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April 26, 2016

The Honorable John B. King, Jr.
Secretary, U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Secretary King:

On behalf of The Leadership Conference on Civil and Human Rights and the 37 undersigned organizations, we write to urge the U.S. Department of Education to issue regulations and comprehensive guidance to assist state and local education agencies in not only complying with new data reporting requirements in the Every Student Succeeds Act (ESSA), but also encouraging school leaders to make this information accessible, high-quality, and helpful in reducing inequities for disadvantaged students.

Having accurate data is vital in uncovering and addressing achievement and opportunity gaps that exist in our nation's schools. Without this data, school leaders and educators lack information needed to adjust teaching to meet the needs of historically disadvantaged boys and girls. Parents struggle to participate meaningfully in conversations to improve their children's schools. And communities are frustrated in their desire to make sure district and state leaders do not neglect the educational needs of their students. At all levels, accurate and accessible data helps improve education.

For these reasons, states and districts will benefit most if ESSA data reporting requirements are used to convey to parents, teachers, school leaders, and other stakeholders objective measures of school quality, resources, and performance. Updating report cards to reflect ESSA requirements in this manner will require input from parents and community members, as required by ESSA, as well as guidance and regulations from the Department of Education. While many states and districts already report data in a way that is useful to stakeholders, many SEAs and LEAs will need technical assistance to update and improve their data reporting systems to reflect the needs of their student population. The Department therefore should issue a comprehensive technical assistance document that takes into account usability and accessibility and encourages states and districts to tailor data reporting systems to reflect the needs and interests of their community. And to deter states or districts from distorting data to mask the needs of historically disadvantaged students, the Department should promulgate regulations to set baselines for data reporting.

Recommendations for Technical Assistance

I. Ensure that States and Districts report data in a manner that meets the needs of educators, parents, and community members.

ESSA requires SEAs to consult parents in the development of state report cards and, at a minimum, make state and LEA report cards available on the SEA's website.¹ To that end, guidance should advise SEAs and LEAs to include parents at the beginning and throughout every stage of report card development—paying special attention to parents of historically disadvantaged students. Guidance should encourage SEAs and LEAs to ask parents, teachers, school leaders and community members what information they hope to get from report cards, when receiving such information would be most useful, and how these different stakeholders prefer to receive this information. Guidance should also encourage states and districts to use online dashboards to make their report cards interactive—allowing users to easily compare information across school years and schools, as well as the district and state overall.

II. Update current guidance by eliminating references to state flexibility granted by NCLB waivers and instructing states and districts on how to include new student populations in reporting student performance and school quality as required under ESSA.

The Department most recently issued non-regulatory guidance in 2013 to address reporting requirements for states granted a waiver from No Child Left Behind.² Many of the items in this document can easily be incorporated into an updated technical assistance document (e.g., guidance on how to report college enrollment rates,³ questions and answers related to maintaining student privacy and setting N-size for accountability systems⁴). However, several items from this document must be eliminated because ESSA makes these waivers null and void as of August 1, 2016.⁵ Specifically, references to “ESEA flexibility”⁶ and illustrations that indicate that SEAs and LEAs can combine subgroups in data systems⁷ should be deleted from the document.

Additionally, ESSA adds a host of new reporting requirements for state and district report cards, including:

- Performance on the statewide annual assessment disaggregated by whether a student is homeless, in foster care, or has a parent in the Armed Forces;
- Graduation rates disaggregated by whether a student is homeless or in foster care;
- Information on the performance of students on the academic indicator for elementary and middle schools, disaggregated by economic status, race/ethnicity, disability status and English proficiency;

¹ Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat 1802, sec. 1005, § 1111(h)(1)(B).

² U.S. DEP'T OF EDUC., STATE AND LOCAL REPORT CARDS: TITLE I, PART A OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED NON-REGULATORY GUIDANCE (Feb. 8, 2013)[hereinafter 2013 GUIDANCE] available at http://www2.ed.gov/programs/titleiparta/state_local_report_card_guidance_2-08-2013.pdf.

³ 2013 GUIDANCE, *supra* note 2, at 40–42.

⁴ 2013 GUIDANCE, *supra* note 2, at 9–10.

⁵ Every Student Succeeds Act § 4 (c).

⁶ *See, e.g.*, 2013 GUIDANCE, *supra* note 2, at 6.

⁷ *See, e.g.*, 2013 GUIDANCE, *supra* note 2, at 15, Illustration 1.

- Other state-selected indicators of school quality or success, disaggregated by economic status, race/ethnicity, disability status and English proficiency;
- English proficiency rates for English language learners;
- Per-pupil expenditures (including actual personnel expenditures and nonpersonnel expenditures), disaggregated by source of funds (i.e., local, State, or Federal);
- Measures of school quality, climate, and safety currently collected in the Civil Rights Data Collection;
- The number and percentage of students with the most significant cognitive disabilities taking the alternate assessment; and
- Rates of enrollment in postsecondary institutions for recent graduates, in the aggregate and disaggregated by economic status, race/ethnicity, disability status and English proficiency.⁸

The comprehensive technical assistance package should include information on how to convey this information in a manner that is accessible and user-friendly for all stakeholders, including sample designs for interactive dashboards and static tables and charts for printed reports. Guidance should also show how districts and states can integrate other current data collection tools with state report cards. For example, the Department already requires school districts to report academic assessment information on students that are homeless; this data can be integrated into systems used to collect information on student performance. Disaggregation of assessment data for children in foster care will be new for most school districts; therefore, the Department should advise schools and districts on how to work with local child services agencies to share information for data collection purposes. Finally, guidance should highlight the value of using state longitudinal systems to track and report required indicators, such as post-secondary enrollment by subgroups, and suggested indicators, such as enrollment in career and technical education programs by groups identified in the Perkins Act.

III. Clarify that reporting requirements extend beyond report cards, assist agencies in reporting achievement data that is or can be cross-tabulated, and encourage states to report other useful intersectional data.

ESSA requires SEAs to make a number of academic achievement data⁹ available in a way that either is or can be cross-tabulated by gender, race/ethnicity, English proficiency, and whether a student has a disability.¹⁰ The table below details what information states are required to make publicly available in a manner that is or can be cross-tabulated.

⁸ § 1111(h)(1)(C)(ii)–(xiv).

⁹ Academic achievement data in this instance refers to performance on the annual statewide assessment, the percentage of students assessed, the four-year adjusted cohort rate for high schools, and the other statewide academic indicator for elementary and secondary schools that are not high schools.

¹⁰ § 1111(g)(2)(N).

Additional Reporting Requirements: These categories must be made publicly available in a manner that is or can be cross-tabulated by, at a minimum gender, race/ethnicity, English proficiency and whether a student has a disability.

Data Element	All Students	Race & ethnicity	Students w/ Disabilities	ELLs	Econ. Disadv.	Migrant	Gender	Homeless	Foster Care	Armed Forces
Test Scores	X	X	X	X	X	X	X	X	X	X
% tested by subj.	X	X	X	X	X	X	X			
HS Grad Rate	X	X	X	X	X			X	X	
K-8 Indicator	X	X	X	X	X					

By making the intersection of and interaction between various subgroups public, parents, community members, districts and states can unmask problems that are obscured by larger subgroups, such as whether the performance for girls overall masks the performance of a subset of girls, such as African American or Native American girls. These cross-tabulated data will permit districts to better ensure that interventions are based on accurate data instead of generalizations and oversimplifications. Because school districts are already required to collect and report this data by the six subgroups,¹¹ reporting in a manner that is or can be easily cross-tabulated should not be burdensome.

Although states are not required to cross-tabulate data themselves, or include such data on report cards, the Department should encourage states to do both by including sample interactive dashboards (e.g., the dashboard used by the Minnesota State Department of Education) or sample tables in non-regulatory guidance, as well as examples of how the availability of cross-tabulated data can better target school interventions. If states choose not to include cross-tabulated information on report cards, guidance should instruct them, at a minimum, to make cross-tabulated data available on the same webpage as state report cards, or include a hyperlink therein. The Department should also encourage SEAs to make required academic information available in a way that is or can be cross-tabulated by all six categories—rather than the four required by statute—and to report other indicators used in state accountability systems in a way that is or can be cross-tabulated across the six reporting categories.

IV. Encourage districts to further disaggregate data on Asian and Native Hawaiian and Pacific Islander (ANHPI) performance.

ESSA requires that the Secretary provide technical assistance upon request to SEAs to further disaggregate performance on the statewide assessment and graduation rates for Asian and Native Hawaiian and Pacific Islander students according to racial categories provided on the 2010 U.S. Census.¹² These categories are:

- Asian Indian
- Chinese
- Filipino
- Native Hawaiian
- Guamanian or Chamorro
- Samoan

¹¹ These six subgroups are race/ethnicity, gender, English proficiency, whether a student has a disability, socioeconomic status, and migrant status.

¹² § 1111(g)(4)(B).

- Japanese
- Korean
- Vietnamese
- Other Asian (e.g., Hmong, Laotian, Thai, Pakistani Cambodian, etc.) with option to print race
- Other Pacific Islander (e.g., Fijian, Tongan, etc.) with option to print race

Just as cross-tabulating achievement data can unmask educational disparities obscured by larger group performance, further disaggregating ANHPI categories can also bring to light academic issues facing a diverse subgroup that contains more than 48 ethnic categories. The Department should encourage broader use of ANHPI categories at the state and district levels to improve student outcomes and provide technical assistance for states and districts seeking to collect and report this important information.

Specifically, guidance should recommend that LEAs with at least 100 ANHPI students and LEAs in which ANHPI students make up at least ten percent of the student population further disaggregate academic achievement data according to the 2010 Census categories listed above, provided that disaggregated data is sufficient to yield statistically reliable information and does not reveal personally identifiable information. With this recommendation, the Department should include examples of school districts that used data further disaggregated by ANHPI categories to address the specific needs of its student population. Additionally, technical assistance should include a sample enrollment form that allows parents to identify their children according to the racial categories that correspond to the 2010 U.S. Census, so schools can easily collect this information at enrollment. Finally, technical assistance should include sample designs for online interactive dashboards and templates for static tables and charts to include in printed reports.

Recommendations for Rulemaking

V. Promulgate regulations to clarify requirements to report achievement data in a cross-tabulated manner.

ESSA specifies that certain academic achievement data that is or can be cross-tabulated must be reported publicly in an easily accessible and user-friendly manner. Thus, the Department should promulgate a rule that sets minimum “easily accessible” requirements that:

- Require information that is or can be cross-tabulated to be publicly downloadable for all visitors to an SEA’s website,
- Prohibit the SEA from setting as a condition to accessing the information:
 - A requirement that users contact the SEA,
 - A fee, or
 - Any significant barrier to getting the data.
- Specify that while an SEA may offer users the option to create a login ID and password to save information, it may not *require* users to create a login ID to access information (i.e., the SEA must allow users to access information as “Guest.”)

The Department should also promulgate a rule that sets minimum “user-friendly” requirements that:

- If a state chooses to release information that can be cross-tabulated, rather than perform the cross-tabulation itself:
 - Requires states to make this information available in a downloadable format that can be easily manipulated, such as an excel spreadsheet or comma delimited file, and
 - Prohibits states from reporting this information in a format that cannot be easily manipulated, such as a Portable Document Format (PDF).
- Allows parents and stakeholders to compare their individual school performance to other schools, as well as see how their school compares district- and statewide, by requiring SEAs to segment this data in a way that allows users to:
 - View cross-tabulations at the state, LEA and school levels, or
 - Perform cross-tabulations at the state, LEA, and school level.

VI. Define or clarify ambiguous statutory text, to promote uniformity in data reporting for students who are homeless or in foster care.

ESSA requires LEAs and SEAs to report achievement data and graduation rates disaggregated by homeless and foster care status. To ensure that data reporting is consistent and meaningful, the Department should promulgate a rule that clarifies that:

- The term “homeless status” is consistent with the definition of homelessness in section 725 of Subtitle VII-B of the McKinney-Vento Act;¹³
- The term “status as a child in foster care” includes youth whose care and placement are the responsibility of the State or Tribal agency that administers a State or Tribal plan under part B or E of title IV of the Social Security Act,¹⁴ without regard to whether foster care maintenance payments are made under section 472 of such Act¹⁵ on behalf of such children and youth;
- LEAs and SEAs are required to disaggregate achievement data by homeless status and status as a child in foster care for any student who meets the definition of those terms at any time during the school year for which data are submitted; and
- LEAs and SEAs are required to disaggregate graduation rates by homeless status and status as a child in foster care for any student who met the definition of those terms at any time during grades 9–12.

VII. Require states to annually update data related to school climate, safety, and quality on state report cards.

ESSA requires states to include school climate and safety information submitted to comply with the biannual Civil Rights Data Collection (CRDC) on annual report cards.¹⁶ Although the school climate and

¹³ 42 U.S.C. § 11434a.

¹⁴ 42 U.S.C. § 621 and 670 et seq.

¹⁵ 42 U.S.C. § 672.

¹⁶ Section 1111(h)(1)(C)(viii). Specifically, SEAs must report rates of in-school suspensions; out-of-school suspensions; expulsions; school-related arrests; referrals to law enforcement; chronic absenteeism (including both excused and unexcused absences); incidences of violence (including bullying and harassment); and the number and percentage of students enrolled in preschool programs, accelerated coursework to earn post-secondary credit while still in high school, and dual or concurrent enrollment programs.



safety information required for annual state report cards is just a subset of CRDC data, we are pleased that parents, stakeholders, and the public will receive annual updates on whether their schools are ensuring a nondiscriminatory climate as required by our nation's civil rights laws. Consistent with ESSA, the Department should promulgate regulations to make clear that annual reporting of the aforementioned data is required and that current reporting standards must be maintained, including cross-tabulation of data by race/ethnicity, gender and disability status, as applicable.

* * * *

Thank you for your consideration. If you have any questions, please contact Adaku Onyeka-Crawford (aocrawford@nwlc.org) or Neena Chaudhry (nchaudhry@nwlc.org) of the National Women's Law Center, or Liz King (king@civilrights.org) of The Leadership Conference.

Signed,

National Women's Law Center
The Leadership Conference on Civil and Human Rights
ACLU
American Association for University Women (AAUW)
American-Arab Anti-Discrimination Committee
Association of University Centers on Disabilities
Augustus F. Hawkins Foundation
Center for Law and Social Policy (CLASP)
Champion Women
Children's Defense Fund
Council of Parent Attorneys and Advocates
Data Quality Campaign
Democrats for Education Reform
Disability Rights Education & Defense Fund
Education Law Center - PA
Education Post
The Education Trust
Girls Inc.
League of United Latin American Citizens
MALDEF
NAACP
National Alliance for Partnerships in Equity (NAPE)
National Center for Special Education in Charter Schools
The National Crittenton Foundation
National Disability Rights Network
National Down Syndrome Congress
National Indian Education Association
National Organization for Women
National Urban League
PolicyLink
Poverty & Race Research Action Council
Southeast Asia Resource Action Center (SEARAC)
Stand for Children
Stop Sexual Assault in Schools

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