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February 25, 2016

The Honorable John Kline
Chairman
Committee on Education and the
Workforce
U.S. House of Representatives
Washington, DC 20510

The Honorable Bobby Scott
Senior Democratic Member
Committee on Education and the
Workforce
U.S. House of Representatives
Washington, DC 20510

Our Mission
Working with and
through our State
Associations, NSBA
Advocates for Equity
and Excellence in
Public Education
through School Board
Leadership

Re: ***“Next Steps for K-12 Education: Upholding the Letter and Intent of
the Every Student Succeeds Act.”***

Office of Advocacy

Dear Chairman Kline and Senior Democratic Member Scott:

John D. Tuttle
President

The National School Boards Association (NSBA), representing more than 90,000 local school board members across the nation, works with and through our state associations to advance equity and excellence in education. NSBA applauds your leadership in the passage of the Every Student Succeeds Act (ESSA), and the historic step toward ending years of overly-prescriptive and restrictive policies under No Child Left Behind. Specifically, we commend your efforts during the reauthorization of the Elementary and Secondary Education Act of 1965 to support school districts by passing a provision in the law, Title VIII, Part F § 8541, to restore local governance and community ownership in public education.

Thomas J. Gentzel
Executive Director

Michael C. Zola
Associate Executive Director

Section 8541 reflects a new paradigm that encourages the U.S. Department of Education (“Department”) to open communication channels between the Department, states, and school districts. This provision underscores the national interest to return the decision-making authority back to states and local communities. Therefore, NSBA urges Congress to use its oversight authority to ensure that any regulations and non-regulatory guidance promulgated by the Department upholds the local governance structure and adheres to the legislative intent of the law.

As the regulatory process begins, how the Department responds to Section 8541’s requirement should be strongly considered as determinations are made on what and how regulations and non-regulatory guidance will be issued with respect to title I and other provisions of the law. If the Department implements the law pursuant to Section 8541, it will allow local stakeholders the autonomy and flexibility needed to institute smart, innovative and effective strategies to ensure that all students have access to a high-quality education.

As you examine next steps for ESSA implementation and the appropriate role of the federal government in education, NSBA urges Congress to encourage the Department to do the following:

- ***“Meaningful Consultation” with Local Stakeholders:*** The Department should provide clarification on how it plans to “meaningfully” consult with states, school districts, and local school boards during stages of the implementation process.

- ***Technical Support for School Districts:*** The Department should provide both state and local education agencies with adequate technical support, guidance, and resources to ensure that local education agencies are prepared to comply with ESSA’s provisions. For example, the Department should clarify timelines for when States must complete state plans, so that school districts will have enough time to provide feedback and implement the expected changes.
- ***Local School Board Perspective on Negotiated Rulemaking Committee:*** As the Department reviews nominations in response to its intent to establish a negotiated rulemaking committee, the collective voice of over 90,000 local school boards should be included as they are critical links to public schools and the communities they serve.

As Congress exercises its oversight authority, the test of whether regulations, guidance and technical assistance advance the spirit of the law should be based on, in part, whether they uphold the local governance structure. The Department must foster a collaborative environment by partnering with school districts and local school boards, because they are in the best position to offer clear visions for student achievement, quality teaching, and how to best design standards, assessments and accountability systems in accordance with the needs of students.

NSBA believes education is a civil right, and is deeply committed to education equity in accordance with the legacy of the Elementary and Secondary Education Act. As we continue to advance our mission to promote equity and excellence in public education through school board governance, we look forward to working with you during the implementation of the Every Student Succeeds Act.

Sincerely,



Thomas J. Gentzel
Executive Director

Attachment: NSBA Comments in response to the U. S. Department of Education’s “*Request for Information*,” January 20, 2016. NSBA’s comments submitted in response to the Department’s “*Request for Information*.”



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January 20, 2016

Via electronic mail (www.regulations.gov)

Deborah Spitz
U.S. Department of Education
400 Maryland Avenue, S.W., LBJ, Rm 3E306
Washington, D.C. 20202

Re: ED Request for Information; Docket ID: ED-2015-OESE-0130
Title of Collection: *Implementing Programs Under Title I of the Elementary and Secondary Education Act*

Dear Ms. Spitz:

The National School Boards Association (NSBA), representing through our state associations nearly 14,000 school districts, 90,000 school board members, and over 50,000,000 students nationwide, offers the following comments to the U.S. Department of Education's Request for Information, *Implementing Programs Under Title I of the Elementary and Secondary Education Act*, ED-2015-OESE-0130 ("RFI"),¹ published by the U.S. Department of Education (the "Department") on December 22, 2015. NSBA understands that through this RFI, the Department is seeking advice and recommendations concerning topics for which regulations and non-regulatory guidance may be helpful as States, school districts, and schools implement the various Title I programs contained in the *Every Student Succeeds Act* ("ESSA").

This letter builds on my testimony at the Department's hearing on ESSA implementation in Washington, D.C. on January 11, 2016. Through our comments, NSBA underscores the importance of community leadership and ownership of our nation's public schools, while the Department considers regulations and non-regulatory guidance to implement ESSA. NSBA believes education is a civil right, and advocates for equity and excellence in public education through local school board governance.

NSBA applauds the historic reauthorization of the Elementary and Secondary Education Act and its clear directive to restore local governance and community ownership in public education. Specifically, Congress directed that nothing in ESSA should be construed to allow the Department to:

¹ Notice, 80 Fed. Reg. 79,528 (Dec. 22, 2015).

- “(1) exercise any governance or authority over school administration, including the development and expenditure of school budgets, unless authorized by [ESSA];
- “(2) issue any regulation without first complying with the rulemaking requirements [under federal law]; or
- “(3) issue any non-regulatory guidance without first, to the extent feasible, considering input from stakeholders.”

ESSA, Title VIII, Section 8033 (to be codified at 20 U.S.C. § 8541 (Local Governance)).

NSBA also applauds the Department’s work in immediately engaging those entities that will be directly impacted by ESSA by publishing this RFI and holding public hearings, enabling the Department to hear firsthand from the collective voice of local school boards and from other stakeholders in our nation’s public education system. These community engagement efforts, as well as those to come through the negotiated rulemaking process, mark a significant moment for education policy and present an opportunity for the Department to support the new federalism in education by supporting a new paradigm of “open communication channels” between the Department, States, and local school districts.

I. ESSA Implementation: Strong Local Governance Structure

Local school boards are the communities they serve – urban, rural, and ethnically and linguistically diverse. School boards of all communities are parents, educators, city clerks, lawyers, electricians, and homemakers. And because they are of the community, they are accountable to their communities, and are in the best position to establish a clear local vision for student achievement, quality teaching, and learning to support strong student outcomes. In fact, NSBA’s legislative body – a national body of local school board members that establishes advocacy priorities – informed the local governance provision in Section 8541, and its historic recognition of the importance of the local school board voice in ESSA implementation.

Because state and local governments often incorporate federal guidance into their own statutes, regulations, and policies, the Department will achieve better results and minimize disruption to the delivery of high quality public education by conferring with school districts *before* issuing non-regulatory guidance or promulgating regulations implementing ESSA. This “collaborative framework” would move forward both the spirit and intent of Section 8541, and also optimize the important balance between agency discretion and stakeholder interests.

Although we are at the very beginning of what should be an open and transparent regulatory effort to implement ESSA, it is exceedingly important that any Departmental regulations and non-regulatory guidance reflect the express and implicit Congressional intent of this reauthorization – to restore significant decision-making impacting public education back to the local level and recalibrate the federal role in education. As a result, this letter sets out in part how the Department can comply with this overarching requirement of the law and addresses specific areas where regulatory clarification or restraint can support this mandate.

II. NSBA Recommendations: Programs Under Parts A and B of Title I

With local governance and community ownership in public education as the overarching goal, NSBA recommends that the Department examine the following areas as it considers regulations and non-regulatory guidance with respect to Title I.

A. Establish Federal-State-Local Partnership

NSBA recommends that the Department ensure a balanced “federal-state-local partnership.” To support this partnership, the Department would not only actively seek input from local school boards, but also encourage States to work with local school districts. In fact, ESSA specifically requires this sort of partnership by requiring States to assure that they solicit and consider local stakeholder input while developing state education plans.

The Department should clarify the phrase “nationally recognized” with regard to the locally-selected, nationally recognized assessments option to allow school districts greater flexibility and cost savings in choosing from among a variety of instruments to meet the needs of their students. The Department should allow maximum flexibility to use multiple student assessment tools with local school districts having the option to select the best tool to measure the progress of their students. Guidance in this area should encourage each State to engage its school districts to determine how and which assessments may be used.

The Department should direct States to collaborate with local school districts, including their governing boards, to identify state-based goals and timelines around student achievement, high school graduation rates, and measures for supports and interventions. NSBA believes that to maintain strong communications between the States and local school districts, any Department regulations should ensure that meaningful consultation actually takes place.

With regard to State accountability systems, the Department should seek input from States and local school districts and provide explicit non-binding guidance and best practices that can help States and school districts identify, set, and use a variety of student success indicators. For example, ESSA requires States to make their Title I plans available for public comment for a period of not less than 30 days prior to submission to the Secretary for approval. Further, States must provide an assurance that public comments were taken into account in the development of their plans. The Department should clarify how they will ensure that States will comply with these statutory requirements.

Similarly, without prescribing or mandating requirements, the Department should provide in guidance a variety of models that would help school districts determine targeted improvements for struggling schools and support tools that may help schools address equity issues.

The Department should acknowledge the movement in many States towards permissive parental opt-out provisions for assessments, and reiterate in no uncertain terms that ESSA does not impose federal penalties for States that do not achieve the 95% student participation threshold.

Concomitantly, the Department should urge States to build on the non-punitive framework of ESSA, by working collaboratively with local school districts to identify strategies and appropriate responses to meet the 95% testing requirement that do not penalize students, schools, or school districts.

The Department should work with States as it develops its Innovative Assessment Pilot (“IAP”). It should select a State for participation only if that State has collaborated with local school districts and their representative school boards associations in developing the IAP, including competency-based approaches.

B. Provide Appropriate Flexibility Through Local Governance

NSBA urges the Department to build in to the Title I regulatory system sufficient flexibility for local schools and communities to make decisions regarding use of Title I funds based on local needs. To avert placing significant burdens on school districts, the Department should refrain from applying a “one-size-fits-all” approach through its regulations or guidance. For instance, Title V, Section 5002 of ESSA allows greater transferability among certain funds within Title I and other parts of ESSA. It will be helpful for the Department to clarify which funds can be combined, which funds cannot be combined, and note any new guidelines for streamlined reporting and compliance under this provision.

With regard to ESSA’s new requirements for Foster Youth, the Department should clarify what “coordinating transportation” means for foster children who remain in their school of origin. It should seek input from local school districts about potential challenges to implementation of this provision, including cost and geography.

C. Support Local School Districts with Compliance Process

NSBA advises the Department to provide technical and compliance support to local school districts that will need to fulfill their audit and other reporting requirements in the years to come. Across the country, the Department’s vast regional office structure should provide a system by which it can ensure a meaningful consultation – which would consist at a minimum of a thorough consideration and analysis of the views provided by local school districts through their national representative, NSBA.

The Department should implement Impact Aid program changes acknowledging Congressional intent to lessen the burden on school district revenues as a result of federal activities. It should seek specific input from impacted districts before enacting regulations, including those affecting eligibility criteria and payment computations.

NSBA reaffirms its strong commitment to safe schools and joins Congress in the repudiation of sexual abuse by school employees. As the nation’s largest collective employer, school districts will be impacted by regulations implementing ESSA provisions prohibiting the aiding and abetting of sexual abuse. NSBA stands ready to work with the Department in its efforts in this area.

Regarding ESSA's requirement that each school district provide the Secretary with an assurance that the school district is aware of its obligations under FERPA and of the importance of student privacy, the Department should work with school districts to ensure that any implementing regulations do not create or expand exposure to legal liability under existing state legal frameworks.

III. The Department Should Actively Engage NSBA as the National Representative of Local School Boards and Their State Associations of School Boards in the Efforts to Implement ESSA.

NSBA urges the Department to recognize the importance of school board input as part of the Department's historic efforts to implement ESSA. Congress has recognized this significance in enacting Section 8541, which provides, in part, that the Secretary cannot "issue any regulation without first complying with the rulemaking requirements [under federal law]," or "issue any non-regulatory guidance without first, ... , considering input from stakeholders," such as local school boards and state school board associations.

That same recognition is set forth with regard to certain negotiated rulemaking where the Department "shall obtain the advice and recommendations of representatives of Federal, State, and local administrators, parents, teachers, paraprofessionals, and *members of local school boards* and other organizations involved with the implementation and operation of programs under this subchapter." 20 U.S.C. § 6571(b) (emphasis added).

The Department should also ensure that States include state school board associations as the representatives of local school boards in the ESSA implementation efforts. See 20 U.S.C. § 6573(a)(1)(A), (b)(2)(E).

As the voice of over 90,000 school board members in nearly 14,000 school districts and their state associations of school boards, NSBA requests an appointment to the Department's negotiated rulemaking panel for standards, assessments, and supplement-not-supplant provisions, in addition to other topics related to Title I of ESSA for which the Department may choose to utilize the negotiated rulemaking process.

CONCLUSION

School districts and school boards are in the best position to represent the concerns and priorities of their local communities with respect to this landmark recalibration of the federal role in public education. NSBA urges the Department to implement ESSA pursuant to Congress' directive, which encourages federal-state-local partnership and direct involvement by school boards specifically. We share a goal: to ensure that all students are held to high academic standards that prepare them to succeed in the 21st Century. Let's create a new regime of open communication, direct input from stakeholders, and flexibility for local communities.

NSBA thanks the Department for the opportunity to comment on behalf of our nation's local school boards, and for its review and consideration of issues raised here addressing the areas of inquiry set out in the RFI. NSBA looks forward to continued participation in the Department's process for implementation of ESSA in our nation's schools.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas J. Gentzel". The signature is fluid and cursive, with a large initial "T" and "G".

Thomas J. Gentzel
Executive Director