



New York State  
School Boards  
Association

*Better School Boards Lead to Better Student Performance*

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August 2, 2017

The Honorable Andrew Cuomo  
New York State Governor  
State Capitol  
Albany, NY 12224

Re: NYSSBA Reaction to the proposed ESSA Plan

Dear Governor Cuomo:

On behalf of the New York State School Boards Association, we are writing at this time to share the Association's thoughts and reactions to the recently published, revised Draft Every Student Succeeds Act Plan (the Plan).

As currently drafted, the Plan is an ambitious one; one which, as acknowledged by the Board of Regents and the State Education Department, exceeds federal requirements for the implementation of ESSA and "stretch[es] beyond historical patterns of improvement in outcomes for students." Beyond setting up a school accountability system, the Plan aspires to transform New York's public education system by addressing a wide range of socioeconomic and other issues, many beyond the capacity of school districts alone to remedy.

NYSSBA shares the commitment of the Board of Regents and the Department to continue to improve New York's system of public education to ensure that all students have access to a high quality public education that will prepare them for career, college and citizenship. However, the particulars of such a commitment need not be wholly contained within the Plan; a plan that is subject to federal approval and oversight and which districts may not have the resources to implement. Federal approval of the Plan does not come with a commitment to fund it.

While discussions in Washington continue regarding potential cuts to existing federal education programs (without changes in federal mandates), and cuts to federal Medicaid funds, NYSSBA has grave concerns about committing to plans and programs from which the State and districts may not be able to back away without federal approval, even if existing funding disappears.

While NYSSBA supports the intent behind the Plan's broader blueprint, we ask that, as part of your review, you consider the unintended consequences of including in the Plan for

federal approval components that go well beyond what is required to comply with ESSA. We also ask that you additionally consider the following.

### **School District Capacity to Implement**

The Plan and its summary point to two sources to fund the costs associated with implementation of the Plan. Those are \$1.6 billion in “ESSA funding,” and as yet unspecified and unidentified State funds.

Even assuming the most efficient and equitable use, federal, state and local funds at their current levels simply are not enough to implement this Plan. Moreover, there are no guarantees regarding federal and State aid from year to year. The availability of local funds for this purpose is limited, as well, by the constraints imposed under the tax levy cap law.

Also, it is misleading to suggest that there is “ESSA” funding. Congress makes funding available for certain Titles under ESSA, like Title I. However, there is no specific funding attached to ESSA. In addition, there is no guarantee that federal dollars will continue to flow, or at any particular level. Should federal cuts to education programs occur, districts would be hard pressed to find the funding necessary to implement the Plan. If more draconian cuts were to be made to other state programs, such as Medicaid, the State would be hard pressed to back fill education cuts.

### **Collective Bargaining Implications**

As currently drafted, the revised Plan includes an affirmative requirement that future collective bargaining agreements include provisions that restrict the transfer of teachers to a school identified as a comprehensive support and improvement school to those rated effective or highly effective in the last evaluation year.

NYSSBA has concern over the ability of school districts to implement this provision. Absent amendments to state law, this would require the agreement of local collective bargaining units which may not be granted. This provision is not required by the statutory provisions of ESSA and should not be included in the Plan unless and until the appropriate amendments to state law are made to ensure compliance.

### **Participatory Budgeting Process**

As currently drafted, the Plan indicates that “the State” will provide a set amount of funding to all comprehensive support and improvement schools. The Plan further states that those funds will be allocated for building level activities. Under the Plan, the parents of students attending such schools will help determine the most appropriate ways for the school to spend those funds through a “participatory budgeting process.”

No such funds have been appropriated by the State for this purpose, nor is there any guarantee that they will be available on a sustainable basis. Moreover, the Plan does not

explain what it means for parents to help determine the most appropriate ways to spend the funds. Under current law, boards of education hold authority over budgetary decisions. While parental input is important, it is imperative that boards of education retain full authority over the final use of these funds to ensure that they are dedicated to activities that will address the causes that led to the school's identification as in need of comprehensive support and improvement.

### **Identification of Target Districts**

The statutory framework of ESSA does not require or even make reference to the identification of school districts. ESSA's focus, instead, is on schools. Nevertheless, the Plan proposes an accountability system in which districts may be identified if the school district has one or more schools identified as comprehensive or targeted support and improvement schools, or if the district itself is performing at the level that would have caused an individual school to be identified.

In addition, the Plan provides that identified districts will have to undergo the same needs assessment process applicable to identified schools and develop an improvement plan based on the results of that needs assessment. However, there is no funding stream for districts to implement their own improvement plan, which would force districts to take moneys, for its own use, away from those needed for the improvement of underperforming schools.

Because the identification of districts is outside of the requirements of ESSA, and such identification may be detrimental to individual schools, we urge removal of this provision from the Plan.

### **Use of Enrichment as an Accountability Indicator**

As drafted, the Plan includes the use of a Career and Civic Readiness Index as a measure of school quality and student success. As described, the Readiness Index would give schools extra credit based on student access to enrichment programs such as Advanced Placement, International Baccalaureate, college-earned credit, and the completion of requirements for certain specified diploma endorsements and added credentials. Use of such factors will disadvantage low wealth school districts that are not able to offer access to such programs.

### **Culturally Responsive Curriculum**

The Plan provides that schools identified for accountability must use the State's Diagnostic Tool for Schools and District Effectiveness (DTSDE) process to assess the areas in which they need to improve. The Plan further provides that the DTSDE team of reviewers will examine curriculum to ensure that it is "culturally responsive."

However, boards of education hold the authority over curriculum matters. In addition, the Plan does not explain what a culturally responsive curriculum looks like and what may be required to make it so. Therefore, we urge removal of this provision from the Plan.

## Conclusion

As stated at the outset, NYSSBA shares a commitment to the intent behind this Plan. It also supports many of the Plan's provisions. For many years, school board members, like all educational leaders, have called for a new approach to accountability. This Plan sets renewable, specific student performance goals that look at more than a single test score or a statewide average to make accountability determinations.

This Plan reframes the conversation and encourages investment in the growth of all children, regardless of where they fall on measures of proficiency right now. However, if there are not adequate resources and supports to properly implement, districts may not be able to achieve this laudable vision.

Many members of the NYSSBA team have served as a part of the ESSA think tank for the last year, and have provided feedback throughout the process. For your reference we have attached our initial comments on the first draft plan, as submitted to the Department. However, as we enter this final stage of review we thought it important to share our thoughts with you as well.

Thank you for your consideration of this feedback, and please do not hesitate to contact us at 518-783-0200.

Sincerely,



Susan L. Bergtraum  
President



Timothy G. Kremer  
Executive Director

Enclosure

cc: Commissioner MaryEllen Elia  
Daniel Fuller  
Terry Pratt

June 15, 2017

New York State Education Department  
ATTN: Dr. Lisa Long  
Office of Accountability, Room 400  
55 Hanson Place  
Brooklyn, New York 11217

Dear Dr. Long:

At their May 2017 meeting, the New York State Board of Regents voted to release for public comment a draft ESSA Plan (the Plan) for the implementation of the federal Every Student Succeeds Act (ESSA) in New York State.

The New York State School Boards Association (NYSSBA) hereby submits its response to that request on behalf of its membership, which consists of school boards charged with the governance and operation of approximately 671, or 91%, of all public school districts and boards of cooperative educational services (BOCES) within the State.

At the outset, NYSSBA wishes to emphasize that its members share the Board of Regents' commitment to the three main themes/objectives that appear to underscore the Plan –

- The provision of equitable educational opportunities for all students across New York,
- The continuous improvement of student outcomes, and
- The promotion of values that respect and promote understanding regarding diversity within their community and society at large.

That commitment is not merely perfunctory, but driven by the responsibility delegated to school boards under the Education Law to provide for the education of public school students. The fulfillment of those responsibilities at times might be found wanting in a specific locality under particular circumstances. Such instances, however, do not negate the central endeavor of all school boards and their staff to provide their students a sound basic education consistent with the mandates embedded within the New York State Constitution.

In keeping with that commitment, NYSSBA supports many of the provisions contained within the Plan. Nonetheless, NYSSBA does have some concerns over certain aspects of the Plan. As set forth below, some of those concerns are of a general nature, while others are more specific.

### ***School Districts Cannot Do It Alone***

The Plan is an ambitious one that exceeds federal requirements for the implementation of ESSA. Beyond setting up a school accountability system, the Plan endeavors to transform New York's public education system by addressing a wide range of issues that often affect the ability of public school students to access equitable educational opportunities.

Such an effort is to be commended, which is why the nature of NYSSBA's concern in this regard relates primarily to implementation capacity issues.

Unlike in the past, school districts no longer can fully compensate for shortfalls in State and federal funding levels through local taxation. However, fulfillment of all of the Plan's requirements, notwithstanding how laudable, does not come without costs, which at any given time throughout the Plan's implementation can easily exceed the level of available federal, state, and local funds.

For example, the availability of educational opportunities that expose all students to advanced coursework and similar offerings, and therefore equitable access to such offerings, is dependent, in large part, on the availability of financial resources not otherwise necessary for basic educational programs. Likewise, support services necessary for all students to succeed in schools, particularly those who come from lower socio-economic strata, are expensive.

The Plan does not identify where and how school districts might be able to access additional resources, and it cannot do so given that the Board of Regents does not enjoy appropriation authority.

Therefore, absent any guarantee of sustainable additional resources for Plan implementation purposes on an as needed basis, the Board of Regents and SED should address cost estimates of the Plan components that are realistic and attainable throughout the State.

In addition, the Board of Regents should mount a more active and visible campaign intended to reduce the level of students opting-out from state assessments. There is still significant misunderstanding and mistrust among parents. They need to hear directly from the highest levels what has been done and will continue to be done to allay their concerns and fears, and why they should allow their children to participate in state assessments.

Furthermore, school districts are not the only public entity providing school age children services that can affect the level of academic performance by such students. Therefore, inter-agency collaboration can play a critical role in the successful implementation of the Plan. The Plan should evidence that the Board of Regents and SED will take steps to facilitate such collaboration, while ensuring that a successful result will not impose an additional financial burden on school districts.

### ***Long Term Goals***

Consistent with ESSA requirements, the Plan establishes end goals that set the performance level each subgroup is expected to achieve statewide and within each school in ELA and math at the

elementary and middle school level, and high school graduation rates for the 4-, 5- and 6-year graduation cohort.

The Plan then sets a process for calculating long-term goals and measures of interim progress. At the elementary and middle school level, the Plan sets a target of 20% to close the gap between the end goal and the long-term goal in ELA and math, over five year periods set annually.

While, conceptually, the methodology might serve to accelerate achievement of the Plan's stated end goal, it can have unintended consequences on students in vulnerable subgroups, such as students with disabilities and limited English proficient students, who already experience burdensome pressures as a result of their unique educational needs and challenges.

The methodology in the Plan may result in the inability of some schools to reach the long-term goals and gap reduction targets until more reasonable and attainable goals are established.

### ***Performance Index Calculations***

There is confusion in the field as a result of an inconsistency between the Plan and the Plan Summary document that accompanied the release of the Plan for public comment. The inconsistency relates to how students who opt out of state assessments will be treated in the calculation of Performance Index scores under the academic achievement indicator.

Under the Plan, such students would be counted as Level 1 (non-proficient) students, which would penalize schools for parental opt-out choices expressly permissible under ESSA. The Summary describes a process that is less punitive to schools and which, for that reason, NYSSBA supports.

The Plan should be revised to be consistent with the Summary.

### ***Impact of Collective Bargaining***

Implementation of Plan provisions that can be deemed to affect an educator's terms and conditions of employment are subject to collective bargaining. So are matters that might not be mandatory subjects of bargaining but are, nonetheless, covered by a current collective bargaining agreement. Therefore, a school district would not be able to implement any such provisions unilaterally; negotiations would be required.

For example, the Plan restricts the transfer of teachers to a comprehensive support and improvement school (CSI) to those rated as effective or highly effective in their most recent evaluation year. To the extent that a current collective bargaining agreement contains provisions that affect the transfer of teachers from one school to another, a school district would not be able to unilaterally accommodate the Plan's restriction.

Collective bargaining obligations could also affect the implementation of strategies that involve school day and/or school year extension, class size, and mentoring among other issues depending on the extent to which a current collective bargaining agreement already addresses such topics.

The inability of school districts to unilaterally implement Plan requirements would impede their ability and that of their schools to fully comply with the Plan, and thus could expose them to accountability action as a result of reasons outside their unilateral control.

In the absence of changes to the Taylor Law, the Plan should be revised to eliminate requirements that school districts might not be able to implement unilaterally because they involve a duty to negotiate.

### ***High School Accountability Indicators***

Pursuant to ESSA, all high schools failing to graduate less than 67% of their students must be automatically identified as a comprehensive support and improvement school (CSI). In addition to the graduation rate and other expressly mandated accountability indicators, ESSA requires states to choose at least one additional indicator of school quality or student success, including post-secondary readiness.

NYSSBA supports the Plan's proposal to use the 4-, 5- and 6-year adjusted cohort graduation rates because it will help high schools with a graduation rate below 67% for their 4-year graduation cohort avoid automatic preliminary identification as a CSI if they have a graduation rate at or above 67% for the 5- or 6-year cohort.

Regarding ESSA's requirement for an additional indicator, the Plan should provide an alternative to the College, Career and Civic Readiness Index that would allow economically disadvantaged districts to garner extra credit for accountability purposes. Without such an alternative, the Plan favors those who have access to adequate resources over those who do not.

### ***Comprehensive Support and Improvement Schools***

Under ESSA, states must identify underperforming schools as either a comprehensive support and improvement school (CSI) or a targeted support and improvement school (TSI), consistent with the statute's requirements. In addition, the statute makes SED responsible for the provision of supports and services to CSI schools and school districts for TSI schools.

SED actions with respect to CSI schools will inevitably have an impact at the local level, including the use of resources on a district-wide basis and the ability of school districts to adequately comply with their responsibilities toward TSI schools. Therefore, the Plan needs to include details regarding the anticipated nature and scope of such activities so that school districts can plan and prepare accordingly.

The Plan also needs to be revised to clarify who is accountable when a CSI school continues to underperform and the implications of that designation.

### ***Public School Choice***

As an alternative to public school choice, the State will provide a set amount of funds to all CSI schools to provide CSI parents with choices in their child's education through the implementation of a participatory budgeting process that must allow parents to help determine the most appropriate ways for the CSI school to spend the funds connected to the results of the needs assessment conducted by the school as part of its CSI identification.

To provide clarity and prevent misinterpretation, the Plan should be revised to identify the source of such funds. The Plan should also explain what happens if the State is unable to provide such funds on a continuously sustained basis to all CSI schools; explain what it means "to help determine" how such funds should be spent or the "most appropriate ways" to do so; and clarify that final decisions regarding the use of such funds would rest with the school board as required by New York.

### ***English Language Learners***

Newly arrived students with limited English proficiency present unique educational needs and challenges. The impact of their language limitations on their ability to perform academically is one of the more common factors contributing to the designation of schools as underperforming.

A process that exempts newly arrived ELL students from taking the ELA test their first year of enrollment, and use their second year ELA scores to set a baseline to measure growth and academic achievement starting their third year, is beneficial to both newly arrived ELLs and their schools. It serves to help the integration of such students, many with no prior formal education, as they adapt to a new country and language.

However, an expectation that newly arrived ELL students will attain English proficiency within 3-5 years, accompanied by goals that establish yearly growth percentage rates related to the acquisition of English proficiency raises concerns.

The 3-5 year timeline appears to be based on generalized conclusions reached after review of New York data associated with one specific cohort. NYSSBA supports, instead, a 4-7 year timeline based on available research, which indicates that oral proficiency takes 3-5 years to develop and academic English proficiency 4-7 years.

### ***95% Participation Rate***

Consistent with ESSA requirements, New York must administer ELA, math, and science assessments to all public school students in the State. At the same time, the statute recognizes the right of parents and students to opt-out of such assessments.

Under the plan, a consistent pattern of less than 95% participation rate in state assessments would require the implementation of a plan to address low testing rates in instances where such a pattern might have been caused by the direct or indirect actions of a school or school district.

The Plan should be revised to provide examples of the types of school or district actions contemplated by this provision, so that school districts can more adequately revise their policies and train their staff in this area.

### ***Supporting Excellent Instruction***

The Plan contains various provisions related to the support of educators, including both teachers and school building principals. In their current form, however, those provisions lay out a framework, rather than specific requirements, for the attainment of such objective.

Without specifics, NYSSBA is unable to assess and comment on how those provisions might actually impact the operation of school districts across the state. Of primary concern would be issues related to financial capacity and collective bargaining obligations that might affect the ability of school districts to meet specific requirements not currently identified in the Plan.

NYSSBA should be included in any discussions exploring how to better support educators so that a school board perspective is considered during that process. It was not that long ago when, in another context, school boards were left out of the process that resulted in the enactment of the controversial APPR law, which turned into a colossal disaster, costing school districts millions of dollars. It is NYSSBA's expectation that everyone has learned the lessons of the past and that we will not repeat them.

The above comments are submitted in response to the contents of the Plan released for public comment in May 2017. School boards are the entities responsible for ensuring Plan compliance at the local level, and the entities that will be held accountable for the underperformance of our public schools. Therefore, NYSSBA expects that it will be provided an opportunity to offer additional comments on any revisions made that expand school district obligations and liability beyond those in the original draft. School boards throughout the state deserve as much. Otherwise, what has been an open and transparent process will have been for naught.

On behalf of its members, NYSSBA appreciates the opportunity to provide comments on the Draft ESSA Plan.

Please contact us if you would like additional information regarding our comments.

Sincerely,



Timothy G. Kremer  
Executive Director