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July 22, 2016

Meredith Miller
U.S. Department of Education
550 12th Street SW Room 5109A
Potomac Center Plaza
Washington, DC 20202

RE: Docket ID ED-2016-OSESE-0032

Dear Ms. Miller:

On behalf of the California County Superintendents Educational Services Association (CCSESA), a statewide association representing all California county superintendents of schools, I am writing to provide comments on the Department of Education’s proposed regulations implementing the Every Student Succeeds Act (ESSA). We appreciate this opportunity to share our thoughts and concerns regarding the regulations that will implement this important new law.

California is deeply engaged in implementing a single, aligned system of accountability that places a major priority on equity issues. In addition, California has recently restructured the state’s school funding formula to ensure that at-risk students, including low-income students, English learners, and foster youth, receive augmented funding to help schools meet students’ additional educational and social-emotional needs. With these efforts, we believe that California is leading the way toward ensuring equality of opportunity for all students in our diverse state.

CCSESA believes that the passage of ESSA was a substantial step towards helping California implement an aligned system. By allowing flexibility to states, the new law provides an important opportunity to avoid the unintended problems created when a prescriptive federal law is superimposed on schools in very different circumstances.

While we are encouraged by the direction of ESSA, we are concerned that a number of the proposed regulations released by the Department do not comport with the spirit of flexibility intended by the legislation. Specifically, the prescriptiveness of the following proposed regulations are of concern:

• **Section 200.15: 95% Assessment Participation**

CCSESA is seriously concerned that this regulation: 1) calculates the participation rate by individual school rather than SEA or LEA and does not appear to include flexibility for small schools; 2) requires a 95% participation rate for subgroups of 30 or more- if even 2 students in a subgroup of 30 opt-out or cannot complete the assessment, a school would fail to meet the 95% participation rate; 3) requires mandatory arbitrary sanctions for schools who fail to meet either school or subgroup participation rates; and 4) contradicts the language of ESSA by establishing a federal definition of the sufficiently “rigorous” sanctions states must impose on schools for failure to comply with this requirement.

This proposed regulation would re-establish precisely the kind of measures and sanctions that the ESSA legislation sought to correct—top-down measures that focus on testing, are not sensitive to

local circumstances and return to a sanction-and-punish model of federal law. To avoid this, we ask that the Department strike parts (b) and (c) of Section 200.15.

- **Section 200.18: Single Summative Rating**

While we appreciate the Department's desire to ensure that school performance is accessible and understandable to parents, we believe that the Department's regulations regarding school rating are misguided. Single summative ratings have a tendency to mask areas needing improvement and prevent the public from acquiring a nuanced understanding of their schools. Furthermore, single summative ratings fail to provide parents with important information about a school's strengths and weaknesses when deciding whether the school will meet their child's needs.

In recognition of the importance of using multiple measures to provide a more comprehensive assessment of school performance, California's State Board and Department of Education are working together with stakeholders to develop a dashboard that is both informative and accessible to parents. CCSESA urges the Department to reconsider the regulation mandating a single summative rating by deleting part (b)(4) and removing references to a single summative rating in part (c) of Section 200.18.

- **Section 200.19: Implementation Timeline**

CCSESA is concerned about imposing a timeline that would require states to identify and sanction schools during the first year of ESSA implementation. California is in the process of restructuring our accountability system to integrate ESSA indicators and measures. Although we are on target to finalize our state plan by the summer of 2017, we will not know whether the Department has approved our plan until after we have used the metrics outlined in the plan to identify and sanction schools. To achieve the continuous improvement intended by this law, states need buy-in from the schools who are identified for improvement. Using pre-ESSA data and measurements, which may significantly differ from post-implementation data and measurements, seriously undercuts the credibility of the support and improvement system and undermines the potential for local buy-in.

We appreciate Secretary King's recent comments acknowledging the concerns with the proposed implementation timeline and ask that the Department consider amending Section 200.19(d) to indicate that identification of comprehensive and targeted support and improvement schools shall begin in the 2018/19 school year and identification of consistently underperforming subgroups shall begin in 2019/20.

- **Section 200.34: Extended Cohort Graduation Rates**

In California, county offices of education (COEs) are tasked with ensuring that high-need and at-risk students do not fall through the cracks. This includes operation of schools for students with moderate to severe disabilities that cannot be served in general education settings as well as programs for incarcerated and adjudicated youth. COEs strongly believe that these students can and should obtain a regular or alternative high school diploma that is aligned with California's rigorous state standards. However, most of these students require additional time to obtain the credits necessary for graduation.

The proposed regulation on reporting individual school graduation rates is troubling to CCSESA because it will result in the over-identification of COEs for improvement regardless of whether a school is meeting or exceeding other important targets and goals. The requirement in the proposed regulation that schools separately report "regular" and "extended cohort" graduation



rates contradicts ESSA's intent to create a fair accountability system for alternative schools and is not aligned with the language of the law. CCSESA urges the Department to amend Section 200.34 to allow states to determine how to measure and report graduation rates.

- **General Concerns Regarding Flexibility**

CCSESA strongly believes that SEAs and LEAs are best positioned to address student and school needs. The spirit of flexibility and local control inherent in ESSA was widely embraced in California as a move in the right direction and is aligned with our state's focus on local control and stakeholder involvement. Because of this, CCSESA is concerned by any attempt to create prescriptive methodologies, targets, plans, or allocation formulas that will limit an SEA or LEA's ability to identify and address community-defined needs. To ensure that implementation of ESSA keeps with the intent of the statute, CCSESA asks the Department to reconsider the appropriateness of parts limiting flexibility in the following: Section 200.17 (setting the "N" number), Section 200.35 (calculation of per-pupil expenditures), Section 200.24 (establishing minimum amounts for school improvement grants), and Section 200.31 (LEA report cards). Although we understand the Department's desire to clarify ambiguities and provide technical assistance as we transition to the new law, CCSESA urges the Department to consider whether these regulations would be more appropriate as non-binding guidance.

We appreciate this opportunity to provide input on these important regulations that will have a substantial impact on California's schools and students. If you have any questions regarding our concerns or would like additional information, please do not hesitate to contact me directly.

Sincerely,

Peter Birdsall
Executive Director