

Congress of the United States

Washington, DC 20510

March 10, 2017

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

Dear Secretary DeVos:

In 2015, Congress passed the Every Student Succeeds Act (ESSA) with overwhelming bipartisan support and the goal “to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”¹ In order to achieve this, ESSA provides states with additional flexibility in the design of statewide accountability and improvement systems and includes strong federal guardrails to hold states, school districts, and schools accountable for meeting the goals of ESSA.

As you know, on March 9th, Congressional Republicans used the Congressional Review Act process to pass a resolution overturning a critical federal regulation to implement ESSA. This action comes less than a month before the first round of ESSA state plans are due. The Department must ensure the intent of the law is upheld and that the public, including students, teachers, principals, parents, school administrators, civil rights and community organizations have an opportunity to provide feedback on any revisions to the state plan application process underway.

In mid-February, you wrote to chief state school officers about your intention to revise the existing state template that states have utilized since last fall to develop their state ESSA plans and to reduce the template to only those items that are “absolutely necessary.”² With this template set to be released in a matter of days, we request you provide at least initial answers to the following questions about the revised template’s development before the template is released:

1. What process did you and your staff use to determine what was “absolutely necessary” for the revised template?
2. It is our understanding that this template has not been released for public comment. What have you done and will you do to ensure that the public has the opportunity to provide feedback on this revised template?
3. Did you engage in any stakeholder meetings to discuss this revised template? If you did, please list what organizations or individuals were consulted and what documents or other information they provided to the Department regarding the revised template. What was your process for incorporating this stakeholder feedback into this template? If you did not incorporate stakeholder feedback, why not?
4. This template is set to be released less than one month before the initial set of state plans are due on April 3, 2017. ESSA requires states to make their plans available for public comment

¹ 20 U.S.C. § 6301

² <https://www2.ed.gov/policy/elsec/guid/secletter/170210.html>

for a period of *not less than 30 days prior to* submission to the Secretary for approval.³ The intent of this provision was to ensure the *entire* state plan is available to the public for at least 30 days *before* it is submitted to the Secretary. If states are revising the state plans based on the new template released on March 13th, it is unclear whether they will be able to comply with this statutory requirement. How do you plan to ensure that states submitting their plans in early April meet this statutory requirement as intended by Congress?

5. Issuing a revised template raises issues of fairness and consistency in the state plan approval process and questions about how your Department will administer the peer review process for state plans. Your February 10th letter raised the possibility of states using *multiple* templates for submitting their ESSA plans, including the template to be released next week as well as any other template that could be developed by a state or group of states. Do you plan to issue peer review guidance to assist the peer reviewers in reviewing plans submitted under any new template? Furthermore, if there are multiple templates issued, how will you ensure fairness and consistency for peer reviewers and states in the state plan approval process so that states know they are all being held to the same standards for state plan approval by peer reviewers and the Department?
6. Will you commit to allowing states to use the template released by the Obama Administration on November 29, 2016?⁴

ESSA contains numerous federal guardrails throughout the law to ensure that schools, districts, and states are held accountable for improving academic outcomes of all students, regardless of their background, where they live, how much their parents make, or how they learn. The revised template must comply with the requirements of the statute. These requirements include, but are not limited to –

- state standards in 1111(b)(1), including requirements that state standards are aligned with postsecondary education and career and technical education standards and that alternate academic achievement standards for students with the most significant cognitive disabilities are aligned with the general standards and are designed to ensure a student meeting the alternate standards is on track to pursue competitive, integrated postsecondary education or employment⁵;
- assessments in section 1111(b)(2), including requirements for annual, statewide assessments in reading and math and science assessments administered in grade spans⁶;
- the statewide accountability system described in section 1111(c), including requirements for setting a statistically sound n-size for subgroups of students, establishing long term goals and measurements of interim progress that are set in a way to ensure states make significant progress in closing achievement gaps, the selection and weighting of indicators that take into account the performance of all students and each subgroup of students in a state accountability system (that the student achievement, high school graduation rate, other academic indicator at the elementary and middle school level and English proficiency indicators are each weighted substantially and in the aggregate carry much greater weight than the school quality or student success indicator), ensuring that each subgroup counts individually in the accountability system (preventing “super-subgroups”), annually and

³ 20 U.S.C. § 6311(a)(8)

⁴ <https://www2.ed.gov/policy/elsec/leg/essa/essadcl-accountability-plus-112916.pdf>

⁵ 20 U.S.C. § 6311(b)(1)

⁶ 20 U.S.C. § 6311(b)(2)

meaningfully differentiating all public schools based on all the indicators described above, annually differentiating any school where any subgroup of students is consistently underperforming, identifying at least once every three years the lowest-performing five percent of schools and the high schools with graduation rates at 67 percent or below, assessing 95 percent of all students in schools and factoring that requirement into the state accountability system, and ensuring that states are not administering the alternate assessment aligned to the alternate academic achievement standards to more than one percent of all students assessed and that only students with the most significant cognitive disabilities are administered this assessments⁷;

- school improvement requirements in section 1111(d), including providing comprehensive and targeted support to all identified schools, including additional targeted supports where required and ensuring that interventions are evidence-based, and ensuring that additional improvement actions take place in low-performing schools that do not improve as required under the statute⁸;
- all other assurances and descriptions in section 1111(g), including ensuring an equitable distribution of teachers, ensuring transportation is provided for students in foster care, description of actions the state will take to improve school conditions for learning by reducing bullying, harassment, and overuse of disciplinary practices that remove students from the classroom, and a description of how states will support school districts and schools to reduce the use of seclusion and restraint⁹; and
- reporting requirements in section 1111(h) that states, districts, and schools must meet to help ensure there is transparency for parents, teachers, and others about student outcomes, the design of state accountability systems, measures of school climate and safety, and resource inequities.

We are concerned about the potential chaos that will result in ESSA implementation as a result of the repeal of the ESSA regulation and the introduction of multiple state plan templates. Now is the time to ensure stability for states as they finalize their state plans to comply with the federal guardrails in the law. We look forward to reviewing the Department's proposed template and working with you to ensure this implementation process is as smooth and transparent as possible.

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

⁷ 20 U.S.C. § 6311(c)

⁸ 20 U.S.C. § 6311(d)

⁹ 20 U.S.C. § 6311(g)