

**Docket ID ED-2016-OESE-0032:**

**Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act-Accountability and State Plans**

**August 1, 2016**

The Arizona Department of Education (ADE) appreciates the opportunity to comment on the proposed rules related to accountability and state plans under the Every Student Succeeds Act (ESSA). Under the flexibility waivers of No Child Left Behind (NCLB), ADE was able to develop, in collaboration with a broad range of stakeholders, effective school accountability measures that have promoted improvement in student learning and school/teacher effectiveness as measured by Arizona student performance on NAEP. Under ESSA, ADE anticipates the opportunity to continue to work with our stakeholders to refine and improve our school accountability measures to ensure that all Arizona students receive a quality education that allows them to achieve their post-secondary goals and to become successful citizens.

ADE is supportive of the intent of ESSA to provide States the latitude to determine what works best for their schools and students. However, in virtually every instance, the proposed rules for accountability and state plans narrow the flexibility intended under ESSA. The provided reasoning and rationale behind the proposed regulations are often based on archaic, simplistic understandings of public schools and public education resulting in proposed regulations that will disincentivize the kind of innovation needed in schools and school accountability systems to ensure all students are well-prepared for their future.

In many places within the proposed regulations and technical guidance, USED has offered suggestions that do not appear to align with the repeatedly stated expectation that measures included in the accountability system be valid and reliable. For example, ADE questions whether USED's suggestion that using a "kindergarten readiness" indicator for elementary schools is analogous to a "postsecondary readiness" indicator for high schools has any supporting validity evidence. It is clear that the latter can be a direct result of actions on the part of the high school while the elementary school has little ability to change the "readiness" of a student prior to his/her enrollment in school.

ADE has chosen to identify specific aspects of the proposed rules that are unduly burdensome and overly prescriptive in how States may comply with ESSA requirements and will limit our ability to build the best school accountability system for Arizona schools.

ADE looks forward to exploring and reporting innovative measures of school quality, but to do so the proposed regulations must not overstep the ESSA statutory language and intent and must allow States the freedom to determine how to comply with the ESSA requirements in ways that are responsive to their stakeholders.

**1. §200.13 Long-term goals and measurements of interim progress**  
**(c) English Language Proficiency**

... in setting ambitious long-term goals for English learners to achieve English language proficiency, States would be better able to support English learners if the proposed regulations include a maximum State-determined timeline, ... and if so, what should the maximum timeline be and what research or data supports the maximum timeline.

81 FR 34541

The integration of a “maximum” State-determined timeline for English language proficiency places an ineffective burden on LEAs and forces the SEA to regulate LEAs beyond what is necessary to comply with federal law designed to ensure students receive appropriate services. Such a policy would perversely incentivize premature exit from English language services to meet a State-determined timeline rather than continue English language support based on student needs. A State-determined, federally mandated timeline for English language support cannot contradict the free and appropriate public education schools must provide to students regardless of the reasons English needs persist for long-term English learners. While the majority of English learners in Arizona reach English proficiency in three years or less, especially in elementary grades, a State-determined, federally-required “maximum” timeline introduces a number of unintended consequences. This is especially true for English learners in upper grades who are unable to master challenging academic standards required for proficiency on grade level assessments and/or high school graduation. By comprehensively evaluating the effectiveness of English learner programs on both short- and long-term English learner students without a “maximum” timeline, ADE promotes a healthier accountability environment designed to capture meaningful and authentic progress and proficiency.

Furthermore, USED requests research or data to support the identification of a universal expectation beyond what is required under ESSA. In fact, accountability for long-term ELL students remains a complex task due to higher rates of mobility, a variety of special education needs, and other factors unlikely to incentivize English language proficiency as a result of any “maximum” timeline.

*ADE does not support a maximum State-determined timeline for English learners to achieve English language proficiency. Specifically, ADE does not support proposed rules §200.13(c)(2)(i)(B) and §200.13(c)(2)(ii)*

**2. § 200.14 Accountability indicators**

(4) For all schools, a Progress in Achieving English Language Proficiency indicator, based on English learner performance on the annual English language proficiency assessment ... , that—

...

(ii) Uses objective and valid measures of progress such as student growth percentiles;

81 FR 34599

Proposed regulations suggest student growth percentiles as a method for including a student's English learner history for setting goals toward proficiency. However, the SEA and LEAs cannot determine a student's actual English language proficiency based on where a student falls in a distribution of other students who are also not proficient in English. While Arizona continues to explore promising practices such as student growth targets or adequate growth targets to monitor English learner progress, Arizona's state plan must reflect best practice for its students rather than prescriptive regulation deemed best by research practices unproven to be generalizable to this highly mobile, heterogeneous, and significant population. In fact, ADE's considerable research on student growth percentiles on its English language proficiency assessment suggests this measure may be inappropriate for older, recently arrived English learners due to extremely low *n*-counts for students reaching proficiency after initial identification in high school. Final regulations should account for states with an even smaller English learner population and the inherent challenges faced by high-school-aged, recently arrived English learners.

*ADE does not support proposed rule §200.14(b)(4)(ii), which codifies progress measures for English language proficiency and suggests that a certain indicator will be "objective and valid" without the context of a State's comprehensive accountability and assessment system.*

(c) A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within an indicator under this section—

...

(2) Is calculated in the same way for all schools across the State, except that measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade span;

81 FR 34599

In order to produce unbiased, accurate, and consistent differentiation and identification of schools for comprehensive and/or targeted supports, Arizona must have the flexibility to identify measures of school quality most aligned to improving student outcomes in a way that is both valid and measurable. ESSA recognizes the local context necessary to produce valid, meaningful, and impactful accountability systems, unlike the proposed regulations, which attempt to determine "how States may establish and measure" the components within their accountability system. These regulations in particular limit *how* the state may comply with ESSA and, at times, eliminate Arizona's ability to determine an accountability system that can appropriately inform, differentiate, and support its schools.

Using measures “calculated the same for all schools across the State” except for those which “may vary by grade span” will prevent Arizona from directing meaningful comprehensive support and resources, which can adversely impact educational effectiveness. The lack of differentiated accountability weakens accountability buy-in if these proposed regulations take precedence over Arizona’s stakeholders and local innovation. The inability to determine *how* to incorporate stakeholder feedback for including certain categories of schools, such as alternate education schools, negates the stakeholder engagement activities required by ESSA in developing the State plan. While ADE understands the intention of these parameters, these regulations monopolize the considerations for “how to design and implement school accountability systems that will meet their intended purpose of improving student academic achievement and school success.”

*In order to maximize the flexibility throughout ESSA and ensure development of a comprehensive and valid accountability system, ADE does not support increased federal regulation that contradicts federal law in several instances as proposed under § 200.14(c)(2).*

### **3. §200.18 Annual Meaningful Differentiation of School Performance**

(a) In its State plan under section 1111 of the Act each State must describe how its statewide accountability system under § 200.12 establishes a system for annual meaningful differentiation for all public schools.

...

(2) Includes, for each indicator, at least three distinct levels of school performance that are consistent with attainment of the long-term goals and measurements of interim progress under § 200.13 and that are clear and understandable to the public;

...

(4) Results in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;

81 FR 34601

The requirement for state accountability systems to produce a summative rating of school quality conflicts with the clearly defined criteria outlined in ESSA for the circumstances under which schools must receive comprehensive and/or targeted supports. Since summative labels will depend on various weights, business rules, and cut scores, potential summative ratings may produce conflicting information given ESSA’s clear criteria for providing comprehensive and/or targeted support to schools. The proposed regulations will force ADE to retrofit a rating system to the performance of subgroups and various graduation rate measures, in addition to all other

criteria required by ESSA, so that the summative rating can inform identification under §200.19. Arizona statute recognizes the value in simple, summative labels like A-F letter grades; however, the level of detail, variety of data, and sensitivity of the summative scoring requires unjustifiably high complexity in order to appropriately account for performance on a variety of measures with various weight requirements. While ADE will continue to provide transparent information to inform open enrollment throughout the state, the highly prescriptive requirements for the weighting of indicators combined with mandating a minimum number of categories within each gives USED even greater authority to determine the values within a State's accountability system than was afforded under ESEA flexibility.

*ADE does not support proposed rules that allow Arizona's system of annual meaningful differentiation to be determined by §200.18(a) subsections 2 and 4 rather than collaboration with Arizona stakeholders.*

(d) To show that its system of annual meaningful differentiation meets the requirements of paragraph (c) of this section, a State must—

(1) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for comprehensive support and improvement under § 200.19(a) unless such a school is also making significant progress, for all students consistent with § 200.16(a)(1), on at least one of the indicators described in paragraph (c)(1)(i) through (iii) of this section;

(2) Demonstrate that performance on the indicator or indicators of School Quality or Student Success may not be used to change the identity of schools that would otherwise be identified for targeted support and improvement under § 200.19(b), unless such a school is also making significant progress, for each consistently underperforming or low-performing subgroup of students, on at least one of the indicators described in paragraph (c)(1) of this section; and

81 FR 34602

The academic indicator selected for School Quality or Student Success must show “varied results across all schools,” but these results may not meaningfully impact a summative rating used to differentiate and support schools under proposed §200.18(d) subsections 1 and 2. Introduction of such a measure dilutes the important information used for high-stakes decisions and confuses mutually exclusive criteria for how variables can inform relative performance on the summative rating. Furthermore, an indicator that must vary across all schools directly conflicts with requirements outlined in § 200.18(d)(1) when the summative rating would be used to identify the lowest-performing 5% of schools. For example, schools with a summative score at the 6<sup>th</sup> percentile would not be required for identification as lowest-performing under ESSA; however, SEAs would not be able to use the School Quality or Student Success measure to distinguish between schools at the 5<sup>th</sup> percentile versus 6<sup>th</sup> percentile despite what may be

similar performance on all other required indicators weighted comparably. These proposed regulations, by design, prevent the School Quality or Student Success indicator allowed by ESSA to contribute to any meaningful differentiation for Title I schools that would benefit most from including only relevant, significant measures that can inform more comprehensive accountability.

*ADE does not support proposed rules that would dilute Arizona's system of annual meaningful differentiation, with School Quality or Student Success relegated to superficial status, as proposed by §200.18(d) subsections 1 and 2.*

#### **4. §200.19 Identification of Schools**

(a) Schools identified for comprehensive support and improvement. Based on its system for annual meaningful differentiation under § 200.18, each State must establish and describe in its State plan under section 1111 of the Act a methodology to identify one statewide category of schools for comprehensive support and improvement under § 200.21, which must include, at a minimum, the following three types of schools:

...

(2) *Low high school graduation rate.* Any public high school in the State with a four-year adjusted cohort graduation rate, as calculated under § 200.34(a), below 67 percent, or below a higher percentage selected by the State, over no more than three years consistent with § 200.20(a).

81 FR 34602

Arizona has complied with the four-year adjusted cohort calculation in an effort to meaningfully measure and compare on-time graduation of its students; however, ESSA does not require the use of this metric to empower USED to “hold schools accountable across States” as USDOE’s rationale suggests. While Arizona’s previous ESEA waivers aligned with the proposed use of the extended-year graduation rate up to seven years, proposed federal regulations cannot create graduation accountability “across states” unless the regulations also intend to create federal mandates for when LEAs may award their high school diploma.

Arizona can and will continue to hold its LEAs accountable for high school graduation of all students and ensure accountability for graduation of English learners, students with special education needs, and Native American students. These subgroups composed a significant percentage of the five-, six-, and seven-year graduates in Arizona’s accountability system for the past three years under ESEA flexibility. Arizona will continue to measure four-year graduation rates for all high schools due to the importance of on-time graduation, but Arizona will hold its own schools accountable for ensuring that all students have the opportunity to complete high school with meaningful skills and credentials. The proposed regulation to use the extended-year graduation only to “compensate” for lack of on-time graduation significantly

reduces any incentive for schools to serve the most under-credited, at-risk students. This specific regulation eliminates the intended flexibility ESSA implies throughout, and further marginalizes delayed graduates by assuming a school is ineffective based on its intent to serve the educational needs of a specific population of students.

*ADE does not support the proposed rule requiring the use of the four-year adjusted cohort graduation rate for identifying all public high schools for comprehensive support and improvement as proposed by §200.19(a) subsection 2.*

(d) *Timeline.*

...

(2) A State must identify schools for comprehensive and targeted support and improvement by the beginning of each school year, with the year of identification defined as the school year immediately following the most recent school year in which the State measured the school's performance on the indicators under § 200.14 that resulted in the school's identification (e.g., data from the 2016-2017 school year inform identification for the 2017-2018 school year).

81 FR 34603

Proposed regulations on timeline for identification discount ESSA's comprehensible requirements for annual identification and emphasize other obsolete ideas such as a "beginning of the school year." Innovation and school choice have facilitated the enrollment of tens of thousands of students each year into Arizona schools that operate year-round. More than 60 online schools and schools operating dropout recovery programs enroll students who may complete academic coursework during any of the 365 days of the year according to Arizona state statutes. USED's proposed regulations discount the rights of LEAs under respective state laws and assume the SEA cannot meet "appropriate, accurate, and timely identification" without gross, unfeasible regulation. Under ESSA, SEAs and LEAs retained the ability to practice planning, implementation, monitoring, and sustainability to balance large-scale administrative responsibilities with purposeful resource allocations to improve student outcomes. Limiting the SEA's due diligence for identifying schools in need of improvement may actually increase the risk USED cites for misidentification and excluding students in need of appropriate resources and support. ADE can meet the requirements and intent for each funded year of ESSA without more obsolete regulations that propose to determine who, what, and when on behalf of the state and its stakeholders.

*ADE does not support unrealistic regulation such as §200.19(d)(2), which attempts to compel timely and accurate information based on unfounded and unrealistic assumptions such as a uniform "beginning of the school year."*

## **5. §200.30 Annual State report card**

(a) *State report cards in general.*

...

(2) Each State report card must include, at a minimum—

...

(ii) As applicable, for each authorized public chartering agency in the State—

(A) How the percentage of students in each subgroup defined in section 1111(c)(2) of the Act for each charter school authorized by such agency compares to such percentage for the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State; and

(B) How academic achievement under § 200.30(b)(2)(i)(A) for students in each charter school authorized by such agency compares to that for students in the LEA or LEAs from which the charter school draws a significant portion of its students, or the geographic community within the LEA in which the charter school is located, as determined by the State;

81 FR 34609

Charter schools comprise about two-thirds of LEAs and one-third of schools in Arizona – 96% of which are authorized by a state authorizing agency. Requirements to disaggregate reporting any further than what is required by current state and federal laws duplicates efforts when all district and charter schools must be included in the state’s accountability system and all relevant reporting. Proposed regulations on Arizona’s state report card aggravate historical issues related to complexity, transparency, and understanding by requiring complex data elements unproven to meaningfully inform SEA, LEA, or other stakeholder activities. ADE appreciates technical assistance regarding how to meet conflicting requirements for transparency and utility; however, the proposed regulations codify a number of esoteric requirements that discount the effort and resources additional reporting requires.

*ADE does not support the undue and redundant administrative burden presented by proposed regulations §200.30(a)(2)(ii) subsections A and B.*