



**INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION**  
MARÍA "CUCA" ROBLEDÓ MONTECEL, PH.D., PRESIDENT & CEO  
5815 CALLAGHAN ROAD, SUITE 101  
SAN ANTONIO, TEXAS 78228  
210.444.1710 • FAX 210.444.1714  
CONTACT@IDRA.ORG • WWW.IDRA.ORG

January 20, 2016

Secretary John King  
Deborah Spitz  
U.S. Department of Education  
400 Maryland Avenue SW., Room 3E306  
Washington, DC 20202

RE: Recommendations and Advice for the U.S. Department of Education to Consider in Issuing Regulations and Guidance under Title I of the Every Student Succeeds Act

Dear Secretary King and Ms. Spitz:

The Intercultural Development Research Association thanks the U.S. Department of Education for the opportunity to present written comments concerning the advice and recommendations on areas that the Department of Education may consider in issuing regulations and guidance under Title I of the *Every Student Succeeds Act* (ESSA). These comments are consistent with the oral testimony provided by IDRA's National Director of Policy, David Hinojosa, at the Department's hearing held at UCLA on January 19, 2016.

For more than 40 years, IDRA has worked to assure equity and educational opportunity for every child, focusing especially on students of color, students who are low income, and students who are English learners (collectively herein, "underserved students"). We have provided our assistance and implemented many successful programs under grants administered under Titles I, II, III and IV of the ESEA, among other federal work. IDRA's track record in research, evaluation and policy on behalf of minority children and students in at-risk circumstances and in partnership with communities, together with our extensive experience in teaching pedagogy and family and community engagement – among other areas – forms a strong basis for its policy perspectives and recommendations at the federal level.

Our comments concern the following topics: (I) Accountability and Intervention; (II) Resource Equity; and (III) Supplement v. Supplant.

## **I. Accountability and Intervention**

### **A. Federal guidance and regulation is needed to avoid misalignment between state plans and carrying out the purpose of the ESSA**

State accountability *can be* an important factor in assessing a school's effectiveness and in identifying critical areas of student support for school leaders and educators when they fall short of the standards. The new provisions under the ESSA do not alter this important role of accountability, but there is a real risk of rolling back protections for underserved students. The Department can play a key role in not only measuring those plans against the standards

established under the Act [ESSA § 1111(a)(4)(A)(vi)], but also in providing guidance and compliance oversight on how states may avoid misaligned accountability systems.

While the ESSA offers states greater flexibility in designing their state goals and interim progress toward their goals in their respective state plans, it does not provide total discretion to the states. The Department maintains an important role in overseeing implementation of the ESSA, and federal guidelines developed during the negotiating process should help ensure that schools identified for intervention receive the appropriate resources and support to meet the needs of underserved students. Such action will help states and local education agencies (LEAs) fulfill their role under the Act in providing all children “significant opportunity to receive a fair, equitable, and high-quality education and to close educational achievement gaps” [ESSA § 1001, Statement of Purpose].

This is needed because, even today, some state accountability systems are designed to include the least number of struggling students, schools, and school districts. Such systems run contrary to the purpose of the ESSA. For example, the 2015 Texas accountability system purports to measure student achievement, student progress, achievement gaps and post-secondary readiness. Yet, despite the dismal outcomes for underserved students, such as English learner (EL) and low-income student groups, on the state tests, on college entrance exams, and among graduation and dropout rates, fewer than 4 percent of school districts were identified for improvement.

<b>District Ratings by Rating Category (Excluding Charter Operators)</b>		
<b>2015</b>		
<b>Accountability Rating</b>	<b>Count</b>	<b>Percent</b>
Met Standard/Alternative	<b>983</b>	<b>96.0%</b>
Met Standard	983	96.0%
Met Alternative Standard	0	0%
Improvement Required	<b>39</b>	<b>3.8%</b>
Not Rated	<b>2</b>	<b>0.2%</b>
Data Integrity Issues	<b>0</b>	<b>0%</b>
<b>Totals</b>	<b>1,024</b>	<b>100.0%</b>

Texas Education Agency. 2015 Accountability System State Summary, November 4, 2015. <http://ritter.tea.state.tx.us/perfreport/account/2015/statesummary.html>

Indeed, state district courts in Texas (*Texas Taxpayer & Student Fairness Coalition/Edgewood ISD v. Williams*, 2014) and Colorado (*Lobato/Ortega v. Colorado*, 2011), among others, found the respective designs of the state accountability systems purposefully weakened and misaligned to the state goals of producing college-and-career ready high school graduates. While the Act allows states to design their accountability systems, transparency and equity must not give way to flexibility. The Department’s consistent guidance, regulation and oversight in this area can assist the states and LEAs in developing fair, equitable accountability systems well within the boundaries of the law.

**B. Regulations and Guidance Should Make it Clear that States and LEAs Must Meet Current EL Students’ Needs**

For EL students, important guidance and oversight is needed to ensure that they continue to receive the services they need to access content in all the subjects and to become proficient in English in a manner that enables them to compete equally in the classroom. Under the ESSA, states *may* include the performance of former EL students who have become proficient in English in the EL subgroup for state accountability purposes [ESSA § 1111(b)(3)(B)]. Because former EL students often perform much better than current EL students, combining the test

scores of the two groups has a strong potential for masking the underperformance of current EL students and denying them the assistance they need to succeed. For example, in IDRA's analysis of Texas' Reading STAAR assessment results in grades 3, 4, 5, and 6 for the 2014-15 school year revealed larger gaps at the upper elementary grades between current EL students and current plus former EL students having been reclassified as non-EL *within the last two years*.

Texas Reading Proficiency Test Results				
	3 <sup>rd</sup> Grade	4 <sup>th</sup> Grade	5 <sup>th</sup> Grade	6 <sup>th</sup> Grade
Current EL only	65%	57%	48%	43%
Current EL + Former EL (2yrs)	67%	62%	57%	55%

Texas Education Agency. STAAR Statewide Summary Reports 2014-2015 (2015).

While the federal government cannot reverse the law, it can make schools and school districts aware of these risks through clear guidance and regulations.

### C. Federal Regulation and Guidance is Needed to Ensure States Properly Weigh the Indicators identified by Congress

We also request that the Department issue regulations and/or guidance on weighing the different academic and school quality factors that may be considered for accountability purposes. The ESSA requires that test scores, measures of student population growth (optional for high schools), English language proficiency, graduation rates (for high schools), and school quality or student success indicators be used in state accountability systems [ESSA § 1111(c)(4)(B)]. The ESSA also requires that *each* of the first four indicators be provided “substantial weight” and “in the aggregate, much greater weight than is afforded to the indicator or indicators utilized by the state” under the fifth indicator (school quality/student success). [ESSA § 1111(c)(4)(C)(ii)].

The weighting of indicators in this manner has not occurred previously, and EL proficiency has not been a part of the state accountability system in such a meaningful manner. Practice in the field tells us that many states will try to avoid their obligations owed to EL students and will try to water-down measures of EL proficiency goals and progress and/or afford EL proficiency far less weight than the other factors, thus resulting in “insubstantial weight” for the EL proficiency indicator. The Department can provide some reasonable parameters for weighing the different indicators that would ensure that EL proficiency is appropriately weighed as required under the ESSA.

The Department also could provide examples of practices that would likely be unacceptable. For example, some states have required larger “minimum numbers” of EL students to gauge the proficiency of EL students compared to other student groups under the state content exams. This has the effect of excluding schools from being rated based on the performance of EL students, and such practices should be actively discouraged. (See ESSA § 1111(c)(3), Minimum Number of Students)

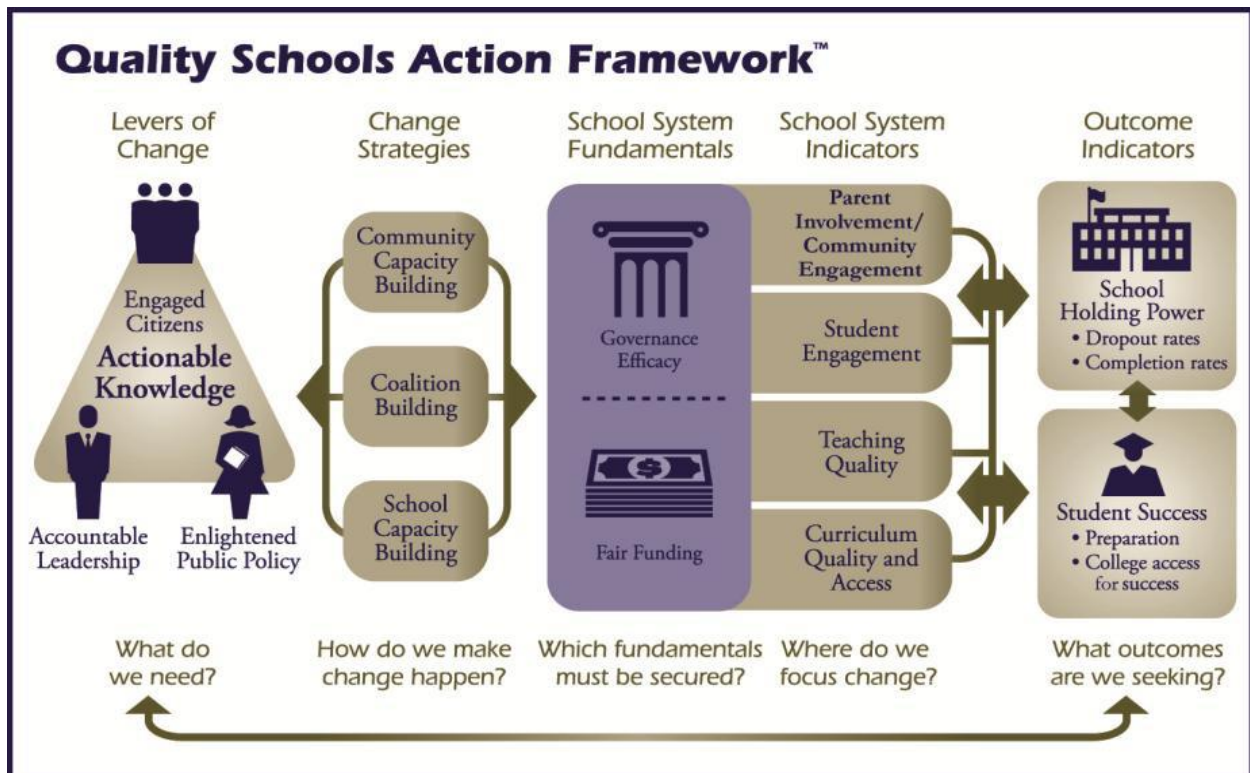
### D. Federal Regulation and Guidance Can Help SEAs Identify Appropriate School Quality or Student Success Indicators

Under the ESSA, states are required to use at least one “indicator of school quality or student success” that “allows for meaningful differentiation in school performance” and “is valid, reliable, comparable, and statewide” [ESSA § 1111(c)(4)(B)(v)(I)]. These indicators may include measures of student or educator engagement, advanced coursework, post-secondary readiness, and school climate and safety, among others [ESSA § 1111(c)(4)(B)(v)(II)]. The

addition of these other measures is – potentially – a large step in the right direction by including other factors beyond test scores in accountability, but only if the states ensure that the statewide measures are “valid, reliable, [and] comparable” and allow for meaningful measurement of student subgroups among schools and school districts.

For example, a state could conduct a student survey or a family and community survey to gauge different factors in a school setting. However, if the survey questions are not valid and reliable, the survey would not be appropriately measuring school quality or success. And if the survey is not distributed in languages other than English for schools serving EL students and parents, then the survey would not be allowing for meaningful differentiation of EL students and, possibly for different racial subgroups and low-income families. The Department should provide, as authorized, regulations and/or guidance for the states to ensure that the school quality and student success indicators satisfy the important tenets of the law.

The Department also should provide a non-exhaustive list of other indicators that the states may consider weighing under the new indicators to supplement the list in ESSA. IDRA’s Quality Schools Action Framework™ (Robledo Montecel & Goodman, 2010), pictured below, provides a comprehensive overview of the various components needed to create and sustain quality schools for all schoolchildren. The framework includes indicators that have been shown empirically and experientially to make a difference in outcomes, such as school governance, fair funding, parent and community engagement, student engagement, teaching quality, and high quality curriculum access.



There may be other interrelated indicators for states to consider as well, such as class size, school discipline, and school counseling. Again, this is not intended to be a prescriptive list, but only suggestive based on the research available.

## **II. Guidance and Regulations in Identifying Resource Inequities**

The ESSA importantly requires schools identified for comprehensive and additional targeted support to identify resource inequities and to periodically review resource allocation to support school improvement [ESSA § 1111(d)(1)(B)(iv), Comprehensive Support and Improvement; § 1111 (d)(2)(C), Additional Target Support; and § 1111(d)(3)(A)(ii), Continued Support for School and Local Educational Agency Improvement]. States and LEAs can benefit from federal guidance and regulations in this area. For example, the federal support could help schools identify which resources should be examined for equity purposes, such as experienced and certified teachers and funding allocations. The Department also could provide suggestions on how certain evidence-based interventions, such as offering teacher incentives and strong professional development and mentoring in the underserved schools, can help schools remedy inequities.

## **III. Supplement vs. Supplant Provisions**

Under the ESSA, an SEA or LEA “shall use federal funds received under this part only to supplement the funds that would, in the absence of such federal funds, be made available from state and local sources for the education of students participating in programs assisted under this part, and not to supplant such funds” [ESSA § 1012(b)]. While the ESSA restricts the Secretary from prescribing the specific methodology an LEA uses to allocate state and local funds [ESSA § 1012(b)(4)], guidance and regulation can be helpful in providing the states a nonexclusive list of methodologies for the states to consider and examples of expenditures that both run afoul of the law and comply with the law. For example, regarding the latter, schools must provide EL students with a teacher and should not be using federal funds to pay for the salary of the teacher. On the other hand, using federal funds for afterschool tutoring to help EL students attain English proficiency would likely comply with the law.

To conclude, the Department has a great opportunity before it to help usher in a new era of accountability together with schools, parents, and communities under the ESSA: one where all students are valuable; one where student diversity and the changing demographics are seen as assets, not deficits; one that is supportive of students and educators, not punitive; and one that is honest and transparent, not misleading and deceitful.

IDRA thanks Secretary John King and the Department for your consideration of its comments and makes itself available to help negotiate the regulatory process related to the ESSA in the areas identified above. For more information, please contact IDRA’s National Director of Policy, David Hinojosa, J.D., at [david.hinojosa@idra.org](mailto:david.hinojosa@idra.org) or 210-444-1710, ext. 1739.

IDRA is an independent, private non-profit organization, led by María Robledo Montecel, Ph.D., dedicated to assuring educational opportunity for every child. At IDRA, we develop innovative research- and experience-based solutions and policies to assure that (1) all students have access to and succeed in high quality schools, (2) families and communities have a voice in transforming the educational institutions that serve their children, and (3) educators have access to integrated professional development that helps to solve problems, create solutions, and use best practices to educate all students to high standards.