



1201 16th St., N.W. | Washington, DC 20036 | Phone: (202) 833-4000

Lily Eskelsen García  
*President*

Rebecca S. Pringle  
*Vice President*

Princess R. Moss  
*Secretary-Treasurer*

John C. Stocks  
*Executive Director*

January 21, 2016

Acting Secretary John King, Jr.  
Department of Education  
400 Maryland Ave., SW  
Washington, DC 20202

*Via Electronic Portal*

Re: Docket ID: ED-2015-OESE-0130  
Request for Information: Implementing Programs under ESSA Title I

Dear Acting Secretary King:

The National Education Association (NEA), representing three million members who are working to ensure the success of our nation's students, submits the following comments on the Department of Education's (ED) request for information concerning the implementation of Title I programs under the Every Student Succeeds Act (ESSA). These comments supplement the remarks made by NEA President Lily Eskelsen García at ED's January 11, 2016, listening session in Washington, D.C.

**General comments: state plans, assessments, accountability and stakeholder involvement**

NEA applauds this request for input, and hopes that a broad range of stakeholders will provide comments as ESSA begins to take effect. We also encourage ED, in developing its regulatory plans, to give high priority to discerning the intent of Congress in any possible area of rulemaking. The new law represents a bipartisan compromise by a Congress that listened closely to education stakeholders around the country concerning the harms created by No Child Left Behind (NCLB). In response to those concerns, Congress has passed a law reflecting its disenchantment with the kinds of high-stakes testing and excessive federal management of standards, assessments, accountability and school interventions that typified NCLB. This Congressional skepticism can be seen in the overall structure and loci of decision making in Title I and the specific prohibitions on ED rulemaking in ESSA section 1111(e) and elsewhere in the law. Congress has also set out important federal "guardrails" in the law to ensure that the schools and students who need the most help receive it and that states and districts promote equity and opportunity. Both the prohibitions and these guardrails need to be carefully considered by ED in deciding whether and how to regulate specific areas in Title I, along with the comments on this RFI.

The need to carefully ascertain Congressional intent is highlighted by a recent ED letter on assessment participation. ESSA states that in designing an accountability system, the state

should measure 95 percent of students, but leaves it to the state to determine the weight of this requirement in the accountability system [sections 1111(c)(4)(E)(i) and 1111(e)(1)(B)(iii)(XI)]. Yet in a December 22 letter to chief state school officers on participation rates, ED said it was asking several states to demonstrate actions to “ensure that all students will participate in statewide assessments during the 2015-2016 school year and each year thereafter” and warned states of financial penalties for missing participation targets, noting that “similar requirements are included in the recently signed reauthorization of the ESEA, known as the Every Student Succeeds Act (ESSA).” It is difficult to reconcile this letter with the decision by Congress to let states determine the weight of nonparticipation in the accountability system. It is also difficult to reconcile the letter with ESSA’s rule on parents’ rights which states: “Nothing in this paragraph [academic assessments] shall be construed as preempting a State or local law regarding the decision of a parent to not have the parent's child participate in the academic assessments under this paragraph.” [Section 1111(b)(2)(K)]. Outside of the interpretive issue, though, it is our hope that if assessments become more meaningful under ESSA, and are detached from high stakes for which they were never designed, all parents will want to have their students tested and the issue of nonparticipation will as a practical matter recede.

NEA believes that ED can best help implement ESSA at this time by providing general guidance (not necessarily through rulemaking) on how the transition process will work. When will ED be ready to receive state plans? How soon will it have a peer review process ready? How quickly will ED be able to respond to state plans? These and other process questions are important with some sections of ESSA going into effect immediately or, in the case of new supports for certain low-performing schools, as early as when state plans are approved. It is also important since waivers expire in August of this year.

In providing guidance on submission of state plans we believe it is important for ED to emphasize the increased stakeholder consultation required in ESSA section 1111(a)(1)(A) as well as the public comment period in section 1111(a)(8). At a minimum states should be required to provide assurances that this consultation has taken place on all areas in the state plans, including assessments and accountability. Title I also includes stakeholder partnership requirements in plans to improve schools, e.g. in the development of local educational agency (LEA) plans for comprehensive support and improvement [section 1111(d)(1)(B)]. ED should also at a minimum require assurances that such state, local, and school partnership requirements are met.

One example of the need for stakeholder involvement in state plans is the area of indicators in the accountability system. ESSA provides an unprecedented opportunity for school quality to be factored into how schools are measured, not just standardized test scores [section 1111(c)(4)(B)(v)]. The fact that school resources and supports can be part of the measuring system means that school supports and resources can also be a necessary part of the resulting supports and improvements. This is a focus that can promote equity and success, and there should be robust stakeholder involvement in designing the indicator systems. NEA has been advocating for an “opportunity dashboard”—indicators of school quality that support learning—throughout the reauthorization process, and hopes that states will adopt many of these indicators in their indicator systems and report cards.

Looking at four more specific issues in ESSA in more detail, we have the following comments:

### **Supplement not supplant and other fiscal-related provisions**

As an item under consideration for negotiated rulemaking, NEA requests that ED regulate data requirements related to compliance under the fiscal requirement that funds under Title I, Part A be used to supplement, and not supplant, state and local funds (section 1118). When demonstrating that the methodology used by an LEA to allocate state and local funds ensures that each school receives all of the state and local funds it would otherwise receive if it were not receiving assistance under Title I, Part A, the LEA should be required to report actual per pupil expenditures of non-federal funds disaggregated by personnel and non-personnel expenditures for each Title I school. Only this level of expenditure data is sufficient to ensure that the LEA is in compliance regardless of the methodology chosen by it. NEA further requests that ED provide non-regulatory guidance to LEAs on methods of allocating state and local funding equitably, including by weighted per pupil funding; and, the evidence base supporting potential weights by category of students, such as low-income, English learner, and disabled, that an LEA may adopt as part of a weighted per pupil funding allocation formula.

NEA requests that ED define “a change in the organizational structure of the local educational agency,” as a condition that may be waived under the maintenance of effort requirement (section 8521).

NEA requests that ED provide non-regulatory guidance to LEAs on establishing the ranking order and the measure of poverty under eligible school attendance areas of Title I, Part A (section 1113).

NEA requests that ED provide non-regulatory guidance to states on determining waivers to operate Title I, Part A schoolwide programs for schools in which less than 40 percent of the children are from low-income families [section 1114(a)(1)(B)].

NEA requests that ED regulate pay for success initiatives, as defined under section 8101(15). Pay for success initiatives are at an embryonic stage with limited evidence on their efficacy and, as such, should be treated as pilot programs before broader adoption.

### **Foster care**

With regard to the education of children in foster care, NEA has the following recommendations. Students in foster care have long been denied an opportunity to succeed. ESSA now bridges the gap between students and a quality education. Key components include allowing students to stay in their school of origin and tracking graduation rates. However, ensuring student success will require ED regulations and guidance, especially on transportation plans and the data reporting process. Consistent and reliable transportation is essential to remaining in the school of origin and improvements in the graduation rate cannot occur without accurate and timely information on students in foster care.

### **Juvenile justice**

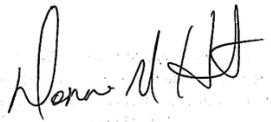
NEA supports the comments being filed in this docket by the Children's Defense Fund, the Education Law Center of Pennsylvania and a coalition of other groups concerned about juvenile justice. We would also suggest that ED provide guidance that will ensure appropriate training and development for educators who serve as school site points of contact for students returning to school.

### **Assessments in foreign languages**

ESSA requires provision of assessment in languages other than English in certain situations where a student is not yet proficient in English. According to ESSA 1111(b)(2)(F): "Each state plan shall identify the languages other than English that are present to a significant extent in the participating student population of the State and indicate the languages for which annual student academic assessments are not available and are needed." NEA encourages ED to provide guidance on what "significant extent" should mean.

NEA respectfully submits the above comments for consideration. Please do not hesitate to contact Matthew Finucane at [mfinucane@nea.org](mailto:mfinucane@nea.org) should you have any questions.

Sincerely,



Donna M. Harris-Aikens  
Director, Education Policy and Practice