

April 10, 2018



The Honorable Lamar Alexander
Chair
U.S. Senate Committee on Health, Education,
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Patty Murray
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Virginia Foxx
Chair
U.S. House of Representatives Committee on
Education and the Workforce
2176 Rayburn House Office Building
Washington, DC 20515

The Honorable Robert C. “Bobby” Scott
Ranking Member
U.S. House of Representatives Committee on
Education and the Workforce
2101 Rayburn House Office Building
Washington DC 20515

Dear Chairman Alexander, Ranking Member Murray, Chairwoman Foxx, and Ranking Member Scott:

On behalf of The Leadership Conference on Civil and Human Rights and the 16 undersigned organizations, we urge you to monitor the U.S. Department of Education’s implementation of the Every Student Succeeds Act (ESSA) and to correct the inappropriate approval of noncompliant state plans. The department’s approval of plans over the course of the past year that do not comply with critical provisions related to signaling how all schools are serving each group of students and the identification of schools for support and improvement when they are not effectively serving individual groups of students is contrary to the law’s requirements and will undermine ESSA’s purpose to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.” **We call on you to fulfill your role in ESSA’s implementation and to correct the Department of Education’s flawed approval of state plans that do not comply with core equity provisions of the law.**

During the reauthorization of the Elementary and Secondary Education Act (ESEA) in 2015, you made the decision to give states greater discretion to construct their own accountability systems to ensure all students received the attention and support they needed. Unfortunately, states have squandered that opportunity and their obligation to design accountability systems that hold *all* schools accountable for the performance of *all* children. More than simply a missed opportunity, these failures violate the law. On April 26, 2017, we sent Secretary DeVos a letter¹ urging her to conduct a robust review of state plans and approve only those that complied with the law, especially the provisions related to the education of historically marginalized students. While the U.S. Department of Education gave states feedback enumerating some of the ways in which plans were not in compliance with the law, some of those issues went unaddressed and those state plans were *still* approved².

Overall, approved state plans still lack a commitment to equity and ignore key ESSA provisions critical for supporting historically marginalized groups of students. Two critical provisions that states failed to comply with in their ESSA plans are:

1. **ESSA section 1111(c)(4)(C)(i) requires states to establish systems of annual meaningful differentiation of all schools based on the performance of *all* students and *each* subgroup of students to ensure that all groups of students receive the supports they need.**

State plans have been approved that base their system of annual meaningful differentiation on the all student group *only*, omitting the disaggregated performance of *each* subgroup as required in the statute.

A recent report from The Education Trust³ demonstrates that state plans from New Mexico and Maryland were approved in spite of their exclusion of individual subgroups from their rating systems. In Arizona's⁴ state plan, individual student subgroups are included for elementary and middle schools, but they count very little. For high schools, the disaggregated performance of student groups is not included. Other state plans such as Massachusetts⁵ and Connecticut⁶ use a "super-subgroup," which combines groups of students together and does not fulfill the law's requirement that annual meaningful differentiation include the performance of *each* student subgroup. Massachusetts⁷, for example, calls this combined group their "high needs subgroup," and combines students who are low-income, students with disabilities, and English learners together (omitting the performance of each individual group of students, and the performance of students from major racial and ethnic groups). Failure to meaningfully include individual groups of students in the state accountability system would further exacerbate the educational barriers that marginalized students already experience and these systems of annual meaningful differentiation are *not* a true reflection of how well *all* students are doing.

2. **ESSA section 1111(c)(4)(C)(iii) requires states to identify schools for Targeted Support and Improvement (TSI) as those schools with one or more consistently underperforming subgroup and section 1111(d)(2)(C) requires states to identify schools for Additional Targeted Support and Improvement (ATSI) as those schools with one or more subgroup performing at or below the state's lowest-performing 5 percent of Title I schools.**

State plans have been approved that either fail to include any criteria for TSI or that use the same criteria for TSI and ATSI. In both scenarios state plans are not meeting the law's requirement to identify *both* categories of schools.

State plans for New Mexico⁸, Washington⁹, Indiana¹⁰, and Missouri¹¹ identify schools for consistent underperformance only in instances where students are doing as poorly as the bottom 5 percent of all students. By using the statutory definition for ATSI to identify schools for TSI, these plans failed to create the two categories of schools outlined in the law, yet were still approved by the secretary. In addition to violating the requirements of the law, setting such low



expectations for school identification means that many students will not receive the benefit of school support and improvement efforts.

We are deeply troubled by the U.S. Department of Education's failure to approve only those state plans that comply with the law. It is incumbent on the Senate Health, Education, Labor and Pensions Committee and the House Education and the Workforce Committee to fulfill their responsibility for oversight of ESSA implementation and to hold public hearings on and correct the department's approval of noncompliant plans. Failure to do so will only undermine ESSA's potential and continue to confine the millions of historically marginalized children to a low-quality education. Our children deserve better than this. We appreciate your attention to our concerns. Please do not hesitate to contact Liz King, Leadership Conference director of education policy, at king@civilrights.org or (202) 466-0087 with any questions or concerns.

Sincerely,

The Leadership Conference on Civil and Human Rights
Alliance for Excellent Education
Association of University Centers on Disabilities (AUCD)
Council of Parent Attorneys and Advocates
Democrats for Education Reform
Disability Rights Education & Defense Fund
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Center for Learning Disabilities
National Down Syndrome Congress
National Urban League
Partners for Each and Every Child
SEARAC
Southern Poverty Law Center
The Education Trust
TNTF
UnidosUS, formerly NCLR

¹ See: <http://civilrightsdocs.info/pdf/policy/letters/2017/DeVos-ESSA-State-Plan.pdf>

² See: <https://ed.gov/admins/lead/account/stateplan17/statesubmission.html>

³ See: <https://1k9gl1yevnfp2lpq1dhrqe17-wpengine.netdna-ssl.com/wp-content/uploads/2014/09/Trends-in-State-ESSA-Plans-Equity-Advocates-Still-Have-Work-To-Do-12.20-17.pdf>

⁴ See: <https://ed.gov/admins/lead/account/stateplan17/azconsolidatedstateplan.pdf>

⁵ See: <https://ed.gov/admins/lead/account/stateplan17/maconsolidatedstateplan.pdf>

⁶ See: <https://ed.gov/admins/lead/account/stateplan17/ctconsostateplan.pdf>

⁷ See: <https://ed.gov/admins/lead/account/stateplan17/maconsolidatedstateplan.pdf>

⁸ See: <https://ed.gov/admins/lead/account/stateplan17/nmconsolidatedstateplan.pdf>

⁹ See: <https://ed.gov/admins/lead/account/stateplan17/waconsolidatedstateplanfinal.pdf>

¹⁰ See: <https://www2.ed.gov/admins/lead/account/stateplan17/inconsolidatedstateplanfinal.pdf>



¹¹ See: <https://ed.gov/admins/lead/account/stateplan17/moconsolidatedstateplanfinal.pdf>