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August 1, 2016

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

Re: Comments from EducationCounsel on the US Department of Education's Proposed ESSA Regulations, Particularly Consolidated State Plans [NPRM ED-2016-OESE-0032]

Dear Secretary King:

Thank you for this opportunity to provide comments on behalf of EducationCounsel in response to the US Department of Education's (the Department's) Notice of Proposed Rulemaking regarding regulations under the Every Student Succeeds Act (ESSA).

Several months ago, in response to your Request for Information on ESSA implementation, EducationCounsel submitted comments on how ESSA could be best understood and coherently implemented to help states and districts transform our education systems into learning systems that are continuously improving to provide full and fair opportunity and advance college and career ready outcomes for all students – particularly poor students, students of color, English learners, and students with learning differences and disabilities.¹

In that letter, we asserted that ESSA sets two broad goals: It requires that state standards align with college and career ready expectations, and it maintains and expands the federal focus on equity. From there, ESSA returns authority toward states and districts to design their standards-based systems and strategies to best advance those goals. This creates opportunities for innovation but also risks that states will under- or over-reach, and that states without sufficient knowledge, capacity, or will may stagnate or regress. However, if properly understood and implemented, ESSA also expects that state and local actions be clearly aligned with college and career-ready and equity goals; based on research and evidence, where available; developed and implemented through significant, ongoing engagement with diverse stakeholders; and periodically reviewed and continuously improved over time. This framework creates a great opportunity to establish a new, more productive state-federal relationship and advance shared goals.

¹ EducationCounsel, Comments on USED ESSA RFI, 21 Jan 2016, <http://educationcounsel.com/?publication=edcounsel-comments-rfi-implementing-programs-elementary-secondary-education-act>; www.regulations.gov/document?D=ED-2015-OESE-0130-0308

In particular, we made the point that federal regulations on ESSA consolidated state plans, which will define in large part the contours of state (and local) ESSA implementation over the next few years, provide a unique opportunity for the Department to help states and districts promote coherence and continuous improvement in and through ESSA implementation. Therefore, we focus our comments here on those relatively few pages of the Department's recent proposed ESSA regulations regarding consolidated state plans.

First, we want to complement the Department and recommend that the broad contours of the proposed regulations on ESSA consolidated state plans remain in the final regulations. In our analysis, the Department has focused on seven key priorities for ESSA implementation in consolidated state (and local) plans – four substantive and three procedural: (1) challenging standards and high-quality assessments; (2) state accountability systems and supports for lowest-performing schools; (3) teacher and leader effectiveness; (4) student learning opportunities and conditions; (5) stakeholder engagement; (6) coordination; and (7) continuous improvement. This architecture makes good sense.

However, we want to recommend several actions and concrete changes within that structure – each of which is based on a key theme in ESSA – that we believe would improve the Department's proposed regulations on ESSA consolidated state plans, and provide states and districts with positive leverage, with limited burden, to improve their education systems through ESSA implementation – rather than engaging in a separate compliance exercise. This, we believe, is key to ESSA being a positive force in improving opportunity and achievement.

1. Improve continuous improvement provisions (Section 299.14)

We strongly support the inclusion in the proposed regulations of the opportunity and expectation for states to describe in their state plans their processes for performance management and continuous improvement in ESSA implementation. This focus on periodic review and improvement in state and local strategies is a central part of ESSA's theory of action – included in numerous places in the Act – along with ESSA's related focus on research and evidence-based policy-making. It represents a critical shift from No Child Left Behind's (NCLB's) static approach, and has the potential to help states move from a compliance-based frame in education policy toward establishment of learning systems and a culture of continuous improvement at all levels.

However, the proposed continuous improvement provisions in Section 299.14(c)(2) should be amended in the final regulations to ask states to describe their “*systems and structures*” for periodic review and continuous improvement as a key part of ESSA implementation, in addition to their “*strategies and timelines*”, and the Department should amend Section 299.14(c)(2)(i) to expect collection and use of data, information, “and evidence, as appropriate” to inform ESSA implementation and continuous improvement. Further, continuous improvement is not just about correcting *underperformance*, but continuously learning and improving *all* strategies. Section 299.14(c)(2)(iii) should, therefore, be amended to expect continuous improvement

“including but not limited to” places where state or local strategies “are not leading toward satisfactory progress.” Also, continuous improvement should be *continuous*. The Department should, therefore, amend Section 299.13(h) to make clear (or clarify in the notes to the final regulations) that this means states must review and revise their state plans *as a whole* at least every four years, but this does not subsume the separate expectation in Section 299.14 that each state have systems of ongoing continuous improvement for each of its priority areas and strategies.

Finally, USED’s regulations should expressly invite and encourage states to submit plans that outline a glide path in accountability and other key systems that go beyond what may be possible in the short term. For example, states that value new indicators in accountability but do not have ready measures may want to design and test new measures, use these data for reporting and improvement, learn and build consensus, and then amend accountability measures over time. ESSA consolidated state plans should allow and encourage such efforts, such as by expressly inviting these kinds of plans and making clear that future amendments can be proposed at state discretion and may not require peer review or even USED approval where not “significant.”

2. Expressly include an expectation that state strategies in each priority area be aligned through a clear *theory of action* to the goals of raising achievement and closing gaps relative to the state’s challenging academic standards (Section 299.14)

Another key theme in ESSA is that it returns authority toward each state and district to design the best strategies in its context to advance ESSA’s twin goals of college and career readiness and equity – as defined by the state’s challenging academic standards. The consolidated state plan provisions should, therefore, expressly expect states to “describe their theory of action within each priority area for how their specific strategies are in fact designed to advance those dual goals, including through use of research- and/or evidence-based practices, where appropriate.” This provision could be added to Section 299.14(b), where the proposed regulations list the priority areas, or elsewhere.

3. Make clear that states must describe their *systems and structures* for meaningful and continuous stakeholder engagement (Section 299.13)

Another key theme in ESSA is its focus on stakeholder engagement. We support that the proposed regulations expressly require states to engage in outreach to a range of stakeholders to best inform policy and promote authentic ownership. Under the proposed regulations, this includes during the design and development of state plans, prior to submission of amendments, and as part of continuous improvement, and it includes a focus on public comment and state consideration of those comments. However, beyond public outreach, meaningful stakeholder engagement should also expect state “systems” for consultation, including “structures” for consultation in policymaking that is more “embedded, informed, and ongoing” – with representatives from a range of communities having a seat at the table. The final regulations in

Section 299.13(b) should include an expectation for states to describe their systems and structures in that regard.

4. Expect states to describe their plans for data reporting (Section 299.17)

Yet another key theme in ESSA is its focus on data transparency as a critical condition for good state and local decision-making, meaningful stakeholder engagement, continuous improvement, and (of course) empowering parents, students, teachers, and principals and other school leaders. Currently, the proposed regulations on consolidated state plans do not require states to describe or provide their mechanisms for data transparency and distribution, despite the central role of data to ESSA's theory of action. The Department should strengthen its final regulations in Section 299.17 or elsewhere to expect states to describe in their state plans their mechanisms for data transparency and reporting to ensure access to timely, actionable, accessible data for all students and by subgroup, as required by the Act.

5. Maintain the through-line for states to ensure key strategies in state consolidated plans are addressed in local consolidated plans, as appropriate (Section 299.14)

A longstanding theme of the Elementary and Secondary Education Act (ESEA) – continued in ESSA – is that states are responsible for their direct actions and for supporting and ensuring meaningful district actions consistent with the Act. We support the Department's inclusion in the proposed regulations of the requirement for states to describe in their consolidated plans their process for support, review, and approval of the activities in their local district ESSA plans, including a description of how the state will determine if district activities are aligned with its specific local needs *and the state's strategies described in its state plan*. This is critical language that will help promote a through-line from state policy to district practice in ESSA implementation, and vice-versa. We urge the Department to maintain this language in the final regulations under Section 299.14(c)(1) to promote state and district collaboration and efficient and effective implementation of ESSA to best improve teaching and learning.

6. Allow states the option to submit key parts of their consolidated state plans in a sequenced manner, as well as shift the timeline for identifying schools in need of comprehensive or targeted supports and interventions (Section 299.13)

The ability of states, districts, and stakeholders to leverage ESSA implementation to improve education systems will require significant capacity and continuous improvement over time. Currently, the proposed regulations would require states to submit their full state plans at once and on an accelerated timeline (with proposed target dates of either March or July 2017). This creates a risk that ESSA implementation will become more of a compliance exercise and/or that some ESSA priority areas will receive greater focus than others in terms of state planning, stakeholder engagement, and federal peer review. A longer-term and/or sequenced approach to state plan submissions, as has been done under prior federal education laws including prior reauthorizations of ESEA, would help ensure that states are able to fully realize this opportunity

to improve their education systems. The Department should change its final regulations in Section 299.13(d)(2)(iii) to allow states to submit portions of their state plans in a sequenced manner over time – not all at once – while still requiring states to describe and demonstrate coherence across their key priority areas and strategies as pieces of their plans are submitted.

In particular, this would permit the Department and states to target state plans on accountability systems to be submitted in the spring of 2017 (for approval and use beginning in the 2017-18 school year), and state plans for school improvement could be submitted at a later date. This relates to one other recommendation regarding the proposed regulations on timelines for ESSA implementation – Section 200.19(d): The Department should change its proposed timeline for initial state identification of schools for comprehensive and targeted support and improvement to allow for use of data from the 2017-2018 school year (once accountability systems are in place) to differentiate schools for planning and support prior to the 2018-2019 school year. While we understand and share the sense of urgency to promote evidence-based actions in low-performing schools, and provide greater supports to students, schools likely will not know the goals, indicators, and measures of their new accountability systems for most if not all of the 2016-2017 school year. Holding schools accountable without this clarity could undermine the buy-in from key stakeholders, especially educators (and states may not be able to comply with the proposed timeline if, for example, a state’s new accountability system includes as indicators data that were not fully collected in 2016-17). Finally, states and districts will need time and capacity to best understand and design evidence-based strategies, in consultation with stakeholders, to dramatically improve conditions and performance in lowest-performing schools. In these cases, some states and districts may rightly choose to go a little slower initially to hopefully strengthen their capacity to then go faster. For the 2017-2018 school year, states that are not ready to identify a new set of schools under their new accountability systems should be able to meet requirements by continuing to implement improvement plans for their current list of schools identified under NCLB and/or ESEA Flexibility waivers.

7. Clarify regulations on “supporting excellent educators” to better include state strategies on the critical issues of professional learning and school leadership (Section 299.18)

ESSA maintains and strengthens the focus of federal law on advancing and ensuring access to high-quality teaching and school leadership. We support the proposed focus on teacher and leader quality and effectiveness within consolidated state plans, which would require states to describe their systems for educator development, retention, and advancement, as well as their state-level strategies for improving teacher and leader quality and for providing equitable access to effective teachers and leaders. Evidence shows that teacher and leader quality remain the most important in-school factors related to advancing student achievement. However, the language should be clarified in Section 299.18(a)(3) with regard to state and local strategies to enhance *professional learning*. ESSA includes a stronger, research-based definition of what constitutes professional development under the Act, and a majority of Title II funds are likely to be spent on related activities. States should be expected in their consolidated plans to

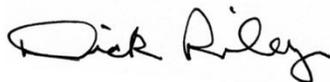
describe their strategies for how they will work with their local districts to build “*systems of professional learning* consistent with the definition in the Act.” Further, the final regulations in Section 299.18(a) or (b) should more clearly elevate school leadership and expect states to describe their plans for improving the quality of principals and other school leaders, including whether and how the state intends to use the optional three percent Title II set aside in this regard.

8. Clarify regulations on “supporting all students” to better include state strategies on critical issues, such as early learning integration and addressing the effects of adversity (Section 299.19)

ESSA maintains and strengthens the focus of federal law on improving conditions for student learning across the continuum. We support the proposed focus on these issues as part of consolidated state plans. However, the Department should strengthen Section 299.19(a) to more expressly ask states to describe their strategies and how they will support districts in expanding access to and integrating high-quality early learning. This is an express allowable use of funds and priority across the Act, and evidence shows that it can have great impact on student outcomes. Further, the Department should improve the language in this Section regarding “school conditions for student learning” and the “academic and non-academic needs” of students to more expressly focus on state plans for working directly and with districts to address the effects of adversity on students and schools – as a critical foundation for helping disadvantaged students and all students succeed.

Thank you for your consideration.

Sincerely,



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CC: Meredith Miller, U.S. Department of Education