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DEPARTMENT OF EDUCATION

*Creating Opportunities
for Students to Keep
Wyoming Strong*

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July 29, 2016

Meredith Miller

U.S. Department of Education
400 Maryland Avenue, SW, Room 3C106
Washington, DC 20202-2800

Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

The Wyoming Department of Education (WDE) appreciates the opportunity to respond to the proposed rules and regulations under the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA). After a thorough review of the proposed rules, the WDE has identified multiple issues for consideration.

Summary of Issues

- (1) Accountability System Implementation Timeline is Unreasonable
- (2) ELL Indicator Rules Leave Numerous Unanswered Questions
- (3) New Reporting Requirements are Overly Burdensome and Ineffective
- (4) 1% Alternate Assessment Cap is Untenable Without Further Guidance

Issues for Consideration

(1) Accountability System Implementation Timeline is Unreasonable

The proposed rules call for implementation of a newly aligned accountability system by SY 2017-18. There are multiple moving parts in an accountability system and it takes time to adjust and realign those components to a single comprehensive, coherent model.

Specifically, we have concerns about the following:

- i. *Identification of Schools:* Under the proposed rules, a new accountability system is to be fully implemented in the 2017-18 school year; therefore, performance data from the

2016-17 school year would need to be used in order to make determinations about schools in need of support. In order to ensure their accountability system is aligned with the requirements outlined in ESSA and to ensure the system is understandable and transparent, states need time to adjust existing indicators or create new ones and multiple opportunities to inform the LEAs, parents, and the general public about the new requirements. Wyoming is no exception. Although our state's accountability model is poised to meet the provisions under ESSA quite seamlessly, there are still adjustments that could significantly impact the LEAs as well as the state's capacity to meet the letter of the proposed rules and regulations, and a 2017-18 timeline would make this transition difficult.

- ii. *Graduation Rates:* The proposed rules require the graduation rate be reported such that students who do not graduate until the conclusion of summer school immediately following their senior year would no longer be counted with their cohort, and therefore, our state's graduation rate would not accurately reflect the full number of completers in a single cohort. Most states use the graduation rate as a lagging indicator for this very reason, and Wyoming does the same. The provision in the proposed rules would preclude our summer graduates from the graduation rate if reporting requirements are now based on the immediate preceding school year. Additionally, all state agencies need a reasonable window of time to vet the data received from the LEAs to ensure the final graduation rate is correct.

An additional issue related to the high school graduation rate is the requirement that any high school failing to graduate at least two-thirds of its students based on a 4-year on-time cohort be identified for comprehensive support. By not allowing a 4-year adjusted or an extended graduation rate, as has been permitted in the past, nearly all of Wyoming's alternative high schools would be identified in need of comprehensive support, thus making it difficult to "meaningfully differentiate" these schools based on actual student performance as required under ESSA.

- iii. *Additional Subgroups:* Other indicators that would be new to the model under the proposed rules and regulations are those related to the status of homeless children under the McKinney-Vento Act, foster children under the Social Security Act, and students who are children of those serving in the armed forces on active duty or those who serve full time in the National Guard. It will take states and especially LEAs time to set up their student information systems to identify and incorporate these new subgroup requirements.
- iv. *The additional "fifth indicator:"* The identification of a "fifth indicator" in the state's accountability model will require time and proper vetting to ensure it meets the intent of the law and yields useful data about student success and school quality in Wyoming.

(2) ELL Indicator Rules Leave Numerous Unanswered Questions

ESSA does not set a timeline for English Learners (ELs) to achieve English language proficiency. The legislative intent is clear from this omission. Setting any date for EL proficiency is not only inconsistent with the intent of ESSA but also a one size fits all approach to a much more complex issue. Therefore, the proposed rules should not require states to establish a maximum timeline. Additionally, states should be allowed to differentiate criteria across subgroups for graduation rates.

We respectfully ask for clarity on the following sections of the proposed rules:

1. §200.13: For graduation rate, what happens when ELs are exited during their cohort? Do they count as Former ELs or are they eliminated from that cohort?
2. §200.18 and §200.19: Does Title III funding include Monitored students up to four years?
3. §200.18 and §200.19: Monitored students up to 4 years - does that mean that a state can continue to monitor for 2 years or are states required to monitor the entire 4 years?
4. §200.15: What is the definition of 12 months for recently arrived ELs? Is this school year specific, calendar days, consecutive, cumulative?
5. §200.15: What is the definition of meaningful participation? If students cannot meaningfully participate in content assessments, how do we ensure that doesn't affect our 95% participation rate for accountability?
6. §200.15: Does the 95% participation rate only apply to content assessments? Does the 95% rate apply to the English Language proficiency assessment?
7. §200.13: Will ED establish any parameters for what is meant by an "interim measure of progress"?

(3) New Reporting Requirements are Overly Burdensome and Ineffective

§200.35(a)(i)(B) and §200.30(e) Citation-Per-pupil expenditure reporting by funding source

The proposed rules have State and Local Education Agencies annually report per-pupil expenditures of federal, state, and local funds disaggregated by funding source. This level of expenditure reporting is unprecedented. Wyoming is able to report certain school level expenditures, such as instructional salary costs, but it does not require all costs to be coded to the school level. Furthermore, many states including Wyoming do not have accounting systems that require the tracking of expenditures by funding source. Requiring states to procure the sophisticated software, systems, and personnel necessary to effectuate the expenditure reporting requirements contained in §200.35(a)(i) statewide in time for the SY2017-18 school is unreasonable and impracticable. It also provides little in the form of meaningful information over what we have in place currently.

Wyoming's Constitution calls for a complete and uniform system of public instruction, one that mandates the equitable allocation of resources among all school districts in the State. The Wyoming funding model provides resources based not only on district- and school-level characteristics but also student characteristics. The Wyoming funding model also adjusts for regional cost variations and diseconomies of scale. For a rural state like Wyoming, there will be wide variances in per-pupil expenditures particularly in school districts that serve small student populations. The per-pupil expenditure data does not provide a reliable basis for comparing

schools due to the limited nature of school-level expenditure data as well as a lack of consideration for school-level demographics and state determined funding mechanisms.

We request clarification on how per-pupil expenditures will be used to determine district compliance with supplement, not supplant provisions or comparability requirements under Title I.

§200.30(e) State Report Card timeline

The proposed rules require state report cards to be provided by December 31 each year starting with the 2017-18 school year (December 31, 2018). In accordance with Wyoming statute, school districts are required to submit audited financial statements no later than December 15 following the end of the audited fiscal year. Although the proposed rules provide for a one-time extension for 2017-18 reporting, the timeline imposed by §200.30 provides insufficient time to validate and reconcile district reported fiscal data with school district audited financial statements. Moving the state deadline up would be impractical for private auditing firms to complete the audit review process. Additionally, entities subject to the single audit review under U.S.C. 200.512, such as school districts, are required to provide the federal audit clearing house with the audit report 30 calendar days after the auditor's report or nine months after the end of the audit period. This would be April 1 for Wyoming school districts. We recommend the dissemination of per-pupil expenditures be required no later than March 31 to coincide with the reporting of school finance data to the National Center for Education Statistics.

§200.35(a)(i)(B)(2) Private funding exclusion

The proposed rules require states to exclude from expenditure reporting any funds received from private sources. Revenue from philanthropic foundations, private individuals or private organizations for which no repayment or special service to the contributor is expected are not required to be accounted for in a restricted fund. Because unrestricted funds from private sources are included in the general operating funds of school districts, Wyoming is not able to exclude all expenditures from private sources. We recommend the language in §200.35(a)(i)(B)(2) be modified to only include the exclusion of private funds restricted by the nature of the agreement.

§200.35(c) Intricate expenditure allocations

The proposed rules require states to “...develop a single statewide procedure to calculate LEA current expenditures including non-personnel expenditures including expenditures for administration, instruction, instructional support, student support services, pupil transportation services, operations and maintenance of plant, fixed charges, preschool and net expenditures to cover deficits for food services and student body activities.” Many of these costs are not tracked at the school level in district and state accounting systems. We respectfully request clarification on the proper inclusion or allocation of expenditures that are not identified to individual schools.

(4) 1% Alternate Assessment Cap is Untenable Without Further Guidance

Another issue in the proposed rules and regulations is related to identifying wide variations in the number of students who are part of the 1% alternate assessment cap. This is troublesome and appears to be outside of the scope of what ESSA intended. Smaller districts in particular could be

identified with the influx of just one or two families. The state should be in charge of handling such variations as needed.

Thank you for your time and consideration. We appreciate the opportunity to weigh in on the proposed rules. As is the concern of many of our colleagues across the country, the proposed rules appear to run contrary to the spirit of ESSA in many ways. We hope that you will consider revising the proposed rules to address the concerns cited herein and by other SEAs and education entities across the country. We are all very excited about the future of education under ESSA and do not want to see the rule promulgation process stifle innovation and the ability of states to tailor education policy and supports to the unique needs of their children.

Sincerely,

A handwritten signature in black ink, appearing to read "Jillian Balow". The signature is written in a cursive, flowing style with a large initial "J".

Jillian Balow
Superintendent of Public Instruction