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August 1, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Dear Secretary King:

Thank you for the opportunity to comment on proposed regulations implementing the Every Student Succeeds Act (ESSA). The undersigned are organizations committed to early childhood education, and we view the accountability and school turnaround provisions of the ESSA as an important opportunity to expand high-quality early learning opportunities. We understand that increasing the availability of high-quality early learning is a top priority of both Congress and the Department of Education, and our comments are intended to help ensure that these rules advance that priority. We appreciate your consideration.

The early years of life are incredibly important to child development – and we know that high-quality interventions can make a significant contribution to successful child development.¹ In recent years numerous states have made significant progress in expanding state-funded early learning programs.² In addition, states have been expanding the use of quality rating and improvement systems that measure the quality of early learning programs and support

¹ Center on the Developing Child at Harvard University (2016). "From Best Practices to Breakthrough Impacts: A Science-Based Approach to Building a More Promising Future for Young Children and Families." Retrieved from www.developingchild.harvard.edu; Elango, S., Garcia, J.L., Heckman, J., and Hojman, A. (2015) "Early Childhood Education." https://econresearch.uchicago.edu/sites/econresearch.uchicago.edu/files/Elango_etal_2015_early-childhood-education.pdf.

² National Institute for Early Education Research (2016). "The State of Preschool 2015."

improvement,³ funded in many instances by the Department of Education through the Early Learning Challenge program. These systems are the early learning analogue to the accountability and turnaround systems included in the ESSA, and their design offers some lessons that could benefit states in designing their next-generation accountability systems.⁴

The Department's ESSA NPRM appears to limit the ability of states to emphasize the early elementary grades and early learning in their accountability systems. Early learning can be a critical strategy for improving school performance, and our recommendations here are intended to further the goal of school improvement that animates the Department's proposed rules. Moreover, the K-2 years have historically been undervalued in accountability and school improvement, and we hope the Department's final rules will give states the space they need to place greater emphasis on those years.

A critical aspect of ESSA is that throughout the law its language emphasizes that discretionary funding streams may be spent on early learning.⁵ This greater clarity is important and should influence state guidance and local spending. But clarity alone is insufficient. If federal rules force state accountability systems to push local spending toward the tested years (third grade and up), then the discretion articulated in ESSA will not lead to meaningful growth of high-quality early learning opportunities.

We look forward to partnering with the Department and states to implement the final rules in a manner that supports high-quality early learning and K-2 education.

Overview

The years prior to third grade are incredibly important developmentally, but historically state accountability systems have ignored those years – in part because federal law pushed them to do so. A recent analysis of state accountability systems showed that assessment results represent the dominant factor in accountability for elementary and middle schools, with no state using assessment results for less than 71% of school scores.⁶ Under the ESSA assessment results will continue to be the predominant indicator of school success, but Section 1111(c)(4)(B)(v) of the law requires states to utilize an “indicator of school quality or student success” beyond assessment results.⁷

The use of this (B)(v) indicator presents an opportunity for states to remove a significant disincentive to early learning presented by previous accountability systems. When assessment results in third grade and up are the only metric on which a school is judged, it creates a strong incentive for district and school leaders to focus on the “tested years.” There are more than four years between the day

³ For a chart showing the growth of QRIS over the last 18 years, see the QRIS Compendium on-line:

<http://qriscompendium.org/top-ten/question-1>.

⁴ Regenstein, E. and Romero-Jurado, R. (2014). “A Framework for Rethinking State Education Accountability and Support from Birth through High School.” P. 26.

⁵ First Five Years Fund (May 2016). “Every Student Succeeds Act: What Early Learning in ESSA Can Look Like for States and Districts.” <http://ffyf.org/wp-content/uploads/2016/05/ESSA-for-States-and-Districts.pdf>.

⁶ Martin, C., Sargrad, S., and Batel, S. (2016) “Making the Grade: A 50-State Analysis of School Accountability Systems.” Table 6, p. 16. Washington, DC: Center for American Progress.

⁷ Every Student Succeeds Act, Sec. 1111(c)(4)(B)(v).

a child enters a 4-year-old preschool program and the day that child takes his or her first accountability assessment – longer than the tenure of the average superintendent or principal. In the context of a low-performing or turnaround school, four years has often been too long to wait to show results. Moreover, many low-performing schools have high student mobility – meaning that only about half of the children receiving pre-kindergarten education in a district could be expected to stay long enough to take accountability assessments in that same district.⁸

Taken together, these factors put pressure on local leaders to focus on the tested years – the years that mattered most to their metrics. The new (B)(v) metric provides an opportunity to shift the balance by using additional indicators that place emphasis on the early years, which will encourage local action to improve opportunities in those years. Assessment results remain the central focus of state accountability systems under the ESSA, but the opportunity to use (B)(v) as a counterweight is critical to the development of early learning systems and efforts to raise quality in the early elementary grades.

One potential strategy for states interested in strengthening the focus on the early years is to choose (B)(v) indicators that can be collected for any grade (such as chronic absenteeism) and then disaggregate the data by grade. For example, if a state determined chose a single (B)(v) indicator that would count for 30% of an elementary school's rating, it could decide that each year in a K-5 school would count as 5% of the school's overall rating – meaning that the K-2 years would represent 15% of the school's total rating.⁹ States could even choose to put additional weight on the K-2 years, which might be particularly important in states placing heavy emphasis on growth in their assessment scores.¹⁰

A complementary and even more ambitious approach is one used in many early learning rating systems: conducting external reviews of teaching and learning, including of the quality of schoolwide systems supporting quality instruction.¹¹ This approach could have numerous benefits if applied to K-12 schools through the (B)(v) indicator, including generating much more actionable feedback for local leaders seeking to improve school quality. These measurements can also be used appropriately for all grade levels, not just third grade and up – providing an opportunity to create real accountability in the K-2 years.¹²

The ESSA rules do not and should not mandate that states use the (B)(v) indicator to place emphasis on the early years. It is important to understand, however, that the (B)(v) indicator presents a valuable opportunity for states to fundamentally change how accountability systems drive local action relating to the early elementary and pre-kindergarten years. Provisions in the rules that impinge on that opportunity – or that discourage the use of school improvement funds in the early

⁸ Regenstein, E., Connors, M., and Romero-Jurado, R. (2016) "Valuing the Early Years in State Accountability Systems Under the Every Student Succeeds Act." Pp. 4-5; Regenstein, E., Romero-Jurado, R., Cohen, J., and Segal, A. (2014) "Changing the Metrics of Turnaround to Encourage Early Learning Strategies." Pp. 15-16. <http://www.theounce.org/what-we-do/policy/policy-conversations>

⁹ Valuing the Early Years in State Accountability Systems Under the Every Student Succeeds Act, p. 12.

¹⁰ Valuing the Early Years in State Accountability Systems Under the Every Student Succeeds Act, p. 13.

¹¹ Valuing the Early Years in State Accountability Systems Under the Every Student Succeeds Act, pp. 7-10.

¹² This approach has the added benefit of creating measurements that can be used for schools with grade configurations that fall outside of a state's academic assessment system, as noted in §299.17(b)(8)(i).

years – reduce the likelihood that ESSA will encourage early learning investments. President Obama, you, and numerous Congressional leaders in both parties have spoken eloquently about the importance of early learning investments under ESSA, and our recommendations are intended to accelerate those investments.

Specific Provisions

§200.14(d) – Accountability Indicators

While Congress was clear that (B)(v) indicators need not be strictly about assessment results, the language of §200.14(d) could be read to tie the (B)(v) indicator back to testing. The Department requires the (B)(v) measure to be “supported by research that performance or progress on such measures is likely to *increase student achievement*.” In so doing the Department appears to be limiting the universe of potential indicators to test scores and things that lead to better test scores. Although the term “student achievement” is not specifically defined, its usage in both the statute and regulations – particularly §200.33 – indicate that it is referring to assessment results. While many improvements to K-2 education can in fact be linked to higher test scores, §200.14(d) may make it more difficult for states to seek out new indicators that measure the quality of education in the untested years.

Importantly, states may choose to value aspects of a child’s education beyond “student achievement.” If defined too narrowly, §200.14(d) could be read to preclude a state focus on social-emotional development, which has been shown to be critical to long-term success.¹³ The statute itself allows a focus on broader indicators like student and educator engagement, and states might choose indicators in that area that have been shown to support students’ learning and development, but for which there is not research evidence to tie them directly to test scores.

To be sure, we share the Department’s concern about the use of indicators that will not lead to improved child outcomes – but we would allow states to define desired child outcomes to include more than “student achievement.” The ESSA clearly states that any indicator used under (B)(v) must be valid and reliable¹⁴, which appropriately limits the ability of states to use indicators that do not have any valid purpose in improving education. This is particularly important for the years prior to third grade, when “student achievement” is not being measured directly.

Clearly there are accountability indicators that can be measured in the K-2 years that meet the proposed standard of §200.14(d), but this is an area that states and researchers simply have not had much opportunity to explore under previous federal laws. Indicators not previously used in accountability systems -- including measures of professional practice, or the indicators itemized in (B)(v)(II) -- may be valid and reliable indicators of practices that a state legitimately values in its education system, but not yet have research evidence linking them directly to improved test scores. States should be given greater freedom to experiment in this area within the statutory parameters,

¹³ Durlak, J. A., Weissberg, R. P., Dymnicki, A. B., Taylor, R. D., & Schellinger, K. B. (2011). The impact of enhancing students’ social and emotional learning: A meta-analysis of school-based universal interventions. *Child development*, 82(1), 405-432.

¹⁴ Every Student Succeeds Act, Sec. 1111(c)(4)(B)(v)(I)(bb).

which limit the impact of (B)(v) indicators on overall ratings and still require the indicators to be valid and reliable.

Indeed, we appreciate the Department's stated desire to have measures that address the quality of education in the early grades, and its understanding that in elementary schools – where measures of “postsecondary readiness” are not available – there is a need for different metrics. We hope that in the years to come states will work to develop additional metrics focusing on those years that are valid and reliable for accountability purposes. This is an area of policy development where more work is clearly needed.¹⁵

Congress made the decision that state education accountability systems should primarily focus on assessment results but left room for other state priorities. As written §200.14(d) undermines that decision by tying the entire system back to “student achievement.” We recommend amending this section to require that the indicators under (B)(v) be “supported by research that performance or progress on such measures is likely to improve student learning and development” – which captures the appropriate focus on research while eliminating the narrow focus on assessment results. This change would align well with the law's intention of promoting a more well-rounded education.

§200.18(d) – Differentiation of School Performance

While we see the (B)(v) indicator as a key opportunity to measure school performance in a manner that incentivizes early learning, the language of §200.18(d) effectively eliminates the ability of states to utilize the (B)(v) indicator in rating schools. Under §200.18(d), a school's performance on the (B)(v) indicator cannot have any impact on whether a school is identified for comprehensive support or improvement (§200.19(a)) or targeted support and improvement (§200.19(b)); those determinations must be made based on test scores alone. This approach is likely to discourage investment efforts to ensure high-quality instruction in pre-kindergarten and the early elementary years, at least in schools seeking to avoid identification as a low-performing school.

Consider the example of a school with historically low performance on state tests in both proficiency and growth. The school assesses its K-2 students and determines that children are entering kindergarten far behind, and falling even further behind before third grade. Accordingly, it spends several years developing partnerships with early learning providers, strengthening its pre-kindergarten offerings, and recruiting top teachers into the early elementary years. The state's measures of teaching quality show that in the years prior to third grade the district is providing an extremely high-quality education, which is likely to lead to dramatic improvements in the coming years. And yet because of §200.18(d), this school could be identified as being in need of improvement instead of a school with slightly higher test scores but that has not undertaken any improvement efforts in the pre-third grade years.

Congress decided that assessment results will remain the primary indicator of school performance, but also gave states leeway to add additional indicators. States might choose to use those additional indicators to place additional emphasis on the early years, or on other factors the state considers important to a successful education system. But if those indicators are not part of the process of ranking schools by performance, then local schools will have little to no incentive to focus

¹⁵ Changing the Metrics of Turnaround to Encourage Early Learning Strategies, pp. 20-21.

on improvement in those indicators. This would undermine the intent of Congress and leave in place the accountability system disincentives to early investment that the ESSA meant to eliminate. The Department should follow the intent of Congress by allowing states to include their (B)(v) indicators in differentiating school performance.

§200.21(f) – Comprehensive support and improvement

Once identified for comprehensive support and improvement, §200.18(d)(3) gives schools the option of using high-quality pre-k as an improvement strategy. However, the regulations are set up to strongly discourage the use of early learning as an improvement strategy.

School improvement fund awards are limited to four years under §200.24(c)(2)(iii), potentially including a planning year. This means that even if a school implemented a new preschool program for 4-year-olds in the first year of a grant¹⁶, the children attending that preschool program would only be in second grade in the final year of the grant – too young to take accountability tests. But for a school to exit continuous improvement, the rules require that it show improvement on “student outcomes” under §200.21(f). In other words, the improvement fund strategy that might end up having the most powerful impact on a school’s long-term trajectory is mathematically incapable of helping the school exit improvement status within the grant period. This combination of rules dramatically reduces the likelihood of any school using improvement funds to support early education.

There are in fact many important practices that school improvement funds could support that would improve early learning at low-performing elementary schools. For example:

- Quantifying the kindergarten entry gap. In many low-performing elementary schools, children are entering kindergarten already far behind. Using developmentally-appropriate assessments to measure where children are at kindergarten entry can provide useful information to inform resource allocation across the birth-to-third-grade spectrum.
- Partner with community providers to expand access and improve quality. This can include aligning curriculum and assessments, developing joint professional development, and engaging families and transition planning.
- Opening additional school-based preschool classrooms.¹⁷

While all of these activities are permitted by law, none of them are likely to happen if schools are responsible solely for showing improvement on standardized test scores within a four year period. Accordingly, §200.21(f) should be amended to allow exit from designation based on measures other than (or in addition to) scores in tested grades and subjects. In this instance, the use of external reviews based on professional practice would serve a valuable purpose; improved practices can be measured immediately, even if the cohorts of children affected have not yet taken accountability

¹⁶ While districts may choose to implement new pre-k programs in the first year of a grant, districts will generally be more successful in providing pre-k if they design their new program in consultation with the community. “Early Learning Users Guide for Illinois School Boards.” P. 7. Springfield, IL: Illinois Association of School Boards and Ounce of Prevention Fund. This would likely preclude the implementation of a pre-k program in the first year of a grant.

¹⁷ These examples are drawn from Changing the Metrics of Turnaround to Encourage Early Learning Strategies, pp. 19-24.

assessments.¹⁸ It is appropriate for the exit criteria to demand a rigorous external validation of improvement at the school, but not for student test scores in third grade and up to be the only measure states use to determine exit from improvement status.

§299.15 – Consultation and Coordination

The regulations require states to consult with a range of stakeholders in developing its consolidated plan. While many interests are represented in the draft rule, the list does not include any representatives of state early learning communities. We encourage the Department to expand the list of stakeholders states are required to engage to include the early learning community – including organizations focused on early learning issues; providers of Head Start, child care, and state-funded preschool; and families served in those programs. Another approach would be to require the engagement of the state’s early learning State Advisory Council, which all states are required to have under the federal Head Start Act.¹⁹

§299.18 – Supporting excellent educators

Relatedly, the narrow focus on student achievement in §299.18 limits the ability of states to improve their teaching force. Great teaching – particularly in the early years -- is about far more than just “academic” skills; it is about creating an environment that allows children to use their natural curiosity, develop their social and emotional skills, and develop close relationships with their teachers and each other.²⁰ We strongly support the Department’s efforts to improve leadership and teaching, but the definition of “effectiveness” in §299.18(b)(iii) would be improved by changing the language to, “Increase the number of teachers and principals or other school leaders who are effective in improving student learning and development.”

It is also important to note that research has shown that accountability systems focused on third grade and up have led districts to reassign weaker teachers to the earlier grades.²¹ One important reason to allow states to emphasize K-2 using the (B)(v) indicator is to prevent this reassignment of less effective teachers to the developmentally important early elementary years.

¹⁸ Changing the Metrics of Turnaround to Encourage Early Learning Strategies, pp. 20-21.

¹⁹ Head Start Act, 42 U.S.C. §9837b(b).

²⁰ Regenstein, E., Marable, B., and Britten, J. “Starting at Five is Too Late: Early Childhood Education and Upward Mobility,” in *Education for Upward Mobility*. (2016) Lanham, MD: Rowman & Littlefield. Pp. 160-163.

²¹ Goldring, E., Neumerski, C., Cannata, M., Drake, T., Grissom, J., Rubin, M., and Schuermann, P. (May 2014). “Principals’ Use of Teacher Effectiveness Data for Talent Management Decisions.” Peabody College, Vanderbilt University <http://www.principaldatause.org/assets/files/reports/Summary-Report-201405.pdf>; Fuller, S.C., and Ladd, H. (April 2012). “School Based Accountability and the Distribution of Teacher Quality Among Grades in Elementary School.” Center for Analysis of Longitudinal Data in Education Research, Working Paper 75. http://www.caldercenter.org/sites/default/files/wp75_updt.pdf; Grissom, J.A., Kalogrides, D., and Loeb, S. (2014). “Strategic Staffing: How Accountability Pressures Affect the Distribution of Teachers Within Schools and Resulting Student Achievement.” <http://popcenter.uchicago.edu/archived/2014-02-27%20Grissom%20Strategic%20Staffing.pdf>.

Conclusion

We appreciate the opportunity to comment on the proposed regulations. We have been grateful for the Department's strong support of early learning in the last eight years, and hope that it will amend these rules to reduce the pressure on local school leaders to focus resources on the "tested years." State accountability and school turnaround can provide meaningful support to state early learning efforts, and we believe the changes we propose would help state and local leaders expand the availability of high-quality early learning.

Sincerely,

Ounce of Prevention Fund
Advocates for Children of New Jersey
Children Now (CA)
Children's Alliance (WA)
Children's Action Alliance (AZ)
Clayton Early Learning (CO)
Colorado Children's Campaign
Erikson Institute (IL)
First Five California
First Five Los Angeles (CA)
First Five Years Fund
Illinois Action for Children
McCormick Center for Early Childhood Leadership at National Louis University (IL)
Prichard Committee for Academic Excellence (KY)
Rhode Island KIDS COUNT
Sargent Shriver National Center on Poverty Law
Stand for Children Illinois
Strategies for Children (MA)
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