings are crucial to identify schools for comprehensive or targeted support and improvement, and a simple summative rating is also a crucial transparency tool for parents and advocates. The Department should explicitly reinforce that the use of non-summative dashboards for accountability purposes are in direct violation of §1111(c)(4)(C).¹³

d. Define the phrase “substantial” weight to mean at least 20%, and the phrase “much greater” weight to mean at least 80%.¹⁴

ESSA prohibits the Department from “prescribing ... the weight of any measure or indicator.”¹⁵ In negotiating this prohibitions section, each of these words was very carefully chosen. While this prohibition precludes the Department from prescribing specific indicator weights, by allowing the Department to define the terms “substantial” and “much greater” in relation to indicator weights, the Department has the ability to describe acceptable indicator ranges.¹⁶

Defining the two terms that describe indicator weights, is a separate legal concept in statutory construction from requiring any one indicator to be of any particular weight. Setting ranges is not prohibited. Defining “ranges” of indicator weights does not prescribe any one particular weight, and is therefore permissible. We propose using the phrase “at least” to describe such indicator ranges.¹⁷

We therefore recommend that the Department define “substantial” to mean “at least 20%” and “much greater” to mean “at least 80%.”¹⁸

e. Provide a framework for indicator weighting by further defining “substantial” weight so that states cannot purposefully reverse engineer the weights of indicators to avoid identification, and by defining “much greater” weight so the indicator of school quality cannot be weighted so that it prevents a school from being identified for supports.

The same rationale that allows the Department to define the terms “substantial” and “much greater” weight describe acceptable indicator ranges also allows the Department to further define those terms.

We call upon the Department to define “substantial” weight so that states cannot purposefully reverse engineer the weights of indicators to avoid levels of identification, and to define “much greater” weight to be such a weight that prohibits the indicator or indicators of school quality or academic success from preventing a school from being identified for comprehensive support and improvement, if it would have been identified as such based on the other four indicators.

* * *

We appreciate your commitment to these issues, and look forward to working with you to ensure that all children, regardless of background or Zip code, have the right to an education that will prepare them for college and career, and to become active members of our society. If you have any questions or concerns, please contact Adam Fernandez, MALDEF Legislative Staff Attorney, at afernandez@maldef.org, or Liz King, Leadership Conference Director of Education Policy, at king@civilrights.org.

Sincerely,

MALDEF

The Leadership Conference on Civil and Human Rights
American-Arab Anti-Discrimination Committee
American Association of University Women (AAUW)
Association of University Centers on Disabilities
Council of Parent Attorneys and Advocates
Education Law Center - PA
Judge David L. Bazelon Center for Mental Health Law
League of United Latin American Citizens
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Special Education in Charter Schools
National Disability Rights Network
National Down Syndrome Congress
National Indian Education Association
National Urban League
SEARAC - Southeast Asia Resource Action Center
Stand for Children
TASH
Teach Plus
UNCF
DREDF

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1. As the public law version of the statute is not yet available at the time of drafting, this letter will reference page numbers in the version of the statute available at <https://www.gpo.gov/fdsys/pkg/BILLS-114s1177enr/pdf/BILLS-114s1177enr.pdf>.
 2. §1111(c)(4)(B).
 3. These recommendations are intended to describe indicators in an accountability system that will lead to the identification of schools that could lead to comprehensive or targeted support and improvement. Other data that do not meet these requirements for accountability purposes could still be very useful for reporting purposes to inform school support and improvement.
 4. §1111(c)(4)(B).
 5. §1001.
 6. §1111(c)(4)(C).
 7. *Id.*
 8. *Id.*
 9. This letter uses the phrase accountability subgroup, to mean subgroups as defined in §1111(c)(2). “(2) SUBGROUP OF STUDENTS.—In this subsection and subsection (d), the term ‘subgroup of students’ means— (A) economically disadvantaged students; (B) students from major racial and ethnic groups; (C) children with disabilities; and (D) English learners.”
 10. *Maintaining a Focus on Subgroups in an Era of Elementary and Secondary Education Act Waivers*, CAMPAIGN FOR HIGH SCHOOL EQUITY, Appendix B (Aug. 2013) available at http://lulac.org/assets/pdfs/WaiversReport_R8.pdf (Analyzing the 35 approved ESEA Flexibility applications available at the time, and finding that 24 states chose to combine subgroups into super-subgroups, and that at least 14 states explicitly removed one or more subgroups from their accountability systems).
 11. §1111(c)(4)(C)(iii).
 12. §1111(c)(4)(C). (“Establish a system of meaningfully differentiating, on an annual basis, all public schools in the State, which shall ... with respect to the indicators described in clauses (i) through (iv) of subparagraph (B) afford— []substantial weight to each such indicator; and []in the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the State and described in subparagraph (B)(v).”)

13. Information in such a dashboard that do not meet these requirements for accountability purposes, could still be useful for reporting purposes to inform interventions.
14. We agree that the Department has the authority to set indicator ranges for the reasons described below, and should set indicator ranges. Some in our coalition believe that the phrase “much greater” should be defined as “at least 90%,” and have sent their own recommendations.
15. §1111(e)(1)(B)(iii)(IV).
16. Annual meaningful differentiation requires that indicators 1-4 should have “substantial weight,” and that in the aggregate that they be afforded “much greater weight” than indicator 5. §1111(c)(4)(C).
17. We propose using the phrase “at least” in order to purposefully avoid the problems inherent with defining an upper range limit. For example, it would be inaccurate to give a range of 20% to 100%, as there are multiple indicators and no one indicator could be 100%. Similarly, setting a range of 20% to 96% would infer a policy judgment that “substantial” indicators could be set as low as 1%, which would contradict the 20% requirement.
18. See footnote 14.