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July 29, 2016

Secretary John King
United States Department of Education
400 Maryland Ave, SW
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0032

Dear Secretary King:

On behalf of the Missouri Association of School Administrators, I am writing today in response to the US Education Department's proposed regulations related to accountability and state plans for the Every Student Succeeds Act (ESSA). We welcome the opportunity to provide this feedback and look forward to the department's response, in the hope that the final rule reflects the feedback of the diverse group of stakeholders weighing in on the topics.

True accountability comes at the most local level, whether that be between a teacher and a student, an administrator and a parent, a principal and a teacher, a state education agency and a school district, or any combination of these parties. Despite good intentions, too often, when USED or policy makers in Washington attempt to come up with accountability standards, it results in a one-size-fits-all approach that restricts innovation, increases red tape, and, most importantly, fails to achieve the very goals the measure was intended to achieve. This was the lesson learned from No Child Left Behind. This was also what precipitated the passage of the Every Student Succeeds Act.

A 2012 Gallup student poll surveyed nearly 500,000 students in grades 5 through 12 from more than 1,700 public schools in 37 states and found that nearly 8 in 10 elementary students who participated in the poll are "engaged" with school. By middle school, that falls to about 6 in 10 students and by high school, only 4 in 10 students qualify as "engaged". Essentially, every year students spend in school, they become less engaged in learning. Beginning nearly sixteen months ago, this data point was used by our association to begin engaging with school superintendents and our state department of education to develop a new accountability and assessment system that would allow school districts to refocus their efforts on student learning rather than high-stakes standardized testing.

This group, with cooperation from our state department of education, was made up of more than 30 school leaders from across the state of Missouri. Our state's work began in March of 2015 and consisted of numerous in-depth meetings in order to build processes to garner feedback from school districts, review research, review data collected from the input process, and eventually construct a set of findings and recommendations. We ultimately have sought to answer these two questions:

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- What are the standards we expect our schools to meet?
- How do we know if these standards are being met?

Our efforts were extremely timely because, at the same time our work was moving forward, Congress passed the Every Student Succeeds Act in December of 2015. Earlier this year, our work was presented to our state board of education and has the potential to be the basis of Missouri's new accountability system under ESSA. Our work directly aligns with the stated intents of the passage of the new federal law. We believe our state is uniquely positioned to take advantage of ESSA, as long as the regulations adopted by USED during the rulemaking process do not limit the opportunities for a new approach to education.

The power of ESSA is the flexibility it provides to states and schools allowing them to focus on meeting the needs of their students and communities. However, it appears in many cases, the draft regulations are simply tweaking existing No Child Left Behind programs rather than fully rethinking their approach in order to allow Missouri to succeed in increasing the educational experience of our students. The tone and tenor of many of the proposed regulations too often appear to be unnecessarily rigid rather than granting the flexibility needed at the state and local level in order to spur innovation.

Below you will find a number of concerns that we have identified with the draft regulations proposed by USED.

- **Standardized Testing:** USED proposes that a state's academic indicators together carry "much greater" weight than its "school quality" (non-academic) indicators. Depending on how USED interprets the "much greater" provision when states submit their plans, this provision has the potential to push states to minimize the weight of non-academic factors in order to win plan approval from DOE. This has the potential to give USED too much influence over the emphasis on standardized testing given in the states.

Under our accountability system aligned with No Child Left Behind and our subsequent waiver, 85% of the points eligible for an elementary and middle school to receive on the building level annual performance report provided by our state department is based on state standardized test scores in math, English language arts, and science. The only additional measure considered when evaluating the performance of these elementary and middle schools is student attendance. Most would agree that doing well on these tests is important and should be a part of the evaluation process. However, if the old adage "what gets monitored, gets done," is accurate, then in the school improvement model presently constructed and applied in Missouri, it appears that other outcomes and inputs are viewed as significantly less important.

It was clear during the work of our task force, that Missouri schools and school leaders believe this over-emphasis on standardized test scores is contributing to increases in student disengagement and pushing highly qualified teachers and/or potential teachers away from the teaching profession. Most importantly, the emphasis on test scores has not resulted in schools producing students who are ready to succeed in their post-secondary endeavors.

We believe test scores should play a role in understanding school quality. However, it is a "trailing indicator" of school quality. A major finding from Missouri's efforts over the last sixteen months is that truly defining school success should look at a wide range of factors,

including “leading indicators” that more accurately ensure schools are providing the educational opportunities and culture that leads to student success.

For these reasons, we ask that the regulation be revised to clearly state that states like Missouri be given significant discretion in determining the value that is placed on standardized tests.

- **Summative Indicator:** Missouri school leaders are opposed to USED’s regulation (200.18) that requires the state plan to include one summative rating from at least three distinct rating categories for each school. The statute requires evaluation of LEAs and schools on academic and non-academic factors, but stopped short of requiring each to be rated by a single indicator. The statute’s clear step away from reducing a school to a single letter or number score is important and provides flexibility and support for more nuanced state and district reporting, including the use of data dashboards. Reliance on a summative indicator mirrors current reporting requirements, blurs the nuance that comes from multiple and varied indicators, unnecessarily hinders the ability of state and local education agencies to consider new approaches and increases the likelihood of states just maintaining the status quo of the broken NCLB. Why are we trying to reduce what should be a fair and comprehensive picture of schools to a single score?

USED should ensure that states retain the flexibility to develop their own weighting systems, including the weight of individual factors. States must have the flexibility to choose among and report on multiple academic and non-academic factors that provide educators, parents, and stakeholders with relevant information. Let the states do what they were tasked to do: take responsibility for building transparent and fair accountability systems.

- **Timeline for Implementation for Comprehensive Supports:** We oppose the proposed regulation that would require all SEAs to identify LEAs in need of support/improvement for the *start* of the 2017-18 school year. It is very likely that states may not have their accountability plans finalized until well into the 2016-17 school year. This unnecessarily rushed timeline creates a scenario whereby a school in the first year of ESSA implementation will be labeled as needing support based on 2016-17 data, which is NCLB data. Given that 2017-18 is the first year of ESSA implementation, it follows that identification under ESSA would come only after ESSA-related data has been collected, at the end of the 2017-18 school year for use during the 2018-19 school year.

Like the summative indicator, this proposal increases the likelihood that states maintain the status quo or, at best, implement only minor or peripheral changes to their systems. This proposal puts in place a process that forces states to rush their timeline to implement a system with the primary focus of meeting federal guidelines rather than the needs of students. We believe that time should be allowed for states to develop a quality accountability system. Our recommendation is that USED should treat the 2017-18 school year in a manner consistent with how it treated the 2016-17 school year after ESEA waivers expired, and freeze accountability ratings/labels.

- **Red Tape:** Contained throughout the proposed regulations are various reporting requirements that will place unnecessarily burdensome mandates on states and schools. In some cases, these requirements have already been proven to be ineffective under the previous No Child Left Behind Act.

While I am sure USED has the best of intentions with the proposal of these requirements, it is clear they exceed what is allowed under the ESSA. The statute (and public comments made by those who passed the law) that USED is specifically limited in the scope and amount of authority it has to only the information/requirements that are absolutely necessary. We believe that a number of the regulations laid out by USED far exceed the authority given by Congress through ESSA. Ultimately, states are best positioned to determine whether this information is appropriate rather than USED. Below are a few of these examples:

Section 200.21 (b) Notice including (1), (2), and (3) – requires LEAs to notify parents when a school is identified for Comprehensive Support and Improvement. While parents and parent involvement play a critical role in a child’s education, a simple letter of this sort did not prove effective during the era of No Child Left Behind. Instead, in many cases the letter, drafted by schools, was used as a way to discredit the USED and the regulations it had in place. This language should be permissive from a “must” to a “may”.

Section 200.21 (f) (2) requires an LEA to conduct a new comprehensive need assessment if they fail to meet the exit criteria established for a school in comprehensive support in a state-determined number of years. ESSA does not contain any provision that requires a new needs assessment. This language exceeds statutory requirements and should be permissive and changed from a “must” to a “may”.

Section 200.22 (e) requires LEAs to make the criteria for exiting the school Targeted Support and Improvement designation. This language exceeds statutory requirements and should be permissive and changed from a “must” to a “may”.

Section 200.21 (f) (3) requires an amendment to local school improvement plans along with other requirements not in statute. Section 200.21 (f) (3) (ii) related to inequities goes beyond the requirements of the statute. This should be removed or made permissive.

Section 200.22 (c) (7) (i) (A) & (B) require reviews of resources specifically relating to equity, teacher experience, and per-pupil expenditures that are not included in statute. This language should be permissive and changed from a “must” to a “may”.

Section 200.21 (d) (4) (i) (A) and (B) requires a review of resources at the LEA level which are not included in statute. Specifically, the language related to Comprehensive Support and Improvement and Target Support and Improvement clearly requires LEAs to identify inequities which *may* include LEA and school level budgeting. These proposed regulations place additional requirements on schools and states related to the evaluation of resources that are not statutory. The collection of Per Pupil Expenditure at the school level would require Missouri to collect additional information not currently collected in our Missouri Student Information System. If this is included, it should be permissive.

- **Allocation of School Improvement Funds:** The statutory requirement laid out in ESSA states that in regard to school improvement funds that “allotments are of sufficient size to enable an LEA to effectively implement selected strategies”. Currently, 200.24 (c) (2) (ii) requires states to make an award of a minimum of \$500,000 to each school that is identified

for Comprehensive Support and Improvement and \$50,000 for each school identified for Targeted Support and Improvement. According to Missouri's SEA, there will be 60 schools identified for Comprehensive Support and Improvement and unknown number of schools identified for Targeted Support and Improvement.

However, if, for instance, the state identified the same number (60) of schools for Targeted Support and Improvement, the total cost would be \$36,000,000. However, the state's Title 1 set-aside for school improvement would equate to just under \$17 million. Additionally, barring a lack of increase in Title 1 funding and the absence of a "hold harmless" provision for the school improvement set-aside taken by an SEA will likely mean cuts for districts. We believe this sends the message that state efforts are more important than local efforts to serve our students with the most need.

In the absence of increased appropriation to cover the cost of the removal of the hold harmless provision or the specific \$50,000 and \$500,000 award levels, we believe that money should first make its way to classrooms before the state education agency is allowed to set-aside funding for their school improvement efforts. Additionally, the specific award amounts should be determined by the states in order to accommodate available appropriations.

- **95 Percent Participation & Opt-Out:** ESSA maintains the requirement that 95 percent of students take the tests. The draft regulations would require states to lower the ranking of any school that does not test 95 percent of its students or to identify it as needing "targeted support." The department should restate ESSA's language requirements that states test 95 percent of students in identified grades and factor low participation rates into their accountability systems. Alternatively, the department could write no regulation at all. In either case, states should decide how to implement this provision.
- **N-Size:** USED proposes to leave the n-size determination up to the state, unless the state wants to go above 30, in which case the state will have to justify a larger n-size. This is a compromise position beyond which USED must not stray. The proposal, as it stands, means that if more than 2 students are absent on testing day, the school would be out of compliance. USED must not issue any further guidance and could consider refraining from any regulation on this topic at all, as the ESSA statute was clear in its assertion that this is a decision to be left to the states.
- **Foster Child Transport:** We strongly oppose USED's proposed regulation as it relates to the transportation of foster children. The USED proposal deems that when it comes to transporting children in foster care, if the child welfare agency and district cannot reach an agreement the LEA is fiscally liable to cover transportation costs. We agree with the right of students in foster care to have transportation to their school of origin, but finds that USED's proposed regulation is an egregious overreach in direct conflict with the underlying statute. The ESSA statute requires a collaborative approach between child welfare agencies and LEAs and provides that if there are additional costs for transporting students in foster care, the district "will provide transportation" for the child if the local child welfare agency agrees to reimburse the local educational agency for the cost of such transportation; if the local educational agency agrees to pay for the cost of such transportation; or if the local educational agency and the local child welfare agency agree to share the cost of such transportation. It does not identify any specific entity as fiscally liable. USED's proposal directly undermines the collaborative, carefully negotiated language in ESSA and reduces the responsibility of the child welfare agency to meaningfully engage in discussions with the

LEA. USED regulation in this area is unnecessary beyond simply underscoring that the LEA will provide transportation only in the three specified instances.

In summary, through No Child Left Behind and the waiver process, USED created an environment in the states, and specifically in Missouri, that drove a significant wedge between educators/schools and our State Department of Education. The ramifications of which are still being felt today. Changes in leadership on our State Board of Education, a change in leadership within our Department of Education, and the work of school leaders over the past sixteen months has provided practitioners with significant hope for the future of education in the state of Missouri where, collaboratively with our state leaders, we can strive to meet the needs our students and our communities. ESSA provides us with a unique opportunity to achieve our goals, however we have significant concerns regarding the way the law is being implemented. We are extremely fearful that if USED views SEA's as a means to implement a one-size-fits-all education system, collaboration and cooperation between the state and local education agencies will be adversely affected.

Thank you for the opportunity to provide feedback on this regulatory proposal. We look forward to seeing the process move forward. Should you have any further questions, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Roger Kurtz". The signature is written in a cursive style with a large, stylized "R" and "K".

Roger Kurtz
Executive Director, MASA

Cc: Sen. Roy Blunt, Sen. Claire McCaskill, Congressman Lacy Clay, Congressman Emanuel Clever, Congressman Sam Graves, Congresswoman Vicky Hartzler, Congressman Billy Long, Congressman Blaine Luetkemeyer, Congressman Jason Smith, Congresswoman Ann Wagner, Missouri State Board of Education President Charlie Shields, Missouri Department of Education Commissioner Margie Vandeven