

To Whom It May Concern:

The Texas Classroom Teachers Association, representing 50,000 classroom teachers and instructional personnel statewide, has the following comments regarding Proposed revisions to 34 CFR Parts 200 and 299, [Docket ID ED-2016-OESE-0032]

**Regarding Proposed Section 200.13 Long-term goals and measurements of interim progress, subsection (a)(2)** provides that “In establishing the long-term goals and measurements of interim progress under paragraph (a)(1) of this section, a State must—

- (i) Apply the same high standards of academic achievement to all public school students in the State, except as provided for students with the most significant cognitive disabilities consistent with section 1111(b)(1) of the Act;”...

We note that the relevant provision of the enabling Act, Sec 1111(b)(1)(A) and (B), requires in part that each state title I Plan “shall provide an assurance that the State has adopted challenging academic content standards and aligned academic achievement standards (referred to in this Act as ‘challenging State academic standards’)”...

**We recommend that since the phrase “standards of academic achievement” used in the proposed rules arguably has a different meaning than “academic achievement standards” used in the enabling Act, the proposed rule should track the language used in the enabling Act so that it reads “Apply the same high academic achievement standards to all public school students in the State...”**

**Regarding Proposed § 200.14 Accountability indicators, subsection (b)** provides that “A State must annually measure the following indicators consistent with paragraph (a) of this section:

(4) For all schools, a Progress in Achieving English Language Proficiency indicator, based on English learner performance on the annual English language proficiency assessment required under section 1111(b)(2)(G) of the Act in each of grades 3 through 8 and in grades for which English learners are otherwise assessed under section 1111(b)(2)(B)(v)(I)(bb) of the Act, that--:...”

We note that the relevant provision of the Enabling Act, Sec 111(c)(4)(B), provides that “Except for the indicator described in clause (iv), annually measure, for all students and separately for each subgroup of students, the following indicators:

“(iv) For public schools in the State, progress in achieving English language proficiency, as defined by the State and measured by the assessments described in subsection (b)(2)(G), within a State-determined timeline for all English learners—“

Consequently, we note that the Department’s proposal to require States to annually measure a Progress in achieving English Language Proficiency indicator does not align with the Act’s requirements, nor are we aware of any specific justification provided by the Department in its explanatory notes accompanying the rule proposal. **Accordingly, we recommend either that the proposed provisions be withdrawn or adequate and specific justification be provided for the proposal.**

Also regarding **proposed subsection (b)(5)**, it provides for “One or more indicators of School Quality or Student Success that meets the requirements of paragraph (c) of this section, which may vary by each grade span...”

**We strongly support the proposal to allow indicators of School Quality or Student Success to vary by grade span, in that it recognizes that in this category of indicators, there are more likely to be indicators that, although very relevant to and meaningful for a particular grade span, may not be relevant and meaningful for another grade span.** Accordingly, allowing States to vary indicators by grade spans ensures that States are able to utilize a fuller range of meaningful indicators for this category rather than being limited to a likely smaller number of indicators that would be relevant to all grade levels.

Additionally, regarding **proposed subsection (c)(4)**, it provides that an indicator under this section “Is used no more than once in its system of meaningful differentiation under §200.18.”

In the explanatory notes accompanying the proposal, the Department states that “For example, a State must choose a different indicator to measure school quality or student success than it uses to measure academic achievement.”

However, the Department doesn’t offer more explanation than that, so it’s unclear what the goal is or what situations it is attempting to prevent from happening. Without a more thorough explanation by the Department so that stakeholders have a better understanding of what the Department is trying to accomplish, it’s difficult to ascertain how to appropriately respond; however, **given the absence of such an explanation, we are concerned about the Department’s attempt to unnecessarily constrain States’ ability to decide the frequency with which to use particular accountability indicators in their state accountability systems, and accordingly, we recommend that subsection (c)(4) be eliminated.**

Finally, regarding **proposed subsection (d)**, it provides that “A State must demonstrate in its State plan under section 1111 of the Act that each measure it selects to include within the indicators of Academic Progress and School Quality or Student Success is supported by research that performance or progress on such measures is likely to increase student achievement...”

We note that the proposed language is roughly akin to one of the enabling Act’s definitions of the term “evidence-based”, in Sec 8002(21)(A). However, we also note that the enabling Act’s definition appears to be tightly worded to align with the context in which the Act uses the term “evidence-based”, i.e. largely in the school improvement area, in which the Act frequently refers to “evidence-based activities, strategies and interventions.” Specifically, Sec 8002(21)(A) defines “evidence-based” in part as “the term ‘evidence-based’, when used with respect to a State, local educational agency, or school activity, means an activity, strategy, or intervention that -...demonstrates a rationale based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes;...”

The terminology used in this definition, which shows a clear connection between it and the school improvement context in which it is used, is evidence of the Act’s intended limitation of the requirement for “evidence-based” to only the components of the Act in which it is expressly required (i.e. school improvement). At the same time, the Act does not require state accountability system indicators to be evidence-based (Sec 111(c)(4)(B)), but rather valid, reliable, comparable, and statewide. We believe that fact that the Act doesn’t require accountability indicators to be evidence-based is deliberate, given the close alignment between the Act’s definition of “evidence-based” and the Act’s use of the term “evidence-based” in the context of school improvement activities. Accordingly, the Department’s proposal to require state accountability indicators to be evidence-based exceeds the Department’s authority under the Act.

Moreover, the Department’s proposal to require state accountability indicators to be “supported by research that performance or progress on such measures is likely to increase student achievement” conflicts with its

own statement in the explanatory notes accompanying the proposal, in which the Department states “Finally, proposed §200.14(d) would ensure that a State selects indicators of Academic Progress and School Quality or Student Success that are supported by research showing that performance or progress on such measures is *positively related* to student achievement...” (*emphasis added*). As those in the research community know, the standard for “likely to improve student achievement” is a much higher (and harder) bar for research studies to meet than “positively related to student achievement”.

**For these reasons, we recommend that Proposed § 200.14(d) be eliminated.**

**Regarding Proposed § 200.15 Participation in assessments and annual measurement of achievement,** we object to the proposal in subsection (b), and particularly subsection (b)(2) which provides four options from which States must choose in order to, as the Department states in the explanatory notes accompanying the proposal, “ensure that failure to meet the 95 percent participation rate requirement is factored in the State’s accountability system in a meaningful, publicly visible manner...”

The Department’s proposal in subsection (b) is to require states to, “For purposes of annual meaningful differentiation under §200.18 and identification of schools under § 200.19, ...*(1) Calculate any measure in the Academic Achievement indicator under § 200.14(b)(1) so that the denominator of such measure, for all students and for all students in each subgroup, includes the greater of--95 percent of all such students in the grades assessed who are enrolled in the school; or The number of all such students enrolled in the school who are participating in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act; and (2) Factor the requirement for 95 percent student participation in assessments under paragraph (a) of this section into its system of annual meaningful differentiation so that missing such requirement, for all students or for any subgroup of students in a school, results in at least one of the following actions...*” (*emphasis added*).

The Department’s proposal to dictate how a state will calculate any measure of Academic Achievement and how it will factor the 95% student participation requirement into its system of annual meaningful differentiation clearly exceeds the Department’s statutory authority, given that the enabling Act specifically gives authority to States to determine how they will “factor the requirement {to “Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments”}...into the statewide accountability system.” (Sec 1111(c)(4)(E)).

The Department’s rationale for doing so, in part is to ensure that failure to meet the 95% participate rate requirement is factored in the State’s accountability system in a meaningful manner. Even if, arguably, the Department could produce compelling evidence that it is not exceeding its statutory authority in subsection (b)(1), it accomplishes its stated goal by virtue of (b)(1) alone. However, to go further and then dictate in subsection (b)(2) what the consequences for factoring the 95% participation rate requirement into the State’s accountability system must be, clearly exceeds the Department’s statutory authority. Even though the fourth option provided for states in subsection (b)(2) is one that provides for another equally rigorous State-determined action described in its State plan under section 1111 of the Act, the proposal goes further and requires that the State-determined action “will result in a similar outcome {as for the three preceding options) for the school in the system of annual meaningful differentiation and will improve the school’s participation rate so that the school meets the requirements under paragraph (a) of this section.”

**Accordingly we strongly recommend the elimination of subsections (b) (particularly (b)(2), as well as subsequent subsections that refer to the requirements in subsection (b), including subsections (c) and (d)(1).**

**Regarding Proposed Section 200.18 Annual meaningful differentiation of school performance,** we support the proposal in subsection (b)(3) that a State must define annual meaningful differentiation in a

manner that provides information on a school's level of performance on each indicator described in § 200.14, separately, as part of the description of the State's system for annual meaningful differentiation on LEA report cards under § 200.32. In the explanatory notes accompanying the proposal, the Department states "Many schools may excel on some indicators, and struggle on other indicators-- *information that could be hidden if only an aggregate rating were reported*, or if performance levels were reported on some, but not all, of the indicators...Further, by presenting the performance level on each indicator separately, States and districts would be better equipped to customize supports, technical assistance, and resources to meet the needs of each school." (*emphasis added*).

We wholeheartedly agree with the Department's rationale, as it recognizes the fact that, in the quest to capture a more accurate and complete picture of school's impact on student learning, many states are moving toward more complex accountability systems that involve the use of indices in order to include a wider range of indicators in accountability calculations. At the same time, in order to provide parents and the public with more transparent and meaningful information regarding school accountability, many states are choosing to separately rate each index or category of accountability indicators, rather than masking valuable and meaningful information by issuing aggregate or summative ratings.

However, in the next breath, in subsection (b)(4), the Department's proposal requires States to define annual meaningful differentiation in a manner that—" (4) Results in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32;"

We strongly object to this proposal as well as to the proposals in subsections (c), (d)(3) and (e)(1) all of which reference States' requirement to produce summative ratings for schools. The Department is clearly exceeding its statutory authority in making this proposal.

The enabling Act does not expressly require a summative rating in state accountability systems. In fact, Sec 1111(c)(4)(D) IDENTIFICATION OF SCHOOLS provides States must, "Based on the system of meaningful differentiation described in subparagraph (C), establish a State-determined methodology to identify—..."

Likewise, Sec 1111(h)(1)(C) provides that each State report card shall include the following information: "(IV) the State's system for meaningfully differentiating all public schools in the State, including—  
(aa) the specific weight of the indicators described in subsection (c)(4)(B) in such differentiation;  
(bb) the methodology by which the State differentiates all such schools;  
(cc) the methodology by which the State differentiates a school as consistently underperforming for any subgroup of students described in section (c)(4)(C)(iii), including the time period used by the State to determine consistent underperformance; and  
(dd) the methodology by which the State identifies a school for comprehensive support and improvement as required under subsection (c)(4)(D)(i);"

Accordingly, there is no requirement in the enabling Act that states must do anything other than provide and report on the state-determined methodology for meaningfully differentiating between all schools, for differentiating a school as consistently underperforming for any subgroup of students, and for identifying a school for comprehensive support and improvement. Additionally, we are unaware of any requirement in the enabling Act regarding state and school reporting that would support the Department's proposal to require a summative rating for schools.

Finally, the enabling Act specifically prohibits the Secretary from prescribing, as a condition of approval of a State plan, or revisions or amendments to, a State plan, the weight of any measure or indicator used to identify or meaningfully differentiate schools; or the specific methodology used by States to meaningfully differentiate or identify schools. (Sec 1111(e))

The Department's rationale for proposing the requirement for summative ratings is that "A single summative rating is easy for stakeholders, parents, and the public to understand, summarizes complicated information into a more digestible format, and provides clear comparisons among schools, just as grade point averages provide a quick, high-level snapshot of students' average academic performance, while students' grades in each subject provide more detailed information about particular strengths and weaknesses. Further, a summative rating sends a strong signal to educators and school leaders to focus on improving school performance across all indicators in the system, as each will contribute to the summative result."

However, the weight of the research establishes just the opposite conclusion. For example, a 2013 report by The Oklahoma Center for Education Policy (University of Oklahoma) and The Center for Educational Research and Evaluation (Oklahoma State University), found that Oklahoma's summative A-F school grading system masked the performance of poor and minority students and that "When letter grades were put to the test with actual student achievement data, it turns out that they do more to hide achievement differences than provide a clear understanding of school effectiveness."

The authors further explained that "unlike dimensions cannot be summarized meaningfully. Just as human height and weight cannot be summarized in a single indicator without grave error, the distinct dimensions of school performance cannot be combined." The study further found that "Based on our empirical testing, we urge policy makers to abandon the single letter grade approach. The fix is quite simple. A school's performance should be reported on multiple dimensions--a profile that includes scale scores for subject areas as well as other relevant school conditions (e.g. program coherence, social climate, and faculty and administrative stability). Scale scores are more easily understood and less susceptible to manipulation and distortion. A balance of process and contextual conditions helps portray a truer performance picture that provides clarity to parents and focuses the improvement efforts of school professionals. Decisions about intervention should take demographics such as poverty and neighborhood vitality into consideration. A bureaucratic evaluation system that produces nearly meaningless grades is no substitute for reasoned decision-making based on careful consideration of all credible evidence."

The paper was reviewed by internationally renowned measurement and accountability expert, Robert Linn, at the University of Colorado, who said it provides "a strong rationale for scrapping the current A-F system and developing a more valid accountability system for Oklahoma."

The Department also states that "Research has shown that accountability systems have a stronger impact on increasing student achievement, particularly in mathematics, when summative ratings are linked to accountability determinations and potential rewards and interventions for schools than when systems rely on reporting information without school-level consequences based on that information" and cites to several studies to support this statement.

However, upon review of the studies cited by the Department, none of them address the effects of summative ratings in accountability systems in increasing student achievement.

Additionally, for each of the studies cited by the Department, there are studies with the opposite conclusion. For example, a 2011 study by Michael Hout and Stuart W. Elliott, *Incentives and Test-Based Accountability in Education*, concluded that "Test-based incentive programs, as designed and implemented in the programs that have been carefully studied, have not increased student achievement enough to bring the United States close to

the levels of the highest achieving countries... Even when evaluated using the tests attached to the incentives, a number of programs show only small effects. School level incentives like those of NCLB produce some of the larger estimates of achievement effects, with effect sizes around 0.08 standard deviations, but the measured effects to date tend to be concentrated in elementary grade mathematics and the effects are small compared to the improvements the nation hopes to achieve.... Despite using them for several decades, policymakers and educators do not yet know how to use test-based incentives to consistently generate positive effects on achievement and to improve education.” National Research Council. (2011). *Incentives and Test-Based Accountability in Education*. Committee on Incentives and Test-Based Accountability in Public Education, M. Hout and S.W. Elliott, Editors. Board on Testing and Assessment, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press <http://www.nap.edu/download/12521#>

**Accordingly, we strongly recommend that subsections (b)(4), (c), (d)(3) and (e)(1) be eliminated.**

**Finally, we support the proposal in §200.18(c)(3) and (e)(2) that in meeting the requirement to use consistent weighting across all schools within a grade span and for particular indicators to be afforded substantial weight, each indicator does not have to receive the same substantial weight.**

**Regarding Proposed Section 200.19 Identification of schools**, we strongly object to the proposal in subsection (a)(1) requires each State to establish and describe in its State plan, a methodology to identify one statewide category of schools for comprehensive support and improvement under § 200.21, which must include, at a minimum, ...the lowest-performing five percent of elementary, middle, and high schools in the State participating under subpart A of this part, based on each school’s summative rating among all students...

Again, we object based on the fact that the Department is clearly exceeding its statutory authority in making this proposal as the enabling Act does not expressly require a summative rating in identifying schools. In fact, Sec 1111(c)(4)(D) IDENTIFICATION OF SCHOOLS provides States must, “Based on the system of meaningful differentiation described in subparagraph (C), establish a *State-determined methodology* to identify—...” (*emphasis added*).

Additionally, the enabling Act specifically prohibits the Secretary from prescribing, as a condition of approval of a State plan, or revisions or amendments to, a State plan, the weight of any measure or indicator used to identify or meaningfully differentiate schools; or the specific methodology used by States to meaningfully differentiate or identify schools. (Sec 1111(e))

**Accordingly we recommend that the phrase “based on each school’s summative rating” be eliminated from subsection (a)(1).**

**Regarding Proposed Section 200.20 Data procedures for annual meaningful differentiation and identification of schools**, we object to the proposal in subsection (a)(1)(ii)(B) which requires States which average data across years, to continue to report data for a single year, without averaging, on State and LEA report cards. One of the chief reasons for averaging data across years is to get a more statistically valid and reliable measure of performance than shorter timeframes, like one year, would yield. As the Department itself states in the explanatory notes accompanying the proposal, “Proposed §200.20 would retain from the current regulations the flexibility for States to average data across years or combine data across grades, because the reliability of data used to make accountability determinations continues to be important for supporting systems that fairly measure the performance of all students and, to the greatest extent practicable, all subgroups of students in a school. Averaging data across school years, or across grades, in a school can increase the data available to consider as part of accountability determinations, improving reliability of accountability determinations and increasing the likelihood that a particular subgroup in a school will meet the State’s minimum n-size.”

Accordingly, to require a State which averages data over three years to report data for a single year, without averaging, undermines the whole reason for averaging data in the first place, which is to obtain (and report on) a more statistically valid and reliable measure of performance that one year's data will yield. We fail to see why, a State couldn't simply report a rolling average each year if it averages data over three years. **Accordingly, subsection (a)(1)(ii)(B) should be eliminated.**

**Regarding Proposed Section 200.21 Comprehensive support and improvement, we strongly support proposed subsection (d)(1) regarding the requirement for each LEA to, with respect to each school identified by the State for comprehensive support and improvement, develop and implement a comprehensive support and improvement plan for the school to improve student outcomes that "is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents), as demonstrated, at a minimum, by describing in the plan how--**

- (i) Early stakeholder input was solicited and taken into account in the development of the plan, including the changes made as a result of such input; and**
- (ii) Stakeholders will participate in an ongoing manner in the plan's implementation;"**

Ensuring meaningful involvement of stakeholders is essential in order to accomplish the enabling Act's goal of school interventions and supports developed by those closest to the situation rather than from afar, as was the case under the NCLB. The proposal to require LEA's to describe in their plans how early stakeholder input was solicited and taken into account in the development of the plan, the changes made as a result of such input, and how stakeholders will participate in an ongoing manner, are all essential facets of ensuring meaningful, rather than token, stakeholder involvement, and that these plans are truly organically developed, thus increasing the chances of their success.

**Regarding proposed subsection (d)(4), we appreciate and support the inclusion of a review of LEA and school-level resources among schools as one of the required facets of an LEA's comprehensive and improvement plan. However, we believe that the proposal could be strengthened by folding in the more specific language of "review of LEA-and school-level budgeting and resource allocation" in subdivision (ii) of that subsection, so that it reads:**

**"(4) Identifies and addresses resource inequities, by--**

**(i) Including a review of LEA and school-level budgeting and resource allocation resources among schools and, as applicable, within schools with respect to--**

**(A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and**

**(B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and**

**(ii) Including, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation ~~with respect to resources described in paragraph (d)(4)(i) of this section~~ and the availability and access to any other resource provided by the LEA or school, such as--**

**(A) Advanced coursework;**

**(B) Preschool programs; and**

**(C) Instructional materials and technology;"**

Given the governance structure of most school districts in which decisions regarding financial and other resource allocations are generally made at the district, not the school level, it is critical to examine the budgeting decisions and resource allocations made by LEAs in order to identify potential areas for improvement in order to ensure that schools identified for comprehensive support and improvement are properly supported by their host LEA.

**Regarding Proposed Section 200.22 Targeted support and improvement, again, we strongly support proposed subsection (c)(1) regarding the requirement for each school identified by the State for targeted support and improvement, to develop and implement a targeted support and improvement plan addressing the reason(s) for identification and to improve student outcomes that “is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents), as demonstrated, at a minimum, by describing in the plan how--**

**(i) Early stakeholder input was solicited and taken into account in the development of the plan, including the changes made as a result of such input; and**

**(ii) Stakeholders will participate in an ongoing manner in the plan’s implementation;”**

Ensuring meaningful involvement of stakeholders is essential in order to accomplish the enabling Act’s goal of school interventions and supports developed by those closest to the situation rather than from afar. The proposal to require LEA’s to describe in their plans how early stakeholder input was solicited and taken into account in the development of the plan, the changes made as a result of such input, and how stakeholders will participate in an ongoing manner, are all essential facets of ensuring meaningful, rather than token, stakeholder involvement, and that these plans are truly organically developed, thus increasing the chances of their success.

**However, we object to proposed subdivision (2) of that subsection as well as subsection (e), both of which include requirements pertaining to schools implementing targeted support and improvement plans consistent with Section 200.15(b)(2)(iii) to improve student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act.**

We object to this based on our earlier objection to Proposed Section 200.15(b)(2), in which the Department proposes to dictate what the consequences for factoring the 95% participation rate requirement into the State’s accountability system must be, which clearly exceeds the Department’s statutory authority, given that the enabling Act’s specific grant of authority to States to determine how they will “factor the requirement {to “Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments”}...into the statewide accountability system.” (Sec 1111(c)(4)(E)).

**Accordingly, we recommend that the phrase “or, in the case of schools implementing targeted support and improvement plans consistent with § 200.15(b)(2)(iii), to improve student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act;” be eliminated from proposed subsection (c)(2); that the phrase “or, in the case of a school implementing a targeted support and improvement plan consistent with §200.15(b)(2)(iii), has met the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act,” be eliminated from subsection (e)(1); and that the phrase “or, in the case of a school implementing a targeted support and improvement plan consistent with § 200.15(b)(2)(iii), has failed to meet the requirement under § 200.15(a) for student participation in the assessments required under section 1111(b)(2)(B)(v)(I) of the Act,” be eliminated from subsection (e)(2).**

**Regarding subsection (c)(7) of that subsection, we appreciate and support the inclusion of a review of LEA and school-level resources among schools as one of the required facets of an LEA’s comprehensive and improvement plan. However, we believe that the proposal could be strengthened by folding in the more specific language of “review of LEA-and school-level budgeting and resource allocation” in subdivision (ii) of that subsection, so that it reads:**

**“(7) In the case of a school with low-performing subgroups as described in §200.19(b)(2), identifies and addresses resource inequities and their effect on each low performing subgroup in the school by--**



- (i) Including a review of LEA and school-level budgeting and resource allocation resources among schools and, as applicable, within schools with respect to--
- (A) Disproportionate rates of ineffective, out-of-field, or inexperienced teachers identified by the State and LEA consistent with sections 1111(g)(1)(B) and 1112(b)(2) of the Act; and
  - (B) Per-pupil expenditures of Federal, State, and local funds required to be reported annually consistent with section 1111(h)(1)(C)(x) of the Act; and
- (ii) Including, at the LEA's discretion, a review of LEA- and school-level budgeting and resource allocation ~~with respect to resources described in paragraph (c)(7)(i) of this section~~ and the availability and access to any other resource provided by the LEA or school, such as--
- (A) Advanced coursework;
  - (B) Preschool programs; and
  - (C) Instructional materials and technology;"

**Regarding Proposed Section 200.30 Annual State report card, we strongly support proposed subsection (a)(2)(ii) of that section, requiring State report cards to provide information for each chartering agency in the State regarding the demographic composition and academic achievement of charters schools authorized by such agency as compared to the broader community in which the schools are located.** Given that a key underlying premise of the charter school concept is to foster competition and innovation within public school systems, it is critical that parents and the public are provided with information regarding effectiveness of charters with regarding to student achievement as well as information about the characteristics of students enrolled in charter schools.

**Regarding Proposed Section 200.32 Description and results of a State's accountability system, we object to proposed subsection (a)(4)(ii), which refers back to Section 200.15(b) with regard to the requirement that each State and LEA report card must include the way in which the State factors the requirement for 95 percent student participation in assessments into its system of annual meaningful differentiation.** We base our objection on our earlier strong objection to Proposed Section 200.15(b) in which the Department proposes to dictate how a State will calculate any measure of Academic Achievement and how it will factor the 95% student participation requirement into its system of annual meaningful differentiation, as well as what the consequences for factoring the 95% participation rate requirement into the State's accountability system must be. This clearly exceeds the Department's statutory authority, given that the enabling Act specifically gives authority to States to determine how they will "factor the requirement {to "Annually measure the achievement of not less than 95 percent of all students, and 95 percent of all students in each subgroup of students, who are enrolled in public schools on the assessments"}...into the statewide accountability system." (Sec 1111(c)(4)(E)).

Although we support the part of proposed subdivision (iii) of that same subsection which requires each State and LEA report card to include information on the performance levels of schools consistent with Section 200.18(b)(3), **we also strongly object to the part of proposed subdivision (iii) of that same subsection which requires each State and LEA report card to include information on the summative ratings provided by the state consistent with Section 200.18(b)(4).** Likewise, although we support the part of proposed subsection (c)(4) which requires each LEA report card to include, for each school served by the LEA, the school's performance level consistent with Section 200.18(b)(3) on each indicator in Section 200.14(b), **we strongly object to the part of proposed subsection (c)(4) which requires each LEA report card to include, for each school served by the LEA, the school's summative rating consistent with Section 200.18(b)(4).**

We do this based on our earlier objection to Proposed Section 200.18(b)(4), in which the Department proposes to require States to define annual meaningful differentiation in a manner that results in a single rating from among at least three distinct rating categories for each school, based on a school's level of performance on each indicator, to describe a school's summative performance as part of the description of the State's system for annual meaningful differentiation on LEA report cards under §§ 200.31 and 200.32.

As we stated earlier, the requirement for States to produce and report on summative ratings for schools clearly exceeds the Department's statutory authority.

There is no requirement in the enabling Act that States must do anything other than provide and report on the state-determined methodology for meaningfully differentiating between all schools, for differentiating a school as consistently underperforming for any subgroup of students, and for identifying a school for comprehensive support and improvement. Additionally, we are unaware of any requirement in the enabling Act regarding state and school reporting that would support the Department's proposal to require a summative rating for schools. Finally, the enabling Act specifically prohibits the Secretary from prescribing, as a condition of approval of a State plan, or revisions or amendments to, a State plan, the weight of any measure or indicator used to identify or meaningfully differentiate schools; or the specific methodology used by States to meaningfully differentiate or identify schools. (Sec 1111(e))

In the explanatory notes accompanying the proposal, the Department states "Because of the potential complexity of multi-indicator State accountability systems under the ESEA, as amended by the ESSA, information on a school's performance level on each of the individual indicators is critical for parents and stakeholders to understand school performance across multiple dimensions of success and the relationship of the performance on each indicator to how a school is ultimately identified in the State's accountability system. Further, knowing a school's single summative rating will be important for conveying a school's performance overall, in a way that reflects performance across the individual indicators. For these reasons, proposed §200.32(c) would require each LEA report card to include each school's performance level on every indicator, as well as the summative rating."

Again, although we wholeheartedly agree with the Department's statement that "information on a school's performance level on each of the individual indicators is critical for parents and stakeholders to understand school performance across multiple dimensions of success and the relationship of the performance on each indicator to how a school is ultimately identified in the State's accountability system", we strongly disagree with the Department's further statement that "...knowing a school's single summative rating will be important for conveying a school's performance overall."

Actually, the weight of the research establishes just the opposite conclusion. As we stated earlier, for example, a 2013 report by The Oklahoma Center for Education Policy (University of Oklahoma) and The Center for Educational Research and Evaluation (Oklahoma State University), found that Oklahoma's summative A-F school grading system masked the performance of poor and minority students and that "When letter grades were put to the test with actual student achievement data, it turns out that they do more to hide achievement differences than provide a clear understanding of school effectiveness."

The authors further explained that "unlike dimensions cannot be summarized meaningfully. Just as human height and weight cannot be summarized in a single indicator without grave error, the distinct dimensions of school performance cannot be combined." The study further found that "Based on our empirical testing, we urge policy makers to abandon the single letter grade approach. The fix is quite simple. A school's performance should be reported on multiple dimensions--a profile that includes scale scores for subject areas as well as other relevant school conditions (e.g. program coherence, social climate, and faculty and administrative stability). Scale scores are more easily understood and less susceptible to manipulation and distortion. A balance of process and contextual conditions helps portray a truer performance picture that provides clarity to parents and focuses the improvement efforts of school professionals. Decisions about intervention should take demographics such as poverty and neighborhood vitality into consideration. A bureaucratic evaluation system that produces nearly meaningless grades is no substitute for reasoned decision-making based on careful consideration of all credible evidence."

The paper was reviewed by internationally renowned measurement and accountability expert, Robert Linn, at the University of Colorado, who said it provides "a strong rationale for scrapping the current A-F system and developing a more valid accountability system for Oklahoma."

**Accordingly, we recommend that the phrase "and summative ratings provided by the State consistent with Section 200.18(b)(4)" be eliminated.**

**Finally, we support proposed subsection (c)(2) which requires State and LEA report cards to include the reason for which the State identified a school for comprehensive support and improvement under proposed §200.19(a).** In order for parents and the public to have an informed understanding of why a school is struggling, it is critical that they be informed of the specific reasons that the school has been identified for comprehensive support and improvement.

**Regarding Proposed Section 200.35 Per-pupil expenditures,** we object to the proposal in subsections (a)(1)(B)(2) and (b)(1)(B)(2) to combine state and local funds for purposes of per-pupil expenditure reporting on State and local report cards and to exclude funds received from private sources.

In support of the Proposed Section 200.35, the Department states in the accompanying explanatory notes that "making such data widely available has tremendous potential to *highlight disparities in resource allocations* that can have a significant impact on both the effective use of Federal program funds and educational opportunity and outcomes for the students served by ESEA programs. *Broader knowledge and understanding of such disparities* among educators, parents, and the public can lead to a more informed debate about how to improve the performance of our education system, and the ESEA, as amended by the ESSA, highlights the importance of resource allocation considerations by making them a key component of school improvement plans." (*emphasis added*)

We couldn't agree more with the Department's rationale, which is why we find it puzzling that the Department proposes to combine state and local funds for purposes of reporting per-pupil expenditures as well as to exclude funding from private sources for purposes of such reporting.

Given widespread disparities in State and local funding for school districts, combining them for reporting purposes would actually obscure, rather than highlight, disparities in resources allocations. Additionally, given that much of the funding disparity between school districts is the result of funds from private sources, to exclude that information from State and local reporting would obfuscate the Department's stated rationale to provide educators, parents and the public with a broader knowledge and understanding of such disparities. Nor are we aware of any specific rationale articulated by the Department for combining State and local funding and excluding funding from private sources.

Most importantly, it's clear that the enabling Act contemplates separate reporting for each of the categories of Federal, State, and local funds, in addition to reporting them in the aggregate, since the relevant provisions of the Act, Sec 1111(h)(1)(C)(x) and (h)(2)(C) require that State and Local Report Cards include "per-pupil expenditures of Federal, State, and local funds, including actual personnel expenditures and actual nonpersonnel expenditures of Federal, State, and local funds, *disaggregated by source of funds*, for each local educational agency and each school in the State for the preceding fiscal year." (*emphasis added*)

**Accordingly, for all of these reasons, we recommend that subsections (a)(1)(B) and (b)(1)(B) be revised to require disaggregation of state and local funds for purposes of State and Local report cards, and to eliminate the phrase "which must not include funds received from private sources" from the subsection.**

**Regarding Proposed Section 200.37 Educator qualifications, we strongly support the inclusion of a specific regulation related to educator qualifications, as one of the chief stated goals of the ESSA is to improve the distribution of equitable educational services and resources, including qualified educators, to struggling and historically underserved schools and students.** In doing so, the Act specifically refers to requirements for States and LEAs, such as identification of resource inequities in the context of school support and improvement activities, as well as to identify, report on, and address low-income and minority children enrolled in schools receiving Title I funds that are being served at disproportionate rates by ineffective, out-of-field (i.e. teachers who are not teaching in the subject or field for which the teacher is certified or licensed), or inexperienced teachers (Sec 1111(g)(1)(B); Sec 1112(b)(2); Sec 1111(h)(1)(C)(ix), ESSA).

Additionally, Sec 1111(g)(2) of the enabling Act requires each State plan to contain assurances that “the State educational agency will ensure that all teachers and paraprofessionals working in a program supported with funds under this part meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification;”.

**Regarding Proposed Section 299.13 Overview of State Plan Requirements, we strongly support proposed subsections (b), (g), and (h) which require SEAs to engage in timely and meaningful consultation with stakeholders in developing, revising or amending a consolidated State plan or individual program State plan.** In particular, we support the proposal to require SEAs to engage stakeholders during the design and development of the State plan, prior to the submission of the initial State plan, and prior to the submission of any revisions or amendments to the State plan, and we agree with the Department’s stated rationale for this, that “stakeholders should have an opportunity to ensure that the concerns raised during public comment are adequately considered and addressed prior to submission of a consolidated State plan or individual program State plans.”

**We also particularly appreciate and support the inclusion of a requirement for the SEA to “Describe how the consultation and public comment were taken into account in the consolidated State plan or individual program State plan submitted for approval, including (i) How the SEA addressed the issues and concerns raised through consultation and public comment; and (ii) Any changes made as a result of consultation and public comment” in subsection (b)(3).** These are all essential facets of ensuring meaningful, rather than token, stakeholder involvement, and that these plans are truly organically developed, thus increasing the chances of their success.

**Finally, we support the proposal in subsection (k) that an SEA that submits an individual program State plan title I, part A must meet the educator equity requirements in Section 299.18(c),** because, as we stated earlier, one of the chief stated goals of the ESSA is to improve the distribution of equitable educational services and resources, including qualified teachers, to struggling and historically underserved schools and students.

**Regarding Proposed §299.15: Consultation and Coordination, we strongly support subsection (a) of the proposal, which requires each SEA to describe in its consolidated State plan, how it engaged in timely and meaningful consultation consistent with proposed Section 299.13(b) with stakeholders, including teachers, principals, other school leaders, paraprofessionals, specialized instructional support personnel, and organizations representing such individuals, in the development of each of the components of its consolidated plan identified in Sections 299.16-299.19.**

We believe it is essential for the success of the plan, for those who will actually be implementing the components of the consolidated State plan in the field to be involved in developing each of the required components of the consolidated plan.

**Regarding Proposed §299.17: Accountability, Support, and Improvement for Schools, we strongly object to the inclusion of summative ratings in subdivision (iii) of Proposed subsection (b)(5).** As we stated earlier, the requirement for States to produce and report on summative ratings for schools clearly exceeds the Department’s statutory authority.

There is no requirement in the enabling Act that States must do anything other than provide and report on the state-determined methodology for meaningfully differentiating between all schools, for differentiating a school as consistently underperforming for any subgroup of students, and for identifying a school for comprehensive support and improvement. Additionally, we are unaware of any requirement in the enabling Act regarding state and school reporting that would support the Department’s proposal to require a summative rating for schools. Additionally, the enabling Act specifically prohibits the Secretary from prescribing, as a condition of approval of a State plan, or revisions or amendments to, a State plan, the weight of any measure or indicator used to identify or meaningfully differentiate schools; or the specific methodology used by States to meaningfully differentiate or identify schools. (Sec 1111(e))

**Accordingly we recommend the elimination of proposed subsection (b)(5)(iii).**

**However, we support the requirement in proposed subsection ((b)(8)(iv) for each SEA to describe In its consolidated State plan, how the State includes all public schools in the State in its accountability system if it is different from the methodology described in paragraph (b)(5), including schools that are designed to serve special populations** (e.g., students receiving alternative programming in alternative educational settings, students living in local institutions for neglected or delinquent children, students enrolled in State public schools for the blind, recently arrived English learners).

Texas has long used an alternative accountability system for alternative education campuses that serve students at risk of dropping out as defined in Texas Education Code Section 29.081(d), in which accountability targets are modified, and some indices contain fewer components, weighted differently, than for non-alternative education campuses. Accordingly, we believe it is appropriate and necessary, both for transparency and equity purposes, to include a requirement for States in their consolidated State plans to describe how the State includes these schools in its accountability system.

**Regarding Proposed §299.18: Supporting Excellent Educators,** we note that the Department identified three major categories falling under the umbrella of “Supporting Excellent Educators”, including subsection (a) Systems of educator development, retention, and advancement; subsection (b) Support for educators; and subsection (c) Educator Equity. Included in each of these categories are various descriptions, strategies, and funding sources for that particular category, identified by the Department as those that each SEA would be required to provide in its consolidated State plan. It appears that some of the descriptions/strategies and funding sources identified by the Department were drawn from Sections 1111(g)(1)(B), 2001, 2101, and 2102 of the Enabling Act.

It is clear that the Department intends for Proposed Section 299.18 to address ESSA provisions in Titles I and II regarding the quality of educators. In particular, subsection (c) is focused on the quality of educators vis a vis how they are distributed with regard to assignment to poor and minority students in schools receiving Title I funds. We believe this is an important and appropriate area of focus. **However, missing from subsection (c) is another aspect of educator quality contained in ESSA that is related to the issue of equitable distribution of teachers, but that addresses it in a different, but equally important manner. That provision is the requirement that each SAE must provide in its state plan how it will ensure that all teachers and paraprofessionals working in a program supported with funds under title I, part A meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification (Sec 1111(g)(2).** This provision complements the other calculation

(addressing and reporting on disproportionate assignment of ineffective, out-of-field and inexperienced teachers to poor and minority students), by getting at the same goal in a different, and more comprehensive way.

**Accordingly, we recommend that the requirement that each SEA must provide in its State plan how it will ensure that all teachers and paraprofessionals working in a program supported with funds under title I, part A meet State certification and licensure requirements be included in subsection (c).**

**Additionally, we strongly believe that the interplay between ESSA's requirements regarding educator equity, certification and state laws that potentially exempt large numbers of schools and LEAs from state teacher certification requirements is ripe for additional explanation, clarification, and guidance from USDE. Given ESSA's core goal of improving the distribution of equitable educational services and resources, including qualified educators, to struggling and historically underserved schools and students, we seek further clarification on and guidance from the Department regarding how a state and its LEAs in a state like Texas, in which large numbers of schools and districts could potentially be exempt from state teacher certification requirements under its innovation district program, can fulfill their respective duties under ESSA's provisions in Secs 1111(g)(1)(B) and (2)(J), 1112(b)(2) and 1111(h)(1) and (2).**

**Regarding Proposed subsection (a)(3), we object to the requirement that each SEA must describe in its consolidated State plan, "The State's system of professional growth and improvement, which may include the use of an educator evaluation and support system, for educators that addresses induction, development, compensation, and advancement for teachers, principals, and other school leaders if the State has elected to implement such a system. Alternatively, the SEA must describe how it will ensure that each LEA has and is implementing a system of professional growth and improvement for teachers, principals, and other school leaders that addresses induction, development, compensation, and advancement."**

Subsection (a) of Proposed §299.18(a) requires each SEA to describe in its consolidated State plan, its educator development, retention, and advancement systems *consistent with the requirements in sections 2101 and 2102 of the Act. (emphasis added).*

The proposal then goes on to provide that the SEA description of its educator development, retention and advancement systems must include, at a minimum, certain items, including subsection (a)(3) which refers to "The State's system of professional growth and improvement..."

Nowhere in Sec 2101 of the enabling Act is there a requirement for SEAs to include "systems of professional growth and improvement" in their plans. Rather the phrase "systems of professional growth and improvement comes from Sec 2012(b)(2)(B) of the Act, which sets out the requirements for a *LEA application for a Title II subgrant*. Accordingly, it is inappropriate and exceeds the Department's statutory authority to require that an SEA include in its state consolidated plan the State's system of professional growth and improvement, or alternatively, how it will ensure that each LEA has and is implementing a system of professional growth and improvement for teachers principals and other school leaders.

Additionally, the Department's proposal defines "systems of professional growth and improvement" as ones that address induction, development, compensation, and advancement for teachers, principals and other school leaders. Again, nowhere in Sec 2101 is there a requirement for SEAs to include, or a definition of "systems of professional growth and improvement." Rather, the Department selectively decided to require inclusion of certain components of any such systems. To do so exceeds the Department's statutory authority.

Further, States that may not have state systems of professional growth and improvement may also not have the authority to ensure that each LEA has and is implementing a system of professional growth and

improvement. For example, currently in Texas, a state which believes strongly in local control, the state has no authority to require this of local school districts.

**Accordingly, we recommend that subsection (a)(3) be eliminated.**

**Regarding subsection (c) Educator equity, subsection (c)(1)** requires that each SEA must demonstrate, consistent with section 1111(g)(1)(B) of the Act, whether low-income and minority students enrolled in schools that receive funds under title I, part A of the Act are taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers compared to non-low-income and non-minority students enrolled in schools *not* receiving funds under title I, part A of the Act in accordance with paragraph (c)(3) of this section. However, although the proposal purports consistency with a relevant provision of the enabling Act, Sec 1111(g)(1)(B), that is actually not the case. Rather Sec 1111(g)(1)(B) requires that each SEA's State Title I plan describe "how low-income and minority children enrolled in schools assisted under this part are not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and the measures the State educational agency will use to evaluate and publicly report the progress of the State educational agency with respect to such description." Accordingly, the Act, by its plain terms, does not constrain the comparison of low-income and minority students from schools receiving title I, part A funds to only all other students who are enrolled in schools *not* receiving title I, Part A funds; rather the Act unambiguously calls for a for a comparison between the rates at which low-income and minority children enrolled in schools receiving Title I, part A funds and the rates by which all other students, regardless of whether or not they are enrolled in a school receiving title I, part A funds, are served by ineffective, out-of-field, or inexperienced teachers. Accordingly the Department's proposed comparison is an entirely different comparison than the one called for by the unambiguous terms of the enabling Act. Additionally the Department's proposed comparison would be virtually impossible to do and yield very little valuable or accurate information in a state like Texas, in which almost every school in the state has student served by title I part A funds.

**Accordingly, we recommend that subsection (c)(1) be revised to eliminate the requirement for a comparison to be limited to only those non-low-income and non-minority students in schools not receiving title I, Part A funds. Likewise, we make the same recommendation for subsection (c)(3)(i).**

**Regarding subsection (c)(2)**, the proposal requires that each SEA establish and provide in its State plan different definitions (of "ineffective", "inexperienced", and "out-of-field" teachers), using distinct criteria, so that each provides useful information..." The Department explains in its explanatory notes accompanying the proposal, that "The definitions must be different from each other and based on distinct criteria so that each provides useful information about educator equity and disproportionality rates."

Although we understand and appreciate the need for these calculations to provide useful information about educator equity and disproportionality rates, we are concerned that the proposal is not sufficiently clear regarding what is meant by "different" and "based on distinct criteria." For example, if a State chose to an define out-of-field teacher as one who was not formally prepared for, nor appropriately certified to teach a particular subject, and it wanted to incorporate the notion of "not formally prepared" as part of its definition of "ineffective" teachers, would it be precluded from doing so under this proposal? If so, we object to the level of constraint this puts on States, particular given growing consensus in the education community about the need to use multiple measures in making determinations in areas like success or effectiveness. Therefore, if "different" and "based on distinct criteria" means that no part of any definition for one of the terms can be included in the definition for another of the terms, we strongly object to such a requirement. **Given our objection, and the fact that, in addition, the proposal needs to be clarified, we recommend that the proposal be revised to provide that "different" and "based on distinct criteria" do not preclude a State from using a facet of a definition for one particular term in the definition of another term.**

**Additionally, regarding subsection (c)(2),** the proposal requires, among other definitions, a statewide definition of “ineffective teacher”, or statewide for guidelines LEA definitions of “ineffective teacher”, that differentiates between categories of teachers (subdivision (i)). In support of this requirement, the Department states in the explanatory notes accompanying the proposal that “Proposed §299.18(c) would clarify the steps each State must take to meet the statutory requirement in section 1111(g)(1)(B) of the ESEA, as amended by the ESSA, that low-income students and minority students are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. These requirements align with the work all States have been doing in recent years to develop and implement State Plans to Ensure Equitable Access to Excellent Educators (Educator Equity Plans).”

Accordingly, we assume the inclusion of the phrase “or statewide guidelines for LEA definitions of “ineffective teacher” was meant to accommodate states like Texas, which expressly stated in its Educator Equity Plan, approved by USDE, that it could not establish a statewide definition of “excellent educator” as suggested at the time by USDE, that could be measured with state-level data. The explanation in Texas’s Educator Equity Plan accompanying this declaration was “In Texas, data identifying excellent educators using educator evaluation instruments, such as T-TESS, are available only to the local education agency administering T-TESS or other locally developed instruments and not to the State... **Such teacher appraisal data is available in Texas only at the local level and is not made available to the state.** Moreover, much of the decision-making that affects teaching assignment, teacher distribution, and support of teachers is under the authority of local decision-makers. In a state like Texas that is committed to the practice of local control, it is critical that efforts to narrow and close the equity gap include development of local plans to address this critical issue.” (*emphasis added*).

Furthermore, Texas state law, Texas Education Code Section 21.355 expressly provides that “{a} document evaluating the performance of a teacher or administrator is confidential.” In the context of whether a state entity (the State Board for Educator Certification) could have access to schools districts’ appraisals of teachers for purposes of using the results in approving educator preparation programs under TEC Section 21.045, the Texas Attorney General ruled that it could not, stating that “section 21.045 does not authorize school districts to provide their teacher appraisals to the Board, *see id.* Section 21.045 (Vernon Supp. 2003), nor do the statutes requiring the Board to certify teachers, *see id.* sections 21.03 1 (Vernon 1996), 21.048-.052 (Vernon 1996 & Supp. 2003). No other provision in subchapter H or any other law provides that a school district may release a teacher appraisal to the Board. Given that section 21.352 expressly provides that a school district may release a teacher appraisal to the teacher or to another school district, and no statute provides that a school district may release an appraisal to the Board, section 2 1.355 must be construed to preclude a school district from releasing a teacher appraisal to the Board.”

**Related to this, regarding subsection (c)(3),** the proposal requires that each SEA must annually calculate and report rates of disproportionality statewide *based on student level data.* (*emphasis added*) In explaining this requirement, the Department states in the explanatory notes accompanying the proposal that “Student-level data are essential to illuminate within-school disproportionalities that a school-level analysis would necessarily obscure.” **Although we understand the Department’s goal with the proposal, we are again concerned that the proposal is not sufficiently clear as to what “student level data” means.** For example, if a State like Texas were to issue guidelines for LEA definitions of “ineffective teacher” such that the guidelines suggest using teacher appraisal ratings in making determinations regarding rates of low-income and minority students being taught by ineffective teachers, would a situation such as each LEA determining such rates based on how many low-income students in each school were taught by teachers with low appraisal ratings compared to non-low income students, and providing that data to the state so that it can perform an overall calculation based on the same information from all other LEAs satisfy that criteria? In other words, further clarity is needed regarding what a “student-level” analysis looks like compared to a school-level analysis.

**Regarding subsection (c)(7), we support the proposal to allow SEAs to direct an LEA to use a portion of its title II, part A funds to address disproportionality issue as well as to require LEAs to describe in its title II, Part A**



**plan or consolidated local plan who it will use title II, Part A funds to address disproportionality in educator equity, and finally to deny an LEA's application for title II, part A funds if it fails to do so.** These are all important facets of ensuring that poor and minority students aren't disproportionately served by unqualified educators.

Thank you for this opportunity to comment; we look forward to a continuing role in working with the Department to refine and improve the proposed regulations.

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