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The Forum for America's Ideas

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January 19, 2016

Dr. John King
Acting Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Docket ID: ED-2015-OESE-0130

Dear Secretary King:

Thank you for the opportunity to offer advice and recommendations on regulations to implement Title I programs under the Elementary and Secondary Education Act, as reauthorized by the Every Student Succeeds Act (ESSA). The National Conference of State Legislatures (NCSL) is a bipartisan organization serving and representing the legislatures in the nation's 50 states, the territories and the commonwealths. Because of its role, NCSL is highly aware of the statutory and constitutional responsibility state legislatures have for education, and believes that state legislators are key stakeholders in any discussion of federal education policy. They are also key to encouraging cooperation among the various parts of the education system—early education, K-12 education, career and technical education, and postsecondary education.

ESSA presents the first real chance in nearly 15 years to significantly change the state-federal relationship in American education policy. First and foremost, NCSL urges the department to consider the intent and spirit of the law when proposing Title I regulations. ESSA signals a recognition that No Child Left Behind (NCLB) set rigid, unrealistic goals, tied to a single measure of academic progress, with punitive punishments for not meeting those goals. It further signals the importance of state and local consultation on education reform, something NCSL worked hard to see reflected in ESSA. NCSL urges the department, as it regulates on provisions of ESSA, to avoid the federal over-prescription that restricted states, districts, schools, and educators under NCLB.

NCSL has long argued that the best accountability system to measure how students and schools are doing is a state system. State legislators feel that the approach laid out in ESSA, with broad guidelines to ensure a focus on all groups of students, is appropriate. However, there is a danger that the department will write regulations that impose a “one size fits all” approach. Instead, states should be able to determine the relative weights of the indicators in the system. The important element is that the indicators have multiple measures of performance, unlike the single metric of

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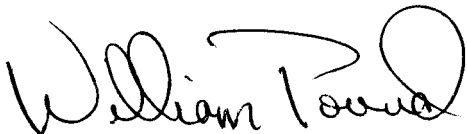
Adequate Yearly Progress under No Child Left Behind. States should also, for example, be able to define what it means for a subgroup to be consistently underperforming.

NCSL is encouraged that there is new flexibility in ESSA to allow for different types of assessments, and urges the department to assist states that want to explore these options or to evaluate the overall amount of testing to prevent teachers and students from spending too much time on tests that do not provide useful information on academic achievement. In addressing assessments, NCSL urges the department to support—as broadly as practicable—the piloting and use of innovative assessment systems. One of the biggest concerns being expressed by individuals across the country is the cumulative time spent on testing. States and localities now have the opportunity to work toward lessening this burden by setting their own target limits on instructional time spent testing, and by using assessments that take less time or are built into instructional time.

NCSL reaffirms its hope that the department will recognize the flexibility that is built into the legislation, and hopes that a negotiated rulemaking process will ensure input from state legislators as you address this first group of issues. We believe that thoughtful, considered regulation that maximizes the abilities of states and local districts to address the specific needs of their students provides the best chance for implementation of ESSA to succeed. In this law, states have both significant opportunities and challenges to address. By combining the guardrails built into ESSA with the chance to innovate in education, NCSL believes every state can build an education system that provides all of America's students with an excellent education.

If you have any questions or need further information, please contact Lee Posey, Federal Affairs Counsel, at 202-624-8196 or lee.posey@ncsl.org.

Sincerely,

A handwritten signature in black ink that reads "William T. Pound". The signature is fluid and cursive, with a large, stylized initial "W" and "P".

William T. Pound
Executive Director