

COMMENTS OF EDUCATION LAW CENTER – PA TO U.S. DEPARTMENT OF EDUCATION’S PROPOSED REGULATIONS IMPACTING EDUCATIONALLY AT RISK STUDENTS

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INTRODUCTION

The [Education Law Center-PA \(“ELC”\)](#) submits the following comments to the U.S. Department of Education’s (“ED” or “Department”) in response to the notice of proposed rulemaking (NPRM) published in the Federal Register on May 31, 2016 regarding the *Every Student Succeeds Act (ESSA)*. Through these comments, we highlight the critical need for greater accountability of schools serving educationally at risk students, especially students experiencing homelessness, students in foster care, and youth involved in and reentering from the juvenile justice system. We appreciate this opportunity to comment on the Department’s development of regulations to ensure effective implementation of programs under Title I and to improve educational opportunities and outcomes for some of our nation’s most vulnerable students.

I. BACKGROUND

The Education Law Center-PA (“ELC”) is a non-profit public interest law firm whose mission is to ensure access to quality public schools for educationally at-risk students across Pennsylvania. We pursue this mission by advocating on behalf of the most vulnerable students -- children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English Language Learners, and those experiencing homelessness.

We work in three strategic areas – enforcing equal access to a quality education, ensuring adequate and fair school funding, and dismantling the school to prison pipeline. Our strategies include advocating for legislative, regulatory, and policy reforms, providing direct legal representation and undertaking impact litigation, and empowering parents and students to understand their legal rights. Over its 40-year-plus history, ELC’s successes have included: ensuring equal access to schools for children in foster care and those experiencing homelessness; expanding access to educational opportunities for English language learners (ELL); advocating on behalf of children with disabilities to enforce their right to a free, appropriate, public education and inclusive learning environment; challenging unfair and discriminatory school discipline policies; and working with schools to improve school climate.

Our comments grow out of our advocacy experiences in individual and impact cases, our involvement in the development of effective federal, state and local policies, and decades of work with schools across Pennsylvania to expand learning opportunities for vulnerable students. ELC hopes that the regulations promulgated by the Department will clarify critical definitions that impact at-risk student groups, highlight the importance of reducing exclusionary discipline practices, and reinforce the need for intersectional data to be collected and analyzed in order to improve learning environments.

II. RECOMMENDATIONS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR STUDENTS EXPERIENCING HOMELESSNESS

a. Introduction

Approximately 1.3 million students enrolled in U.S. public preschools, elementary schools, middle and high schools experienced homelessness during the 2012-13 school year. This is an 8% increase from the prior year and the highest number on record, according to the National Center for Homeless Education (NCHE) which is operated by the Department.¹ Students experiencing homelessness face unique and often overwhelming barriers to school success including hunger, high rates of mobility and lack of basic resources needed for learning. They score lower on standardized tests, have higher rates of grade retention and are at greater risk of dropping out of school, reinforcing the cycle of poverty and homelessness.² ESSA includes important clarifications and new provisions which significantly strengthen vital protections for children and youth experiencing homelessness.

b. Proposed Regulations

Student Achievement and High School Graduation Rates for Homeless Youth **Proposed §200.34**

Student Achievement

In § 200.33(a)(3)(ii)(E)ⁱ, ED proposes that, for purposes of reporting student achievement results, information must be disaggregated by status as a child experiencing homelessness.

Because students experiencing homelessness have unique educational needs, and because we need to identify the educational barriers they face, we strongly support the designation of students who are homeless as a subgroup for purposes of reporting student achievement data.

High School Graduation Rates

In §200.34(e)(1)(i)ⁱⁱ, ED proposes regulations relating to the high school graduation rates and specifically asks whether criteria should be standardized for adjusted cohort graduation rates and for suggestions for standardization. Simply stated, if the high school graduation rate is reported only for students who are homeless at the time of reporting, the data will significantly underreport.

¹ See National Overview: Consolidated State Performance Report (NCHE) available at <http://nchespp.serve.org/profile/National>.

² *Residential Instability and the McKinney-Vento Homeless Children and Education Program What We Know, Plus Gaps in Research*, Mary Cunningham, Robin Harwood, Sam Hall available at <http://files.eric.ed.gov/fulltext/ED510555.pdf>

The nature of homelessness leads many students to move in and out of these situations over the course of their school careers. Therefore, a graduation rate that only includes students whose most recent status prior to exiting high school was homeless would fail to capture students who were homeless earlier in high school, as well as those who dropped out of school prior to 12th grade. In light of the well-documented negative impact of homelessness on graduation from high school, it is important to calculate graduation rates for these students both when the student is enrolled in the cohort, and if the student is identified in these statuses at any time during the cohort period. If ED chooses only one graduation rate calculation, it should be for students who are identified as experiencing homelessness *at any time during the cohort period*.

In order to accurately reflect the academic achievement of students impacted by homelessness, we recommend that graduation rates be collected and reported regarding *both* cohorts – those who are homeless at the time of reporting (as a point-in-time cohort), as well as those who have *ever* experienced homelessness while in high school. Doing so ensures that states have an accurate picture of the graduation success of students who have experienced homelessness. To narrow the cohort only to those in experiencing homelessness at the time they exit high school will fail to capture the significant number of students impacted by homelessness who may have dropped out or fallen behind rather than timely exited high school.

Accordingly, we recommend the following:

(c) *Definition of terms.*

For the purposes of calculating an adjusted cohort graduation rate under this section—

(4) “Homeless” shall include two disaggregated subgroups as separate reporting categories:

- (1) Students in experiencing homelessness at the time of graduation and*
- (2) Students who ever qualified as children experiencing homelessness in grades 9-12.*

We understand that collecting *both* cohorts (those experiencing homelessness at the time of graduation, and those who have ever experienced experiencing homelessness while in high school) will create additional data collection requirements. However, we are confident this is the most accurate way to have a full understanding of the educational experiences of students experiencing homelessness. If only one cohort is possible, we suggest collecting only those who were homeless at any time during high school. This prevents underreporting and better reflects this vulnerable population of students.

State Accountability Indicators

In §200.14(b)(2), ED proposes regulations that require an Academic Progress Indicator for all elementary and middle schools to measure either student group based on reading and math assessments or another academic measure that meets requirements of the proposed regulation §200.14(c). The other academic measures of §200.14(c) would require use of a measure that: “(1) is valid, reliable, and comparable across all LEAs in the state; (2) is calculated in the same way for all schools across the State, except that measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade

span; (3) is able to be disaggregated for each subgroup of students described in §200.16(a)(2); and (4) is used no more than once in its system of annual meaningful differentiation under §200.18.”

Additionally, in §200.14(b)(3), ED proposes regulations that require a Graduation Rate Indicator, which measures the adjusted cohort rate consistent with §200.34(a), and, at the state’s discretion, measures the extended adjusted cohort graduation rate consistent with §200.34(d). ESSA in § 111(h)(1)(C)(ii-iii) requires these to be included in the state report card disaggregated for status as a child experiencing homelessness. Because of the unique educational needs of students experiencing homelessness, as described above, we support the inclusion of youth experiencing homelessness as a subpopulation for purposes of the state accountability indicators.

Supportive Services

In § 299.18(b)(2)(i)(E) relating to supporting excellent educators and § 299.19(a)(2)(i)(E) relating to supporting all students, children and youth in experiencing homelessness are identified as a specific identified group for supportⁱⁱⁱ. As referenced above, because of the unique educational needs of students experiencing homelessness, and because of the critical need for additional supports and services, we strongly support the inclusion of children and youth in experiencing homelessness in these two proposed regulations.

III. RECOMMENDATIONS TO IMPROVE EDUCATIONAL OPPORTUNITIES FOR YOUTH IN FOSTER CARE

a. Introduction

We applaud the U.S. Department of Education for issuing these regulations, and believe the foster care-related provisions will support effective implementation of ESSA for this extremely vulnerable student cohort. Our comments fall into three categories: I) Transportation, II) Data and Reporting, and III) General.

b. Proposed Regulations

Transportation

In §299.13(c)(1)(ii), ED proposes the following regulation to the Title I state plan:

The SEA will ensure that an LEA receiving funds under title I, part A of the Act will provide children in foster care transportation, as necessary, to and from their schools of origin, consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the Act, even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation.

We strongly support ED for issuing this proposed regulation and for recognizing the critical importance of ensuring that children in foster care receive transportation when needed to support school stability. It is essential that states receive clear direction about this issue. Our experience working in states shows us that a failure to provide such transportation is a common barrier to stability and it will be a challenge to implement this statutory requirement without clear federal guidance.

However, we propose the following alternative language that we believe may more directly clarify the joint obligations on *both* local education and child welfare agencies, consistent with the Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (Guidance) issued on June 23, 2016 at <http://www2.ed.gov/policy/elsec/leg/essa/index.html>. As stated in this Guidance, “[ESSA and the Fostering Connections Act] make clear that the education stability of children in foster care is a joint responsibility of the educational and child welfare agencies, and to successfully implement these provisions, these entities will need to collaborate continuously” (p. 5). We believe the language below, which accords with the new Guidance, effectively outlines the obligations on both child welfare and education to collaborate to provide school stability transportation. Furthermore, consistent with ESSA, it clarifies obligations of education and child welfare agencies when additional costs are involved and there is a dispute about payment. Most importantly, like the proposed regulation, it will help to ensure that transportation is provided and funded for all children in foster care in accordance with negotiated established procedures and policies and that such transportation is not delayed – and hence the education of these students is not interrupted – during the pendency of any interagency disputes.

(ii) The SEA will ensure that an LEA receiving funds under title I, part A of the Act will ensure children in foster care promptly receive transportation, when necessary, to and from their schools of origin, consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the Act, and sections 475(1)(G) and (4) of the Social Security Act. Additional costs incurred to provide transportation will be paid for by the LEA or local child welfare agency or shared by the two agencies, with any payment disputes resolved in accordance with policies or mechanisms established by the SEA in collaboration with the State Child Welfare Agency. The LEA must provide or arrange for adequate and appropriate transportation to and from the school of origin while any disputes are being resolved.

Consistent with the statutory language, as well as the joint guidance, this version recognizes that both child welfare and education agencies have an obligation to ensure that transportation is provided, even if there is disagreement. Furthermore, it allows for resolution of disputes per the collaboratively developed State plan, and ensures that during any period of dispute resolution, that there is a clearly identified local agency responsible for providing transportation pending the dispute. This language also allows for SEAs to use statewide guidelines or procedures for LEAs to consistently implement transportation throughout the State and ensure resolution of any disputes. We believe this allows for sufficient state and local flexibility, and clearly articulates the dual-agency responsibility while ensuring that all eligible children promptly receive transportation to their school of origin when needed.

Data Collection and Reporting

a. Definition

In §200.30(f)(1)(iii), ED proposes the following regulation related to the Annual State report card:

(iii) With respect to the term “status as a child in foster care,” the term “foster care” has the same meaning as defined in 45 CFR 1355(a), which means 24-hour substitute care for children placed away from their parents and for whom the title IV–E agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the State, tribal, or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of an adoption, or whether there is Federal matching of any payments that are made.

We strongly support the inclusion of this definition within education regulations, especially because it cross-references federal child welfare regulations 45 CFR 1355(a). It is important to define this term and align it with Fostering Connections’ school stability requirements. However, we note that this definition is included only in the definitions relating to the Annual State Report Card. We believe that it is important that a definition of a child in foster care that aligns with the federal child welfare definition is needed and should apply throughout the ESSA.

Furthermore, we note that some states currently define “child in foster care” more broadly than the federal definition. For example, California education law defines foster youth to include children who have not been removed from their home but are the subject of a petition filed in dependency court. As such, we recommend that the following sentence be added to the text of the proposed regulation: *To the extent that state education law defines “child in foster care” more broadly to include children who are not living in 24-hour substitute care but for whom the Title IV-E agency has placement responsibility, states are permitted to apply that broader definition for purposes of data reporting.*”

We acknowledge that this change may result in slightly different reporting populations for purposes of the State Report Card. However, we do not believe this will cause significant discrepancies in comparing data among and between states, and will allow for states to have some flexibility to expand both protections and reporting for a slightly broader group of students (those under the placement and care responsibility of the state child welfare agency but who are living at home).

b. Student Achievement

In § 200.33(a)(3)(ii)(E)^{iv}, ED proposes that, for purposes of reporting student achievement results, information must be disaggregated by status as a child in foster care.

Because students in foster care have unique educational needs, and because we need to identify the educational barriers they face, we strongly support the designation of students in foster care as a subgroup for purposes of reporting student achievement data. Additionally, unlike in the situation of reporting high school graduation rates (see below), we do not believe that this clarification in regulation and annual reporting requirement will result in underreporting or inconsistent data.

c. High School Graduation Rates

In §200.34(e)(1)(i)^v, ED proposes regulations relating to the high school graduation rates and specifically asks whether criteria for the foster care subgroup should be standardized for adjusted cohort graduation rates and for suggestions for standardization. Simply stated, if the high school graduation rate is reported only for students in foster care at the time of reporting, the data will significantly underreport.

Status in foster care is, by nature, short-term. Students may move in and out of the foster care system for short- or long-term stays. It is common for children to be involved with the foster care system more than once. Finally, many students in foster care may drop out of school before reaching 12th grade.

In order to accurately reflect the academic achievement of students impacted by the foster care system, it is important to collect and report on *both* cohorts – those in foster care at the time of reporting (as a point-in-time cohort), as well as those who have *ever* experienced foster care while in high school. Doing so ensures that states have an accurate picture of the graduation success of students who have experienced foster care. To narrow the cohort only to those in foster care at the time they exit high school will fail to capture the significant number of students impacted by foster care who may have dropped out or fallen behind rather than timely exited high school.

Accordingly, we recommend the following:

(c) Definition of terms.

For the purposes of calculating an adjusted cohort graduation rate under this section—

(4) “Child in foster care” as defined by §200.30(f)(1)(iii) shall include two disaggregated subgroups as separate reporting categories:

(3) Students in foster care at the time of graduation and

(4) Students who ever qualified as children in foster care in grades 9-12.

We understand that collecting *both* cohorts (those in foster care at the time of graduation, and those who have ever experienced foster care while in high school) will create additional data collection requirements. However, we are confident this is the most accurate way to have a full understanding of the educational experiences of students in foster care. If only one cohort is possible, we suggest collecting only those who were in high school at any time during high school. This prevents underreporting and better reflects this vulnerable population of students.

d. State Accountability Indicators

In §200.14(b)(2), ED proposes regulations that require an Academic Progress Indicator for all elementary and middle schools to measure either student group based on reading and math assessments or another academic measure that meets requirements of the proposed regulation §200.14(c). The other academic measures of §200.14(c) would require use of a measure that: “(1) is valid, reliable, and comparable across all LEAs in the state; (2) is calculated in the same way for all schools across the State, except that measures within the indicator of Academic Progress and within any indicator of School Quality or Student Success may vary by each grade span; (3) is able to be disaggregated for each subgroup of students described in §200.16(a)(2); and (4) is used no more than once in its system of annual meaningful differentiation under §200.18.”

Additionally, in §200.14(b)(3), ED proposes regulations that require a Graduation Rate Indicator, which measures the adjusted cohort rate consistent with §200.34(a), and, at the state’s discretion, measures the extended adjusted cohort graduation rate consistent with §200.34(d). ESEA in § 111(h)(1)(C)(ii-iii) requires these to be included in the state report card disaggregated for status as a child in foster care. Because of the unique educational needs of students in foster care, as described above, we support the inclusion of youth in foster care as a subpopulation for purposes of the state accountability indicators.

e. Supportive Services

In § 299.18(b)(2)(i)(E) relating to supporting excellent educators and § 299.19(a)(2)(i)(E) relating to supporting all students, children and youth in foster care are identified as a specific identified group for support^{vi}. As referenced above, because of the unique educational needs of students in foster care, and because of the critical need for additional supports and services, we strongly support the inclusion of children and youth in foster care in these two proposed regulations.

IV. RECOMMENDATIONS TO IMPROVE ACCESS TO EDUCATION FOR YOUTH INVOLVED IN AND REENTERING FROM THE JUVENILE JUSTICE SYSTEM

a. Introduction

ELC responds to the request for public comment on the proposed regulations relating to the critical need for greater accountability of schools serving students involved in the juvenile justice system. The current proposed regulations require revision and enhancements, as they lack clear instruction for monitoring and evaluation of Title I, Part D of ESSA, a funding stream to support “children and youth who are neglected, delinquent, or at risk.” The regulations’ silence on Title I, Part D, coupled with explicit exceptions for programs that tend to serve these students, creates multiple accountability loopholes that defeat the purpose of ESSA and render “children and youth who are neglected, delinquent, or at risk” invisible to their schools, their states, and to the federal government. The absence of accountability of state educational agencies (“states”) and local educational agencies (“LEAs”) for this vulnerable subgroup creates incentives for schools to push these students out — fueling the school-to-prison pipeline, and undermining

ESSA's goal of ensuring "all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps" and ESSA's accountability system. We urge the Department to support prompt and equitable access to a quality education for students involved in, and reentering from, the juvenile justice system ("justice-involved students" or "justice-involved youth") by improving these regulations and offering additional clarification and guidance to ensure the proper implementation of ESSA.

Specifically, we urge the Department to:

1. Provide further clarification to ensure students in juvenile justice facilities are not invisible in high school graduation cohorts.
2. Close reporting and accountability loopholes for alternative schools exempt from comprehensive support and improvement plans.
3. Emphasize states' ability to collect and report data on additional subgroups, including justice-involved youth.
4. Ensure appropriate tracking and planning for justice-involved students with disabilities.
5. Provide additional regulations and guidance on existing school discipline regulations that will help dismantle the school-to-prison pipeline.
6. Expand Title I, Part D accountability requirements and clarify certain protections.
7. Maintain justice-involved youth as a subgroup in the regulations designated to support "excellent educators" and "all youth."

Juvenile justice facilities educate hundreds of thousands of students each year,³ yet only 23 states place these students in nationally accredited schools that participate in the state's accountability system.⁴ Despite 40% of detained students being educated in privately run facilities, only 20% of states collect the same outcome data from private facilities as they do from state-run facilities.⁵ Without expanding and strengthening reporting requirements for juvenile justice facilities and the schools accepting transfers from those programs, agencies, legislatures, and the Department will continue to lack the necessary data to create informed policy or develop interventions to improve educational access and outcomes for justice-involved students.

Students often make contact with the justice system following disproportionate and exclusionary school discipline policies, a lack of access to appropriate education services and supports, and inappropriate referrals to law enforcement for school disciplinary violations. These students frequently have unmet needs and are regularly excluded from accessing critical resources for improving life outcomes. Research has found that students are chronically behind

³ U.S. Department of Education, Office of Civil Rights, and U.S. Department of Justice, Civil Rights Division, *Dear Colleague Letter on the Civil Rights of Students in Juvenile Justice Residential Facilities*, 1 (Dec. 8, 2014), <https://www2.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf>.

⁴ The Council of State Governments Justice Center, *Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth*, 4 (2015), https://csgjusticecenter.org/wp-content/uploads/2015/11/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf.

⁵ *Id.* at 7-8.

in school upon entry to the juvenile justice system,⁶ and the Department's data show that most youth in juvenile justice facilities do not make any meaningful progress in learning or academic achievement while incarcerated.⁷ Two out of three students drop out after exiting the juvenile justice system.⁸ Past school accountability measures have multiplied these issues by failing to regulate the treatment of justice-involved youth and incentivizing the schools to push out any challenging students. We fear that the proposed ESSA regulations, without explicit protections for this population, would strengthen the school-to-prison pipeline rather than dismantle it.

When the pipeline pushes students into the justice system, their secondary education experience becomes much more complicated. The frequent transition of these students between schools, alternative educational settings, and facility-based education programs creates a unique challenge for administrators, districts, and states in both proper classification and proper outcome tracking, which too often results in the circumvention of data collection and the neglect of education for justice-involved students. Only 20 states collect data on whether youth are enrolled in a public school upon release from a justice facility, and only 17 states analyze student outcome data to evaluate the performance of individual schools, providers and educators.⁹ States are required under ESSA to provide all students equitable access to a quality education; the Department must assist them in fitting all schools and all students into the data infrastructure used to do so.

We write specifically to focus on accountability issues concerning the equitable education of justice-involved youth. Students involved in the adult criminal justice system face many of the same educational barriers, often even more acutely, that students in the juvenile justice system face; most of our comments apply equally to these highly vulnerable students. We additionally emphasize that the subgroups of students in Section III(c)(2) of ESSA—racial minorities, those with disabilities, English learners, and the economically disadvantaged—are disproportionately pushed into the juvenile justice system. Specifically, 65% of youth in custody are students of color;¹⁰ the number of students receiving special education services in juvenile correction

⁶ Southern Education Foundation, *Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems—A Study of Juvenile Justice Schools in the South and the Nation*, 14 (2014), <http://www.southerneducation.org/getattachment/cf39e156-5992-4050-bd03-fb34cc5bf7e3/Just-Learning.aspx> (two-thirds of juveniles in the nation entering state institutions were below grade level in math and reading, and 44% entering local juvenile justice facilities were below grade level in math and reading).

⁷ *Id.* at 15-17.

⁸ *Id.* at 18 (citing Joseph C. Gagnon, Brian R. Barber, Christopher L. Van Loan, and Peter E. Leone, *Juvenile Correctional Schools: Characteristics and Approaches to Curriculum*, *Education and Treatment of Children*, Vol. 32, No. 4, 673-696 (2009); Joseph C. Gagnon, *State-Level Curricular, Assessment, and Accountability Policies, Practices, and Philosophies for Exclusionary School Settings*, *The Journal of Special Education*, Vol. 43, No. 4, 206-219 (2010); Joseph C. Gagnon, Christopher L. Van Loan, and Brian R. Barber, *Secondary Psychiatric Schools: Characteristics and Approaches to Curriculum*, *Preventing School Failure*, Vol. 55, No. 1, 42-52 (2010); Joseph C. Gagnon and Brian Barber, *Characteristics of and Services Provided to Youth in Secure Care Facilities*, *Behavioral Disorders*, Vol. 36, No. 1, 7-19 (2010)).

⁹ The Council of State Governments Justice Center, *Locked Out: Improving Educational and Vocational Outcomes for Incarcerated Youth*, 8-11 (2015), https://csgjusticecenter.org/wp-content/uploads/2015/11/LOCKED_OUT_Improving_Educational_and_Vocational_Outcomes_for_Incarcerated_Youth.pdf.

¹⁰ Office of Juvenile Justice and Delinquency Prevention, *Youth's Characteristics and Backgrounds*, *Juvenile Justice Bulletin*, 2 (December 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227730.pdf>.

facilities is almost four times higher than in public school programs;¹¹ 16% of youth in residential placement come from families speaking a language other than English;¹² and while the family economic data is limited, prior to being taken into custody, 45% of youth were living in a single parent household and 25% were not living with either parent,¹³ both arrangements increasing the student's likelihood of being economically disadvantaged. While we advocate for regulations to end the catastrophic push-out of special populations into the justice system, present conditions indicate that any attempt to aid students in the overlap of these populations will be thwarted if the Department does not also ensure proper guidelines are in place to ensure equitable education within the entire juvenile justice system.

b. Proposed Regulations

We advocate that the Department of Education ("the Department") improve access to quality education for young people involved in and returning from the juvenile justice system by making distinct revisions and additions to the proposed regulations, and by providing additional written guidance to states. Specifically, we urge the Department to:

1. Provide further clarification to ensure justice-involved youth are not invisible in high school graduation cohorts.

a. Proposed §§ 200.34(b)(3) and 200.34(f) – Adjusted cohort graduation rate

Proposed Revisions of Regulation Language:

§ 200.34(b)(3) To remove a student from the cohort, a school or LEA must confirm in writing that the student –

(i) Transferred out, such that the school or LEA has official written documentation that the student enrolled in another school or educational program ~~that culminates in the award of~~ from which the student is expected to receive a regular high school diploma, or a State defined alternative diploma for students with the most significant cognitive disabilities;

(ii) Emigrated to another country;

(iii) Transferred to a prison or juvenile facility after an adjudication of delinquency and is enrolled and meaningfully participating ~~participates~~ in an educational program ~~that~~

¹¹ Mary Magee Quinn, Robert B. Rutherford, Peter E. Leone, David M. Osher, and Jeffrey M. Poirer, *Youth with Disabilities in Juvenile Corrections: A National Survey*, Exceptional Children, 342 (Spring 2005), http://helpingganguyouth.homestead.com/disability-best_corrections_survey.pdf.

¹² A. Sidana, S. Lampron, and M. O'Cummings, *Fact Sheet: ELL Students and the N or D Context*, National Evaluation and Technical Assistance Center for the Education of Children and Youth who are Neglected, Delinquent, or At Risk, 4 (August 2011), <http://www.neglected-delinquent.org/sites/default/files/docs/ELLFactSheet.pdf>.

¹³ Office of Juvenile Justice and Delinquency Prevention, *Youth's Characteristics and Backgrounds*, Juvenile Justice Bulletin, 6 (December 2010), <https://www.ncjrs.gov/pdffiles1/ojjdp/227730.pdf>.

~~culminates in the award of from which the student is expected to receive a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities. Students who have not yet been adjudicated delinquent but have transferred to a prison or juvenile facility may not be removed from the cohort; or~~

(iv) *Is deceased.*

§ 200.34(f) Partial school enrollment. Each State must apply the same approach in all LEAs to determine whether students who are enrolled in the same school for less than half of the academic year as described in § 200.20(b), including students who have entered and/or exited a prison or juvenile facility, who exit high school without a regular high school diploma and do not transfer into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate . . .

Discussion – Revision of Regulation, and Request for Guidance:

We appreciate that, through its proposed regulation § 200.34(b)(3), the Department is attempting to ensure that there is accountability for the graduation rates of justice-involved youth, even if they transfer to a prison or juvenile facility. The language in the proposed regulation provides critical clarification that justice-involved student transfers should be treated the same as other student transfers. This language somewhat alleviates the perverse incentive for schools or LEAs to enhance graduation rates by referring more struggling and disengaged students to the juvenile justice system through disciplinary referrals to law enforcement and ticketing of chronically truant students.

However, in order to truly eliminate this perverse incentive and encourage schools and LEAs to provide justice-involved youth with the meaningful education they deserve, we urge the Department to incorporate the above-underlined revisions to the regulation and to provide additional guidance, as detailed below. Three issues require the Department's attention: i) when the justice-involved student should transfer from the sending school or LEA's graduation cohort to the receiving school or LEA's cohort, ii) the process for the justice-involved student's transfer *back* to the sending school or LEA's graduation cohort, and iii) oversight and accountability for prisons and juvenile facility schools.

- i. **Transfer process – Sending school or LEA's graduation cohort to receiving prison or juvenile facility cohort.*** As written, the regulation lacks clarity regarding when a justice-involved student should be transferred from the student's sending school or LEA's graduation cohort to the prison or juvenile facility's school or LEA graduation cohort. This issue requires clarity because justice-involved youth often lack school stability, so accountability should apply to the school or LEA from which the student is likely to graduate. Therefore, we have suggested underlined revisions that require a student to be transferred to a prison or juvenile facility graduation cohort *only if* they have already been adjudicated delinquent *and* are enrolled and meaningfully participating in the prison or juvenile facility's school. Students who have not been adjudicated delinquent but are in a prison or juvenile facility, e.g. students who are

detained in the prison or juvenile facility temporarily awaiting their hearing or release, should not be transferred to the prison or juvenile facility's graduation cohort. Instead, they should remain in the sending school or LEA's graduation cohort, since the expectation is that they will return to the sending school or LEA or move on to another permanent school placement after adjudication. Furthermore, the student should not be transferred out of the sending school or LEA's cohort unless they can expect to receive a high school diploma or alternative diploma at the prison or juvenile facility's educational program. This specific language tracks the statutory definition for "transferred out," under 20 U.S.C. 7801(23)(C).

Additionally, the Department should add the above-underlined language to § 200.34(f). The current proposed regulation emphasizes that states should standardize accountability for students who are enrolled in an LEA for less than half of an academic year and then move on to a non-diploma-granting school, to ensure that those students are counted somehow in the adjusted cohort graduation rate. By inserting our suggested language, the Department would clarify that states must also standardize accountability metrics for justice-involved youth, including those who move to a non-diploma-granting prison or juvenile facility, for the adjusted cohort graduation rate. This additional regulatory language is a critical complement to the revisions we suggest for § 200.34(b)(3).

- ii. *Transfer process – prison or juvenile facility cohort back to sending school or LEA's cohort.*** We appreciate that the Department issued proposed regulatory language stating that justice-involved students cannot be transferred to the graduation cohort of a prison or juvenile facility that does not award a regular high school or alternative diploma. However, the Department must provide further guidance addressing what happens to students who transfer to a prison or juvenile facility that does not have such an educational program. Guidance should be issued stating that, if a student transfers to such a prison or juvenile facility, they should be included in their *original* graduation cohort upon return to the sending school or LEA. For example, if a student leaves a school or LEA in 9th grade and enters a juvenile facility that does not provide a regular diploma program, then returns to the school or LEA a year later and is still in the 9th grade, that student should be counted as part of his original 9th grade cohort, not the new 9th grade cohort he enters. This will hold schools and LEAs most accountable.
- iii. *Oversight and accountability of prison and juvenile facility schools.*** The Department should issue additional guidance explaining that the state and appropriate district education administrators must regularly review the prisons and juvenile facilities that claim to have an educational program culminating in an award of a regular high school diploma or State-defined alternative diploma. Additionally, schools and LEAs should report the graduation rates of such programs to the public, pursuant to the accountability provisions. These measures will help ensure that such facilities actually provide requisite coursework and instruction by qualified teachers.

Under proposed § 200.21(g)(2), schools with total enrollment of less than 100 students are permitted to forego implementation of improvement activities otherwise required

under comprehensive support and improvement principles. Consequently, many prison and juvenile facility schools, which often have low enrollment, will fall within that exemption. This is one of many compelling reasons that states and LEAs should review prison and juvenile facility educational programs for adequacy and report graduation rates to the public.

The mere assertion that prisons and juvenile facilities provide regular high school diploma programs should not suffice for clear evidence that such programs are truly sufficient, and that such programs are resulting in actual high school graduation. Without concrete accountability measures for prisons and juvenile facilities, the new emphasis the Department's proposed regulation places on diploma-granting programs will not result in genuine change for justice-involved youth.

b. Proposed § 200.34(d)¹⁴ – Extended-year adjusted cohort rate

Proposed Revision of Regulation Language: None.

Discussion – Request for Guidance:

Because of their significant school instability relative to students who are not involved in the juvenile justice system, justice-involved youth often require more than four years to graduate. While the Department uses the word “may” in this regulation, we urge the Department to provide additional guidance to states encouraging states to calculate and report extended-year adjusted cohort graduation rates if at all feasible. The use of an extended-year adjusted cohort graduation rate could both increase the visibility of justice-involved students' graduation rates and provide states and LEAs with incentive to provide more high school education services to justice-involved youth.

2. Close reporting and accountability loopholes for alternative schools exempt from comprehensive support and improvement plans.

a. Proposed §§ 200.31(b)(2)(ii) and 200.21(g)(2)¹⁵ – Foregoing implementation of improvement plans

¹⁴ **Proposed §200.34(d)** In addition to calculating a four-year adjusted cohort graduation rate, a State may calculate and report an extended-year adjusted cohort graduation rate.

¹⁵ **Proposed § 200.21(g)** State discretion for certain high schools. With respect to any high school in the State identified for comprehensive support and improvement under § 200.19(a)(2), the State may—

(1) Permit differentiated improvement activities consistent with paragraph (d)(3) of this section as part of the comprehensive support and improvement plan, including in schools that predominantly serve students—

(i) Returning to education after having exited secondary school without a regular high school diploma; or

Proposed Revision of Regulation Language:

§ 200.31(b)(2) Each LEA report card must begin with . . . a clearly labeled overview section that . . . includes the following information . . .

(ii) For each school –

- (A) The summative rating of the school consistent with § 200.18(b)(4);*
- (B) Whether the school is identified for comprehensive support and improvement under § 200.19(a) and, if so, the reason for such identification (e.g., lowest-performing school, low graduation rates); ~~and~~*
- (C) Whether the school is identified for targeted support and improvement under § 200.19(b) and, if so, each consistently underperforming or low-performing subgroup for which it is identified, and*
- (D) Whether the LEA is able to forego implementation of a comprehensive support and improvement plan under 200.21(g)(2), and, if so, the reason for such exemption.*

Discussion – Recommended Changes to Regulation:

We urge the Department to require that any LEA able “to forego implementation of a comprehensive support and improvement plan” under proposed § 200.21(g)(2) provide justification for applicability of that exemption on its annually published LEA Report Card. To this end, the Department should incorporate the above-underlined revisions to Proposed § 200.31(b)(2)(ii).

Proposed § 200.21 holds particular importance for justice-involved students, because many districts continue to force students returning from placement into schools meeting the § 200.21(g)(1) requirements, also known as “Alternative Schools.”¹⁶ Without requiring proper documentation for this exemption, its use cannot be monitored and investigated as necessary. To exempt an LEA from the otherwise required improvement activities without a public explanation defeats the transparency that ESSA intends and complicates tracking at both the state and national levels.

Families have a right to know that if their child is assigned to an exempt school, the school will not be held to the same standards as the rest of their state schools. They should also know what characteristics of the school allowed for the exemption. Added reporting requirements would not burden the LEA because it is simply a written statement of the determination the LEA already made in order to utilize the exemption. Additionally, LEAs should have to inform parents in writing that their child attends an exempt school, with notifications accessible to individuals with disabilities and non-English speaking families.

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- (ii) Who, based on their grade or age, are significantly off track to accumulate sufficient academic credits to meet high school graduation requirements, as established by the State; and*
 - (2) In the case of such a school that has a total enrollment of less than 100 students, permit the LEA to forego implementation of improvement activities required under this section.*

¹⁶ In part 6(b)(iii) of this comment we request the prohibition of these blanket policies because they fail to address the unique educational and reentry needs of young people returning to the community.

b. Proposed § 200.21(g)(2)¹⁷ - All other reporting requirements

Proposed Revision of Regulation Language: None.

Discussion – Request for Guidance:

We request that the Department clarify through guidance that any LEA able to forego implementation of comprehensive support and improvement plans under Proposed § 200.21(g)(2) is still subject to all other reporting requirements under ESSA. Even if the consequences of reporting will not apply, the report itself creates accountability through public awareness.

The proposed § 200.21(g) allowance for “differentiated school improvement activities” and the ability to forego implementation of the “comprehensive support and improvement plan” certainly addresses the unique student characteristics and needs at these schools. However, if LEAs abide by reporting standards, they will more likely continue independent efforts to improve outcomes for the vulnerable students that they serve. Maintaining reporting requirements will also help states identify best practices among alternative schools and will lead to broader implementation of effective programs. This would better align the treatment of alternative programs with the goals of ESSA.

3. Emphasize states’ ability to collect and report data on additional subgroups, including justice-involved youth, pursuant to Proposed § 200.16.¹⁸

Proposed Revision of Regulation Language: None.

Discussion – Request for Guidance:

¹⁷ Proposed § 200.21(g)(2), *supra* note 13.

¹⁸ **Proposed § 200.16** (a) *In general. In establishing long-term goals and measurements of interim progress under § 200.13, measuring performance on each indicator under § 200.14, annually meaningfully differentiating schools under § 200.18, and identifying schools under § 200.19, each State must include the following categories of students consistent with the State's minimum number of students under § 200.17(a)(1):*

(1) *All public school students.*

(2) *Each of the following subgroups of students, separately:*

(i) *Economically disadvantaged students.*

(ii) *Students from each major racial and ethnic group.*

(iii) *Children with disabilities, as defined in section 8101(4) of the Act.*

(iv) *English learners, as defined in section 8101(20) of the Act.*

[. . .]

(c) *State plan. Each State must describe in its State plan under section 1111 of the Act how it has met the requirements of this section, including by describing any subgroups of students used in the accountability system in addition to those in paragraph (a)(2) of this section, its uniform procedure for including former English learners under paragraph (b)(1)(i) of this section, and its uniform procedure for including recently arrived English learners under paragraph (b)(4) of this section, if applicable.*

ESSA and its regulations identify the minimum requirements for subgroup disaggregation in the context of accountability. However, the Department should issue guidance instructing states and LEAs that they can and should track data for additional subgroups of traditionally under-performing students, such as justice-involved youth, who face significant education barriers and are relatively invisible in the current law and regulations. States and LEAs should include these subgroups when building state plans, measuring performance on accountability indicators, meaningfully differentiating schools, and identifying schools for comprehensive support and improvement.

Encouraging states and LEAs to determine additional vulnerable subgroups to track within the accountability framework of ESSA will ensure that states and LEAs will not have to design additional monitoring processes beyond their federal requirements in order to track needy student populations that are of acute local concern. If states and LEAs define and report on additional subgroups, the resulting data will align with national standards and more easily alert other LEAs, states, the Department, or legislatures of potential subgroups whose educational outcomes demonstrate a need for future attention.

4. Ensure appropriate tracking and planning for justice-involved youth with disabilities.

Because an estimated 30 to 50 percent of youth in juvenile corrections are identified as youth with disabilities, we also urge the Department to strengthen and clarify protections for students with disabilities. A major concern for this intersectional group – justice-involved students with disabilities – is that these youth often receive special education services inconsistently. This inconsistency could be due to justice-involved youth’s school instability, incorrect school placement, because a new school does not consider them “eligible” for special education services, or because the school they are placed in is unable to provide them with necessary special education services. By strengthening protections for these youth, the Department can ensure states and LEAs are held more accountable for tracking outcomes, reporting data and planning programs in service to this vulnerable intersectional subgroup.

We expect other disability advocacy organizations and stakeholders to provide more in-depth comments regarding these proposed regulations and the changes required to best serve students with disabilities; here, we have only included comments specific to the intersectional group of justice-involved youth with disabilities.

a. Issue regulations requiring disaggregation of intersectional data across subgroups

Proposed Revision of Regulation Language: None.

Discussion – Request for Additional Regulations:

ESSA mandates that states disaggregate academic assessment data by each major racial and ethnic group. However, the Department should issue additional regulations requiring states

to include in their state plans how they will further disaggregate these categories by intersectional subpopulations, including “students with disabilities in the juvenile justice system.” The state plan should include methods to uncover intersectional trends between and among student subgroups. In the absence of an intersectional lens of the intertwined relationships of system involvement, race, gender and disability, schools fail to undertake the proper analysis or make important structural changes that would address the unique barriers facing these otherwise invisible and more vulnerable student cohorts.

b. Revise regulations to reflect smaller minimum number of students for subgroup disaggregation

Proposed Revision of Regulation Language:

§ 200.17(a)(2) *Such number [of students] –*

- a. Must be the same number for all students and for each subgroup of students in the State described in § 200.16(a)(2);*
- b. Must not exceed ~~30~~ 10 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section . . .*

Discussion – Changes to Regulation and Request for Guidance:

ESSA does not require reporting of disaggregation by subgroup at all — and, in fact, disallows it — where the size of a subgroup is so small within a particular state, LEA, or school that the results would reveal personally identifiable information (“PII”) or present statistically unreliable information. Consequently, many LEAs and schools may claim an exemption from reporting critical disaggregated data. To address these concerns, we urge the Department to decrease the minimum number of students in a subgroup, or “n-size,” to 10 students.

Additionally, the Department should issue guidance regarding the reporting of disaggregated data by subgroup to ensure that smaller subgroups, such as intersectional subgroups, are at minimum reported on the state level. For example, even if a school or LEA is unable to report disaggregated data for the students with disabilities subgroup because of privacy or statistical concerns, the school or LEA must report that data to the entity above it, e.g. the LEA or state, such that reporting captures the outcomes of that subgroup at some accountability level. Reporting must occur at the earliest point at which privacy or statistical concerns no longer exist.

c. Issue regulations governing state sub-grants to LEAs that promote education achievement of justice-involved students with disabilities

Proposed Revision of Regulation Language: None.

Discussion – Request for Additional Regulations:

ESSA permits states to make sub-grants to LEAs. LEA plans must meet many of the same requirements as state plans. We urge the Department to develop standards and promulgate regulations governing state sub-grants to LEAs that promote the achievement of justice-involved youth with disabilities and to incentivize reductions in the use of exclusionary discipline practices against students with disabilities. This must include standards for plans to reduce all forms of exclusionary discipline, as detailed in section 5 of these Comments.

d. Mandated reporting of school-based incidents involving students with disabilities

Proposed Revision of Regulation Language: None.

Discussion – Request for Additional Regulations:

The Department should issue regulations corresponding with the IDEA's regulations on addressing racial disproportionality in school discipline and mandate that states that adopt the "school climate and safety" indicator incorporate such regulations into their accountability metrics. The Department's regulations should track IDEA § 618(a), which requires states receiving funding under IDEA to track and report data on, among other data points, the number of students with disabilities in "separate schools or facilities," the incidence and duration of disciplinary incidents for students with disabilities, and the number of students with disabilities removed to alternative education facilities.

5. Provide additional regulations and guidance on existing school discipline regulations that will help dismantle the school-to-prison pipeline.

School discipline practices have a clear connection to involvement with the juvenile justice system. A recent study from Texas noted that students who are suspended or expelled are nearly three times as likely to be in contact with the juvenile justice system the next year.¹⁹ In recent years the Department has provided additional funds for hiring school police and resource officers although there are several notable examples of such inadequately trained security personnel engaging in aversive and arguably abusive behavioral interventions. The Department should issue additional regulations in order to ensure states are most accountable for states' and LEAs' school discipline policies. The additional regulations should clarify that if a state submits a plan with insufficient assurances as required by 1111(g) that their plan will not be approved, and funding may be withheld until a plan with the appropriate assurances is provided (though we suggest the Department utilize technical assistance and other enforcement mechanisms before removing Title I funding, which may hurt the most vulnerable students). Although we expect

¹⁹ Tony Fabelo, Michael D. Thompson, Martha Plotkin, *et al.*, Council of State Governments Justice Center & The Public Policy Research Institute, Texas A&M University, *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, xii (July 2011), https://csgjusticecenter.org/wp-content/uploads/2012/08/Breaking_Schools_Rules_Report_Final.pdf.

other advocates to comment more broadly on the school climate and discipline provisions of ESSA, we write to provide specific recommendations to ensure that states meet the requirements of the law:

*a. Clearly define key terms related to school discipline in Proposed § 299.19(a)(1)(iii)*²⁰

Proposed Revision of Regulation Language: None, but additional regulations would clarify terms in proposed § 299.19(a)(1)(iii).

Discussion – Request for Additional Regulation:

ESSA, pursuant to Sec. 1111(g)(1)(C), mandates that each state plan describe “how the [s]tate educational agency will support local educational agencies . . . to improve school conditions for student learning, including through reducing “incidences of bullying and harassment, the overuse of discipline practices that remove students from the classroom, and the use of aversive behavioral interventions that compromise student health and safety.”

The proposed regulations at 200.19 do reference how each state must “*describe its strategies . . .*” (§ 200.19(a)(1)) and specifically references at § 299.19(a)(1)(iii) the provisions pertaining to the reduction of bullying and harassment, reduction of disciplinary removal and of aversive behavioral interventions that compromise student health and safety. However, in order to achieve this accountability in a standardized manner, ESSA should issue additional regulations that define key terms with clarity and precision, as follows:

- i. **Removing students from the classroom:*** At minimum, these must include rates of: in-school suspension; out of school suspension; expulsion; referral to law enforcement; and school based arrests which are the disciplinary removal categories that states are required to report on pursuant to 1111(h) of the statute. We also suggest that in guidance DOED encourage states to support LEAs in reducing all exclusion from instructional time for disciplinary purposes, office referral, ticketing, mandated cyber school or referral to alternative education, and any other disciplinary method that denies a student instructional time in the classroom constitutes a removal from school.
- ii. **Aversive behavioral interventions:*** Any activities, practices, forms or techniques, including the use of seclusion or restraints that restrict a student’s participation in school or access to resources or are undertaken because a child has an aversion to the action, even if most children would not be upset by it. Aversive interventions include a broad spectrum of activities that range from clear physical and emotional abuse to

²⁰ **Proposed § 299.19(a)** *Well-rounded and supportive education for students. (1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma consistent with § 200.34...*

subtler forms of restriction. forms of restriction. forms of restriction. forms of restriction.

- iii. Overuse of discipline practices:* The “overuse” should include assurances that states review for this problem even when only one subgroup is subjected to overuse. Therefore, a regulatory definition should clarify that “reducing overuse” includes identification and reduction of the disproportionate use of any disciplinary practice that disrupts student learning, removes a student from instructional time, places unnecessary financial hardships on students or their families or leads to the student's contact with or placement in the criminal or juvenile justice system.

In addition, state plans should describe how the state will respond to school or LEA level overuse, including how the state will support the reduction in disparities in school discipline that the state is aware exists, including where disproportionate discipline is found along the lines of race, ethnicity, disability status, English language learner status, or for students who are eligible for free and reduced price lunch, foster youth, homeless youth, and other student subgroups the state has identified.

6. Expand Title I, Part D accountability requirements and clarify certain protections.

The items discussed below in subsections a-d could also be clarified in a guidance package for justice-involved youth, similar to the Department’s ESSA guidance released on June 23, 2016 regarding youth in foster care.

- a. Enhance meaningful accountability for Title I, Part D programs*

Proposed Revision of Regulation Language: None.

Discussion – Request for Additional Regulations:

The Department must provide additional regulations regarding how states should report data to the Department and the public on the education outcomes of justice-involved youth in Title I, Part D programs. In order to be most meaningful, states should disaggregate this data by race, gender, age and disability status.

Title I, Part D of ESSA provides federal funds to State educational agencies to establish or improve educational programs for neglected, delinquent, or “at-risk” children and youth, whether through sub-grants to state agencies (Subpart 1) or funding awards to LEAs with high numbers of students in locally operated juvenile correctional facilities (Subpart 2). Title I, Part D clearly advocates that states and LEAs should improve education outcomes for youth involved in the juvenile justice system in the areas of improved education services, more effective reentry processes for young people moving between juvenile facilities and educational programs, and

higher graduation rates. However, these proposed regulations are nearly silent as to accountability provisions related to Title I, Part D.²¹

As a baseline, Title I, Part D compels states to detail in their state plans how they will further efforts to improve access to high school diplomas, processes for timely reenrollment, access to credit-bearing coursework, and so forth, for justice-involved youth. However, the statute does not acknowledge that the existence of such assurances in a state plan does not ensure that such efforts will actually occur. Regulations should emphasize this point, and further, should require annual state reporting on whether these efforts have truly occurred in states receiving funds under Title I, Part D.

Additionally, Title I, Part D requires accountability through sections 1426 and 1431. However, both sections provide vague guidance. Section 1426 posits that states “may” reduce or terminate funding to LEAs that do not show improvement in graduation rates, and that states “may” require juvenile facilities to demonstrate an increase in graduation rates. Section 1431(d) says that states shall use program evaluations to improve subsequent programs for youth. Neither of the two sections requires or proposes effective methods for holding failing programs accountable, and thus further specificity is needed in the form of regulation. Regulation could clarify, for example, how states would review LEAs and juvenile facilities for compliance regarding these sections and, if needed, how and when states would hold those entities accountable for non-compliance.

b. Additional regulations to clarify protections under Title I, Part D programs

Proposed Revision of Regulation Language: None.

Discussion:

We urge the Department to issue regulations that provide clarity as to Title I, Part D, as is detailed below. Such regulations would enhance accountability for educational services for youth involved in, returning from, and at-risk from the juvenile justice system and ensure that young people involved in the juvenile justice system are able to access and achieve a quality education.

²¹ The only regulation even vaguely related to justice-involved students in Title I, Part D programs is the high school graduation rate provision that requires cohort tracking of students moving between LEAs and prisons/juvenile facilities. While we applaud the Department for clarifying the language around high school graduation cohorts (see section II(1) comments), more specific regulations are necessary to hold states and LEAs accountable for the improvements sought through Title I, Part D.

For more information on these requests, see comments submitted in January 2016, requesting that the Department address more general issues in need of regulation in Title I, Part D. Seventy-two organizations signed on to that document.²²

- i. ***Define when a youth has “come into contact with both the child welfare and juvenile justice systems.”***²³ ESSA requires states receiving Title I, Part D funding to note when a youth has had “contact” with both systems and allows states to use funds to support services for these youth. The Department should clarify through regulation what constitutes “contact” to avoid confusion and promote consistent data collection across jurisdictions. We recommend the following definition, which is not so broad as to overburden jurisdictions in obtaining the information: “Youth who have concurrent involvement (diversionary, formal, or a combination of the two) with both the child welfare and juvenile justice systems.”²⁴
- ii. ***Broadly interpret and clarify when conducting an education assessment upon entry is “practicable.”***²⁵ **ESSA provides that States accepting funding should describe the procedures they will use to assess students’ educational needs upon entry to a correctional facility. They must do so “to the extent practicable.” We urge the Department to describe what constitutes “to the extent practicable” so that as many States as possible institute this initial assessment.**
- iii. *Ensure that upon reentry, students are immediately re-enrolled in appropriate quality education programs and not automatically sent to alternative schools or placed in GED or Adult Basic Education (ABE) programs that do not meet their needs.*

²² A copy of the comments from January 2016 is available at http://www.ndrn.org/images/Documents/Issues/Education/ESSA/Comments_on_Title_I_ESEA_Foster_Care_Provisions.pdf.

²³ 20 U.S.C. § 6434(c)(20)(A).

²⁴ John A. Tuell, Jessica K. Heldman, & Janet K. Wiig, Robert F. Kennedy Children’s Action Corps., *Dual-Status Youth - Technical Assistance Workbook*, 4 (2013), <http://www.modelsforchange.net/publications/515>.

²⁵ 20 U.S.C. § 6434(c)(1).

- iv. *Prohibit blanket policies that force returning students to enroll in alternative schools. The Department of Education’s regulations should prohibit blanket policies that force reentering students to enroll in alternative schools, which often fail to adequately address the educational and reentry needs of young people returning to the community.*
- v. *Define the process for determining which school or educational program best meets a young person’s needs upon reentry into the community.²⁶ **The Department should clarify the process for determining how to assess which school or educational program, including which education reentry supports, best meets the student’s needs, including who makes the decision and within what time frame, requiring that the decision be student-centered, and what type of dispute process should be available to youth and families.***
- vi. ***Define “timely” re-enrollment.**²⁷ The Department should clarify that “timely” re-enrollment means immediate re-enrollment, and in no case later than 3 business days after the local educational agency receives notice of the student’s discharge from a correctional facility.*
- vii. ***Emphasize robust re-entry planning.** Early, thoughtful, youth- and family-driven reentry planning across state and local educational agencies, the juvenile justice system, correctional facilities, and other relevant youth serving agencies is fundamental to ensuring youth are immediately re-enrolled in an appropriate educational program. The Department should emphasize and require this robust reentry planning through regulation.*
- viii. ***Ensure that state educational agencies emphasize credit-bearing secondary and postsecondary coursework, and career and technical education. The Department should clarify that all three educational options described above should be available to young people involved in the juvenile justice system. Specifically, youth in the juvenile justice system should have equal access to traditional coursework that leads to recognized academic credit. Further, we urge the Department to interpret this provision to ensure youth have access to these critical opportunities both while in custody as well as upon reentry into the community.***

c. Clarify which entities are eligible to receive funding under Title I, Part D

Proposed Revision of Regulation Language: None.

²⁶ 20 U.S.C. § 6434 (a)(2)(E)(i).

²⁷ *Id.*

Discussion – Request for Additional Regulations and Revision of Regulations:

- i. Develop regulations on the term “at-risk,” as defined under 20 U.S.C. § 6472(2),²⁸ to clarify the affirmative eligibility of youth in custody awaiting a delinquency adjudication proceeding or criminal trial or youth who are participating in a diversionary program.*

The use of often lengthy pre-trial detention stays for youth awaiting trial in the juvenile and criminal justice systems necessitates flexibility for Title I, Part D dollars to provide educational services to those youth. Additionally, given the increase in diversionary programs for youth, consistent with best practices, “at-risk” dollars should go to educational services for youth participating in diversion programs to ensure that these youth are not penalized in their education because they participated in an evidence-based rehabilitative program.

Providing educational services during these periods of high risk is an essential aspect of the educational continuum consistent with the intent of Title I, Part D and targeted services for “at-risk” youth, which supports their continued success and ability to achieve successful educational outcomes.

- ii. Repeal 34 C.F.R. § 200.90(b)(2)²⁹ to reflect the critical educational needs of youth with short stays in juvenile justice facilities consistent with the goals of the ESSA.*

Consistent with best practices and the rehabilitative intent of the juvenile justice system, juvenile justice system placements can be relatively short. Regulations for ESSA should reward this advancement in juvenile corrections and guarantee educational access for a range of lengths of stay to safeguard the educational continuum for all juvenile justice-involved youth, not just youth in facilities with average lengths of stay of 30 days or longer, as currently mandated by 34 C.F.R. § 200.90(b)(2).

²⁸ **20 U.S.C. § 6472(2) AT-RISK.** —The term “at-risk”, when used with respect to a child, youth, or student, means a school aged individual who is at-risk of academic failure, dependency adjudication, or delinquency adjudication, has a drug or alcohol problem, is pregnant or is a parent, has come into contact with the juvenile justice system or child welfare system in the past, is at least 1 year behind the expected grade level for the age of the individual, is an English learner, is a gang member, has dropped out of school in the past, or has a high absenteeism rate at school.

²⁹ **34 C.F.R. § 200.90(b)** The following definitions apply to the programs authorized in part D, subpart 1 of Title I of the ESEA: Institution for delinquent children and youth means, as determined by the SEA, a public or private residential facility that is operated primarily for the care of children and youth who—

(1) Have been adjudicated to be delinquent or in need of supervision; and

(2) Have had an average length of stay in the institution of at least 30 days.

d. Broadly interpret the definition of “Institutions for Delinquent Children and Youth” under 20 U.S.C. § 6472(4)(B)³⁰ and 34 C.F.R. § 200.90(b)³¹.

Proposed Revision of Regulation Language: None.

Discussion:

In order to allow for the widest flexibility for states and localities to serve the diverse educational needs of justice-involved youth, the Department should interpret the definition of eligible institutions for Subpart 1 and Subpart 2 funding as broadly as possible to include all types of facilities in statute and the relevant regulation. This will allow for all justice-involved youth to advance toward educational success regardless of the facility they find themselves in and will allow for innovation in future juvenile justice facility models beyond those contemplated at the time of the development of ESSA regulations and guidance.

7. Maintain justice-involved youth as a subgroup in the regulations designated to support "excellent educators" and "all youth."

Proposed Revision of Regulation Language: None.

Discussion – Support for Current Regulations:

While students involved with the juvenile justice system should be treated as a subgroup in *every* section of ESSA and the proposed regulations, we support the explicit inclusion of the population in proposed §§ 299.18 and 299.19.

Proposed § 299.18(b)(2)(i)(H)³² recognizes the need for staff and teachers to shape instruction to the special needs and experiences of youth in and returning from the juvenile

³⁰ **20 U.S.C. § 6472(4) INSTITUTION FOR NEGLECTED OR DELINQUENT CHILDREN AND YOUTH.** —The term “institution for neglected or delinquent children and youth” means—

(A) a public or private residential facility, other than a foster home, that is operated for the care of children who have been committed to the institution or voluntarily placed in the institution under applicable State law, due to abandonment, neglect, or death of their parents or guardians; or

(B) a public or private residential facility for the care of children who have been adjudicated to be delinquent or in need of supervision.

³¹ 34 C.F.R. § 200.90(b), *supra* note 27.

³² **Proposed § 299.18(b)(2) (i)** *How the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act, including strategies for teachers of, and principals or other school leaders in schools with:*

(H) *Neglected, delinquent, and at-risk children identified under title I, part D of the Act;*

justice system. It is vital that states provide training to staff and teachers working with special populations on how to best educate each group. Indeed, all staff working with this population should be aware of potential gaps in learning, credit transfer problems, and the unique challenges that transitioning into and out of secure facilities can cause, as well as the impact that these experiences can have on a student's independence, decision making, self-control, and time management.

Proposed § 299.19(a)(2)(i)³³ directs states to describe strategies to address “the academic and non-academic needs” of neglected, delinquent, and at-risk students. This provision also requires that the states articulate the strategies chosen, including the rationale, timelines, and funding sources to address the needs of justice-involved youth. By explicitly requiring states to address not only the special academic needs, but also those non-academic needs of youth involved in and returning from the juvenile justice system, the proposed regulations affirm that justice-involved youth require specific attention and planning in order to access the educational equity promised by ESSA.

V. RECOMMENDATIONS REGARDING STATE ACCOUNTABILITY PROVISIONS TO IMPROVE EDUCATIONAL ACCESS AND OUTCOMES FOR AT-RISK STUDENTS

For too long, students of color, low-income students, English learners, students with disabilities and other at-risk and marginalized students have been denied the equal educational opportunity that is their right and our collective responsibility. Given the civil rights legacy and purpose of ESSA, and the centrality of accountability and reporting requirements to ensuring that all students are well served by the law, we must consider whether the proposed regulations will facilitate equal access to quality schools for our at-risk children and youth. We believe that the regulations proposed in May are a good first step toward ensuring that *all* students are counted and that parents and communities hold schools accountable for meeting the needs of students. We offer the following comments in support of regulations we believe are appropriately strong to ensure that the needs of at-risk students are identified and addressed, and to highlight areas where the regulations need to be strengthened.

States, districts, and schools must be required to consult in a timely and meaningful way with parents and families, community-based organizations, civil rights organizations, Indian tribes, teachers, and school leaders.

We support the draft §299.13 “Overview of State Plan Requirements,” §299.14 “Requirements for the Consolidated State Plan,” and §299.15 “Consultation and Coordination” because, taken as a whole, these three regulations require meaningful parent, family, and tribal consultation as a core component of drafting, revising and implementing state plans. The specific

³³ **Proposed § 299.19(a) (2)** *In describing the strategies, rationale, timelines, and funding sources in paragraph (a)(1) of this section, each SEA must consider—Show citation box*

(i) The academic and non-academic needs of subgroups of students including—

(H) Neglected, delinquent, and at-risk students identified under title I, part D of the Act.

requirements in §299.13 (b) through (h) in particular did not exist in the regulations implementing No Child Left Behind, but are at the heart of ESSA’s emphasis on a real, collaborative dialogue in the creation of state plans. We applaud the draft regulations as consistent with the new statutory language in ESSA and appropriately specific to ensure meaningful consultation.

The specific requirements in §299.13 concerning the Overview of State Plan Requirements in subsection (b) “Timely and Meaningful Consultation” through (h) “Revisions” include a number of specific requirements that the civil and human rights community views as critical, including providing public notice of the initial state plan; a 30 day period for comments; specific assurances regarding high school students who are English learners; and a requirement for stakeholder engagement when amending the state plan. These requirements are consistent with and include priorities that are critical for the civil and human rights community: early and ongoing consultation that actively seeks the views of all key stakeholders.

We also applaud “Requirements for the Consolidated State Plan,” §299.14, which requires that consultation and coordination is a major component of state plans for the first time, and draft regulation §299.15, “Consultation and Coordination” which identifies stakeholders who must be involved, including representatives of Indian tribes and civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students. Both draft regulations clarify that consultation is a critical part of ESSA and establish that state plans must be developed with the full parent and community engagement from those who have historically been underserved.

We support draft regulation §200.30 “Annual State Report Card,” which requires a state to prepare a state report card and share it to the extent practicable in a language that parents can understand, including Native and spoken languages, that are present in parent and community members in a state. Underrepresented parents will benefit from this provision because they will be better able to understand how their student is doing in school and how their school is doing for all students. Easy access to this data will help all parents be active participants in the education of their children.

We applaud the language in §200.21 and §200.22, which requires that notice be provided in a language that parents can understand, including Native and spoken languages, which are present in parent and community members in a state. In addition, we request that the Department consider adding culturally responsive approaches in school support and improvement strategies for underserved students to the non-exhaustive list in §200.21(d)(3) of strategies that schools may use. This recommendation comes from the belief that parents and community members know their students best and often know how to support schools through relevant strategies.

We want to highlight our support for three of the specific requirements under §299.13 (b) that define “timely and meaningful” and recommend one additional specific step that we see as critical. The (1) public notice of the processes and procedures; (2) outreach during the design, submission, and revision of a state plan and (3) publication of how comments and consultation occurred are all requirements we see as critical. We applaud these requirements and look forward to the states’ rigorous adherence to them as well as the Department’s enforcement of them.

However, our experience with consultation—through tribal government-to-government consultations as well as the civil rights community as a whole—is that without agendas developed with stakeholders and written, clear follow up, consultation is often ineffective. We recommend an additional subsection to §299.13(b) to ensure that agendas and written follow up to participants is required in state plans. The addition of the phrase “timely and meaningful” in §1111 of ESSA and the state plan peer review subsection in §8541 support this recommendation. Moreover, the longstanding purpose of the Elementary and Secondary Education Act (ESEA) as expressed in ESSA as well as the history of exclusion of the civil rights community, low-income people, and people of color support our recommendation as a critical step to ensure ESSA truly marks a new era of real, inclusive collaboration that is reflected in state plans.

Each individual group of students must count in accountability systems and “super-subgroups” must not be allowed.

We support the clarification that a State must include each of the required subgroups of students separately in the state’s accountability system as stated in §200.16. Relying on a combined subgroup or a super-subgroup of students masks subgroup performance and conflates the distinct academic needs of different groups of students, inhibits the identification of schools with one or more consistently underperforming subgroups of students for targeted support and improvement, and limits information available to the public and parents, which is contrary to the statutory purpose to increase transparency, improve academic achievement, and hold schools accountable for the success of each subgroup.

State accountability systems must provide a summative school rating for each school.

We support the inclusion of the requirement in §200.31 that state accountability systems must provide a summative rating for each school which takes into account the performance of all students and each group of students on each of the indicators included in the accountability system. The law requires summative ratings by creating a system which requires: at least four indicators of school performance; specific weights to be applied to those indicators; and school rankings. It has been suggested that there exists a tension between summative ratings and the need for transparency about school quality. Dashboards—one option for displaying multiples pieces of information about schools—and summative ratings are not mutually exclusive. Indeed, the highest quality and most transparent summative systems include a clear explanation based on each indicator of school performance. We share the goal of transparency, but because the law requires the use of summative ratings in the accountability system, it would go against the goal of transparency to purposefully exclude these required summative ratings from public disclosure.

Schools must be held accountable for the inclusion of 95 percent of all students, and of each subgroup, in the accountability system.

We support the language in §200.15(a) of the draft regulations which would incorporate the ESSA requirement that States annually measure the achievement of at least 95 percent of all

students, and 95 percent of all students in each subgroup of students under proposed §200.16(a)(2), who are enrolled in each public school. Participation rates would be calculated separately on the assessments in reading/language arts and mathematics required under section 1111(b)(2)(B)(v)(I). Proposed §200.15(b)(1) would incorporate the statutory requirements related to the denominator that must be used for calculating the Academic Achievement indicator under proposed §200.14 for purposes of annual meaningful differentiation of schools, while proposed §200.15(b)(2) would establish minimum requirements for factoring the participation rate requirement for all students and each subgroup of students into the State accountability system. The participation rate requirement, first included in the No Child Left Behind Act of 2001, was in direct response to the routine exclusion of certain groups of students from the assessment system. Without both the inclusion of historically marginalized students and the inclusion of historically advantaged students in the assessment system, low student performance will be hidden and remain unaddressed and disparities will be ignored and dismissed. The inclusion of all students is central to the accountability system and should be robustly enforced.

The “other indicator of school quality or student success” must be related to student experience and achievement, disaggregated at the student level.

We support the important guardrails placed around the indicator of “school quality or student success” in §200.14. It is important that additional measures included in accountability systems support the focus on student achievement and students’ experience in schools, including the impact of discipline practices, overall school climate, and the presence of security and law enforcement in school.

The regulations should provide more direction on how states should assist local educational agencies with improving school environments for student learning.

We believe that §299.19 should define or list the types of disciplinary actions that would remove students from the classroom, building on the examples of out-of-school suspensions and expulsions to also include referrals to law enforcement, and school-based arrests. The “overuse” of discipline practices should include the imposition of discipline for subjective, nonviolent conduct, such as disrespect of authority and disorderly conduct and also the disproportionate application of disciplinary actions to subgroups of students. The regulations should also provide a definition for aversive behavioral interventions, such as involuntary confinement or the use of restraints, including handcuffs, which would prevent students from moving freely.

In addition, §200.21 and §200.22 of the proposed regulations should require local educational agencies and schools that have been identified as in need of comprehensive or targeted support and improvement to include in their needs assessments measures of school climate, such as bullying and harassment, and exclusionary and disproportionate discipline. Support and improvement plans resulting from the needs assessment should address any inequities in measures of school climate and inequities in resources that would positively impact school climate, such as funding for school counselors and evidence-based programs, as required by ESSA.

Schools must be identified for targeted support and improvement after a group of students has been underperforming for no more than two years.

We support the definition of “consistently” in §200.19(c) to mean no more than two years. Because the academic career of a student is so limited, every year counts. If a problem facing a school for a group of third grade students isn’t even identified until those students have moved on to middle school, it is unlikely that students will benefit from needed support and improvement strategies. We cannot wait to identify areas where supports are needed and to make changes to support student learning. The stakes are too high for every single student and even more so for those who have been historically marginalized as a group.

State definitions of “underperforming” for any subgroup of students must be based on the statewide goals and interim progress targets.

The definition of “consistently underperforming subgroup” is critical to ensuring that all schools are held accountable for how they are serving all groups of students. To serve this purpose, this definition must include not just the lowest performing schools for a group of students, but schools anywhere along the performance spectrum that are not making progress for one or more groups.

We support the proposed regulatory requirement that states, in defining consistent underperformance, must consider schools’ performance for each student group over no more than two years (§200.19(c)(1)). However, we are concerned that several of the options for identifying consistent underperformance in section §200.19(c)(3) – specifically options §200.19(c)(3)(ii) through §200.19(c)(3)(iv)—would result in methodologies that would flag only the lowest-performing schools for intervention and support.

Instead of allowing states to base definitions of consistent underperformance on the size of achievement gaps with statewide averages, or thresholds based on these averages, we urge the Department to require states to base their methodology for identifying consistently underperforming schools on state goals and progress targets.

Additionally, we recommend requiring that this definition be more expansive than the definition of “low performing subgroup.” Specifically, we recommend striking section §200.19(c)(3) and replacing with: “§200.19(c)(3) Be based on the state’s goals and progress targets; and (c)(4) Include more schools than the definition of “low-performing subgroup” under §200.19(b)(2).”

The minimum number of students needed to include a subgroup of students, the “n-size,” must be no more than 10 students.

Although the proposed regulations in §200.17(a)(2)(iii) and §200.17(a)(3)(v) do not require states to set a specific N-size, they do say that if a state sets an N-size above a threshold

of 30, they have to justify why, including identifying the number and percentage of schools that would not be held accountable in their system. The Department is justified in exercising its statutory authority to include a threshold N-size and ensure that states meet the requirements under §1111 (c)(4)(D)(III) and (d)(3)(A)(i)(II) to meaningfully differentiate among school performance as it applies to subgroups and school identification. However, the threshold is set far too high. We urge the Department to lower the threshold to 10 students, while maintaining the language within the proposed regulations that allows states to set a higher threshold if they can provide justification, including data on the number and percentage of schools that would not be held accountable for the results of students in each subgroup in the accountability system and that explains how a minimum number of students exceeding 10 promotes sound, reliable accountability determinations.

The state-determined timeline for English learners to achieve English language proficiency must not exceed five years.

We urge the Department to include in §200.13 a maximum timeline of five years for goals for reaching English proficiency. The average time to reclassification is under four years for children under grade 5. Moreover, ESSA adds much needed reporting requirements for English learners that have not reclassified within five years. We believe this timeline will be consistent with the Long Term English learner definition signaling that more than five years is excessive and students should be “making progress” with the supports they need to become proficient in the English language within a reasonable timeline.

A state’s “regular high school diploma” should only be one that is fully aligned with state standards and a State’s “alternate diploma” should only be one that is standards-based and meets all other criteria as required by the statute.

In §200.34(c) the definitions for “regular high school diploma” should be changed to ensure that, as required under ESSA, neither a regular nor alternate high school diploma is based, wholly or in part, on meeting IEP goals, even if those goals are fully aligned with the State’s grade level academic content standards. Specifically, the definition of “regular high school diploma” should be amended to read: “Regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in §1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals.

The regulations should make progress in ensuring the promise of resource equity.

We strongly support the clarifying language to identify and address resource inequity under the development of both Comprehensive and Targeted Support and Improvement Plans

found in §200.21 and §200.22. In addition to addressing school discipline and climate, as mentioned above, we also strongly support the suggestion to identify and address other resource inequities such as the access and availability of advanced coursework, preschool programs, and instructional materials and technology. We suggest that the Department add a healthy school climate, access to specialized instructional support personnel (including paraprofessionals, guidance counselors and social workers), and access to high-quality preschool programs and full-day, five-day-a-week kindergarten to this list of resource inequities. It may also be instructive for schools to show that they provide access to core academic subject courses that are prerequisites for a regular high school diploma.

We strongly support the proposals in §200.23 that would require a periodic review of resource allocations in each LEA serving significant numbers of identified schools for comprehensive or targeted support and improvement. This review must also consider allocations between LEAs and between schools, and require states to take action to address the resource inequities identified during this review. We strongly support the proposed regulations in §200.35 requiring states to develop a single, statewide procedure for LEAs to utilize to calculate and report LEA- and school-level per-pupil expenditures of federal, state and local funds. These data are essential to identifying and addressing resource inequities that may exist.

Data must be easily accessible and user-friendly.

Section 200.30 outlines the format, accessibility, dissemination, timing, and substance of state report cards. Although the proposed rule stipulates that academic achievement data may be cross-tabulated, the proposed rule does not adequately outline what states must do if they choose not to include cross-tabulated data on their report cards. Additionally, the proposed rule fails to outline guardrails to ensure that new categories are reported in a manner that is easily accessible and user-friendly. The Department should amend §200.30(c) to set minimum “easily accessible” requirements that require information on report cards, including information that is or can be cross-tabulated, to be publicly downloadable for all visitors to an SEA’s website. The Department should also prohibit the SEA from setting as a condition to accessing the information any significant barrier to getting the data, such as a requirement that users contact the SEA or pay a fee.

The Department should also amend §200.30(d) to set minimum “user-friendly” requirements for a state that chooses to release information that can be cross-tabulated, rather than perform the cross-tabulation itself. In this case, the state must make this information available in a downloadable format that can be easily manipulated, such as an Excel spreadsheet or comma delimited file, and must not report this information in a format that cannot be easily manipulated, such as a Portable Document Format (PDF).

Additionally, although we appreciate that the proposed rule clarifies that the SEA must make LEA report cards available on its website, the final rule should also promote the ability of parents and stakeholders to compare their individual school performance to other schools, as well as see how their school compares district- and statewide. Therefore, §200.30(d) should also be amended to require SEAs to segment this data in a way that allows users to view and compare data at the state, LEA and school level.

States must only be allowed to count students with disabilities who have exited special education in the disability subgroup for the school year in which they exited.

In response to the Department’s guiding question on the counting of students who have exited special education, we ask that states only be allowed to count those students within the disability subgroup during the year in which they are exited. In each subsequent school year that a student with a disability is not receiving special education, the student should be counted with all students, as well as within any other relevant subgroup. Students who no longer need special education services should no longer be included in the disability subgroup, which is defined as students with disabilities who receive services through the IDEA. However, for reporting ease, we support the proposal that students who have exited from special education in the middle of a school year may still be counted in the disability subgroup for the school year in which they exited.

VI. CONCLUSION

We appreciate this opportunity to comment on the Department’s development of regulations and guidance to ensure effective implementation of programs under Title I of the Every Student Succeeds Act. We believe this new law offers multiple opportunities to significantly improve educational and life outcomes for our nation’s most vulnerable students. We would welcome any opportunity to work with the Department towards achieving this critical goal.

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ⁱ (a) Calculations for reporting student achievement results.
(1) . . . each State and LEA report card must include the percentage of students performing at each level of achievement . . . on the academic assessments . . . by grade.
(2) . . . each LEA report card must also. . .
(3) Each State and LEA must include . . .
(i) Information for all students;
(ii) Information disaggregated by—
(A) Each subgroup of students in § 200.16(a)(2);
(B) Migrant status;
(C) Gender;

(D) Homeless status;

(E) Status as a child in experiencing homelessness; and

(F) Status as a student with a parent who is a member of the Armed Forces . . .

(iii) Results based on . . .

(b) Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.

(c) Calculation for reporting the percentage of students assessed and not assessed.

ii § 200.34 High school graduation rate.

(a) Four-year adjusted cohort graduation rate.

A **State** must calculate a *four-year adjusted cohort graduation rate* for each *public high school* in the State in the following manner:

(1) The **numerator** must consist of the sum of—

(i) *All students who graduate in four years with a regular high school diploma*; and

(ii) *All students with the most significant cognitive disabilities in the cohort* . . .

(2) The **denominator** must consist of the number of students who form the adjusted cohort of entering *first-time students in grade 9* enrolled in the high school . . .

(3) For those high schools that start after grade 9 . . .

(b) Adjusting the cohort.

(1) “**Adjusted cohort**” means the students who *enter grade 9* (or the earliest high school grade) plus any students who *transfer* into the cohort in grades 9 through 12, and *minus any students removed* from the cohort.

(2) “Students who **transfer** into the cohort” means . . .

(3) To **remove** a student from the cohort, a school or **LEA** must confirm in writing that the student—

(i) Transferred out, such that the school or LEA has *official written documentation* that the student enrolled in another school or educational program that *culminates in the award of a regular high school diploma, or a State-defined alternate diploma* for students with the most significant cognitive disabilities;

(ii) *Emigrated* to another country;

(iii) Transferred to a *prison or juvenile facility* and participates in an educational program that culminates in the award of a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities; or

(iv) Is *deceased*.

(4) A student who is *retained* in grade, enrolls in a *general equivalency diploma [GED] program* or other *alternative education program that does not issue or provide credit toward the issuance of a regular high school diploma or a State-defined alternate diploma*, or leaves school for any reason other than those described in paragraph (b)(3) of this section *may not be counted as having transferred* out for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(c) Definition of terms.

For the purposes of calculating an adjusted cohort graduation rate under this section—

(1) “Students who graduate in four years” means . . .

(2) “Regular high school diploma” means . . .

(3) “Alternate diploma” means . . .

(d) Extended-year adjusted cohort graduation rate.

In addition to calculating a four-year adjusted cohort graduation rate, a **State** may calculate and report an **extended-year adjusted cohort graduation rate**.

(1) “Extended-year adjusted cohort graduation rate” means . . .

(2) A State may calculate one or more extended-year adjusted cohort graduation rates, except that no extended-year adjusted cohort graduation rate may be for a cohort period longer than **seven years**.

(e) Reporting on State and LEA report cards.

(1) A **State** and **LEA** **report card** must include, at the *school, LEA, and State levels*—

(i) **Four-year adjusted cohort graduation rates** and, if adopted by the State, *extended-year adjusted cohort graduation rates* for all students and disaggregated by **each subgroup of students in § 200.16(a)(2), homeless status, and status as a child in experiencing homelessness**.

(ii) Whether all students and each subgroup of students described in § 200.16(a)(2) **met or did not meet the State measurements** of interim progress for graduation rates under § 200.13(b).

(2) A **State** and its **LEAs** must report . . . *graduation rate . . . that reflects results of the immediately preceding school year*.

(3) If a State adopts an **extended-year** adjusted cohort graduation rate, the State and its LEAs *must* report the extended-year adjusted cohort graduation rate *separately* from the four-year adjusted cohort graduation rate.

(4) A State that offers an **alternate diploma** . . . must—

(i) Not delay the timely reporting . . .

(ii) Annually update the . . . graduation rates reported for a given year to include in the numerator any students with the most significant cognitive disabilities . . .

(f) Partial school enrollment.

Each **State** *must* apply the *same approach in all LEAs* to determine whether students who are enrolled in the same school for *less than half of the academic year* as described in § 200.20(b) **who exit high school without a regular high school diploma and do not transfer** into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate—

(1) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(2) At the school in which the student was most recently enrolled.

iii (a) *Systems of educator development, retention, and advancement.*

(b) Support for educators.

(1) In its consolidated State plan, each SEA must describe how it will use title II, part A funds . . .

(2) In its consolidated State plan, each SEA must describe—

(i) How the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act, including strategies for teachers of, and principals or other school leaders in schools with:

(A) Low-income students;

(B) Lowest-achieving students;

(C) English learners;

(D) Children with disabilities;

(E) Children and youth in experiencing homelessness;

(F) Migratory children . . .

(G) Homeless children and youths;

(H) Neglected, delinquent, and at-risk children identified under title I, part D of the Act;

(I) Immigrant children and youth;

(J) Students in LEAs eligible for grants under the Rural and Low-Income School Program under section 5221 of the Act;

(K) American Indian and Alaska Native students;

(L) Students with low literacy levels; and

(M) Students who are gifted and talented;

(ii) . . . how the SEA will work with LEAs in the State to develop or implement State or local teacher, principal or other school leader evaluation and support systems . . . ; and

(iii) . . . how the State will improve educator preparation programs . . .

(3) In its consolidated State plan, each SEA must describe its rationale for, and its timeline for the design and implementation of, the strategies identified under paragraph (b)(1) and (2) of this section.

(a) Well-rounded and supportive education for students.

(1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma . . .

(2) In describing the strategies, rationale, timelines, and funding sources . . . each SEA must consider—

(i) The academic and non-academic needs of subgroups of students including—

(A) Low-income students.

(B) Lowest-achieving students.

(C) English learners.

(D) Children with disabilities.

(E) Children and youth in experiencing homelessness.

(F) Migratory children . . .

(G) Homeless children and youths.

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- (H) Neglected, delinquent, and at-risk students . . .
 - (I) Immigrant children and youth.
 - (J) Students in LEAs eligible for grants under the Rural and Low-Income School program . . .
 - (K) American Indian and Alaska Native students.
 - (ii) Data and information on resource equity
 - (3) In its consolidated State plan, the SEA must use information and data on resource equity collected
 - (4) In its consolidated State plan, each SEA must describe how it will use . . . Federal funds—

^{iv} (a) Calculations for reporting student achievement results.

(1) . . . each State and LEA report card must include the percentage of students performing at each level of achievement . . . on the academic assessments . . . by grade.

(2) . . . each LEA report card must also. . .

(3) Each State and LEA must include

(i) Information for all students;

(ii) Information disaggregated by—

(A) Each subgroup of students in § 200.16(a)(2);

(B) Migrant status;

(C) Gender;

(D) Homeless status;

(E) Status as a child in foster care; and

(F) Status as a student with a parent who is a member of the Armed Forces

(iii) Results based on

(b) Calculation for reporting on the progress of all students and each subgroup of students toward meeting the State-designed long-term academic achievement goals.

(c) Calculation for reporting the percentage of students assessed and not assessed.

^v § 200.34 **High school graduation rate.**

(a) Four-year adjusted cohort graduation rate.

A **State** must calculate a *four-year adjusted cohort graduation rate* for each *public high school* in the State in the following manner:

(1) The **numerator** must consist of the sum of—

(i) *All students who graduate in four years with a regular high school diploma*; and

(ii) *All students with the most significant cognitive disabilities in the cohort . . .*

(2) The **denominator** must consist of the number of students who form the adjusted cohort of entering *first-time students in grade 9* enrolled in the high school . . .

(3) For those high schools that start after grade 9 . . .

(b) Adjusting the cohort.

(1) “**Adjusted cohort**” means the students who *enter grade 9* (or the earliest high school grade) plus any students who *transfer* into the cohort in grades 9 through 12, and *minus any students removed* from the cohort.

(2) “Students who **transfer** into the cohort” means . . .

(3) To **remove** a student from the cohort, a school or **LEA** must *confirm in writing* that the student—

(i) Transferred out, such that the school or LEA has *official written documentation* that the student enrolled in another school or educational program that *culminates in the award of a regular high school diploma, or a State-defined alternate diploma* for students with the most significant cognitive disabilities;

(ii) *Emigrated* to another country;

(iii) Transferred to a *prison or juvenile facility* and participates in an educational program that culminates in the award of a regular high school diploma, or State-defined alternate diploma for students with the most significant cognitive disabilities; or

(iv) Is *deceased*.

(4) A student who is *retained* in grade, enrolls in a *general equivalency diploma* [GED] program or other *alternative education program that does not issue or provide credit toward the issuance of a regular high school diploma or a State-defined alternate diploma*, or leaves school for any reason other than those described in paragraph

(b)(3) of this section *may not be counted as having transferred* out for the purpose of calculating the graduation rate and must remain in the adjusted cohort.

(c) Definition of terms.

For the purposes of calculating an adjusted cohort graduation rate under this section—

(1) “Students who graduate in four years” means . . .

(2) “Regular high school diploma” means . . .

(3) “Alternate diploma” means . . .

(d) Extended-year adjusted cohort graduation rate.

In addition to calculating a four-year adjusted cohort graduation rate, a **State** may calculate and report an **extended-year adjusted cohort graduation rate**.

(1) “Extended-year adjusted cohort graduation rate” means . . .

(2) A State may calculate one or more extended-year adjusted cohort graduation rates, except that no extended-year adjusted cohort graduation rate may be for a cohort period longer than **seven years**.

(e) Reporting on State and LEA report cards.

(1) A **State and LEA report card** must include, at the *school, LEA, and State levels*—

(i) **Four-year adjusted cohort graduation rates** and, if adopted by the State, *extended-year adjusted cohort graduation rates* for all students and disaggregated by **each subgroup of students in § 200.16(a)(2), homeless status, and status as a child in foster care**.

(ii) Whether all students and each subgroup of students described in § 200.16(a)(2) **met or did not meet the State measurements** of interim progress for graduation rates under § 200.13(b).

(2) A **State and its LEAs** must report . . . *graduation rate . . . that reflects results of the immediately preceding school year*.

(3) If a State adopts an **extended-year** adjusted cohort graduation rate, the State and its LEAs must report the extended-year adjusted cohort graduation rate *separately* from the four-year adjusted cohort graduation rate.

(4) A State that offers an **alternate diploma** . . . must—

(i) Not delay the timely reporting . . .

(ii) Annually update the . . . graduation rates reported for a given year to include in the numerator any students with the most significant cognitive disabilities . . .

(f) Partial school enrollment.

Each **State** must apply the *same approach in all LEAs* to determine whether students who are enrolled in the same school for *less than half of the academic year* as described in § 200.20(b) **who exit high school without a regular high school diploma and do not transfer** into another high school that grants a regular high school diploma are counted in the denominator for reporting the adjusted cohort graduation rate—

(1) At the school in which such student was enrolled for the greatest proportion of school days while enrolled in grades 9 through 12; or

(2) At the school in which the student was most recently enrolled.

^{vi} (a) *Systems of educator development, retention, and advancement.*

(b) Support for educators.

(1) In its consolidated State plan, each SEA must describe how it will use title II, part A funds . . .

(2) In its consolidated State plan, each SEA must describe—

(i) How the SEA will improve the skills of teachers, principals, or other school leaders in identifying students with specific learning needs and providing instruction based on the needs of such students consistent with section 2101(d)(2)(J) of the Act, including strategies for teachers of, and principals or other school leaders in schools with:

(A) Low-income students;

(B) Lowest-achieving students;

(C) English learners;

(D) Children with disabilities;

(E) Children and youth in foster care;

(F) Migratory children . . .

(G) Homeless children and youths;

(H) Neglected, delinquent, and at-risk children identified under title I, part D of the Act;

(I) Immigrant children and youth;

(J) Students in LEAs eligible for grants under the Rural and Low-Income School Program under section 5221 of the Act;

(K) American Indian and Alaska Native students;

(L) Students with low literacy levels; and

(M) Students who are gifted and talented;

(ii) . . . how the SEA will work with LEAs in the State to develop or implement State or local teacher, principal or other school leader evaluation and support systems . . . ; and

(iii) . . . how the State will improve educator preparation programs . . .

(3) In its consolidated State plan, each SEA must describe its rationale for, and its timeline for the design and implementation of, the strategies identified under paragraph (b)(1) and (2) of this section.

(a) Well-rounded and supportive education for students.

(1) In its consolidated State plan, each SEA must describe its strategies, its rationale for the selected strategies, timelines, and how it will use funds under the programs included in its consolidated State plan and support LEA use of funds to ensure that all children have a significant opportunity to meet challenging State academic standards and career and technical standards, as applicable, and attain, at a minimum, a regular high school diploma . . .

(2) In describing the strategies, rationale, timelines, and funding sources . . . each SEA must consider—

(i) The academic and non-academic needs of subgroups of students including—

(A) Low-income students.

(B) Lowest-achieving students.

(C) English learners.

(D) Children with disabilities.

(E) Children and youth in foster care.

(F) Migratory children . . .

(G) Homeless children and youths.

(H) Neglected, delinquent, and at-risk students . . .

(I) Immigrant children and youth.

(J) Students in LEAs eligible for grants under the Rural and Low-Income School program . . .

(K) American Indian and Alaska Native students.

(ii) Data and information on resource equity . . .

(3) In its consolidated State plan, the SEA must use information and data on resource equity collected . . .

(4) In its consolidated State plan, each SEA must describe how it will use . . . Federal funds—