January 21, 2016

Dr. John B. King Jr.
Acting Secretary of Education
United States Department of Education
400 Maryland Ave., SW
Washington, DC 20202

Re: Implementing Programs under Title I of the Elementary and Secondary Education Act
Docket ID: ED-2015-OESE-0130

Dear Acting Secretary King:

As Executive Director of the New York State School Boards Association, Inc. (NYSSBA), please accept these comments per your request regarding implementation of programs under Title I of the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA) of 2015.

The following are our initial recommendations for you to consider as a part of the rulemaking process.

1. **95% State Assessment Participation Requirement-Section 1111(c)(4)(E)**

   This section continues the requirement that each local education agency (LEA) continue to annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on certain assessments. However, at the same time, the ESSA permits states to adopt laws codifying the parental right to opt out of required assessments. This internal inconsistency only encourages parental refusal and places school districts throughout the country in an untenable position.

   Regulations to implement this section should make it clear that existence or enactment of state laws codifying or supporting parental refusal will not be deemed evidence of state noncompliance with ESSA and the United States Department of Education (USDOE) will not subject an SEA or an LEA to negative consequences when parents assert their rights under a state law explicitly authorized under ESSA.

   In addition, USDOE should preclude a state education agency (SEA) from taking negative actions against an LEA for failure to meet the 95% participation requirement when such failure is a result of State or parental action outside of an LEA’s control, even if such state does not have an explicit parental refusal law.

2. **Participation of Children Enrolled in Non-Public Schools-Section 1117**

   This section addresses the provision of equitable services for non-public schools and their students, among other issues affecting private schools.
Regulations should provide clear guidance that there is no additional entitlement to services or dollars by nonpublic schools.

3. **Challenging Academic Standards and Academic Assessments-Section 111(b)(1)(A),(B),(C)**

This section requires that the State plan provide an assurance that the State has adopted challenging academic standards that apply to all public schools and their students. This section specifically requires those standards be in “mathematics, reading or language arts and science, and that a State may have such standards for any other subject determined by the State.”

This section fails to expressly state that academic standards adopted by the State shall apply to public charter schools. Given the differences in state laws regarding charter schools, regulations implementing this section should expressly state that is shall apply equally to all public schools including public charter schools. The regulations should further clarify that public charter schools are subject to all State standards, not just those standards developed for the three core subject areas identified in ESSA.

4. **Additional Targeted Support-Section 1111(d)(2)(C)**

This section requires that certain targeted support and improvement plans required to address a subgroup’s academic achievement underperformance “identify resource inequities” (which may include a review of local educational agency and school level budgeting), to be addressed through implementation of such plan.

Regulations implementing this section should not allow the SEA or any other entity to regulate district or building level budgeting beyond what is provided in current state law.

5. **Continued Support for School and Local Educational Agency Improvement-Section 1111(d)(3)**

This section provides for greater, more rigorous State involvement, in school districts with schools identified for comprehensive support and improvement within a State-determined number of years (not to exceed 4 years). Such action, which may include addressing school-level operations, and include periodic review of resource allocation within the LEA.

Regulations to implement this section should expressly authorize the continuation of existing interventions that have been approved at the State level as sufficient to meet the standards of this section. State authorized plans that already address multiple facets of school-level operations and have provisions authorizing intervention at the building level should satisfy the requirements under this section. Regulations should specify that LEAs will retain district level authority over budgeting without additional State interference.

6. **Flexibility for Assessments for Students with Disabilities and English Language Learners**

New York has long sought flexibility to administer required assessments to students with disabilities and English language learners. Under the ESEA waiver process, the NYSED (with the support of NYSSBA), sought the flexibility to assess those students with severe disabilities who fall outside the
cohort eligible for the alternative assessment yet still have severe challenges at their cognitive rather than chronological age. In addition, a similar waiver request has repeatedly been submitted to allow districts to assess newly arrived ELL students in their native language for a limited period of time. We further sought to have this type of flexibility embedded in the reauthorization of ESEA.

To the extent the ESSA grants the authority to do so, we request the inclusion of regulatory language to provide states with this flexibility.


This section of ESSA requires that a comprehensive support and improvement plan must be approved, where applicable, by the school, the LEA and the SEA.

The law does not indicate how disputes over the comprehensive support and improvement plan will be resolved. Regulations should stipulate that when reviewing and approving the comprehensive support and improvement plan, the LEA has final approval over proposals made at the school/building level. The role of the State should be limited to ensuring that plans approved by the LEA are consistent with federal law.

8. **Parent and Family Engagement-Section 1010**

This section of the legislation requires that “family members” be included in required engagement activities. However, there is no definition of “family member” for the purposes of this section.

Regulations should provide a clear definition of family members limited for this section to mean parents and persons in a parental relation to the student. School districts need to have clear points of contact to work with on behalf of their students. Definitions of those required for engagement should respect that need for clarity. Moreover, explicit guidance is needed on how any changes to this section interact with FERPA, and what information school districts can and must provide, and to whom.

Expansions to this section should be limited to prevent the imposition of unnecessary administrative burdens on school districts.

Thank you for the consideration of these recommendations. As the rulemaking process continues, NYSSBA will remain in communication and will continue to provide information on the implementation and how changes will impact our students. Do not hesitate to call upon us if additional information is required.

Sincerely,

Timothy G. Kremer
Executive Director

Cc: Michael Zola, NSBA