



August 1, 2016

Secretary John King
U.S. Department of Education
400 Maryland Ave. S.W.
Washington, DC 20202-2800

Dear Secretary King:

I write on behalf of the more than 1.6 million members of the American Federation of Teachers to comment on the Department of Education’s proposed regulations regarding accountability systems and state plans for the implementation of the Every Student Succeeds Act. For the past century, our members have worked daily in American public schools to ensure our students are guaranteed their right to a high-quality, well-rounded education that prepares them to participate in a global society.

The AFT believes that, to best achieve this, these regulations should clearly follow the intent and language of the new law, which allows for a reset of education policy and a focus on children, not testing. This requires listening to the collective wishes of those closest to kids—their parents and educators. ESSA provides a reset for states, with broad stakeholder input, to create robust systems of accountability that redefine how to measure learning to be more about what learning really is—not simply math and reading test scores.

This is the standard by which the AFT measures all ESSA policies, including the draft regulations: whether they would help fulfill this promise, reflect the voices of educators and make a real difference in America’s classrooms. We have used the following questions as guides:

- Will the regulations allow for engaging learning that is guided by a rich curriculum?
- Will they foster collaboration and capacity building?
- Are they transparent to the public, and do they allow for flexibility to respond to community and stakeholder feedback?
- Do they provide the time for states to develop accountability systems that focus on the whole child rather than fixating on testing?
- Do they end the NCLB-era sanctioning and punishing of schools?

When held to these standards, the Education Department proposals succeed in some areas and fall short in others. We note that the proposed regulations reinforce the law’s flexibility for states to incorporate new measures of school quality and student success, beyond test scores, into their accountability systems. Likewise, we

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The **American Federation of Teachers** is a union of professionals that champions fairness; democracy; economic opportunity; and high-quality public education, healthcare and public services for our students, their families and our communities. We are committed to advancing these principles through community engagement, organizing, collective bargaining and political activism, and especially through the work our members do.



note that the regulations also uphold the law's flexibility to allow local school systems and their stakeholders to select interventions for struggling schools that meet their needs. The requirement that states report data comparing the demographics and student achievement of charter schools to that of the schools in their surrounding communities is also positive.

However, the AFT does have some major concerns that parts of the proposed regulations walk away from ESSA's promise of flexibility and opportunity, and we seek changes in the following areas before these rules become final:

Timelines won't allow for use of nontest measures: The proposed regulations require that all states begin identifying schools as in need of support and improvement in the 2017-18 school year, using data from the previous school year. Without enough time to put accountability systems in place, states will revert back to what they have—test-driven systems.

Punishments imposed for opting out of tests: Rather than listen to the outcry by parents and educators concerning overtesting, the proposed regulations offer specific punitive consequences for districts and schools when fewer than 95 percent of students take tests. This inflames rather than solves the concerns over the misuse and high-stakes nature of standardized testing.

Equity requires more than narrow indicators: ESSA continues important equity safeguards so states cannot deny disadvantaged children funding that would level the playing field. Additionally, schools identified for support and improvement must review resource inequities and create a plan to address them. The proposed regulations specify two things that must be reviewed: per-pupil expenditures, and disproportionate access to ineffective, out-of-field or inexperienced teachers. There are so many factors that are related to inequities in schools, including early childhood education, wraparound services and facilities. No one or two factors should be singled out for consideration; communities should decide which areas to review.

Inflexible graduation rate requirements: The law says a school must be identified for interventions if its graduation rate is below 67 percent, and it allows for this calculation to include *more than four years* for some students. The regulations would require all schools with a four-year graduation rate below 67 percent to be identified, without allowances for more time. This proposal ignores the law and the commonsense flexibility it offers to schools and students who need more time.

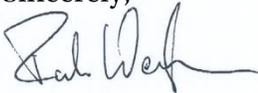
Single summative rating: The regulations would require states to produce a single summative rating for each school. In practice, this has meant labeling schools with A through F letter grades. This is neither required by the statute nor conducive to the innovative accountability systems some states are currently developing. If

states are able to design accountability systems that comply with all of ESSA's other requirements, and are somehow able to do so without producing a summative rating, the Department of Education should allow this.

Defining "ineffective" teachers: The regulations would require states to submit a definition of ineffective teachers. Because of Race to the Top and the No Child Left Behind waivers, most states put in place definitions of "ineffective" that were based, in significant part, on student test scores. ESSA squarely rejects the federal government involving itself in the teacher evaluation process. But since most states have these definitions left over in their laws because of recent federal mandates, they will likely just submit what they already have, making it more difficult for states to move away from old, punitive evaluation systems.

Thank you for considering our views. A section-by-section analysis is attached. Your attention to the views of stakeholders like us will strengthen this law. We will continue to fight to make sure AFT members' concerns are addressed front and center in any final regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Randi Weingarten". The signature is fluid and cursive, with a long horizontal stroke at the end.

Randi Weingarten
President

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**Comments from the American Federation of Teachers to the U.S. Department of Education
on proposed regulations regarding accountability systems and state plans for the implementation
of the Every Student Succeeds Act**
August 1, 2016

200.12 Single statewide accountability system

We recommend amending any sections of the regulations that conflict with 200.12(a)(1): The AFT notes that section 200.12(a)(1) requires that states *develop and implement* a single statewide accountability system “*no later than*” the 2017-18 school year. We consider this language to be consistent with the statute. Other sections of the regulations contradict section 200.12(a)(1) and such contradictions should be stricken from the final regulations. States and stakeholders have been working from the assumptions that accountability systems will be up and running beginning in the 2017-18 school year, and that the results of those systems will be used to make identification determinations in the years that follow.

200.13 Long-term goals and measurements of interim progress

We recommend against imposing a maximum state-determined timeline for English language proficiency and that any such timeline, if imposed, allow seven years to achieve proficiency: The AFT is pleased that section 200.13(b)(2)(ii) allows a state to use a graduation rate beyond four years. Such a rate will ensure that students, such as English learners or those enrolled in specialty career and technical education classes, have the additional time they need to graduate, and that their schools are not penalized for supporting them through the process.

The draft regulations ask whether section 200.13 should include a maximum state-determined timeline for achieving English language proficiency. While we are not recommending the imposition of a maximum state-determined timeline, if the regulations do impose one we strongly suggest that such a timeline be consistent with the research and allow for seven years to achieve English language proficiency.

200.14 Accountability indicators

We recommend deleting “grade-level” from 200.14(b)(1)(i): Section 200.14(b)(1)(i) would require the accountability system to “measure grade-level proficiency” in reading and math. The AFT recommends that the final regulations stick to the letter of the law to require states to include an indicator of academic achievement that “measures proficiency on the statewide assessments in reading/language arts and mathematics.” The regulations should reject the proposed expansion of this provision in section 200.14, which says that the academic achievement indicator must “equally measure grade-level proficiency” in reading/language arts and math. When accountability systems focus on grade-level proficiency, this incentivizes schools to focus only on “bubble students”—those at or near the proficiency cutoff score—rather than on all students.

We recommend deleting 200.14(d): The AFT is concerned about the requirement in proposed section 200.14(d) that “each measure [the state] selects to include within the indicators of Academic Progress and School Quality or Student Success [must be] supported by research that performance or progress on such measures is likely to increase student achievement or ... graduation rates.” This requirement goes beyond the letter of the statute,

and may preclude many promising indicators from being included if states cannot produce research satisfactory to the U.S. Department of Education's approval process. We recommend the deletion of 200.14(d).

200.15 Participation in assessments and annual measurement of achievement

We recommend deleting 200.15(b)(2)(i)-(iv): Section 200.15(b)(2) specifies that one of four actions must be taken against schools that do not meet the 95 percent participation requirement. Three of those actions are quite punitive, not at all in line with the statute's "support and improve" bipartisan construction, and go well beyond the letter of the statute, which simply requires that states say how they will incorporate the 95 percent requirement into their accountability systems. The fourth action is subject to secretarial approval—again, not in line with the letter of the law. Furthermore, none of these actions will at all address the reasons parents choose to opt their children out of testing.

By suggesting these four options, the department is undermining ESSA's intent that state officials have an open dialogue with stakeholders about how to craft their own requirements. We recommend deleting the four actions named within section 200.15(b)(2), and reverting to the letter and spirit of the statute by requiring states to explain how they will incorporate the 95 percent participation requirement into their accountability systems.

200.16 Subgroups of students

The AFT recommends that the regulations specify they do not preclude non-test options for the academic progress indicator: The statute and the regulations under section 200.14 allow the academic progress indicator to be a measure of student growth or "another valid and reliable statewide academic indicator." Yet for English learners, as part of section 200.16(b)(3)(C), one of the options for delaying inclusion of their test scores in accountability systems requires the inclusion of their scores on assessments for the academic progress indicator, starting in their second year of enrollment.

This section 200.16(b)(3)(C) language appears to require states to use only tests for the academic progress indicator for English learners. Since the same indicator must be used for all students in the state, this regulation would seem to force states to use test scores for the academic progress indicator, while the law specifically allows using another valid and reliable statewide academic indicator, which does not have to be tests. The AFT recommends that the regulations specify that, regardless of how English learners are included in the accountability system (and we believe the delays around including their test scores are appropriate given these students' unique characteristics), they do not preclude non-test options for the academic progress indicator.

We recommend amending 200.16 to include former special education students in the children with disabilities subgroup for up to two years: The draft regulations ask whether students who formerly received special education services can and should have their scores included in the subgroup of students with disabilities for up to two years after no longer receiving services. The AFT would support amending section 200.16 to allow this. Inclusion of such students in the subgroup could be useful for planning and provision of services.

200.17 Disaggregation of data

We recommend retaining section 200.17(b): The language in section 200.17(b) around protecting students' privacy and not revealing personally identifiable information is important, and the AFT strongly recommends that the language remain.

200.18 Annual meaningful differentiation of school performance

We recommend deleting 200.18(b)(4): The proposed requirement in section 200.18(b)(4) that the accountability system must be used to produce a single summative rating for each school is neither required by the statute nor conducive to the development of innovative accountability systems. If states are able to design accountability systems that comply with all of ESSA's other requirements and are somehow able to do so without producing a summative rating, the Department of Education should allow this. The AFT recommends that 200.18(b)(4) be stricken.

We recommend deleting 200.18(d): Similarly, under the statute, the indicators of academic achievement, academic progress, graduation rates and English language proficiency must be afforded substantial weight in the accountability system, and these indicators must be afforded much greater weight in the aggregate than the indicators of school quality or student success. In sections 200.18(c)(1) and (2), the regulations repeat these requirements, and that should be sufficient guidance for states to develop their accountability systems.

Unfortunately, the proposed regulations then go on to specify:

(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*
- (3) Demonstrate, based on the performance of all students and each subgroup of students, that a school performing in the lowest performance level under paragraph (b)(2) of this section on any of the indicators described in paragraph (c)(1) of this section receives a different summative rating than a school performing in the highest performance level on all indicators under § 200.14.*

This section 200.18(d) proposed language goes far beyond the statute and considerably narrows how states can design their accountability systems. Specifically, this language restricts how states can incorporate the indicator of school quality or student success. The AFT recommends that 200.18(d) be stricken for the final regulations.

200.19 Identification of schools

We recommend amending 200.19(a)(2) to allow identification of schools based on either a four-year graduation rate below 67 percent or an extended graduation rate below 67 percent: ESSA allows for a four-year graduation rate and, at a state’s discretion, a rate allowing more time for graduation, including in the context of indicators that must be included in an accountability system. Section 200.19, which spells out how schools are identified for comprehensive support and improvement, requires that schools be identified if their four-year graduation rate is below 67 percent, without allowing for the more-than-four-years rate, at the state’s discretion.

This proposal ignores the law, and the commonsense flexibility it offered to schools and students who need more time. The AFT recommends that section 200.19(a)(2) be amended to align with the statute—that is, to allow for schools to be identified based on a four-year graduation rate below 67 percent or, at state’s discretion, an extended graduation rate (i.e., between five and seven years) below 67 percent.

We recommend deleting 200.19(c)(1): ESSA requires each state to establish and describe in its state plan a methodology to identify schools for targeted support and improvement and leaves the determination of consistently underperforming up to the state. Section 200.19(c)(1) would define consistently underperforming as failing to make progress for two years. The statute was very clear that states should decide how to determine consistently underperforming. Requiring identification after two years is arbitrary and an overreach of administrative authority. The AFT recommends deleting section 200.19(c)(1) in the final regulations.

We recommend amending 200.19(d) to allow states to have their accountability systems in place by 2017-18 and to identify schools using them for 2018-19: Section 200.19(d) would require states to identify most schools for comprehensive support and improvement for the 2017-18 school year, that is, using data from the 2016-17 school year. The 2016-17 year will begin before these regulations are finalized, and it will be either nearly or fully completed by the time states submit plans based on these regulations. In proposing such aggressive timelines, the Department of Education undermines the spirit of engaging stakeholders that it purports to promote. The department also invites states to ignore its regulations since states will have to start implementing accountability systems before the regulations are finalized. Additionally, since states won’t actually have indicators beyond test scores in place in 2016-17, this proposed regulation basically reverts back to test-and-punish accountability systems of the No Child Left Behind era, something that was soundly rejected by the overwhelmingly bipartisan passage of ESSA. The AFT recommends that section 200.19(d) be amended to allow states to have their accountability systems up and running in 2017-18 and to use them to identify schools for the 2018-19 school year. This change would be entirely consistent with ESSA’s language.

200.21 Comprehensive support and improvement

We recommend deleting 200.21(d)(3)(ii) and (iii): The AFT is concerned that the language in sections 200.21(d)(3)(ii) and (iii) would restrict the use of evidence-based interventions unnecessarily and in a manner inconsistent with the statute. Even with the language “to the extent practicable,” the proposed requirement that interventions be supported “by evidence from a sample population or setting that overlaps with the population or setting of the school to be served” and “by the strongest level of evidence that is available” does not align with the spirit of ESSA that allows for flexibility and innovation, nor does it align with the language of the statute. We recommend that sections 200.21(d)(3)(ii) and (iii) be stricken.

We recommend revising 200.21(d)(4) either to name a broad range of resources that can be considered in addressing resource inequities, or to not name any specific resources that must be considered: Also inconsistent with the statute is the language in section 200.21(d)(4). The statute simply states that districts with schools identified for comprehensive support and improvement must identify and address resource inequities. This is something that the AFT championed, and we believe it will give schools the tools to call attention to a broad range of resource inequities between schools. However, section 200.21(d)(4) would require schools identified for comprehensive support and improvement to review per-pupil expenditures and disproportionate access to ineffective, out-of-field or inexperienced teachers identified by the state and district. Thus, the only two required “resource inequities” to be examined go straight to teachers and their salaries, and do not take a broad look at other inequities like access to early childhood education, facilities, etc. We recommend that section 200.21(d)(4) be revised to name a broad range of resources that can be considered. Alternatively, this regulation can be revised to not name any specific resources that must be considered.

We recommend preserving 200.21(d)(5): The AFT recognizes that section 200.21(d)(5) allows for a planning year to carry out a needs assessment, develop a plan to prepare for successful implementation of interventions. Research and our members’ experiences demonstrate that a planning year is absolutely crucial for any school improvement interventions to be effective. The AFT recommends that section 200.21(d)(5) should be preserved as is.

We recommend preserving 200.21(g): We also recognize that section 200.21(g) allows high schools identified for comprehensive support and improvement to differentiate their interventions to target students without enough credits to be on track to graduate or who are returning to high school after dropping out. This flexibility is important, and the AFT recommends that section 200.21(g) be preserved.

200.22 Targeted support and improvement

We recommend revising 200.22(c)(7)(i) either to name a broad range of resources that can be considered in addressing resource inequities, or to not name any specific resources that must be considered: Similar to our concern with resource inequity requirements in 200.21(d)(4) (see above), we are concerned that section 200.22(c)(7)(i) is inconsistent with the statute. By requiring schools identified for targeted support and improvement to review per-pupil expenditures and disproportionate access to ineffective, out-of-field or inexperienced teachers, 200.22(c)(7)(i), like 200.21(d)(4), specified two teacher-focused inequities and failed to provide for consideration of a broader range of inequities such as early childhood education, facilities, etc. We recommend that section 200.22(c)(7)(i) be revised to name a broad range of resources that can be considered. Alternatively, this regulation can be revised to not name any specific resources that must be considered.

200.30 Annual state report card

We recommend preserving 200.30(a)(2)(ii): The AFT is pleased with the proposed requirement in section 200.30(a)(2)(ii) that would require states to report data comparing charter schools to schools in their surrounding communities in the areas of student achievement and demographics of students served. This is something that the AFT has long called for, and this new transparency will help level the playing field between charter schools and their traditional public school counterparts. We recommend that the final regulations keep section 200.30(a)(2)(ii) as written.

299.18 Supporting excellent educators

We recommend deleting 299.18(c)(2): Section 299.18(c)(2) requires states to define “ineffective teacher,” along with a number of other terms such as “low-income student,” and submit such definitions to the Department of Education. The statute does not require that states define these terms; in fact, there are prohibitions against the secretary mandating or prescribing anything related to such state definitions. The problem with requiring states to submit definitions of terms like “ineffective teacher” is that the vast majority of states changed or put in place such definitions to comply with federal Race to the Top or NCLB waiver rules that mandated and highly prescribed such definitions. They likely do not have time to change these definitions, especially because this new requirement is outside of the scope of the statute and so was not anticipated by states when ESSA was passed. The AFT strongly recommends removing section 299.18(c)(2) from the final regulations.