

## Recommendations on ESSA Regulatory Feedback Accountability, State Plans & Data Reporting

The Arizona Education Association (AEA) appreciates the opportunity to reply to the Notice of Proposed Rulemaking (NPRM) for the Every Student Succeeds Act (ESSA). AEA will first offer its comments to the specific USDOE requests, and it will follow them with general concerns.

### Specific USDOE Requests for Comment:

1. Whether the suggested options for States to identify “consistently underperforming” subgroups of students in proposed § 200.19 would result in meaningful identification and be helpful to States; whether any additional options should be considered; and which options, if any, in proposed § 200.19 should not be included or should be modified. (§ 200.19)
  - a. AEA has concerns regarding this proposed rule in that it creates a mandate that hampers the State’s ability to design accountability and improvement processes that best work for Arizona. A better approach would be for the regulation to give the states the ability to consider all the options that will help Arizona students succeed. For example, under the regulation, the high school graduation rate is limited to a four-year cohort, which Arizona should be able to modify for schools that specialize in and are finding success with our nontraditional and more challenging populations. Further, the state should have flexibility in determining the specific time periods for data use and timelines for improvement.
2. Whether we should include additional or different options, beyond those proposed in this NPRM, to support States in how they can meaningfully address low assessment participation rates in schools that do not assess at least 95 percent of their students, including as part of their State-designed accountability system and as part of plans schools develop and implement to improve, so that parents and teachers have the information they need to ensure that all students are making academic progress. (§ 200.15)
  - a. Since ESSA allows for parental-opt, severe consequences based on the 95% participation rate seem incongruous with this provision. While other factors for low participation must be addressed, schools and their teachers and staff should not be punished based on the very parental choice that is supported by the ESSA statutes. For schools falling below 95% due to parental opt-out, there needs to be other options, as schools will have difficulty creating and implementing a plan that addresses parental opt-out. Arizona should have flexibility in crafting the consequences based on the reasons for the failures to achieve the 95% participation rate.
3. Whether, in setting ambitious long-term goals for English learners to achieve English language proficiency, States would be better able to support English learners if the proposed regulations included a maximum State-determined timeline (e.g., a timeline consistent with the definition of “long-term” English learners in section 3121(a)(6) of the

ESEA, as amended by the ESSA), and if so, what should the maximum timeline be and what research or data supports that maximum timeline. (§ 200.13)

- a. AEA believes that the state needs to have the flexibility to determine timelines for ELL achievement/proficiency. Arizona has a considerable number of ELL students, at all grade levels, and these should be state-level decisions not a one-size fits all approach.
4. Whether we should retain, modify, or eliminate in the title I regulations the provision allowing a student who was previously identified as a child with a disability under section 602(3) of the Individuals with Disabilities Education Act (IDEA), but who no longer receives special education services, to be included in the children with disabilities subgroup for the limited purpose of calculating the Academic Achievement indicator, and, if so, whether such students should be permitted in the subgroup for up to two years consistent with current title I regulations, or for a shorter period of time. (§ 200.16)
  - a. AEA believes that we should continue to allow such flexibility.
5. Whether we should standardize the criteria for including children with disabilities, English learners, homeless children, and children who are in foster care in their corresponding subgroups within the adjusted cohort graduation rate, and suggestions for ways to standardize these criteria. (§ 200.34)
  - a. AEA believes that flexibility should be at state-level to address unique needs of our schools and students.

In addition to the specific requests for comment, AEA offers the following comments:

1. Overall, the regulations tend to be overly prescriptive and undermine the flexibility provided in ESSA. The intent behind ESSA was to allow local communities to craft their own solutions. So to that extent the regulations limit the flexibility of local communities, the regulations need to be modified.
2. AEA believes that the proposed §200.14(d) unnecessarily limits the ability of states to choose school accountability indicator(s) that best meet the needs of their population. The ESSA statute requires states to identify four distinct indicators of student performance, and it specifically allows states to use “any other indicator the State chooses that meets the requirements [of the statute]” However, the proposed regulations limit the indicators by requiring they be supported by a specific and limited type of research. While AEA supports the use of research in the development of state indicators, as worded the proposed regulation appears to place a subjective criteria and judgment on what research is valid and reliable. It also limits the broad power of the states, as created in statute, to fashion their own indicators.
3. AEA believes the requirement for states to have a single summative rating is in direct conflict with the ESSA statutes that grant the states the power to establish their own accountability systems. The states should not be limited in how they set up their accountability systems.
4. AEA shares concerns about implementing a new accountability system in 2017-18, when the plans and metrics do not have to be finalized until March or July of 2017. It will be

difficult for schools and districts to implement a new system by the 17-18 school year that begins in July for many of the Arizona schools.

5. Section 1111(c)(3) of the ESEA, as amended by the ESSA, requires each State to determine, in consultation with stakeholders, a minimum number of students (hereafter “n-size”) that the State will use for accountability and reporting purposes. However, the regulations overreach in this area by prescribing a minimum n-size of 30. This minimum size is contrary to the statute’s stated goal to include as many students as possible within the Accountability System. In Arizona, we have many small schools, both district and charter, that will have their students excluded by prescribing this minimum n-size, and the state should determine a n-size that best captures the students in all our schools.
6. The regulations are interpreting Proficiency as “grade-level proficiency,” even though ESSA allows states to select their own long-term goals which are then incorporated into the Accountability System. By further defining and prescribing the impact of “proficiency,” the regulations impede a state’s ability to craft realistic long-term goals for students. This limited definition also fails to capture the growth of students who initially fall far below grade level, and it will discourage the instruction of and development of innovation centered on the very groups that need the most intervention.
7. As mentioned above, AEA is concerned about the regulations’ inflexibility as to the Graduation Rate. ESSA allows flexibility in the Accountability System to include additional adjusted extended year cohorts in the graduation rate indicator and this flexibility is contrary to the regulations’ automatic designation for improvement those schools with less than 67% 4-year graduation rate. The 4-year rate is important, but it does not address Arizona’s unique choice environment. We have numerous charter schools and district programs, whose sole focus is as an alternative school. Unlike other states, where students who do not graduate from their local school district have no other option than to get a GED, Arizona students have many other options to graduate, such as online schools and alternative schools. Under the previous NCLB Waivers, Arizona had an approved alternative school accountability model that addressed these other options for graduation. The current proposed regulations would force Arizona to designate schools who are serving our lowest performing students. This could leave schools who truly need the interventions unidentified.
8. Similarly, the proposed regulations as to ELL Proficiency are not flexible enough for Arizona to address the needs of its students. With Arizona’s large ELL population, the state needs to retain flexibility in identifying long-term goals and accountability indicators. Using the same time period for improvement could penalize those high schools with newly identified ELL students. Students identified in the early elementary grades reclassify far earlier while those learning English as an older student take more time to become proficient.
9. The regulations are also too prescriptive as to School Improvement, especially in the areas of school and support identification. Additionally, requiring a minimum award amount could overfund some of our smaller schools and deplete resources better allocated to larger schools.

10. Finally, the regulations concerning School Report Cards are too prescriptive, and they seem to confuse a parent and community outreach tool with data reporting requirements to the Department. The regulations should allow for flexibility so the methods of communication remain a state/local decision.