

COMMITTEES:

APPROPRIATIONS
BANKING
INDIAN AFFAIRS
VETERANS' AFFAIRS
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

United States Senate

July 28, 2016

The Honorable John King
Secretary
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Secretary King:

I write to you regarding the Department's proposed rule on the accountability provisions of the Every Student Succeeds Act (ESSA). While I appreciate the Department's ongoing efforts to implement this law, I have serious concerns about the impact this particular proposed rule will have on states' efforts to craft accountability systems that meet the needs of their students. As the failed No Child Left Behind (NCLB) taught us, one size does not fit all in education. I voted for ESSA because it promised to give families, teachers, school administrators, school boards, state officials, and tribal leaders the flexibility they needed to choose the policies that best meet the needs of their students—because what works in one state may not work in another. But I believe the following provisions in the Department's proposed rule will narrow state and local stakeholders' choices as they work to develop new accountability systems.

The Department proposes requiring that every academic progress and school quality or student success indicator in a state's plan be backed by research showing that progress on such measures is proven to "increase student academic achievement". ESSA aimed to allow states to implement new policies after years of being locked into NCLB or waiver requirements. The Department's proposed requirement could lock states into continuing the same policies used under NCLB, since these policies could be the only ones with enough evidence already behind them to meet the requirement.

The Department proposes specific, mandated interventions for schools that fail to test 95 percent of their students. It is certainly important to make sure that states are accounting for the performance of all of its students, but the Department's proposal too closely resembles NCLB's failed "test and punish" culture. Test scores are not the only indicator of a school's quality, and states should take the lead in holding their schools accountable when the 95 percent benchmark is met. Additionally, the Department's proposed rule is troublingly silent on how these punitive measures would apply in instances where a state makes a good-faith effort to test all students but technological glitches outside of their control get in the way, as we have recently witnessed throughout the country.

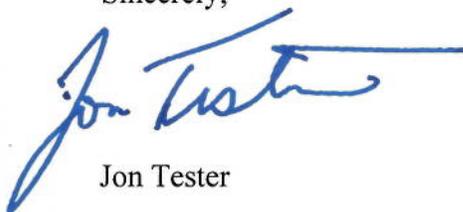
The Department proposes requiring that states assign ratings and summative scores to schools. Again, such a requirement would narrow the choices available to state and local decision-makers and lock them into a certain path, when ESSA aimed to free them from federal requirements. The Department's proposal may be a good one for some states, but it may not work for all of them. Some states may decide that a three-tier rating system may be an inappropriate way to evaluate a school's quality, and some states may decide that a single summative rating glosses over the varied factors that contribute to a school's success. If a state so decides, it should have the freedom to choose the method that works best for its schools.

Throughout the proposed rule, the Department makes clear that it does not value the school quality or student success indicator. This indicator was included in ESSA to allow states to include information on things like absenteeism and safety, that are vital to indicating the quality of a school but do not directly show up in test scores or graduation rates. We should be encouraging states to address these underlying causes of student success. But the Department's proposal puts its thumb on the scale against the school quality and student success indicator, particularly by disregarding its importance in indicating whether schools identified for improvement have met the states' goals.

The Department proposes requiring states to identify districts in need of support at the start of the 2017-2018 school year. We are currently only a few weeks away from the start of the new school year, and many states are only beginning to develop new accountability systems. The Department's own proposed rule will not be final until well into the upcoming school year. If states and districts are required to identify schools for support at the beginning of the 2017-2018 school year, they will spend much of the 2016-2017 school year working toward undefined goals and scrambling to assemble a plan. I strongly urge you to reconsider the proposed timeline, so that states and districts have the time they need to implement ESSA well.

I strongly urge you to reconsider and revise the provisions that I have discussed. We all share the goal of ensuring that every single one of our children has the opportunity to go to a good school that prepares them for a successful future. But as a former teacher and school board member from a rural state, I strongly caution you to avoid the mistakes of No Child Left Behind and ensure that local voices aren't drowned out by aggressive federal regulation. I look forward to working with you further as you implement ESSA, and I respectfully await your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jon Tester", with a long horizontal flourish extending to the right.

Jon Tester