

## ESSA Updates Presentation Outline

John W. Borkowski

### **I. ED Proposed Regulations for which Comments Have Been Received**

- A. This first section will discuss proposed regulations about which the U.S. Department of Education already has received comments, as well as a discussion of the controversial provisions from school districts' points of view.
- Accountability, State Plans, and Data Reporting under ESSA: closed for public comment on August 1, 2016, but not yet finalized.
    - <http://www2.ed.gov/policy/elsec/leg/essa/nprmacountabilitystateplans52016.pdf>
  - Key Provisions in Proposed Regulation
    - Statewide Accountability Systems, to create a more comprehensive picture of school success by replacing NCLB's definition of school success.
    - Supporting low-performing schools by replacing NCLB's interventions with locally designed, evidence-based strategies to fit schools' unique circumstances.
    - Data reporting to provide clearer information for parents and communities regarding the education system.
    - Consolidated state plans, requiring broad, robust engagement with a diverse group of stakeholders, as state plans are being developed and implemented.
  - ED received over 21,000 comments on the proposed regulation.
    - More than one-third of the comments on ESSA (7,364) consisted of language from a form letter provided by the National Education Association (NEA).
    - Another 1,026 people wrote in using a template provided by the Network for Public Education (NPE), criticizing the proposed regulations as contrary to the language and spirit of ESSA by imposing damaging and overly prescriptive mandates on public schools.
    - Over 8,000 commenters criticized the Common Core.
  - Controversial Provisions from School Districts' Perspectives
    - Proposed accountability regulations preserve a system of federal mandates by dictating specific aspects of school accountability, identification and

improvement, which arguably are contrary to the intent of Congress that decisions regarding accountability systems be reserved for State and local education officials.

- § 200.15 Participation in Assessments and Annual Measurement of Achievement: requires states to factor the requirement for 95 percent student participation in assessments into its system of annual meaningful differentiation.
- § 200.18 Annual Meaningful Differentiation of School Performance: prescribing the specific structure States must use in developing the system of meaningful differentiation.
- § 200.23 State Responsibilities to Support Continued Improvement: permit a State to establish an exhaustive or non-exhaustive list of State-approved, evidenced-based interventions consistent with the definition of evidence-based for use in schools implementing comprehensive or targeted support and improvement plans, which infringes on the authority of local school districts to identify and implement evidence-based interventions to remedy the basis for such an identification and improve student outcomes within the school district.

## **II. ED Proposed Regulations that Remain Open for Public Comment**

- A. The second section will address proposed regulations for which the comment period remains open, at least as of this writing.
- Title I-Improving the Academic Achievement of the Disadvantaged-Supplement Not Supplant: open for public comment until November 7, 2016.
  - <https://www.federalregister.gov/documents/2016/09/06/2016-20989/title-i-improving-the-academic-achievement-of-the-disadvantaged-supplement-not-supplant>; <http://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>
  - Fact Sheet: <http://www.ed.gov/news/press-releases/fact-sheet-supplement-not-supplant-under-title-i-every-student-succeeds-act>
- This is the first time that the Title I supplement-not-supplant requirement contains an express legislative directive regarding how an LEA must demonstrate compliance. For this reason, ED proposed the regulations to provide clarity about how LEAs can demonstrate that the distribution of State and local funds satisfies the statutory test. Based on the Department’s Fact Sheet, the proposed regulation

would mean up to \$2 billion annually in additional funding for the highest need schools and students.

### III. ESSA Related Guidance from ED

- A. The final section will briefly discuss recent non-regulatory guidance issued by the U.S. Department of Education and foreshadow upcoming non-regulatory guidance that ED has indicated it will release.
- August 5, 2016 DCL Regarding Transitioning to ESSA
    - <http://www2.ed.gov/policy/elsec/leg/essa/essatransitiontechassisltr080516.pdf>
  - Homeless Student Guidance
    - <http://www2.ed.gov/policy/elsec/leg/essa/160240ehcyguidance072716.pdf>
    - <http://www2.ed.gov/policy/elsec/leg/essa/160315ehcyfactsheet072716.pdf>
  - Using Evidence to Strengthen Education Investments Guidance
    - <http://www2.ed.gov/policy/elsec/leg/essa/guidanceeusesinvestment.pdf>
  - Ensuring Educational Stability for Children in Foster Care Guidance
    - <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf>
    - <http://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercaredcl.pdf>
  - Non-Regulatory Guidance: English Learners and Title III
    - <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiiiguideenglishlearners92016.pdf>
  - Non-Regulatory Guidance for Title II, Part A: Building Systems of Support for Excellent Teaching and Leading
    - <http://www2.ed.gov/policy/elsec/leg/essa/essatitleiipartaguidance.pdf>
  - Non-Regulatory Guidance: Expanding Opportunities to Support our Youngest Learners
    - <http://www2.ed.gov/policy/elsec/leg/essa/essaelguidance10202016.pdf>
  - Dear Colleague Letter on ESSA Transition Technical Assistance and Resources
    - <http://www2.ed.gov/policy/elsec/leg/essa/essatransitiontechassisltr080516.pdf>
  - Dear Colleague Letter on Stakeholder Engagement
    - <http://www2.ed.gov/policy/elsec/guid/secletter/160622.html>
  - Non-Regulatory Guidance: Student Support and Academic Enrichment Grants

- <http://www2.ed.gov/policy/elsec/leg/essa/essassaegrantguid10212016.pdf>
- Support School Reform by Leveraging Federal Funds in a School Wide Program
  - <http://www2.ed.gov/policy/elsec/leg/essa/essaswpguidance9192016.pdf>
- ESSA Dear Colleague Letter on Tribal Consultation
  - <http://www2.ed.gov/policy/elsec/leg/essa/faq/essafaqtribalconsultation.pdf>
- Non-Regulatory Guidance: Using Evidence to Strengthen Education Investments
  - <http://www2.ed.gov/policy/elsec/leg/essa/guidanceeuseinvestment.pdf>
- Foreshadowing of Non-Regulatory Guidance:
  - Preparing, training, and recruiting high quality teachers and principals (Title II)