



August 1, 2016

The Honorable John King
Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW. Room 3C106
Washington, DC 20202-2800

Re: Docket ID ED-2016-OESE-0032

The Center for Law and Social Policy (CLASP) submits these comments pursuant to the Notice of Proposed Rulemaking (NPRM) that was published in the Federal Register, Vol. 81, No. 104 published on May 31, 2016.

CLASP advocates for public policies that reduce poverty, improve the lives of poor people, and create ladders to economic security for all, regardless of race, gender, or geography. We target large-scale opportunities to reform federal and state programs, funding, and service systems, then work on the ground for effective implementation. Our research, analysis, and advocacy foster new ideas and position governments and advocates to better serve low-income people. We also work at the state and local levels, providing technical assistance regarding the implementation of federal policies and programs.

Our comments and recommendationsⁱ are based on CLASP's work and expertise in supporting academic success and career and college readiness for disadvantaged youth, including out-of-school youth and students of color. CLASP thanks the Department for their hard work on the proposed regulations. Our comments seek to emphasize and strengthen the provisions in the Every Student Succeeds Act (ESSA) of 2015 that support state and district efforts to prevent students from dropping out of high school and reengage out-of-school youthⁱⁱ, and promote alignment with the bi-partisan Workforce Innovation and Opportunity Act (WIOA) of 2014 that targets funding and comprehensive education and training programming to out-of-school youth.

High school completion and postsecondary readiness have been major focuses of education reform in recent years. It is widely accepted that the U.S. must better prepare students for careers that provide financial stability, promote national economic growth, and improve our standing globally. By 2018, 60 percent of all U.S. jobs will require some level of postsecondary education. At the current rate, employers in 2025 will need about 23 million more degree and credential holders than our higher education system will have produced.ⁱⁱⁱ Yet, far too many students struggle to complete high school.

While most students do not drop out until high school, warning signs are evident in the middle school years. Research demonstrates several predictors of eventual high school dropout, including chronic

absenteeism, behavioral issues, and course failure.^{iv} Students who have been involved with the juvenile justice and child welfare systems are particularly vulnerable and more likely to drop out of high school. These students often lose large amounts of instructional time and fall far behind. Also at significant risk are students who have not successfully completed enough credits by the end of ninth grade.^v The first year of high school is pivotal for students; the majority of students who drop out do so in ninth grade. Using appropriately disaggregated data, states and local education agencies (LEAs) can accurately predict which students will need additional supports and help them remain on track to finish school.

Young people who have discontinued their education without earning a high school diploma need viable options for returning to school. The current system presents obstacles; youth often lack information on available education options and where to enroll. We support regulations that help states and LEAs recognize these students and incentivize the creation of intentional, coordinated plans for reengaging and keeping them connected. Through the regulatory process, the Department has the opportunity to emphasize state and LEA accountability for these students' educational outcomes and to highlight opportunities for states to address the needs of these students in their state plans.

For questions about CLASP's recommendations, please contact Nia West-Bey, Senior Policy Analyst for Youth Policy (nwestbey@clasp.org) or Kisha Bird, Director of Youth Policy at CLASP (kbird@clasp.org).

§ 200.14 Accountability indicators

We strongly support the requirement in proposed §200.14(b)(5) that as part of its statewide accountability system, each state must include one or more indicators of school quality or student success, which may include indicators of one or more of those listed in §200.14(b)(5)(i)- §200.14(b)(5)(vi). We particularly applaud the inclusion of postsecondary readiness, school climate and safety, and student engagement on the list of indicators, as each represents a known predictor of high school completion, and the requirement in §200.14(d) that the indicators selected at the high school level must support graduation rates.

In addition, we recommend that school accountability indicators selected by middle schools that feed into high schools identified for comprehensive or targeted support and improvement under §200.19 also be required to support high school graduation rates. There is strong evidence that risk factors for high school dropout, such as failing one or more courses, grade retention, disciplinary issues, and attendance problems are first evident in middle school, and when used as an early warning system, can be addressed with evidence-based interventions to support improved chances of high school completion. We suggest that 200.14(d) be revised to read: "A state must demonstrate in its State plan under section 111 of the Act that each measure it selects within the indicators of Academic Progress and School Quality or Student Success is supported by research that progress on such measures is likely to increase student achievement or, for measures within indicators at the *middle and* high school level, graduation rates.

§ 200.15 Participation in assessment and annual measurement of achievement

Proposed §200.15 is focused on ensuring that each state must annually measure the achievement of at least 95 percent of all students, and 95 percent of each subgroup of students under §200.16(a)(2), who are enrolled in each public school under section 111(b)(2)(B)(v)(I) of the Act. This section provides an opportunity to leverage this requirement to increase the accountability of schools for students who drop out and to incentivize reengagement efforts. We recommend that students who do not complete academic assessments, and who have not been removed from a high school cohort because there is no

documentation to support their removal from that cohort as outlined in §200.34(3), should be included in the denominator when calculating the 95 percent assessment participation rate. Specifically, we recommend adding §200.15 (b)(1)(iii) as follows: “95 percent of all such students in the adjusted cohort for the grades assessed, unless the student has been documented as participating in a school or program as defined in §200.21(g)(1)(i)-(ii).”

§ 200.19 Identification of schools

We support the focus and identification of a state’s lowest-performing schools and chronically low-performing students, including the requirement that states identify public high schools that have a four-year adjusted cohort graduation rate below 67 percent, or below a higher percentage selected by the State. In the interest of promoting challenging state academic standards as defined by the Act, we recommend the Department encourage states to identify public high schools that are not meeting the 67 percent high school graduation rate threshold and those not meeting a higher threshold selected by the State.

§ 200.21 Comprehensive support and improvement and § 200.22 Targeted support and improvement

We support many of the proposed requirements under this section, including the required needs assessment and engagement of stakeholders. In addition to the included stakeholders (principals and other school leaders, teachers and parents), we recommend the list be amended to also include middle and high school students here and in all places that it appears. Secondary students have a critical perspective on what is working in their own schools, and can make a unique contribution to stakeholder conversations as the ultimate beneficiaries of school improvement efforts.

In addition, we request that the Department consider adding culturally responsive approaches in school support and improvement strategies for underserved students to the non-exhaustive list in §200.21(d)(3) of strategies that schools may use. This recommendation comes from the belief that parents and community members know their students best and often know how to support schools through relevant strategies.

Proposed §200.21(g)(2), describes State discretion for certain high schools, such that schools primarily serving students who are returning to school or who are over-age and under-credited as defined in §200.21(g)(1) with total enrollment of less than 100 students are permitted by the LEA to forgo implementation of improvement activities required under this section. We recommend that the section be revised to require states to provide a plan for how accountability will be maintained for these schools, including the calculation of extended year adjusted cohort graduation rates of up to 7 years (§ 200.34) for students in the high schools described in §200.21(g)(1)(i) and (ii).

We also join our colleagues at the Leadership Conference for Civil and Human Rights in requesting that §200.21 and §200.22 of the proposed regulations be revised to require LEAs and schools that have been identified as in need of comprehensive or targeted support and improvement to include in their needs assessments measures of school climate, such as bullying and harassment, and exclusionary and disproportionate discipline. Support and improvement plans resulting from the needs assessment should address any inequities in measures of school climate and inequities in resources that would positively impact school climate, such as funding for school counselors and evidence-based programs, as required by ESSA.¹

¹ §1111(d)(1)(B)(iv).

§ 200.23 State responsibilities to support continued improvement and § 200.24 Resources to support continued improvement

The proposed regulations indicate that it is the State’s responsibility to “establish an exhaustive or non-exhaustive list of state approved, evidence-based interventions for schools implementing comprehensive improvement plans”. In addition, states are required to provide a description of one or more evidence-based interventions. We strongly recommend that the Department explicitly highlight that States should include dropout prevention and recovery strategies. In addition, we believe the Department should provide guidance to state education agencies (SEAs) and LEAs on best practices to create a menu of well-supported educational pathways and options for high school students (including over-age students, uncredited students, and students who have dropped out) that meet young people’s needs and prepare them for postsecondary success. Examples of options include but are not limited to:

- Reengagement centers;
- High-quality alternative programs or charter schools;
- Credits earned based on demonstrated competency instead of seat time;
- Applied learning approaches
- Accelerated learning models;
- Twilight academies;
- Specialized supports for parenting students;
- Concurrent enrollment in high school and community college;
- Integrated Education Training models in partnership with workforce boards;
- GED Plus/Diploma Plus models; and
- Career and technical education.

§ 200.34 High school graduation rate

We strongly support the requirement in proposed §200.34 that States must calculate a four-year adjusted cohort graduation rate for each public high school in the state. We particularly applaud the language in 200.34(b)(3)(iii) that notes that the cohort can only be adjusted by removing a student who has transferred to a prison or juvenile facility if the student participates in an educational program that culminates in the award of a regular high school diploma or a State-defined alternate diploma for students with the most significant cognitive disabilities, as this specification promotes the Act’s goal of ensuring accountability for students who are neglected, delinquent, or at risk.

We are concerned that there is substantial risk that if this discretion as described in §200.21(g)(1)-(2) is applied to prisons and juvenile facilities, the efforts to maintain accountability for students involved in the criminal justice system will be undermined. We recommend that the section be revised to require states to provide a plan for how accountability will be maintained for court-involved youth served in programs with total enrollment of less than 100 students.

We also strongly support the requirement in proposed 200.34(2)(i) that four-year adjusted cohort graduation rates and, if adopted by the state, extended-year adjusted cohort graduation rates be calculated for all students disaggregated by each subgroup of students included in 200.16 (a)(2) (economically disadvantaged, major racial/ethnic groups, children with disabilities, English learners), as well as for homeless and Foster youth, because these vulnerable populations are at particular risk for educational disconnection and school dropout.

We recommend that the regulations also require disaggregation by involvement in the juvenile or criminal justice system. Although youth who are incarcerated are typically attending school in locked facilities, the responsibility for the education of many court-involved youth, including those awaiting trial, on

parole or probation lies with the public school system. Including high school graduation data disaggregated for students involved in the juvenile and criminal justice system will support the Act's goal of ensuring accountability for the re-enrollment and educational progress of court-involved youth. In addition, to promote alignment with WIOA eligible in-school youth definitions, graduation rates should also be disaggregated by status as pregnant or parenting, as this status is a key predictor of high school drop out for girls.

§200.36 Postsecondary enrollment

CLASP applauds the required reporting on postsecondary enrollment on State and LEA report cards. We join our colleagues from the National Urban League in supporting the definition of “program of postsecondary education” consistent with the term “institution of higher education” under the Higher Education Act of 1965, and in our support for asking States and LEAs to publish when they expect to report postsecondary education data if they do not currently publish it.

In addition, we recommend that the regulations clarify that indicators of postsecondary readiness include both postsecondary enrollment and rates of non-remedial postsecondary classes taken as indicated in the preamble in column three of page 34547.

Subpart G—State Plans § 299.13 Overview of State plan requirements.

§ 299.15 Consultation and coordination

In addition to the listed stakeholders that must be consulted in the development of the state plan, we recommend the inclusion of entities that serve and support some of the most vulnerable students, including child welfare, homeless, juvenile/criminal justice, and workforce development agency staff, providers, and advocates, as well as students who are members of these vulnerable categories. SEAs cannot address the high school dropout crisis alone. It is imperative that they establish partnerships with other youth-serving entities, including government systems, community-based organizations, business and industry. Stronger planning and coordination at the state level can help to create a safety-net to capture and provide new opportunities for students who may be at risk of dropping out and to re-engage those that have. Thus, we support the requirement for SEAs to describe how they are coordinating plans with, for example, the Carl D. Perkins Career and Technical Education Act of 2006 and the Workforce Innovation and Opportunity Act of 2014.

§ 299.17 Accountability, support, and improvement for schools

Sections 299.17(b)(5) and (8) recognize the importance of meaningfully differentiating accountability for a range of each state's public schools. We ask that these sections and Section 200.18 be amended to clarify that accountability performance and graduation rates may be differentiated for schools serving a majority population of reengaged dropouts as defined by the State, and require states to provide a plan for how accountability will be maintained for students attending such schools.

§ 299.19 Supporting all students

In this section, we support the statute and the Department's focus on improving school climate to reduce punitive school discipline practices that disproportionately impact students of color and efforts to keep students safe from bullying. However, we believe the regulations should provide more direction on how states should assist LEAs with improving school environments for student learning.

We join the Leadership Conference on Civil and Human Rights in recommending the regulations define or list the types of disciplinary actions that would remove students from the classroom, building on the examples of out-of-school suspensions and expulsions to also include referrals to law enforcement, and school-based arrests. The “overuse” of discipline practices should include the imposition of discipline for subjective, nonviolent conduct, such as disrespect of authority and disorderly conduct and also the disproportionate application of disciplinary actions to subgroups of students. The regulations should also provide a definition for aversive behavioral interventions, such as involuntary confinement or the use of restraints, including handcuffs that would prevent students from moving freely.

We also applaud the language indicating that SEAs must consider the academic and non-academic needs of particular groups of vulnerable students. In addition to the list of students provided, we recommend that the Department also include over-age and under-credited students, students that have been re-engaged, pregnant and parenting teens, court involved youth, and students with disabilities to promote alignment with the WIOA eligible in-school youth definitions.

SEAs must use information and data on resource equity collected and reported under section 1111(h) of the Act and §§ 200.35 and 200.37 including a review of LEA-level budgeting and resource allocation related to a number of factors. In addition to those included, we recommend the department add the availability of drop-out recovery strategies and programs, such as reengagement centers, accelerated learning models, twilight academies, Diploma Plus models, and specialized educational services for teen parents.

Thank you for the opportunity to offer our comments and recommendations regarding these regulations. We look forward to continuing to work with the Department on the implementation of ESSA and ensuring accountability for our nation’s most vulnerable and disconnected students.

ⁱ *ESEA Reauthorization: Challenges and Opportunities*, CLASP, 2015, <http://www.clasp.org/resources-and-publications/publication-1/Recommendations-for-ESEA-2015-Final-2-10-15.pdf>.

ⁱⁱ Every Student Succeeds Act Primer: High School Dropout Prevention and Reengagement of Out-of-School Youth, Alliance for Excellent Education, CLASP, and National Youth Employment Coalition, 2016, <http://files.ctctcdn.com/fd851a99501/d81eacaf-8b71-4bb8-8d4d-fef43a91e7d3.pdf>.

ⁱⁱⁱ *A Stronger Nation Through Higher Education*, Lumina Foundation, 2013, <http://www.luminafoundation.org/files/resources/a-stronger-nation-through-higher-education-2014.pdf>

^{iv} Karl L. Alexander, Doris B. Entwisle, Nader S. Kabbani, “The Dropout Process in Life Course Perspective: Early Risk Factors at Home and School,” *Teachers College Record*, 103 no. 5 (2001)

^v Ruth Curran Neild, Scott Stoner-Eby, Frank F. Furstenberg Jr., “Connecting Entrance and Departure: The Transition to Ninth Grade and High School Dropout,” lecture, Harvard Civil Rights Project and Achieve, Inc. Joint Conference, Cambridge, Massachusetts, January 2001, <http://www.civilrightsproject.harvard.edu/research/dropouts/neild.pdf>