



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

July 19, 2016

TO: The Honorable Lance Mizumoto
Chairperson, Board of Education

FROM: Kathryn S. Matayoshi
Superintendent

SUBJECT: **Board Action on Formal Comment on Federal Notice of Proposed Rulemaking to Amend Federal Regulations to Implement Changes Contained in ESSA – Accountability and State Plans**

1. RECOMMENDATION

The Department of Education (Department) recommends that the Board of Education (Board) support a proposed joint letter from the Governor, Board Chairperson, and Superintendent to the U.S. Department of Education (USDE) on the proposed regulations to the Every Student Succeeds Act (ESSA).

The letter expresses concerns that the proposed regulations are restrictive and not consistent with the spirit of ESSA with regard to the flexibility afforded to states. See draft letter in Attachment A.

The purpose of this letter is to express joint support for maintaining the flexibility under ESSA so that states can maximize opportunities that fit their unique needs, rather than a one-size-fits-all approach similar to what was offered under No Child Left Behind.

The Department will submit a detailed response to the proposed regulations by the August 1st deadline, which the Department anticipates will generally align with the following themes:

- Requests to strike provisions in the proposed regulations where the USDE is encroaching on state autonomy.
- Recommendations to improve the implementation timeline(s).
- Recommendations specific to supporting effective promising practices in Hawaii.

2. RECOMMENDED EFFECTIVE DATE

The Department recommends that the Board take action to support the joint proposed comments with immediate effective and compliance dates.

3. RECOMMENDED COMPLIANCE DATE (if different from the effective date)

See section 2.0.

4. DISCUSSION (if different from the effective date)

a. Conditions leading to the recommendation:

On December 10, 2015, President Barack Obama signed ESSA into law. Subsequently, USDE released a series of guidance letters and other documents to support states' implementation of ESSA. On May 31, 2016, USDE released proposed regulations related to implementation of the accountability, data reporting, and state plan requirements in ESSA. The proposed regulations would provide the regulatory requirements that states must adhere to when submitting their state plans for ESSA implementation. Comments are due back to USDE on or before August 1, 2016.

The Department used a cross-office strategy to review, analyze, and develop draft comments on the proposed regulations. This process was also informed by the comments created by other states and national partners such as the Council of Chief State School Officers and the WIDA Consortium.

b. Previous action of the Board on the same or similar matter:

There is no previous action on this recommendation.

c. Other policies affected:

No policies are affected by this recommendation.

d. Arguments in support of the recommendation:

The proposed comments support the Department's efforts to develop and execute an education system that is aligned to the mission, vision, values, and themes in the Board of Education and Department of Education Strategic Plan.

In addition, comments must work within the congressional intent of ESSA. For example, extreme changes such as the elimination of testing requirements and/or a standards-based approach to education run counter to the statutory language and would not be actionable.

e. Arguments against the recommendation:

Those opposing the proposed recommendation may favor comments that go further to eliminate the proposed regulatory requirements.

- f. Other agencies or departments of the State of Hawaii involved in the action:

No other agencies or departments were involved in the development of these proposed comments.

- g. Possible reaction of the public, professional organizations, unions, Department staff and/or others to the recommendation:

See section 4.e.

- h. Educational implications:

There are no educational impacts at this time.

- i. Facilities implications:

There are no facilities impacts at this time.

- j. Financial implications:

There are no financial impacts at this time.

5. OTHER SUPPLEMENTARY RECOMMENDATIONS

None

KSM:TOC:SS:kp

Attachment A: Draft Joint Letter to USDE

Attachment B: Internal Memo – Summary and Analysis of ESSA Proposed Regulations

- c: Office of Strategy, Innovation, and Performance
Office of Curriculum, Instruction, and Student Support

DAVID Y. IGE
GOVERNOR



KATHRYN S. MATAYOSHI
SUPERINTENDENT

STATE OF HAWAII

July 19, 2016

The Honorable John B. King, Jr.
Secretary, U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Secretary King:

We are writing to provide general comments on the U.S. Department of Education's (USDE) proposed regulations for accountability, state plans, and data reporting (Docket ID: ED-2016-OESE-0032). The focus on state autonomy and flexibility in the Every Student Succeeds Act (ESSA) is a welcome change from the once-size-fits-all approach under No Child Left Behind. As our state's education leaders, we are concerned about the Federal Notice of Proposed Rulemaking for Accountability and State Plans, which appear restrictive and not consistent with the spirit of ESSA with regard to the flexibility afforded to states.

In Hawaii, we have been working toward bringing people together to maximize the possible opportunities we have under ESSA. On Saturday, July 9, 2016, the Governor's ESSA Task Force hosted an Education Summit with approximately 1,000 people from many backgrounds in attendance. Participants were inspired by being able to contribute to meaningful improvements to the state's education system. However, aspects of the proposed regulations seem to revert back to the one-size-fits-all approach, which may limit the opportunities that has been purported to be available.

One specific request that we jointly ask is that USDE pay particular consideration to the application deadlines and consultation requirements when releasing the final regulations and reviewing state plans. To have the greatest positive impact on our schools and students, and for ESSA planning to be perceived as a school improvement initiative rather than a compliance exercise, we need sufficient lead time for planning upon the issuance of the final regulations and for implementation when plans are approved. Hawaii's 2017-2018 school year begins on August 1, 2017 for teachers and August 7, 2017 for students. For us to begin the next school year implementing ESSA fully as required by law, we need an approved plan no later than July 2017.

The Hawaii State Department of Education will formally submit its detailed comments in response to the proposed regulations by the August 1st deadline. We hope that USDE will carefully consider the implications of the proposed regulations and whether they undo the flexibility that states have been led to believe that they have.

The Honorable John B. King, Jr.
July 19, 2016
Page 2

We look forward to working with USDE to further refine the proposed regulations to ensure that they best meet the needs of schools and students.

Sincerely,

David Y. Ige
Governor, State of Hawaii

Lance Mizumoto
Chairperson, Hawaii State Board of Education

Kathryn S. Matayoshi
Superintendent, Hawaii State Department of Education

KSM:TOC:SS:la

Cc: U.S. Senator Brian Schatz
U.S. Senator Mazie Hirono
U.S. Representative Tulsi Gabbard
U.S. Representative K. Mark Takai
Members of the State of Hawaii Board of Education

Date: June 6, 2016 (edited 6/15/2016)
To: Assistant Superintendent Tammi Chun
From: Stephanie Shipton, Policy, Innovation, Planning, and Evaluation
Tom Saka, Assessment and Accountability
Re: Summary and analysis of ESSA proposed regulations for accountability and state plans

This memo provides a summary and analysis of the proposed regulations for Every Student Succeeds Act (ESSA), released by the U.S. Department of Education (USDE) on May 31, 2016. Comments on the proposal are due to USDE by August 1, 2016.

General Requirements for State Plans

The proposed regulations set forth a framework for the ESSA state plans, with two deadlines for submission: March 6, 2017 and July 5, 2017. Consolidated state plans must have a cohesive and comprehensive narrative, organized into the following sections:

- consultation and coordination;
- challenging academic standards and assessments;
- accountability, support, and improvement for schools;
- supporting excellent educators; and
- supporting all students.

The proposed regulations further define timely and meaningful consultation requirements by requiring multiple touch points between State Education Agencies (SEA) and stakeholders (notification, collection of feedback, public comment period), and a crosswalk of how feedback was addressed (or not).

Plans must be reviewed every four years and the review must include outreach to and feedback from stakeholders.

Requirements for Accountability

The proposed regulations build on the statutory requirements by defining and adding the following:

1. Requires that each school receive a single summative rating.
2. Requires that indicators be weighted such that schools cannot exit status without "significant progress for all students" on at least one academic indicator.
3. Requires at least three performance levels for each indicator.
4. Provides states with four options to choose from in determining how to penalize schools for missing the 95% test participation rate in the aggregate or by subgroup. All four options, including the state determined option, would require classifying a school for improvement and/or significantly impacting a school's summative rating. Title I school improvement funds cannot support schools identified as Targeted Support and Improvement (TSI) schools due to low test participation rates.

5. Clarifies that statewide accountability plans cannot use “super subgroups” (consolidating subgroups of students) to replace individual subgroups, but can use them in addition to subgroups.
6. Sets an n-size limit of 30, before requiring a waiver from USDE. Schools not meeting the n-size for English learners will not be held accountable to the required English language proficiency indicator.
7. Allows for states to include English learners in the subgroup for up to four years after exiting status.
8. Allows for states to include one or more student-level factors, in addition to English proficiency, when defining the long term goals and measurements of interim progress for English language proficiency.
9. Requires states to define uniform exit and entrance criteria for English learners that include a proficiency score on the English language proficiency assessment.
10. Requires that the school quality indicator is grounded in evidence of positive impact on student achievement and graduation rates; supports meaningful differentiation of schools (cannot use average daily attendance); and is different from the other indicators.
11. Requires that the statewide long term and interim goals take into account the increased rate of improvement needed for lower performing subgroups to catch up.

Requirements for Classification and School Improvement

The proposed regulations build on the statutory requirements by defining and adding the following:

1. Defines a timeline for implementation that requires states to identify schools for all classifications, except for consistently underperforming subgroups, by the beginning of school year 2017-2018, based on available data from school year 2016-2017. Schools with consistently underperforming subgroups require two years of data and, as such, must be identified by the beginning of school year 2018-2019.
2. Requires that school identification happen before the start of the school year.
3. Provides requirements that states must choose from when defining “consistently underperforming subgroups”.
4. Requires states to identify any school with one or more subgroups performing at or below the aggregate performance of the lowest five percent of Title I schools.
5. Creates and requires a new classification consisting of schools whose subgroups are consistently low performing, without improvement over no more than three years.
6. Clarifies that improvement supports for Comprehensive Support and Improvement (CSI) schools may include a planning year, be based on evidence-based interventions defined on a state-approved list, and provides additional requirements for action and intervention in schools failing to exit status after no more than four years.
7. Requires that TSI schools satisfy exit criteria, successfully implement their improvement plans, and have improved outcomes for each low-performing subgroup in order to exit status.

8. States must allocate Title I School Improvement funds to Local Education Agencies with a minimum of \$50,000 for each TSI school and \$500,000 for each CSI school.
9. Provides additional requirements for data points on the state report card and requires that the report cards be released no later than December 31.

Other Requirements

The proposed regulations also integrate the Title II Equity Plan requirements by requiring states to provide a description of strategies for ensuring that low-income and minority students are not taught by ineffective, out of field, or inexperienced teachers at disproportionate rates. If low income and minority students are disproportionately impacted, than the state must do a root cause analysis. States are also required to define terms related to teacher quality and effectiveness.

The proposed regulations require states to develop and provide a process for considering applications for Title I funds to support schoolwide programs in schools that do not meet the 40% free and reduced price lunch threshold.

Finally, state plans must also provide descriptions of strategies, timelines, and budgets to support:

- Student learning from preschool-grade 12;
- Equitable access to advanced coursework and a well-rounded academic program for all students;
- School climates that support student learning (specific provisions regarding discipline and bullying); and
- Increased effective integration of technology to support student achievement and digital literacy.

Primary concerns about U.S. Department of Education's draft accountability regulations

“Super subgroups” may only supplement use of individual student subgroups.

- This requirement is alluded to in the law but is elaborated in the draft regulations, but presents a significant challenge for Hawaii. The use of super subgroup (i.e., “high needs”) allows Hawaii to include thousands of students in their schools’ accountability rating compared with No Child Left Behind’s (NCLB) individual subgroups. Using the “high needs” subgroup eliminated “n-size challenges” when schools are too few students in a subgroup for the group to be “counted.” For example, in 2013, over 2,000 special education students were included in school accountability for the Strive HI system, compared with NCLB. Use of the “super subgroup” under Strive HI resulted in more awareness of achievement gaps and attention to equity issues.
- Equity in excellent outcomes is critical. Having data about the performance of student subgroups is important to bringing attention to groups that are underperforming and provide interventions for student needs. However, the return to specific groups (vs super subgroup) also means that schools would be “dinged” multiple times for a low performing student who may be included in many categories (e.g., low income, homeless student receiving special education services).

We must identify schools for Comprehensive Support and Improvement in SY 17-18 (Fall 2017).

- For federal purposes: The school accountability system must classify schools in at least one of three performance categories. To meet the Fall 2017 deadline, we will have to classify schools using data from school year 2016-17, which does not provide fair notice to schools since a state plan with criteria for identification would not be approved until July 2017 (estimated). Schools will not have certainty about the measures for federal school accountability during the year for which school performance “counts.”

SEAs must classify schools by the start of the school year.

- This deadline is problematic. There are obvious challenges here that deal with the timing of receipt of data. For example, in Fall 2015, we were not able to classify schools until after the school year began, due to the time necessary to receive all of the data points and run the data through the system. This could potentially be accommodated, but it would mean that summer high school graduates wouldn't be counted in graduation rates and testing administration windows would have to be adjusted for data to be complete in time to provide classifications for federal accountability by the time the new school year starts. Adjusting testing administration windows is dependent on a solution for our three multi-track schools who may currently test students until the end of their school year, June 30.

SEAs must classify schools for Targeted Support and Improvement if they have one or more subgroups performing at or below the overall performance of the lowest 5% of schools.

- Many, many schools have at least one subgroup of students whose performance is below the overall performance of even our most challenged schools. Therefore, initial assessment is that schools will struggle with this requirement and many will be identified as TSI based on this criterion. Also, this could result in a school being identified as TSI based on a small number of students in their school if the low performing subgroup is a small group in their school.

Schools' classification must be penalized by the accountability system if they miss the ESSA 95% participation requirement on the math or ELA test, for all, one, or some subgroups. Also, the test results for schools with less than 95% participation in testing must also be penalized.

- This is an area that USDE is explicitly calling for comments (ways to support state's efforts to improve test participation).
- USDE provides four options for penalties: lower summative performance rating; lowest performance level on academic achievement indicator; identified as a TSI; or a state determined action that is equally as rigorous as impacting a school's summative rating or classification.
- With a maximum n-size of 30, the 95% participation for subgroups has the potential to impact a significant number of schools, as only 2-3 students could put the participation rate below the threshold. In addition, the four options for penalties would double punish schools, since the regulations and statute would also penalize schools for non-test takers in the formula requirements for calculating proficiency.