

August 1, 2016

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

Re: Comments on Notice of Proposed Rulemaking for the Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act—Accountability and State Plans; Docket ID: ED-2016-OESE-0032

Dear Mr. Secretary:

The National Coalition on School Diversity (NCSd) is a network of national civil rights organizations, university-based research centers, and state and local coalitions working to expand support for government policies that promote school diversity and reduce racial and economic isolation. We also support the work of the state and local school diversity practitioners. Our work is informed by an advisory panel of scholars and academic researchers whose work relates to issues of equity, diversity, and integration. See www.school-diversity.org for more information about our work.

On behalf of the undersigned members of the NCSd, we are writing to comment on the Department's proposed rules for Accountability and State Plans in the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, as set out at 81 Fed. Reg. 34539 (May 31, 2016). As discussed in detail below, the NCSd is concerned with several aspects of the Department's proposed regulations, including the omission of racial integration as a comprehensive support and improvement strategy, the proposed n-size threshold for traditionally underserved students in state accountability plans; and the potential effects of a school ranking system that is too closely tied to student socioeconomic characteristics.

Racial Diversity as a Comprehensive Support and Improvement Strategy

In the proposed 34 CFR §200.21 “Comprehensive support and improvement” subsection 200.21(d)(3), the Department includes “strategies designed to increase diversity by attracting and retaining students from varying socioeconomic backgrounds” as an acceptable intervention to improve student outcomes.¹ While our coalition obviously supports the Department for recognizing socioeconomic integration as an evidence-based strategy for student improvement, we are concerned that SEAs and LEAs may interpret the failure to include racial diversity as an indication that such interventions are not favored by the Department or do not meet the necessary evidence base (despite clear

¹ 81 Fed. Reg. 34539, at 34604.

evidence to the contrary).² We urge the Department to amend the proposed regulations to include improving racial diversity as a strategy to support and improve student performance.

Such changes should be simple, and could read as follows: “...strategies designed to increase diversity by attracting and retaining students from varying socioeconomic, racial, and ethnic backgrounds.” This change would be in line with the Department’s 2011 guidance on the voluntary use of race to achieve student diversity and avoid racial isolation in elementary and secondary schools,³ as well as with the Secretary’s Final Supplemental Priorities and Definitions for Discretionary Grant Programs promulgated in late 2014.⁴

Lower n-size Threshold

While the Department’s proposed regulations include numerous protections for traditionally underserved students, the proposed upper bound on n-sizes of 30 students could significantly limit the law’s benefits for these students. For example, a key provision aimed at helping subgroups of students is the requirement that schools with consistently underperforming subgroups implement targeted Title I interventions, but the effectiveness of this provision would be limited in those states that choose to use the highest allowable n-size for subgroups.

Since research from the National Center for Education Statistics has established that states can comfortably set an n-size of 10 students without fear of crossing the line into reporting identifiable student data,⁵ we suggest the Department revise §200.17 to cap n-sizes at 10, rather than 30 students. This change would ensure that significantly more traditionally underserved students would be able to benefit from the law’s protections.

School Rating Systems

Problems with a single summative score: In the proposed §200.18 subsection (b)(4) the Department requires states to summarize school performance under the state-determined accountability system in a single, summary measure. While we understand the desire to present information in a succinct manner for public distribution, the requirement of a single tiered rating (e.g. A, B, C, D, F) to measure something as complex as school

² Several decades of increasingly sophisticated research show that integrated education has clear impacts on opportunities and attainment for students of color and that it produces life-long benefits in high school and college completion and in connection of networks that lead to better jobs and income. It prepares students of all races to better live and work in diverse communities and workplaces. *See generally* National Coalition on School Diversity, Research Brief 5, “School Integration and K-12 Educational Outcomes: A Quick Synthesis of Social Science Evidence,” available at <http://www.schooldiversity.org/pdf/DiversityResearchBriefNo5.pdf>. *See also* Long-run Impacts of School Desegregation & School Quality on Adult Attainments (NBER Working Paper No. 16664), retrieved from <http://www.nber.org/papers/w16664> (illustrating the positive impact of desegregation on student achievement and life outcomes).

³ <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>

⁴ <https://www.gpo.gov/fdsys/pkg/FR-2014-12-10/pdf/2014-28911.pdf>

⁵ U.S. Department of Education, National Center for Education Statistics, *Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting* (NCES 2011–603) (Washington, DC, 2011).

performance and improvement runs the risk of actually distorting public perception with regard to school quality. Section 200.32 of the Department's proposed regulations requires inclusion of descriptions of how schools are rated in LEA report cards, as well as schools' scores on the various accountability measures laid out in §200.14, but there is no guarantee parents seeking quick information on school quality will read these descriptions, especially if presented with an easily accessible summative rating in the media or in online real estate listings. If the Department continues to insist on summative scores for schools, we would ask the Department to require that LEA report cards include a schools' scores on the §200.14 accountability measures to be prominently featured *on the same page* as the summative scores.

Decreasing reliance on absolute test levels: Partly as a result of prior federal requirements, current school report cards in all states focus on test *levels*. As a result, they largely reflect factors like early learning and community factors that are outside the control of schools and that correlate highly with the race, ethnicity, and income levels of schools. This means that these measures can unfairly label excellent diverse schools as low quality schools, discouraging families from choosing them. We support the emphasis in ESSA on a more nuanced set of school ratings, and the inclusion of student growth measures in §200.18 of the proposed regulations. We urge the Department, within its statutory authority, to place as much emphasis as possible on student achievement growth and similar factors, rather than simple achievement test levels. This is fairer to schools and largely unrelated to student demographics and, consequently, will encourage families to choose more diverse schools.

Encouraging greater racial as well as socioeconomic integration in our nation's schools through targeted and comprehensive interventions utilizing Title I funds should be a primary objective as implementation of ESSA moves forward. The Department should also ensure that as many students from subgroups as possible are counted and receive the intended protections of the new law, and that state school rating systems do not have the unintended effect of increasing racial and income segregation. The National Coalition on School Diversity looks forward to working with the Department to realize these goals.

Sincerely,

Philip Tegeler
Michael Hilton
Poverty & Race Research Action Council
Washington, DC

Monique Dixon
Monique Lin-Luse
NAACP Legal Defense and Educational Fund, Inc. (LDF)
Washington, DC

Kristen Clarke
Brenda Shum
Lawyers' Committee for Civil Rights Under Law
Washington, DC

Todd Mann
Magnet Schools of America
Washington, DC

Gary Orfield
Civil Rights Project/Proyecto Derechos Civiles
University of California, Los Angeles
Los Angeles, CA

Susan Eaton
Sillerman Center for the Advancement of Philanthropy
Brandeis University
Waltham, MA

David Harris
Charles Hamilton Houston Institute for Race and Justice
Harvard Law School
Cambridge, MA

Gail Sunderman
Maryland Equity Project
University of Maryland
College Park, MD

David S. Glaser
Voluntary Interdistrict Choice Corporation
St. Louis, MO

V. Elaine Gross
ERASE Racism
Syosset, NY

Sarah Camiscoli
IntegrateNYC4me
New York, NY

David Hinojosa
Intercultural Development Research Association
San Antonio, TX

Professor Elise Boddie
Rutgers Law School
Newark, NJ
(University listed for identification purposes only)

Professor Elizabeth DeBray
University of Georgia
Athens, GA
(University listed for identification purposes only)

Professor Douglas Harris
Tulane University
New Orleans, LA
(University listed for identification purposes only)

Professor Genevieve Siegel-Hawley
Virginia Commonwealth University
Richmond, VA
(University listed for identification purposes only)

Lee Teitell
Harvard Graduate School of Education
Cambridge, MA
(University listed for identification purposes only)

Professor Richard R. Valencia
The University of Texas
Austin, TX
(University listed for identification purposes only)

Professor Kevin Welner
University of Colorado
Boulder, CO
(University listed for identification purposes only)