



Recommendations for Proposed ESSA Rules on Accountability and State Plans

As the U.S. Department of Education promulgates regulations for accountability and state plans (ED-2016-OESE-0032) under the Every Student Succeeds Act (ESSA), the National Governors Association offers the following comments and recommendations on the recent Notice of Proposed Rulemaking (NPRM):

Positive Aspects of Proposed Rules

Governors applaud the Department for honoring ESSA's congressional intent and the basic principles of federalism by allowing states to:

- Develop **state goals** and **measures of interim progress** pursuant to statutory language;
- Select state-determined **accountability indicators**;
- Define "**substantial weight**" for academic indicators in the state's accountability system;
- **Amend state plans** over time to update state accountability systems as necessary;
- Design **school improvement strategies** suited to the needs of districts and schools in each state;
- Decide an "**evidence-based**" definition that will accelerate state school improvement efforts;
- Determine an **N-size** for student subgroups that balances student success and privacy;
- Diversify the academic experience of students through history, music and the arts to ensure **a well-rounded education**; and
- Make certain **the governor is an integral part** of the development of the state plan, approval the state plan and the ongoing administration of the state's education system.

Recommendations to Improve Provisions

The following provisions must be addressed to safeguard congressional intent and ensure states are able to effectively and collaboratively implement ESSA.

School Ratings

- ESSA moves away from the federal "label and punish" model of No Child Left Behind (NCLB) by allowing state-designed accountability systems that rate schools based on input collected from diverse stakeholders. The statutory text of ESSA does not prescribe specific elements of the school rating produced by the state's accountability system.
- The NPRM requires that states label each school with a single, summative score or grade based on the state's accountability system. A summative score is only one method that states may select to rate schools based on ESSA §1111(c)(4)(C). The Department's goal of providing a transparent and comprehensible rating is admirable. However, a federally-mandated summative score for accountability purposes oversimplifies the complex nature of school performance, neglects the unique needs of communities in each state and disregards explicit statutory text.

Recommendation: The Department should amend §200.18(b)(4), §200.18(c) and make conforming changes throughout the law to ensure states and education stakeholders decide the school ratings format that works best for students. The Department should also provide technical assistance to state education agencies to develop best practices for local education agencies to develop clear, transparent and comprehensible report cards for families.

Standards

- In the Spring of 2015, the Department announced that no rules would be issued on academic standards. Furthermore, ESSA requires that any rulemaking on standards be conducted through negotiated rulemaking.
- The NPRM includes a provision on standards that requires a state to "provide evidence at such time and in such manner specified by the Secretary that the State has adopted challenging academic content standards and aligned academic achievement standards" as part of the state plan. In ESSA, Congress deliberately changed the NCLB-era term "demonstrate" to "provide an assurance" that standards are "challenging."

Recommendation: Due to the absence of negotiated rulemaking, the Department should strike §299.16(a) of the NPRM and replace with the broad language ESSA provides in §1111(b)(1)(A).

Participation Rate

- The NPRM provides three federally-designed options to respond to assessment participation rates that fall below the 95 percent threshold for all students or for a subgroup and a state-determined action that is “equally rigorous” in comparison to the three federally-designed options. The state-determined option must be approved by the Secretary.
- The state-determined action provides a foundation for states to support schools falling below the 95 percent participation rate threshold, but requiring Secretarial approval of this action does not honor the spirit of flexibility envisioned by ESSA. States are able to design an “equally rigorous” action by adhering to the clear example provided by the three federally-designed actions. States should also be granted flexibility to design multiple state-determined actions, including the ability to craft actions with escalating interventions and supports that are less punitive than the federally-designed options.

Recommendation: In §200.15(b)(2)(iv), the Department should insert “*To improve participation rates, States may design multiple actions, which may include escalating interventions and supports. The Secretary shall not disapprove any State plan based on State-determined actions designed under authority granted by this paragraph.*” after “paragraph (a) of this section.”

School Quality Accountability Indicator

- For the first time in federal K-12 policy, ESSA provides states with a holistic accountability indicator that allows districts to look beyond assessment results when determining school performance. The examples of school quality and student success indicators provided in §1111(c)(4)(B)(v) illustrate congressional intent to create diversity and equity in accountability while ensuring disaggregation.
- The NPRM minimizes the school quality and student success indicator by linking it to student achievement and discounting its role in school improvement. The Department’s proposal limits the universe of high-quality indicators, doubles down on test scores and effectively upends state authority regarding indicator weights.

Recommendation: In §200.18(d)(1), the Department should insert “, at the determination of the state,” after “such a school”, strike “significant” after “also making” and insert “sufficient”. The Department should also strike §200.18(d)(2).

Timeline

- ESSA creates an ambitious timeline for transitioning from NCLB and waivers that will limit state and local education agencies’ capacity as they devote considerable resources to implementing the new law. These agencies will also be working to refine new accountability and assessment systems while resolving issues that inevitably arise.
- The NPRM exacerbates the fast-paced statutory timeline by requiring initial identification of schools after the first year new accountability systems are in place. Potential delays or technical issues that arise with the transition to new systems could create a situation where limited or unreliable data could inform the identification process. States and districts should be granted at least an additional year to hone their systems before identification is required.

Recommendation: In §200.19(d)(1)(i), the Department should strike and replace “2017-2018” with “2018-2019” after “identification for the” and “required for the”. In §200.19(d)(1)(ii), strike and replace “2018-2019” with “2019-2020” after “identification for the”. In §200.19(d)(1)(iii), strike and replace “2017-2018” with “2018-2019” after “identification for the”. In §200.19(d)(2), strike and replace “2016-2017” with “2017-2018” and “2017-2018” with “2018-2019”.

Consistently Underperforming

- NPRM §200.19(c)(2) and (3) reflects statutory language in ESSA that allows states to define “underperforming” in a manner that meets the individual needs of their student populations. However, NPRM §200.19(c)(1) requires that low performance in one or more subgroups over two consecutive years necessitates a school be designated as “consistently underperforming.” ESSA leaves the timeline of this designation up to each state.

Recommendation: Amend §200.19(c)(1) to grant states a more flexible timeline for identification based on student subgroup performance that balances student equity and the unique challenges that each individual school district faces in addressing the achievement gap.

State Plans

- ESSA is the first federal education law to recognize that education begins at early childhood and extends throughout an individual's career. The law includes flexibilities and requirements that connect the federal system to the continuum of a student's educational experience.
- To ensure that the goals of alignment in ESSA become a reality, a state plan must include collaboration and coordination across the state's educational and human services spectrum to ensure a well-rounded education that sets up student success in school and in life.

Recommendation: The Department should amend §299.13(b)(4) after “regarding the signature of such plan.” to insert (i) *A State must demonstrate in its state plan under section 8540 of the Act how the State educational agency engaged with the Governor, or appropriate officials from the Governor's office, including the frequency of meetings and a description of collaborative planning.*

The Department should amend §299.19(a)(i) after (4)(ii): (5) *In its consolidated State plan, each SEA must describe how it consulted with state entities related to the continuum of a student's education consistent with §299.19(a)(i), including – (i) the designated State early childhood agency; (ii) the State workforce investment board; (iii) the State human services agency; (iv) the State postsecondary education system; and (v) the State health agency.*

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