



# Advocates for Children of New York

Protecting every child's right to learn

July 26, 2016

Secretary John B. King, Jr.  
United States Department of Education

## Re: Comments on Proposed ESSA Accountability and State Plan Regulations

Dear Secretary King:

Advocates for Children of New York submits these comments on the proposed Every Student Succeeds Act accountability and state plan regulations. For over 40 years, Advocates for Children of New York has worked to ensure access to a quality education for all New York City students. Our comments below are based on our experiences working on behalf of students who are most likely to experience failure or discrimination in school because of poverty, disability, race, ethnicity, immigrant or English learner status, homelessness, sexual orientation, gender identity, or involvement in the child welfare or juvenile justice systems.

### **Extended-Year Adjusted Cohort Graduation Rate Definition (§200.13(b))**

The current definition of the extended-year adjusted cohort graduation rate requires states to set "more rigorous" goals for extended-year graduation rates as compared to four-year graduation rates. The use of the term "more rigorous" seems to suggest that states must hold students in the extended-year cohort to more difficult academic standards or higher levels of proficiency. The regulation should clarify that the term "more rigorous" refers to the percentage rate being set at a higher rate for the extended-year graduation goal than the four-year graduation goal.

### **English Language Proficiency Goals and Measurements of Interim Progress (§200.13(c))**

The proposed regulation provides a number of student characteristics that may be taken into account when setting goals and measurements of interim progress for the attainment of English language proficiency. Currently, the list of student characteristics makes no reference to disability status. We recommend that "disability" be added to the list of student characteristics that may be considered since a student's disability may have an impact on the student's ability or progress towards becoming proficient in English.

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The proposed regulation also contemplates setting a maximum timeline for achieving English Learner (EL) proficiency. Given that certain EL populations, such as students with informal/interrupted education (SIFE) and students with disabilities, may require more time to become English proficient, we recommend that the regulation not set a maximum timeline for achieving EL proficiency.

**School Quality or Student Success Indicator (§200.14(d))**

The proposed regulation states that the selected school quality or student success indicator must be supported by research showing that the progress on either indicator is likely to increase student achievement. We recommend that the regulation include multiple examples of evidence-based practices for measuring school climate improvements. Currently, the description of the regulation only references student surveys. Other measures that should be offered as examples include: reduction of suspensions, summonses, expulsions, and arrests; and use of positive interventions, such as a positive behavioral interventions and supports, whole-school collaborative problem solving, and restorative practices. The regulation should also make clear that this list is not exclusive and that other measures may also be considered.

**Participation in Assessments and Annual Measurement of Achievement (§200.15(d)(2))**

The proposed regulation provides that states, school districts, and schools cannot systematically exclude students from participating in annual testing. We recommend that the regulation should more explicitly prohibit states, districts, and schools from systematically excluding students from participating in annual testing through the use of disciplinary actions. Specifically, §200.15(d)(2) should read that "a state, LEA, or school may not systematically exclude students . . . from participating in the assessments, *including through the use of disciplinary actions*. . ." Specific language addressing the use of discipline is necessary in order to ensure that low-performing students are not suspended and out of school during standardized testing periods, which we have seen take place under No Child Left Behind.

**Subgroups of Students (§200.16)**

The proposed regulation allows states to include former ELs for four years after a student exits the EL subgroup for purposes of annual meaningful differentiation and identification of schools for support and improvement. We support the requirement that where states choose to include former ELs, they must include all students who fall within this category in order to ensure that states do not selectively count only higher performing students in order to inflate their EL subgroup performance.



With respect to students with disabilities, the notice of proposed rulemaking seeks comment on whether students who were formerly identified as students with disabilities should remain part of this subgroup for accountability purposes for a 2-year period. Unlike ELs, whose English language proficiency will evolve over time and for whom the goal is to achieve English language proficiency and exit EL status, the goal for student with disabilities is to receive the supports they need to succeed at the same level as their peers. The goal is not necessarily for students with disabilities to exit special education status. Accordingly, we do not support including students who were formerly identified as needing special education and related services as students with disabilities for accountability purposes because this would dilute our understanding of how students currently classified as students with disabilities are academically performing.

**Data Disaggregation (§200.17)**

The proposed regulation allows states to choose a maximum n-size of 30 for both reporting and annual meaningful differentiation purposes. We recommend that the maximum n-size be lowered to 10 for both reporting and annual meaningful differentiation purposes. A lower maximum n-size is necessary to ensure meaningful subgroup accountability, particularly at the school level. An n-size of 10 allows for the protection of student privacy and fulfills the need for statistic reliability while ensuring that schools with smaller subgroup populations are still held accountable for subgroups' performance.

In addition, the proposed regulation includes a provision that each state must submit information in its state plan regarding the number and percentage of students in each subgroup for whose results schools would not be held accountable for annual differentiation. This provision should be expanded to include information on the number and percentage of schools that would not be held accountable for one or more subgroups, which will allow for more complete information on the impact of a state's selected subgroup size.

**Annual Meaningful Differentiation of School Performance (§200.18)**

The proposed regulation allows schools who do not meet the n-size threshold for ELs to exclude EL progress towards achieving English language proficiency. This is particularly concerning since the proposed regulations allow for n-sizes up to 30 students. As a result, schools with less than 30 ELs could potentially be able to avoid being held accountable for a significant indicator. We oppose the proposed regulation as written since it undermines the purpose of the English Language proficiency indicator.



### **Identification of Schools (§200.19)**

The proposed regulation requires states to use a four-year adjusted cohort graduation rate to identify schools in need of comprehensive support and improvement. We strongly oppose this proposed regulation. Usage of a four-year adjusted cohort graduation rate penalizes those schools that work with student populations who may often require more than four years to graduate, including students with disabilities, ELs, over-age and under-credited youth, and court-involved youth. Moreover, it disincentivizes schools from enrolling these student populations and encourages schools to push these students out. Instead, we recommend that the regulation require states to use extended-year cohort graduation data for the identification of schools.

### **Comprehensive & Targeted Support and Improvement (§200.21 and 200.22)**

The proposed regulations require school districts to promptly notify parents of the reasons for a school's identification as a school in need of improvement. The regulations should specifically require districts to provide written notice to parents in a language that they understand and should not allow LEAs to rely on oral translations. In addition, the regulation should provide a specific timeframe in which notice must be provided to parents. We recommend that this notice should be sent to parents within 30 calendar days of the school's identification as a school in need of comprehensive or targeted support.

With respect to the needs assessment that must take place, we recommend that the regulations require LEAs to provide interpretation in order for parents to have a meaningful opportunity to participate in the process. We also recommend that the regulations specify that students should be involved in stakeholder meetings and that the needs assessment take into consideration school climate indicators, such as school discipline and police data, reduction of police presence in schools, and disproportionality in discipline and policing based on race, gender and disability.

### **State and LEA Report Cards (§200.30 and §200.31)**

The proposed regulations address the creation and dissemination of annual State and LEA report cards to the public, including parents. We recommend that the regulation specifically require translation of state and LEA report cards so that families who are not English speakers are able to access them. In addition, given that many low-income communities lack access to reliable internet, LEAs should be required to distribute hard copies of the LEA report cards in addition to posting them on the LEA's website. To the extent that states and LEAs will be disseminating



report cards via their websites, the regulations should specify that state and LEA websites must meet minimum accessibility standards.

Moreover, given the diversity within each subgroup covered by both the state and LEA report cards, we recommend that the regulations require that the subgroup data provided in the state and LEA report cards be disaggregated as follows:

- ELs: ELs with disabilities, ELs in temporary housing, ELs in foster care, justice-involved ELs, recently arrived ELs, SIFE, and long-term ELs
- Students with disabilities: breakdowns for each disability classification, students with disabilities in temporary housing, justice-involved students with disabilities, and students with disabilities in foster care
- Students in temporary housing: students in shelter, students who are doubled up, and unaccompanied youth

Further disaggregation is warranted in order to draw attention to academic outcomes for these unique student populations, which have varying needs and may require different interventions to help them meet their academic potential.

Finally, in addition to requiring annual state and LEA report cards to include the minimum number of students that the state/LEA deems necessary to be included in each subgroup for use in the accountability system, the regulation should require states and LEAs to also report on the following:

- the number and percentage of all students and students in each subgroup for whose results schools are not held accountable
- the number and percentage of schools not held accountable for one or more subgroup of students.

### **Calculations for Reporting on Student Achievement and Progress toward Meeting Long-Term Goals (§200.33)**

We recommend disaggregating results for student achievement on academic assessments and interim progress goals for academic achievement in line with our comments on §§200.30 and 200.31 above.

### **High School Graduation Rates (§200.34)**

The United States Department of Education is seeking comment as to whether it should standardize the criteria for including students with disabilities, ELs, homeless students and students in foster care in their corresponding subgroups within the adjusted cohort graduation rate. We recommend standardizing the criteria that States must use to identify students in each of the above subgroups, in order for



adjusted cohort graduation rates across states to be more comparable. For the students with disabilities subgroup, students should be counted if they were classified as a student with a disability at the time they were awarded a high school diploma. For the homeless students and students in foster care subgroups, students should be included if they were homeless or in foster care at any point during high school. For the ELs subgroup, students should be included if they were identified as an EL at any point during high school.

For purposes of calculating the adjusted cohort graduation rate, the proposed regulation allows states to remove students from the cohort who have transferred to a prison or juvenile facility that provides an educational program resulting in a regular high school diploma. The regulation should explicitly prohibit states from removing students from the cohort if the prison or juvenile facility to which students are transferred only offers a program resulting in a high school equivalency diploma. Even if the prison or juvenile facility offers a program leading to a high school diploma, states should only be permitted to remove students from the cohort if they are expected to receive a diploma from the prison or juvenile facility. In addition, the regulation should specify that only students who are transferred to a facility for a year or more should be removed from the cohort. Students who are transferred to a facility for less than a year should remain part of the cohort. Finally, the regulations should specify that students may only be transferred from a sending school's or LEA's cohort to a prison's or juvenile facility's cohort once the students have been adjudicated delinquent. Students who have not yet been adjudicated delinquent, but have transferred to a prison or juvenile facility, should not be removed from a school's or LEA's cohort since the expectation is that they will return to the sending school or LEA or move on to another permanent school placement after adjudication. These clarifications are necessary in order to prevent districts from pushing students out.

The proposed regulation also sets a limit on the maximum number of years that can be used to calculate the extended-year adjusted cohort graduation rate. We oppose this provision and recommend that the regulation should stay silent on the number of years that can be used in the extended-year adjusted cohort graduation rate calculation. Given that some student groups, such as SIFE and students with disabilities, may require more than seven years to graduate high school, states should be allowed to include students who have graduated, irrespective of how long it has taken.



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**Postsecondary Enrollment (§200.36)**

We support inclusion of postsecondary enrollment outcomes in the annual state and LEA report cards. However, in addition to reporting on college enrollment, we recommend that the report cards be required to include enrollment in trade schools/job-training programs and the military as well as employment rates, recognizing that not all students choose to attend college following high school.

**Educator Qualification (§200.37)**

The proposed regulation requires disaggregation of educator qualification data by low and high poverty schools. We recommend that the disaggregation also include schools with high concentrations of students of color, ELs, and students with disabilities.

**Overview of State Plan Requirements (§299.13)**

The proposed regulation requires states to make their plans available for public comment for 30 days prior to submission to the Secretary of the United States Department of Education. In order to ensure meaningful opportunity for stakeholder engagement, we recommend that state plans be made available for public comment for 60 days prior to submission to the United States Department of Education. In addition, the regulations should specifically require states to provide written notice to parents in a language that they understand and translate their plans. It is vital that families who do not speak English have access to their state's plan in a language they understand so that they are able to provide meaningful feedback on their state's plan.

If you have any questions about our comments or would like to discuss them further, please contact Kim Sweet at (212) 822-9514 or [ksweet@advocatesforchildren.org](mailto:ksweet@advocatesforchildren.org).

Sincerely,

A handwritten signature in cursive script that reads 'Kim Sweet'.

Kim Sweet  
Executive Director