



The Education Trust—New York

Closing the gaps in opportunity and achievement, pre-k through college.

August 1, 2016

The Honorable John B. King, Jr.
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Docket ID ED-2016-OESE-0032;
Proposed Rulemaking—Accountability and State Plans

Dear Secretary King:

The Every Student Succeeds Act (ESSA) offers equity-minded educators, civil rights and education advocates, business leaders, families, and community leaders a chance to work together to create an accountability system that focuses on quality for all students.

ESSA gives considerable power to states in shaping measures of success and accountability, while demanding a genuine focus on the progress of low-income students, students of color, English learners, and students with disabilities. Given the flexibility ESSA provides, we believe it is essential that New York's accountability plan promote a meaningful definition of postsecondary readiness, ensure real transparency, and address schools that are underperforming either overall or for any group of children with urgency and data-backed solutions.

We also recognize that making the most of the opportunity provided by ESSA — and, most importantly, improving the quality of education that low-income students and students of color receive — remains a partnership between states and the federal government. We are grateful for the opportunity to comment on the proposed rulemaking for Accountability and State Plans, and seek to support several vital aspects of the proposed rulemaking and strengthen others so that New York and other states are best-positioned to create effective state plans that truly serve the needs of students.

We strongly encourage that the following key provisions of the proposed rulemaking be maintained in the final regulation:

- **Ensuring transparency about school performance.** The requirement that accountability systems meaningfully differentiate between schools based on how they are doing for all

groups of students is critical for advancing educational equity. Parents, communities, students, and educators deserve a clear understanding of how well a school is doing in meeting state expectations for serving students. We strongly support the requirement in the proposed rulemaking that the system for meaningful differentiation for all public schools “results in a single rating... to describe a school’s summative performance” (§200.18(b)(4)). While additional performance data can and should be made available to the public in a “dashboard” or other format, a single summative rating is the only way to ensure meaningful transparency and avoid information overload that leads to confusion rather than establishing clarity and helping schools improve.

- **Incorporating valuable indicators beyond state test results.** A frequently cited feature of ESSA is that it will broaden the measures used to determine whether a school is successful beyond student achievement data alone. For this provision to be meaningful and — most importantly — improve educational opportunities for students, the required indicator of School Quality or Student Success must, consistent with the proposed rulemaking and in order to contribute to the “meaningful differentiation” of schools, be “supported by research that performance or progress on such measure is likely to increase student achievement or, for measures within indicators at the high school level, graduation rates” (§200.14(d)). It is also important to emphasize, as the proposed rulemaking does, the statutory requirement that such measure “is able to be disaggregated for each subgroup of students...” (§200.14(c)(3)), in order to ensure that the state accountability system addresses the systemic inequities that impact low-income students and students of color.
- **Protecting the academic progress of all students.** A hallmark of any effective accountability system is that it shed light on the places where students are succeeding and where they are not, and this is only possible when parents, educators, and policymakers have information about each student’s ability to meet rigorous state standards in English language arts (ELA) and math. New York’s high “opt-out” rate is more likely to impact students who scored below proficient on state tests in the prior year,¹ and is a direct impediment to efforts to improve equity and achievement. Because there is no way to determine whether all students are meeting long-term goals and measurements of interim progress (§200.13) without achievement data on state tests, the proposed rulemaking takes important steps to reflect a school’s failure to meet the participation rate requirement and, just as importantly, places responsibility on states and school districts to address the underlying challenge so that the academic progress of all students can be measured (§200.15(b), (c) and (d)). The proposed rulemaking also appropriately recognizes that states like New York face unique circumstances in addressing this pressing problem by including an “equally rigorous State-determined action” among the available options in §200.15(b)(2).
- **Addressing funding gaps that contribute to inequitable student outcomes.** The proposed rulemaking recognizes the importance of adequate and well-invested resources to provide

¹ New York State Education Department. “State Education Department Releases Spring 2016 Grades 3-8 ELA and Math Assessment Results.” July 29, 2016. Available at <http://www.nysed.gov/news/2016/state-education-department-releases-spring-2016-grades-3-8-ela-and-math-assessment-results>.

students with a quality education. The rulemaking requires that school districts with schools identified for Comprehensive Support and Improvement identify and address intra-district “resource inequities” (§200.21(d)(4)), and that schools identified for Targeted Support and Improvement likewise address funding inequities that impact low-performing subgroups (§200.22(c)(7)). The proposed rulemaking also requires states to “periodically review resource allocation between LEAs and between schools, consider any inequities identified under [provisions of the law addressing funding, educator, and other educational opportunity inequities], and to the extent practicable, address any identified inequities in resources” (§200.23(a)). Given that New York has the second most regressive school funding system in the country, which disproportionately impacts low-income students and students of color,² this requirement could help prompt the state to address its systemic funding inequities.

- **Improving access to excellent educators.** Research makes clear that the quality of teaching is the most important school-based determinant of student success.³ In New York State, African American, Latino, and low-income students are more likely than their white or non-low-income peers to be placed with teachers rated “ineffective” on the state-provided growth subcomponent rating for ELA and math.⁴ In addition, students in New York schools that serve the highest proportion of low-income students or students of color are more likely than students in schools with the smallest proportion of low-income students or students of color to be placed with first-year teachers and educators teaching outside of their certification area.⁵ The proposed rulemaking wisely emphasizes educator equity, including in requirements for the state’s public reporting (§299.18(c)), as well as by noting the importance of states and school districts providing robust support to help educators succeed. These provisions represent an opportunity to ensure that key provisions of *New York State’s Plan to Ensure Equitable Access to the Most Effective Educators* are fully implemented. In addition, as in the case of funding inequity, the proposed rulemaking includes important provisions requiring that *intra-district* educator inequity challenges be identified and addressed for schools requiring Comprehensive or Targeted Support and Improvement (§200.21(d)(4) and §200.22(c)(7)).

To further strengthen the proposed rulemaking, we recommend that the following areas be addressed in the final regulation:

- **Require states to base the definition of “consistently underperforming” (§200.19) for any subgroup on the statewide goals and interim progress targets.** The definition of “consistently underperforming” is critical to ensuring that all schools are held accountable for how they are serving all groups of students. To serve this purpose, the definition must include not just the lowest performing schools for a group of students, but schools

² The Education Trust. *Funding Gaps 2015*. Available at <https://edtrust.org/resource/funding-gaps-2015/>.

³ See, for example: <http://www.rand.org/education/projects/measuring-teacher-effectiveness/teachers-matter.html>.

⁴ New York State Department of Education. *New York State’s Plan to Ensure Equitable Access to the Most Effective Educators, 2014-15*. Available at: <http://www.p12.nysed.gov/accountability/T2/pdfs/FINALNYSEquityPlan.pdf>.

⁵ *Ibid.*

anywhere along the performance spectrum that are not making progress for one or more groups. We recommend requiring states to base their methodology for identifying consistently underperforming schools on state goals and progress targets (§200.13). Additionally, we recommend requiring that this definition be more expansive than the definition of “low performing subgroup.”

- **Require states to identify the first set of Comprehensive Support and Improvement schools based on 2017-18 data, not 2016-17 data.** Given that new state accountability systems will not be approved until 2017, the requirement in the proposed rulemaking that states identify the first set of Comprehensive Support and Improvement schools based on 2016-17 data would essentially mean that schools will be identified based on expectations that are not yet in place. This timeline risks undermining one of the key functions of a school accountability system — to communicate expectations and prompt improvement in schools that do not meet them.
- **Require that the review of district- and school-level resource inequities (§200.21(d)(4) and §200.22(c)(7)) include disparities in access to advanced coursework, preschool programs, and instructional materials and technology.** As mentioned previously, we strongly support the requirements that in identifying and addressing resource inequities, school districts and schools consider disproportionate rates of ineffective, out-of-field, or inexperienced teachers, and per-pupil expenditures. We recommend expanding the provision to include the key resources listed in §200.21(d)(4)(ii), which are currently included only at the school district’s discretion. Research shows that each of these resources — access to advanced coursework, high-quality early education programs, and instructional materials — are critical to student success.
- **Set more meaningful exit criteria for schools identified for Comprehensive Support and Improvement (§200.21(f)) and Additional Targeted Support and Improvement (§200.22(e)).** The exit criteria parameters in the proposed rulemaking set the bar far too low to help determine whether or not schools have improved sufficiently to no longer require the specific level of support or, conversely, whether or not that support needs to be escalated. To ensure that exit criteria are meaningful, we recommend requiring states to tie them to state goals and progress targets (§200.13).

Thank you for the opportunity to provide comments and to assist New York State in developing an accountability system that places paramount importance on the needs of our students.

Sincerely,



Ian Rosenblum
Executive Director