



The Education Trust

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

May 2, 2016

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

Secretary King:

Re: Developing Strong Regulations for the Accountability Provisions of the Every Student Succeeds Act

As states begin to implement the new Every Student Succeeds Act (ESSA) and powerful education interest groups rally to exploit the flexibility in the law to gut school accountability systems, there is a grave danger that we could lose what Dr. Martin Luther King called “the fierce urgency of now.”

The problem is this: Our students — especially those who are low-income or of color — can’t afford for us to take our collective foot off the accelerator. These students made swifter gains than their more advantaged counterparts during the No Child Left Behind years, especially in the early grades. Yet still, most such students complete high school — if they complete high school at all — unready for the postsecondary education they need in order to have any chance of success in our fast-changing economy. The patterns are clear in the early grades: Only about 20 percent of black, Latino, and Native American students are mastering the fundamentals of reading for learning by fourth grade; even fewer are mastering the fundamentals of mathematics by eighth grade. Changing these patterns is urgent, both for the children themselves and for our shared future.

Accountability systems are our best vehicle for communicating that urgency. To be clear, accountability alone doesn’t bring about improvement: Educators need support and development, and poor kids often need extra help as well. But if our accountability systems award “A’s” to schools even when low-income kids in those schools are not progressing, or define as “acceptable” any amount of progress, no matter which students make it, both educators and students are unlikely to get the supports they need. Good school and district leaders will lose the leverage they need to drive improvements, and no amount of clamoring from communities will be sufficient to dislodge other, intransigent leaders.

Accordingly, as you undertake the critical task of developing regulations for the accountability provisions of the Every Student Succeeds Act (ESSA), we urge you to do so in a way that makes absolutely clear the law’s focus on much-needed progress for low-income students, students of color, students with disabilities, and English learners.

Strong accountability systems set a clear expectation that schools must improve academic outcomes for all of their students, not just some. They focus attention and resources on the full range of students. And they prompt action when schools don't meet expectations for any group.

Thanks to the tireless work of policymakers and partners in the civil rights, business, and disability communities, ESSA has important provisions aimed at ensuring that states put in place strong accountability systems. These include the requirements that state accountability systems expect more progress for groups of students who have been behind, base school ratings on the performance of all groups of students, and require action whenever a school consistently underperforms for any student group.

The law is also clear that state accountability systems must be responsive to unique state and local contexts and build on the insights of local stakeholders — especially the low-income communities and communities of color with the most at stake.

But recognizing and honoring the need for state and local decision-making does not, as some have suggested, mean that from now on, the U.S. Department of Education should do nothing more than cut checks. Because in all the celebration of “a return to state and local control” surrounding this law, let's not forget that the state and local track record of serving the interests of vulnerable students is not a good one. Without strong guardrails on accountability, many states are likely to replace what some have called “test and punish” not with a more comprehensive — and more nuanced — improvement and accountability strategy, but with something far more damaging: “test and ignore.”

The U.S. Department of Education has the opportunity, obligation, and authority to ensure that states and localities are taking seriously their responsibility to all of their children. This starts by issuing regulations that further clarify ESSA's accountability provisions and guard against all-too-common risks to equity.

Specifically, we encourage the Department to issue regulations that:

- **Require states to base the definition of “consistently underperforming” for any subgroup on the statewide goals and interim performance targets for each individual group.** As a linchpin of both school ratings and supports and interventions for struggling students, 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, this definition must include not just the lowest performing schools for a group of students, but schools anywhere along the performance spectrum that are not making progress for one or more groups. Basing this definition on state goals and progress targets will ensure a focus on progress in all types of schools and action when that progress is not happening.

States should not be allowed to base the definition of “consistently underperforming” on the size of within-school achievement gaps between groups. Doing this would send the signal that what

matters most about a group's performance is how it compares with that of other groups, as opposed to where students need to be on the path to postsecondary readiness. Any school that is not meeting expectations for, for example, its African American students should be required to take action, regardless of how well — or not — the school is serving its white students.

Further, states should not be allowed to limit the number of schools identified as “consistently underperforming” for a group of students to a set percentage of schools, as they did with Focus Schools under ESEA waivers. When any school — not just a set percentage of schools — consistently misses expectations for one or more groups of students, its rating should reflect that fact, and the school should be required to take action.

- **Require summative ratings for all schools.** A key function of a school accountability system is to communicate a clear summary to parents and community members of how well a school is doing in meeting state expectations. This is best done through a summative rating.

Of course there can — and absolutely should — be reporting of all the data that goes into this summative rating, as well as of additional data to inform the improvement planning process. But simply reporting school performance metrics in a data dashboard, with no clear signal of whether the school is meeting expectations, leaves parents and community members to do all the work of interpreting the data.

Moreover, the ESSA language regarding indicator-weighting indicates clear Congressional intent to require summative ratings.

- **Clarify that these summative ratings must be based on how schools are doing for each group of students on all of the indicators.** When indicators are not disaggregated, that sends the message that how schools are doing for groups of students does not matter. Unfortunately, that's been an all-too-common practice under ESEA waivers, with many states basing school ratings on indicators that are not disaggregated at all.

Thankfully, ESSA statute requires that all indicators in the system (except progress toward English proficiency) be disaggregated for each group of students within each school, and that school ratings must be based on those disaggregated results. Yet already, there's discussion among state leaders and interest groups about including indicators in school accountability systems that cannot be disaggregated by student group.

To clarify these statutory requirements, and to ensure that school ratings send a clear signal about how schools are serving all groups of students, regulations must make clear that all indicators have to be disaggregated for all groups of students within each school in a statistically valid manner. This means, for example, that states cannot use the number of AP or IB classes offered in a school as an indicator, but could use the percent of students in each student group who are enrolled in an AP or IB class.

Regulations must also be clear — as is the law itself — that states cannot use schools’ results for a “supergroup” of students (for example a high-need group that includes students who are low-income, have a disability, or are English learners) in place of results for individual student groups. This has been allowed under waivers, but is clearly prohibited under ESSA.

- **Clarify that summative ratings must reflect whether a school is consistently underperforming for any student group and therefore in need of targeted support and intervention.** This is critical to ensuring a single, coherent statewide accountability system as opposed to a ratings system, with separate, on-the-side identification of schools for intervention, as happened in some states under waivers.

The regulations must also be clear that ESSA requires annual differentiation of schools, including whether schools are consistently underperforming for any group of students, and an annual process for notifying LEAs of any schools that meet the definition of consistent underperformance. Without an annual notification process, schools with several years of even declining performance for a group of students could delay acting on that problem for years — and, similarly, schools that make significant and rapid progress wouldn’t be able to shed their “consistently underperforming” label for years. The point of annual notification is clear: to ensure that all schools with multiple years of underperformance for any group of students get those students, and those who teach and support them, the assistance they need as soon as possible.

Of course there are other important issues for regulation around both school accountability systems and other areas of ESSA. The Education Trust provided comprehensive comments covering many of these in January. But as we’ve continued to work with our partners both in Washington and in the states, these four issues have come up over and over, prompting us to elevate them yet again.

We welcome any questions you have and look forward to working with you to ensure successful, equity-focused implementation of the new education law.

Cordially,



Kati Haycock
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The Education Trust