Docket ID: ED-2016-OESE-0032

Dear Ms. Miller:

On behalf of the National Association of School Psychologists, thank you for the opportunity to respond to the proposed regulations for selected programs under Title I of the Elementary and Secondary Education Act, now known as the Every Student Succeeds Act (ESSA). This is an important time for the U.S. Department of Education (the Department) to be proactive in supporting states and school districts as they implement ESSA. The Department’s voice is critical to ensuring ESSA meets its goal, ‘to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.’ As such, NASP urges the Department to preserve and strengthen provisions of the proposed regulations outlined below.

**EMPHASIS ON STAKEHOLDER ENGAGEMENT**

**NASP Recommendation:** Retain, at a minimum, all of the proposed provisions in the final ESSA regulations that require stakeholder engagement. The Department should expand the list of stakeholders to include Specialized Instructional Support Personnel, a group that is specifically mentioned in the law, to ensure that all professionals in a school are engaged. Further, we ask that the Department require that there be numerous opportunities to provide feedback, in various formats and venues, to ensure that educators have ample opportunity to provide input into the law. We ask that the Department issue guidance or clarifying language to ensure that educators are afforded the opportunity, including flexible leave time participate in these vital conversations. Further, NASP asks that stakeholders included in §200.21 be expanded to include specific mention of specialized instructional support personnel.

Moreover, we reiterate our request to the Department that it more widely acknowledge the value of specialized instructional support personnel (SISP) and specialized instructional support services in our nation’s schools. We ask that the Department offer guidance for schools and communities on the critical role of SISP in the implementation of evidence-based practices that utilize a multidisciplinary team to promote improved academic and lifelong outcomes for our students. The Department routinely speaks to the importance of best practices to increase the number of quality school personnel available to address service disparities, to properly identify students in need, to provide classroom-based and school-wide interventions, and to make appropriate referrals for more intensive services. With specific guidance from the Department, schools would be better informed of the long-term value of investing in SISP and less inclined to cut or eliminate these important comprehensive services. **The Department should issue guidance or technical assistance regarding best practices in school improvement efforts, it is imperative the critical contribution of SISP be explicitly included.**

**Rationale:** NASP strongly believes that developing partnerships between stakeholders, educators and policymakers will be critical to the successful implementation of ESSA. However, these partnerships cannot be formed unless all stakeholders are meaningfully engaged and included in the process. Therefore, NASP strongly urges the Department to maintain all of the provisions included in the proposed regulations that reference stakeholder engagement and expand this list of stakeholders to include Specialized Instructional Support Personnel. School psychologists are specifically included in this group, and have tremendous expertise, and uniquely specialized training that make them invaluable resources for policymakers, school administrators, teachers, parents, families, and ultimately students. Additionally, while ESSA renamed the category of school-based qualified professionals from pupil services personnel to specialized instructional support personnel, and it appears a number of times in ESSA, there are still some sections of the law where engagement of stakeholders groups does not specifically list SISPs. Therefore, NASP strongly urges the Department to (1) maintain all of the provisions included in the proposed regulations that reference stakeholder
engagement; (2) align the final regulations to Secretary King’s June 23rd Dear Colleague letter by adding specificity; and (3) expand this list of stakeholders to specifically include Specialized Instructional Support Personnel.

**PROMOTING TRANSPARENCY ABOUT SCHOOL PERFORMANCE FOR FAMILIES, EDUCATORS AND POLICYMAKERS**

**NASP Recommendation:** Retain §200.18(b)(3) and (4) which describe the process for meaningful differentiation between schools that provide the public with both an overall summative school rating and information about how a school performed on each indicator within its accountability system, as measured for all students and each subgroup.

**Rationale:** NASP believes a State’s accountability system should be rooted in transparency. Accountability systems should recognize the value of providing the public with both a summative rating as well as information about how all students – and subgroups of students – fared on individual indicators, allow families, educators and policymakers to have a more complete understanding of how schools are serving students, where support is needed, and where students are thriving. It is important that both the summative rating and the performance on individual indicators be presented to the public together, as they present equally important ways to analyze school performance in a way that parents and community members are able to understand. Most importantly, an accountability system must prompt swift action and meaningful improvement in schools where all students – or a subgroup of students – is underperforming.

**EMPHASIZING INDICATOR(S) OF SCHOOL QUALITY AND STUDENT SUCCESS ARE TO BE LINKED TO IMPROVING ACADEMIC ACHIEVEMENT**

**NASP Recommendation:** Retain §200.14(d) with modifications. Currently, 200.14 states “(d) A State must demonstrate in its State plan that 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 or, for measures within indicators at the high school level, graduation rates.” NASP recommends adding, to the end of this proposed regulation, “and is appropriate to be used for accountability purposes.”

**Rationale:** NASP is pleased that the ESSA statute requires State accountability systems to include – along with several academic indicators – an indicator of school quality and student success. This “non-academic” indicator, when chosen carefully and implemented well, can provide actionable information to families, educators and policymakers that can help improve educational outcomes for all students, including students with disabilities. To help ESSA meet its goal “to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps” it is important that this additional indicator be supported by research showing how the indicator is connected to improving academic achievement and graduation rates.

It is imperative that states select indicators, and ways to measure those indicators, that are appropriate to be used for the purposes of accountability. A tremendous amount of data exists at the state, district, and campus levels that addresses student and school performance including: results of academic and behavioral screenings, performance on classroom assignments and standardized tests, attendance and truancy rates, frequency and type of disciplinary actions, school climate and safety indicators, student and teacher engagement levels, and indicators of student development of nonacademic skills. Using these types of data for accountability purposes is uncharted territory. As school psychologists are well aware, not all data is created equal. The inappropriate use and misinterpretation of various data can result in an incomplete, and in some cases, an inaccurate picture of student and school success. This can lead to ineffective or unnecessary school improvement efforts as well as missed opportunities to effectively address student or support needs. Any indicator chosen must be able to withstand the significant – sometimes unintended – consequences of being included in an accountability system, rather than being used simply for reporting purposes.
ENSURING CONSISTENTLY UNDERPERFORMING SUBGROUPS PROMPT TIMELY ACTION TO IMPROVE ACHIEVEMENT

**NASP Recommendation:** The final regulations must be written in a way that assures that a State definition of “consistently underperforming subgroups” will: (1) appropriately identify student subgroups that are underachieving; (2) spur timely action to implement evidence based interventions to improve academic achievement of such subgroups.

**Rationale:** Our public schools educate millions of students, including those who are of ethnic or racial minority, students with disabilities, or students from disadvantaged backgrounds. (Include ELL?) In many instances, these students are underperforming in schools where the majority of students are performing adequately. To address such situations, the final regulations must reinforce the importance of providing targeted support and improvements to schools in which any subgroup of students is underperforming, with the goal of supporting schools to improve student achievement.

**NASP Recommendation:** Retain §200.19(c)(1) which states that a State’s methodology for determining “consistently underperforming subgroups” must consider the schools performance over no more than two years.

**Rationale:** NASP strongly supports a robust methodology for identifying ‘consistently underperforming subgroups’. A State’s methodology should reinforce the notion that there must be a timely recognition of student subgroups that are underachieving. Building an accountability system that promotes this timely recognition – such as over the course of two years, as noted in 200.19(c)(1) – should result in actions, support, and evidence-based practices to increase student achievement.

**NASP Recommendation:** Revise §200.19(c)(3) by requiring those States that select (c)(3)(iii) and (c)(3)(iv) from the list of methodologies for defining ‘a consistently underperforming subgroup of students’ to also take into account ‘(i) a subgroup of students that is not meeting the State’s measurements of interim progress or is not on track to meet the State-designed long-term goals under §200.13.’

**Rationale:** This revision would ensure that States do not rely solely on a relative comparison to define ‘underperformance’ for subgroups. The importance of getting the methodology right for ‘consistently underperforming subgroups’ cannot be understated. Not only does it provide transparency but it is the mechanism within ESSA that prompts targeted resources for schools to develop and implement a plan to improve achievement. Specifically, NASP believes that to determine whether student subgroups are underperforming it is important for States to consider: (1) whether the subgroup is meeting the State defined long-term goals and interim progress measures; and (2) the performance of the subgroup in relation to higher performing groups of students. By considering only how subgroups of students are performing relative to other students without also taking into account whether they are meeting/missing the State defined long term goals and measures of interim progress, numerous unintended consequences can occur including providing a perverse incentive for States establishing truly ambitious long-term goals and interim progress measures, and creating a scenario where “underperformance” is only shown when achievement levels are extremely low.

NASP strongly urges the Department to strengthen its approach to a State’s methodology of identifying consistently underperforming subgroups by requiring any State that proposes to use a comparative methodology (such as those outlined in §200.19(c)(3)(iii) and (iv)) to also take into account standards-based measure (such as those outlined in§200.19(c)(3)(i) and (ii)).

ENSURING ALL STUDENTS ARE COUNTED IN ASSESSMENT & ACCOUNTABILITY SYSTEMS

**NASP Recommendation:** Retain §200.13(c). 200.13 would require States to consider students’ English language proficiency level in setting goals and measurements of interim progress and allow the consideration of additional research-based student factors such as time in language instruction educational programs, grade level, age, native language proficiency level, and limited or interrupted formal education) in determining the most appropriate timeline and goals for attaining English language proficiency for each English learner, or category of English learner. NASP believes this is a more appropriate method than simply examining the number of years the child has lived in the United States.
**Rationale:** A number of factors influence and can help predict how rapidly a student will acquire Basic Interpersonal Communication Skills (BICS) and Cognitive Academic Language Proficiency (CALP), and it is appropriate to allow the option of taking these factors into consideration when setting short and long term goals for these students.

**NASP Recommendation:** Modify §200.24(c)(4)(i) to allow LEAs to determine which schools – those identified for comprehensive support and improvement and targeted support and improvement – receive funding during circumstances of insufficient school improvement funds to award a grand of sufficient size to each LEA that submits an approvable application.

**Rationale:** NASP recognizes the important role of investing in all schools that are identified for both comprehensive support and improvement as well as all schools identified for targeted support and improvement. Adequate investments are necessary to create, implement and monitor comprehensive and targeted improvement plans. During circumstances where States have insufficient funding to support all such schools, NASP believes that the LEA should have the ability to decide how they fund comprehensive and targeted improvement schools.

**NASP Recommendation:** Retain §200.16(a)(2) related to subgroups of students which specifically requires that States measure performance on each indicator, differentiating schools for all students and for each subgroup, separately.

**Rationale:** In alignment with the statute, the regulation must prohibit States from measuring the performance of a super-group of students in place of individual student groups. In recent years, as more and more States have been designing their own accountability systems, many have chosen to base their school ratings either solely on school-wide average performance or on schools’ performance for students overall and for a super-group of students. As a result, in most States, school ratings tell parents and community members little about how schools are performing for individual groups of students. Schools that are doing fairly well on average, but are performing poorly for, for example, their poor students, or their students with disabilities, are allowed to ignore this underperformance.

**NASP Recommendation:** Modify §200.17(a)(2)(iii) to read: “(iii) Must not exceed 30 10 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section.

**Rationale:** The cornerstone of ESSA is to ensure that every student has the opportunity to receive a high quality education. To achieve this goal, students must counted and be recognized and visible in the educational system. This transparency ensures families, educators and policymakers know how all students and subgroups of students are faring and can spur action, interventions and supports to increase achievement. At the crux of this transparency is ensuring that States establish an appropriate “N Size”. The proposed regulation that sets an upper limit “n” size of 30 will strongly suggest to States that 30 is an acceptable minimum group size when, in fact, there is little evidence to support this. Under the No Child Left Behind Act, many states set n-sizes higher than necessary to avoid the consequences of missing Adequate Yearly Progress. A report referenced by the Department in its proposed regulations specifically noted that “while raising the minimum n-size is an effective means of increasing the passing rates of schools, it does so at a considerable cost to special education students in terms of being excluded from the accountability system.” [Page 34553]

In order to ensure that, to the maximum extent practicable, each student subgroup is included in the accountability system, NASP strongly urges the Department to lower the threshold included in §200.17(a)(2)(iii) to 10 students in the final regulations.

**NASP Recommendation:** Modify §200.21 and §200.22 to add students with disabilities as a subgroup, that LEAs are required to address when examining the disproportionate distribution of ineffective, out-of-field and inexperienced teachers for schools that are identified as chronically underperforming because of one or more subgroups.

**Rationale:** The regulation indicates that when a school is identified as having persistently underperforming subgroups, the LEA must address the equitable distribution of teachers, but only for low income and minority
students. If students with disabilities are the subgroup which has caused the school to be identified as chronically underperforming, districts need to know what the distribution of ineffective, inexperienced and out-of-field teachers is for this subgroup so it can be addressed, as the proposed regulation requires.

HIGH SCHOOL GRADUATION

NASP Recommendation: Delete the following text within §200.34(c)(2), the definition of “regular high school diploma”: “(2) “Regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals that are not wholly aligned with the State’s grade-level academic content standards.”

Rationale: NASP strongly urges the Department to delete the language indicated above because it allows for the unintended consequence of allowing a ‘regular high school diploma’ to be defined to include a diploma that is based on meeting IEP goals that ARE fully aligned with the State’s grade-level academic content standards. Awarding a regular high school diploma based on whether a student has met his/her IEP goals – whether they are aligned to grade-level standards or not – is wholly inappropriate for the following reasons:

- IEPs are not designed to be qualifying documents for obtaining a regular high school diploma; they are intended to be child-centered documents that are individually developed to provide information on specific goals, special education and related services, and accommodations necessary.

- IEP often do not include goals aligned to every standard that might be appropriate for graduation. Additionally, it is very likely that a goal could be based on a standard, but be nowhere close to reflecting what the student would need to do to meet the graduation requirement.

- It would revert back to a time when the performance of students with disabilities was based solely on whether or not they met their IEP goals, which has resulted in a lowering of expectations and goals for students with disabilities.

PROMOTING EXCELLENT TEACHERS FOR ALL STUDENTS IN STATE PLANS

NASP Recommendation: Amend §299.18 (b)(iv) which requires state plans to expand access to effective teachers for low income and minority students to include the subgroup of students with disabilities.

Rationale: Students with disabilities are one of the lowest performing subgroups. It is critical that they have equal access to effective experienced teachers who can meet their needs. The shortage of special education teachers in multiple states is inviting states to lower their standards for special educators, and in some case all teachers, in order to address the supply. It is our nation’s most vulnerable students who will pay the price for this in the long run, as the key to improved academic results is effective teaching.

NASP Recommendation: Amend §299.18 (c) which requires state plans to demonstrate whether low income and minority students are disproportionately taught by ineffective, out-of-field, or inexperienced teachers so that students with disabilities are included as a subgroup.

Rationale: Students with disabilities are significantly behind their peers without disabilities. States are increasingly looking to lower standards for special education teachers and others in shortage areas due to the pressure of the shortage. This solution is short sighted and will not result in increasing the academic performance of students with disabilities. Long terms strategies are needed that invest in building the pipeline of well-prepared teachers who enter the classroom profession-ready.

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**NASP Recommendation:** Amend §299.18 (c)(i), (ii) and (iii) which requires states to define ineffective teacher, out-of-field teacher and inexperienced teacher to ensure that students with disabilities will be taught by teachers who are effective in teaching them.

**Rationale:** In order to raise the academic performance of students with disabilities, effective, experienced teachers are critical. The definition of “ineffective” teachers should address whether or not a teacher is effective in working with students with disabilities, which may include passage of a performance assessment. The definition of “inexperienced” should include any teacher with less than three years of experience. And the definition of “out-of-field” teacher should include anyone designated as a special education teacher who has not completed a preparation program in special education or at least three years of success as a special education teacher. Further, we ask that you amend the remaining portions of §229.18 to reflect the recommendations noted above.

**Transportation for Students in Foster Care**

**NASP Recommendation:** Modify §299.13(c)(1)(ii), which states “The SEA will ensure that an LEA receiving funds under title I, part A of the Act will provide children in foster care transportation, as necessary, to and from their schools of origin, consistent with the procedures developed by the LEA in collaboration with the State or local child welfare agency under section 1112(c)(5)(B) of the Act, even if the LEA and local child welfare agency do not agree on which agency or agencies will pay any additional costs incurred to provide such transportation.”

**Rationale:** It is essential that states receive clear direction about this issue. Our experience working in states shows us that a failure to provide such transportation is a common barrier to stability and it will be a challenge to implement this statutory requirement without clear federal guidance. As written, the proposed regulation is deeply problematic for several reasons. First, the proposed rule is inconsistent with ESSA's statutory language. ED’s proposed rule contradicts ESSA’s statutory language by requiring LEAs to provide transportation when the agencies cannot agree on payment. The rule appears to shift the entire cost burden to LEAs unilaterally, despite ESSA's language designed to avoid exactly such a result. We propose the following alternative language that we believe may more directly clarify the joint obligations on both local education and child welfare agencies, consistent with the Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care (Guidance) issued on June 23, 2016 at [http://www2.ed.gov/policy/elsec/leg/essa/index.html](http://www2.ed.gov/policy/elsec/leg/essa/index.html).

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

This language version recognizes that both child welfare and education agencies have an obligation to ensure that transportation is provided, even if there is disagreement. Furthermore, it allows for resolution of disputes per the collaboratively developed State plan, and ensures that during any period of dispute resolution, that there is a clearly identified local agency responsible for providing transportation pending the dispute. This language also allows for SEAs to use statewide guidelines or procedures for LEAs to consistently implement transportation throughout the State and ensure resolution of any disputes. We believe this allows for sufficient state and local flexibility, and clearly articulates the dual-agency responsibility while ensuring that all eligible children promptly receive transportation to their school of origin when needed.
QUESTION 4: COUNTING STUDENTS WITH DISABILITIES WHO HAVE EXITED FROM SPECIAL EDUCATION IN THE DISABILITY SUBGROUP

**NASP Recommendation:** NASP encourages the Department to only count students with disabilities who have exited special education in the disability subgroup for the school year in which they exited. In each subsequent school year that a student with a disability is not receiving special education, the student should be counted with all students, as well as within any other relevant subgroup (e.g., economically disadvantaged).

**Rationale:** NASP believes that if a student no longer needs special education services they should no longer be included in the disability subgroup, which is defined at students with disabilities that receive services through the Individuals with Disabilities Education Act. However, for reporting ease, NASP supports the notion that a student who has exited from special education in the middle of a school year may still be counted in the disability subgroup for the school year in which they exited.

In closing, NASP appreciates the opportunity to provide feedback on critical areas of the ESSA proposed regulations that will impact our nation’s students. NASP looks forward to continuing to be a vocal advocate for all students as the regulatory process unfolds. We stand ready to work with the Department and states across the nation to ensure they are implementing measures that will help every student achieve their full potential. Please direct any questions to Kelly Vaillancourt Strobach, PhD, NCSP. E-mail: kvaillancourt@naspweb.org Phone: (301) 657-1652.