

Congress of the United States

Washington, DC 20510

September 18, 2017

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

The bipartisan Every Student Succeeds Act (ESSA) empowered states with the flexibility to design statewide accountability systems to improve public education, so long as those systems comply with the law's equity requirements. It is the responsibility of the Department of Education ("Department") to ensure compliance with these equity provisions designed to provide all children with a high-quality, public education.

Sixteen states and the District of Columbia submitted ESSA plans to the Department in April and May 2017. The Department provided each state with feedback outlining areas of non-compliance prior to plan approval. As of today, fourteen state plans have been approved. While the Department's feedback correctly noted many statutory violations that resulted in some necessary revisions to state plans, we believe the Department missed other statutory violations in its feedback and, thus, states did not address these violations in their revised plans. We are concerned that inconsistent feedback and a lack of enforcement of the law's equity-focused provisions will hinder states' ability to identify and address persistent achievement gaps, harming our nation's most vulnerable students.

As the Department turns to the second plan submission window, we remind you that it is your statutory obligation to *only* approve plans that meet all the law's requirements. While the below list of such requirements is not exhaustive, it includes critical equity requirements that must be upheld to ensure faithful implementation of the law.

Select Every Student Succeeds Act Statutory Requirements:

Assessments

- **Annual reading and math assessments:** States must annually assess all students in grades 3-8 and once in high school on reading and math on statewide assessments.
 - Sec. 1111(b)(2)(B)(v)(I)
- **Science assessments:** States must test students once in grades 3-5, grades 6-9, and grades 10-12 in science on statewide assessments.
 - Sec. 1111(b)(2)(B)(v)(II)
- **Every student must count:** States must test at least 95% of all students and 95% of students in each subgroup each year to ensure every student is included in the

accountability system, and must factor whether schools meet this requirement into their accountability systems.

- Sec. 1111(c)(4)(E)
- **Disaggregate by subgroups:** States must disaggregate information by each subgroup of students, including each major racial and ethnic subgroup, students who are economically disadvantaged, children with disabilities, English proficiency status, gender, and migrant status. States cannot combine these subgroups together for reporting or for use in the statewide accountability system.
 - Sec. 1111(b)(2)(B)(xi), Sec. 1111(c)(2)

Accountability

- **Minimum number of students:** States must set a statistically sound n-size, or minimum number of students in a subgroup, so that students can be included in the accountability system without identifying personal information.
 - Sec. 1111(c)(3)
- **Long-term and interim goals:** States must set ambitious goals for all students and for each subgroup of students based on the academic indicators, including academic assessment proficiency, the other academic indicator for elementary or middle schools, English learner progress, and high school graduation rates. States must also include measures of interim progress to assess whether or not students are on track to meet the state's goals.
 - Sec. 1111(c)(4)(A)
- **At least four indicators:** Each state is required to develop an accountability system that includes at least four indicators for elementary and middle schools and at least four indicators for high schools (Sec. 1111(c)(4)(B)):
 - Elementary and middle schools: (1) academic achievement as measured by the annual statewide reading and math assessments required under 1111(b)(2), (2) another academic indicator which may be student growth, (3) English language proficiency, and (4) one or more measures of school quality or student success.
 - High schools: (1) academic achievement as measured by the annual statewide reading and math assessments required under 1111(b)(2), (2) graduation rate, (3) English language proficiency, and (4) one or more measures of school quality or student success.
- **Subgroup performance:** Each of the indicators must measure the performance of all students and each subgroup of students. This means that any indicator used must allow for disaggregation by student subgroup.
 - Sec. 1111(c)(4)(C), Sec. 1111(c)(4)(C)(iii)
- **School quality or student success:** The other academic indicator and the indicator(s) of school quality or student success must show meaningful differentiation in school performance – meaning a state cannot use an indicator or indicators(s) on which all

students perform well or relatively similar. Indicator(s) of school quality or student success must be valid, reliable, comparable, and statewide.

○ Sec. 1111(c)(4)(B)(v)(I)

- **Academic achievement:** The first indicator—academic achievement—must include measures of proficiency in reading and math, as measured by the statewide annual assessments.
 - Sec. 1111(c)(4)(B)(i)
- **Student growth or other academic indicator:** States must select an indicator for elementary schools and secondary schools that are not high schools that measures student growth or another valid, reliable, and statewide academic indicator.
 - Sec. 1111(c)(4)(B)(ii)
- **Graduation Rate:** High schools in the state must use graduation rate as an indicator. This includes the four-year adjusted cohort rate and, if determined by the state, an extended-year cohort graduation rate.
 - Sec. 1111(c)(4)(B)(iii)
- **English language proficiency:** All schools must assess progress in achieving English language proficiency for English learners. This is required for all schools in which there is an English learner subgroup, and is based on the English language proficiency assessments selected by the State. If a state decides to exempt recently arrived English learners, it must be done within the requirements of a comprehensive, statewide system, as required by ESSA.
 - Sec. 1111(c)(4)(B)(iv), Sec. 1111(b)(3)
- **Identification of schools needing improvement:** The law requires States to establish accountability systems that are based on all the indicators required by federal law and that assess the performance of all students and each individual group of students. These systems are used to determine schools that need more help getting all students and each subgroup of students to meet the ambitious long-term goals established by each state.
 - Sec. 1111(c)(4)(D), Sec. 1111(d)(3)(A)(i)
- **Three groups of schools:** States are required to identify three groups of schools:
 - Comprehensive support and improvement –not less than the lowest-performing 5% of all schools and all public high schools failing to graduate one third or more of their students, Sec. 1111(d)(1)
 - Targeted support and improvement – any school with one or more consistently underperforming subgroup, Sec. 1111(c)(4)(C), Sec. 1111(d)(2)(B)
 - Additional targeted support – schools in which any subgroup of students, on its own, is performing at the level of the lowest-performing 5% of schools, Sec 1111(d)(2)(C)

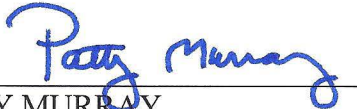
- **Improvement Plan:** Once a school is identified for supports, it must implement an improvement plan that uses evidence-based interventions and takes meaningful steps towards improving achievement for the school as a whole or a specific subgroup of students.
 - Sec. 1111(d)(1)(B-C), Sec. 1111(d)(2)(B), Sec. 8101(21)

Other Plan Provisions

- **Improving School Conditions:** States must also take steps toward reducing disparities and improving school conditions as part of their state plan. This includes making sure minority and low-income students have equitable access to well-trained teachers; providing supports to improve educational stability for students in foster care; providing supports to students to ensure effective transitions to middle and high schools; reducing bullying and harassment; and reducing harmful discipline practices such as suspension, expulsion, seclusion, and restraint.
 - Sec. 1111(g)

While the Department’s state plan review and approval process thus far has failed to adequately address all of the above-listed requirements, we urge careful scrutiny of compliance with these requirements moving forward. We remain concerned with the quality and integrity of plan components addressing educational equity, and we will continue to exercise our constitutional duty to conduct oversight and closely monitor the plan approval process.

Sincerely,



PATTY MURRAY
Ranking Member
U.S. Senate Health, Education, Labor,
and Pensions Committee



ROBERT C. “BOBBY” SCOTT
Ranking Member
U.S. House of Representatives
Committee on Education and the
Workforce