

January 21, 2016

Submitted electronically to www.regulations.gov

Deborah Spitz
U.S. Department of Education
400 Maryland Avenue SW., Room 3E306
Washington, DC 20202

**Implementing Programs Under the Elementary and Secondary Education Act
Docket Number ED-2015-OESE-0130**

Dear Ms. Spitz:

The Wisconsin Department of Public Instruction (DPI) submits the following comments in response to the administration's request for information printed in the Federal Register on December 22, 2015.

The DPI appreciates the opportunity to comment on what regulation and guidance the United States Department of Education (ED) should issue to interpret the Every Student Succeeds Act (ESSA). The department values the additional flexibility provided under the law to states and local school districts to advance locally designed policies to best serve students. Having a federal law that supports our efforts, while maintaining flexibility, is key.

The DPI's comments below are focused on areas of the law that we feel need additional clarity by ED to resolve uncertainties or conflicts.

SEC. 1111. State Plans

Challenging Academic Standards and Academic Assessments - Alternate Assessments

(b)(2)(D)(i) and (ii)

The DPI would request clarification from ED in regards to conflicts in the law. This provision of ESSA states that a state may provide for alternate assessments aligned with challenging academic standards for students with the most significant cognitive disabilities if the state ensures that for each subject the total number of students assessed through the alternate assessments doesn't exceed one percent of the total number of all students assessed in the state in each subject.

The DPI would like clarification regarding the role of the Individualized Education Program (IEP) team in this section. The ESSA states that this provision is to be implemented "consistent with clause (ii)," which refers to how IEP teams make the determination whether to teach to alternate standards and test with an alternate test. Clause (ii) further prohibits states from imposing percentage caps on local educational agencies (LEAs), and requires LEAs that exceed

the one percent cap imposed on states to submit information to the state education agency (SEA) justifying the need to exceed the one percent. The state is required to provide appropriate oversight, as determined by the state, of any LEA that is required to submit information to the state (i.e. exceeds the one percent). While the U.S. Secretary of Education's waiver authority applies to this provision, and states could request an exception to the cap [See sec. 1111(b)(2)(D)(ii)(IV)], it would be helpful to have clarification due to the inherent tension between these different provisions.

Can an SEA can exceed one percent tested if the IEP teams for those students have selected this route for them? DPI would request that the SEA be allowed to honor the decisions of the IEP team made at the local level. The SEA has no control over decisions of IEP teams at the local level. While a cap is imposed on states, states cannot impose caps on LEAs, and IEP teams determine who participates in alternate assessments—something that is not within the control of the state.

Furthermore, it would be helpful to have clarification regarding the oversight requirement, and under what conditions might the cap be waived. The department would like clarification that a state could not be penalized for exceeding the one percent cap because of the tensions described above and that a waiver would be provided when the cap is exceeded because of IEP team determinations at the local level.

Section 1111. State Plans
Statewide Accountability System – Identification of Schools
(c)(4)(D)(II)

This section requires the identification of all public high schools in the state failing to graduate one third or more of their students. The DPI is requesting clarity as to whether or not the high schools identified under this provision need to be Title I receiving schools.

Additionally, the law has not previously required the state to intervene in non-Title I schools. This raises questions as to the state's required interventions and whether these schools are eligible for any Title I funds if they do not receive a building-level allocation.

Section 1111. State Plans
Other Plan Provisions - Assurances
(g)(2)(J) and (M)

These sections require assurances that all teachers and paraprofessionals working in a Title I school meet applicable state certification and licensure requirements and that the state has professional standards for paraprofessionals.

The DPI would like clarification as to whether a state must have certification and licensure requirements for paraprofessionals if none previously existed, and whether the standards that existed for paraprofessionals working in Title I under the prior law now continue with the ESSA.

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Section 4. Transition and Section 5. Effective Dates

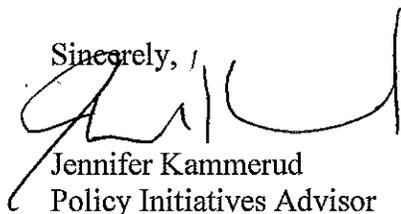
ESSA returned to states and local school districts a significant amount of flexibility. It provides us with an opportunity to explore different methods to tackle achievement gaps and ensure all students graduate college and career ready. In order to take full advantage of this opportunity, SEAs need to be able to have a comprehensive and transparent stakeholder engagement process. Similarly, LEAs need to have the ability to plan and consult.

As a result, the DPI requests clarification on the timelines for submission of SEA plans to ED and LEA plans to the SEA. SEAs need to establish accountability systems and identify schools. Only then does it make sense for LEAs and schools to develop their corresponding plans. Given the timelines surrounding this, the department would propose that plans be due no earlier than June 2017.

Additionally, it is critical that SEAs know as soon as possible the effective dates for full implementation of all programs and provisions of the law and how the ED plans to approach the time between the end of waivers on August 1, 2016 and the implementation of the new statutory provisions.

Thank you for your consideration of our comments. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Kammerud', written over the typed name.

Jennifer Kammerud
Policy Initiatives Advisor