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Dr. John B. King, Jr.
Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW, Room 3C106
Washington, DC 20202-2800

DOCKET ID: ED-2016-OESE-0032

Dear Secretary King,

On the behalf of the School Administrators Association of New York State (SAANYS), we are grateful for the opportunity to provide comments and recommendations regarding draft regulations to implement programs under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA), enacted in December 2015. SAANYS is a professional association of more than 7,000 principals and other school administrators working in over 400 New York State school districts. SAANYS is affiliated with the National Associations of Elementary and Secondary School Principals (NAESP and NASSP), the New York State School Administrators Consortium (NYSSAC), and the Educational Conference Board (ECB).

Our members applauded the clear intent of ESSA, to change the federal-state relationship by returning more decision-making to the states. With respect to the accountability system, the law states that the secretary may not add requirements or criteria that are in excess of statutory authority. It is our overall observation that many of the proposed regulations exceed statutory authority, and sometimes fly in the face of congressional intent. Just as importantly, many of the provisions are rushed, over-simplistic and are more focused on punishment than the provision of assistance. These same characteristics are applicable to New York State's recent flawed roll-out of Race to the Top reforms – all of which are now in the process of being revised. Therefore, to advance the federal-state relationship intended in ESSA, it is our overriding recommendation that federal regulations be written in a manner that closely parallels the ESSA statutory language and framework.

Recommendations related to specific draft regulations:

Item 1: Requirement that accountability determinations be made using prior school year results, including summer school graduates, and those determinations be provided to districts prior to the start of the school year.

Position: This provision ignores State Education Agency (SEA) assessment and reporting systems and local level school district calendars. Therefore, this proposed regulation would be virtually impossible to implement in a timely manner in New York State.

Recommendation: Each state should be allowed to include in its accountability plan the timeline and manner in which test performance and graduation data will be used in making accountability determinations and for informing school districts and the general public of such determinations. The assessment and data reporting systems and capacity (e.g., implementation of computer-based assessments versus paper-pencil assessments) of each state must be considered. For this year, for example, the administration of paper/pencil Regents examinations will be completed on August 18, 2016 and many school districts are scheduled to re-open September 7. There would be insufficient time to grade August assessments, complete any appeals that may be necessary, determine results and report such data to the State Education Department (SED), and for SED to complete necessary data runs and inform school districts of their accountability status – by September 7 -- in 13 work days.

Item 2: Requirement that only the four-year graduation rate, and not any extended year graduation rates, be used to determine which schools have graduation rates below 67 percent and must be identified for Comprehensive Support and Improvement.

Position: This provision exceeds statutory authority in that ESSA does not restrict the determination of successful high school completion to only those students who graduate in four years. The proposed provision will also result in the over-identification and misidentification of schools designated for Comprehensive Support and Improvement.

Recommendation: States should be allowed to include every student who remains in school and graduates with a high school diploma as a “graduate” and successful school completer for purposes of school accountability. In New York State, students earn Regents, local, or high school equivalency diplomas based on rigorous criteria, which do not include a time criterion – and there is no compelling reason to establish a four-year criterion now. At a time when we are increasing academic rigor and strongly emphasizing college and career readiness, we should not be seeking the most expedient route to school completion, but the route that is planned, sequenced and timed to make the best strategic use of no-cost public education services to promote success in post-secondary education opportunities. Such careful planning is especially important for students with disabilities. In New York State every student has the right to a free public education until they graduate or reach 21 years of age (whichever first occurs). Extending the timeframe to age 21 for the calculation of successful high school completion will provide added incentive to schools and school districts to not give up in continuing to identify and meet student needs. Conversely, the proposed regulation may

promote a triage approach with the diminished provision of services to students who are expected to need more than four years to graduate.

Recommendation: States should be allowed to include students who remain enrolled in school and graduate with a high school equivalency (HSE) diploma as a graduation measure for school accountability. The current federal accountability system categorizes such students as dropouts – which is not accurate. The Test Assessing Secondary Completion (TASC), New York State’s assessment tied to the award of HSE diplomas, is common core-aligned and in some cases is more rigorous than the Regents examinations that are required for a Regents High School Diploma. Recognizing the HSE diploma as a form of successful school completion may be expected to have the following positive impacts upon school performance and students’ lives:

- For students “at risk,” enhance student resiliency and promote student participation in Career and Technical Education.
- For students who are “over age and under credited,” the completion of Regents diploma requirements by age 21 is often impossible; and the HSE diploma stands as a real, value-added and life-enriching reason to remain in school.
- For students who have dropped out, serve as an incentive to school districts to reach out to students to re-enroll.

The competencies and skills necessary to earn a HSE diploma will position the individual to succeed in higher education and employment. Examples of HSE diploma recipients include Richard Carmona, Surgeon General of the United States and Ruth Ann Minner, Governor of Delaware.

Item 3: Requirement that all schools be assigned to at least one of three summative levels (e.g., Red, Green, Yellow) and publically reported as such.

Position: This provision is overly simplistic and serves no constructive purpose.

Recommendation: ESSA requires SEAs to establish procedures to identify schools for Comprehensive Support and Improvement and schools for Targeted Support and Improvement. Other schools, not falling into these categories would be operating in good standing, therefore, the proposed regulation could be at best redundant; and if a different meaning is attached to the three summative levels, the designations may be confusing to the general public. If the intention of the proposed regulation is to result in a report card-like grade (e.g., A, B, C, D, F), then such a designation scheme appears simplistic and unfair. It is unfair because not all schools are alike – some have concentrations of students with severe disabilities or concentrations of Students with Interrupted Formal Education (SIFE); and not all school districts are alike -- some are affluent and have many resources and services while others are financially constrained and have fewer resources and services. Excessive and redundant labeling designations for schools posting lower performance serves no constructive purpose, but may

depress morale, affect educators' and students' self-concepts, and diminish public confidence in the school system.

Item 4: Requirement that if more than five percent of an accountability group (e.g., students with disabilities) on an accountability measure do not participate in a state assessment these students will be considered non-proficient.

Position: This provision exceeds statutory authority and would result in the over-identification of schools in Targeted or Comprehensive Support and Improvement.

Recommendation: The ESSA indicates that the SEA should determine the minimum N needed for accountability determinations. The automatic assignment of non-proficiency to a school for the performance of non-tested students, in many instances, will skew results in a negative direction and provide misinformation regarding the quality of the school program and actual student performance, as in many instances, the most academically capable students opt out of state tests. What would be gained through this approach, other than to punish a school for parent actions over which it has little or no control?

Items 5 and 6: Requirement that all schools that fail to meet the participation rate requirement must implement an improvement plan. The state would be required to place a school in the lowest category on an accountability indicator or on the summative indicator, identify the school for Targeted Improvement, or implement another equally rigorous action.

Position: The requirement for an improvement plan is a one-size fits all measure that smacks of a punishment that will not be helpful. The three strategy options fly in the face of the ESSA statutory flexibility afforded to states to bring about a 95 percent participation rate.

Recommendation: The 95 percent participation rate was a non-issue in New York State until the State Education Department rushed to simultaneously implement multiple Race to the Top school reforms – including common core standards, new assessments, and a new annual professional performance system. Each of these reforms was flawed and the manner in which they were simultaneously implemented compounded their negative repercussions. Despite numerous and repeated recommendations from stakeholders, no pilot periods were allowed and virtually no changes were made to the roll-out of these reforms. Parents acted in civil disobedience to have their children opt-out of the state testing, and until June of 2015 they too were ignored by the State Education Department. However, today their actions and their messages have been recognized by Governor Cuomo, the New York State Legislature, and the State Education Department. The standards are being revised, the assessment development and administration are being revised, and a moratorium is in place to bar the use of common core-aligned assessment data for educators' evaluations. Therefore, just as the opt-out rate increased from negligible in 2012, to 15,000 in 2013, to 55,000 in 2014, and to 240,000 in 2015; it will take time for parents to assess the revisions that are underway, to regain trust, and to have their children sit for well-designed assessments that are in-line with standards they understand and trust. The three strategies proposed by the secretary are far from constructive

– they are punitive. There is no way that parents will be encouraged to have their children sit for state assessments as a result of the strategies proposed by the secretary: assigning a lower summative rating, or assigning the lowest performance level on the state’s academic achievement indicator, or designating the school for targeted support and improvement. The proposed improvement plan would be a hammer intended to punish. Like our earlier experience in New York, this type of pushback is likely to be counter-productive. We should learn from our experiences.

Item 7: Requirement that if a Local Education Agency (LEA) wishes to use a nationally recognized high school examination in lieu of a state assessment, all students in the district must take the examination.

Position: This provision exceeds statutory authority and makes no sense.

Recommendation: This proposed regulation is inappropriate and should either be deleted or be revised to delete the requirement for districtwide implementation. If implemented as written, students at the elementary and middle school levels would be required to take International Baccalaureate, Advanced Placement, SAT and ACT assessments. Therefore, if the regulation is enacted as written, it would preclude school districts’ use of nationally recognized high school examinations in lieu of state assessments.

Item 8: Although not included in draft regulations for school accountability, during negotiated rule making, the secretary proposed to amend procedures related to *supplement, not supplant* and *comparability*, by requiring that teacher salaries be included in measures of how state and local spending in Title I schools is at least equal to the average spent in non-Title I schools. This recommendation flies in the face of the law, and the intent of federal lawmakers. According to an article published in *Education Week* on April 14, Senator Lamar Alexander, chairperson of the Senate Education Committee and a chief ESSA architect, said:

“The committee has debated several times whether or not teacher pay should be excluded ... Ultimately the United States Congress made two decisions about this issue, as reflected in the law we passed:
First, we chose not to change the comparability language in the law, so the law still says teacher pay shall not be included.
Second, we added a requirement that school districts report publically the amount they are spending on each student, including teacher salaries, so that parents and teachers know how much money is being spent...”

The secretary’s proposal would constitute an unnecessary burden for state and local education agencies to revise their respective finance systems, but more importantly, it would require that teachers be transferred to new schools. Teacher assignment determinations should be made by district and school leaders based on many considerations related to school performance and what is best for students. Such determinations should not be hampered by one-size-fits-all

federal requirements. Therefore, it is recommended that the proposal to include teacher salaries in supplement, not supplant and comparability, determinations should be set aside.

On the behalf of this association's board of directors and membership, we respectfully submit the above comments and recommendations, and hope they will be helpful in identifying and implementing necessary and appropriate revisions to proposed federal regulations. Designing an accountability system with a punitive orientation, setting requirements that are undoable either because of time requirements or current state systems, will not achieve our mutual interest in improving educational performance and student preparedness for college and career opportunities.

Sincerely,

A handwritten signature in cursive script that reads "Kevin S. Casey".

Kevin S. Casey
Executive Director

cc: New York State Congressional Delegation
New York State Board of Regents
Education Commissioner MaryEllen Elia
Deputy Secretary for Education Jere Hochman
SAANYS Board of Directors
JoAnn Bartoletti, NASSP Executive Director
Gail Connelly, NAESP Executive Director