



January 21, 2016

Ms. Deborah Spitz
U.S. Department of Education
400 Maryland Avenue, SW 3E306
Washington, DC 20202

RE: Docket ID ED-2015-OESE-0130 - Implementing Programs under Title I of the *Elementary and Secondary Education Act of 1965*, as amended by the Every Student Succeeds Act (ESSA).

Dear Ms. Spitz,

Thank you for the opportunity to respond to the request for information and advice on rulemaking to implement programs under Title I. EdVoice is a nonprofit grassroots network of over 50,000 parents, community and business leaders, educators and leading philanthropists in California, working together to dramatically increase measurable student academic achievement and eliminate inequality in educational opportunities for all students.

EdVoice believes formal regulations in areas identified herein will be useful in assisting all States, school districts, schools, educators, parents and other stakeholders to help ensure that the resources provided by Title I accomplish the most to mitigate the effect of poverty, special needs, and language barriers faced by disadvantaged students in our nation's schools.

Establish supplement not supplant criteria. Direction must be explicit to ensure extra federal resources are actually used to the benefit of disadvantaged students. While ESSA prohibits federal prescription of a specific methodology for how local educational agencies (LEAs) allocate resources to each school, clarification is necessary to ensure there is in fact a mechanism to verify supplement not supplant assurances at the state level and for the public.

The recently enacted and celebrated Local Control Funding Formula (LCFF) in California apportions extra State resources to LEAs in part based on the districts' attendance and concentration of students in poverty, English language learners and foster youth. However, the State law and implementing regulations provide no State level mechanism or uniform methodology for transparency regarding how LEAs allocate the extra supplemental and concentration LCFF resources to the *schools* for the benefit of disadvantaged students in the schools and programs where these students are actually enrolled. Rather, California's system of extra help stops at the LEAs, like counting dump truck loads from Sacramento to district headquarters, instead of tracking backpacks of help to actual students at school sites.

California LCFF law included a threshold for parents to challenge LEA decisions to use funds for districtwide salary increases or schoolwide purposes, instead of proportionally helping the disadvantaged students that generated the extra dollars. However, from the outset the statute has been highly controversial and the subject of contradictory, and now incongruent, guidance from the California Department of Education (CDE). Ultimately, it allowed LEA use of grants originally targeted for high poverty students to be expended in a district's most affluent neighborhoods without fear of audit exceptions. Furthermore, the provision in question has now been rendered inoperative with the enactment of the ESSA because the State law referenced the "No Child Left Behind Act of 2001" (Cal. Education Code Section 42238.07(a)(2)).

Parameters on "much greater weight" for academic achievement are needed. Formal rulemaking is necessary to ensure States do not follow the ill-advised path of California in developing revised State level accountability systems. The State is now clearly in violation of federal law under the previous and today's version of Title I, and on a precarious path to ignore its obligation under the State constitution to monitor academic achievement and achievement gaps in all schools, including the very same academic achievement of disadvantaged students and English learners specifically called out in ESSA and mandatory Title I accountability. Far from "a much greater weight" as required by Title I, California's elected and appointed education leaders of the State Educational Agency (SEA), the CDE and their consultant, WestEd, which receives a significant sum of federal funds, have minimized the role of academic achievement in every proposed State-level rubric for accountability.

In recent public hearings addressing the question of whether or not to harmonize local, State and federal accountability, high ranking members of the CDE and the SEA have suggested \$7 billion in federal funds received for Title I in California amounts to little more than "budget dust" to some parties; and, tracking student achievement at the State level for all schools is a "distraction."

Evidence of school and district performance on academic achievement toward state adopted academic content standards from 15 out of 17 grade levels and content areas required to be tested by Title I have been entirely omitted from any proposal put forward by staff and the contractor for formal consideration by the SEA. California has over 30 permutations of K-12 grade spans:

- 14 elementary spans, with up to 2,300 schools in each category
- 6 middle spans, with up to 810 schools in each category
- 4 grade specific -12th grade spans with up to 108 schools in each category
- 6 high school spans with up to 884 schools in each category

As currently proposed, consideration of academic achievement data would occur in California *only* using 3rd grade reading and 8th grade mathematics scores. This obviously is too little too late to promote improvement, ensure LCFF or federal Title I resources are being used to promote increased academic achievement of disadvantaged students, address academic achievement gaps, provide for meaningful differentiation of all schools annually, or identify the lowest performing 5 percent of all schools every three years using a methodology that makes sure academic achievement receives the greatest weight.

Notably, California recently had a mandate requiring the State Board of Education to establish statewide goals for performance and growth toward the LCFF priorities for LEAs and schools with a hard deadline of October 2015, which the SEA unreservedly failed to meet. Notwithstanding the provisions of Cal Education Code Section 52064.5(c), even as late as January 2016, there has been no effort whatsoever to deliberate in public regarding specific proposals for statewide academic goals for all LEAs, schools or subgroups relating to academic achievement, academic growth, or closing academic achievement gaps as a key state metric.

Two and a half years after enactment of the mandate, the SEA has only produced a draft incomplete recommendation to address graduation rates; ignored academic achievement data from the Title I high school statewide assessments; failed to address all elementary and middle school academic achievement except reading in 3rd grade and math in 8th grade—only two of the 17 federally required assessments in grades 3-8 and high school (in reading/language arts, mathematics, science); and failed to address equity and closure of achievement gaps as a key state metric; but, managed to secure an additional year extension on the original deadline.

Guidance is needed to restore common sense and ensure policies do not send perverse signals to schools and educators. The proposed California system under LCFF would severely exacerbate already existing teacher shortages and establish incentives to move away from 3rd grade, 8th grade math, and middle schools. Should 8th grade math teachers be held accountable for the failures of the kindergarten, 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th grade teachers that came before them? With the demand for STEM competencies in the 21st century economy, this is the opposite signal California or any other State should be sending effective math teachers, who could quadruple their salaries in the private sector. Without any legal basis in State or federal law, the SEA and the CDE have diminished the importance of the 11th grade statewide academic assessments and completely omitted the reliable, valid, comparable statewide academic gauge of high school performance and college readiness; nor have they provided any legal rationale for the State to ignore all academic achievement data from Title I tests for the overwhelming majority of elementary and middle schools in grades where Title I statewide tests are nevertheless administered, paid for by taxpayers, and results known.

Clarity is needed to ensure States establish statewide accountability systems that differentiate school performance of all schools as specifically required in Title I. There must be explicit direction regarding the requirements to meaningfully differentiate on an annual basis, “all public schools” in the State as required by Section 1111(c)(4)(C), giving “much greater weight” to “academic achievement,” including academic achievement “growth,” as specified, and include any school in which any subgroup of students is consistently underperforming as required by Section 1111(c)(4)(C)(i)(I) and (II). And clarification is needed to explicitly ensure identification of schools for comprehensive support and improvement occurs using the same methodology of much greater weight of academic achievement under Section 1111(c)(4)(D) as specified therein, “based on the system of meaningful differentiation described in subparagraph (C).”

A recommendation for rulemaking here may seem odd but unfortunately, at least for California, the necessity is unambiguous. Not unlike the path taken by the State after the passage of NCLB, already, senior California officials and other bureaucrats and consultants are devising schemes to thwart the intent of Congress and the letter of ESSA. During the first public meeting and deliberation at the January 2016 meeting of the California State Board of Education after enactment of ESSA, it was clear senior CDE staff will continue to promote to the gubernatorial appointees of the SEA a policy of ignoring student achievement in statewide accountability and purport to provide the SEA an invented federal authority to differentiate school performance and identify low performance in certain schools without using the greatest weight as academic achievement, thereby explicitly recommending a violation of federal law by not identifying the lowest performing 5 percent as required by explicitly by Title I. Nothing in the four corners of the ESSA enacted by Congress and signed by the President, or in any material distributed by the US Department of Education establish authority for such a scheme and yet the very same is being asserted in a public hearing as a legitimate option by an anarchic senior State official.

Specifically, the Deputy Superintendent responsible for the development and administration of all statewide assessments, and the development, calculation, and analyses of statewide education data for State and federal accountability alleged with confidence publicly, "...Let me give you an example, and make one slight correction in that it talks about the lowest 5 percent. They're talking about Title 1 schools. So the list is a little lower than that. It's about 300 and something. That is, if we had five indicators, just to pick a number, and you could say look we are going to look at each of these five indicators and were going to select, we are going to put the most weight in indicator number one, meaning we are going to select 150 schools from that list. And then we go to indicator 2 and we are going to select only 100 from that list, 80. That's a weighting in and of itself." (California State Board of Education Meeting, January 13, 2016).

The temerity of the stated purpose of this interpretation is incredible considering it clearly does not meet the letter or intent of the newly enacted law, and would blatantly and purposefully ignore hundreds of schools that are defined by federal law as the lowest performing 5 percent.

Definitions needed for "effective" and "ineffective" distinct from "quality" relating to teachers, principals and school leaders. ESSA provisions requiring the monitoring of distribution of certificated staff across schools within LEAs from the previous competency based employment eligibility standard of "qualified" to the new performance standard of "effectiveness" is obviously a significant and politically sensitive change for many stakeholders. To avoid unnecessary litigation and weak or useless policy amounting to nothing more than a fig leaf of compliance monitoring, clear direction and definitions consistent with congressional intent will allow states to move forward in this sensitive area in good faith.

New California law establishes a statewide priority relating to the degree to which "teachers" employed in an LEA are appropriately assigned but does not address the distribution of other certificated staff called out by Title I, nor does the State law address educator "effectiveness." California statutorily defines misassignment as placement of a certificated employee in a teaching

or services position for which the employee does not hold a legally recognized certificate or credential. And the State minimally monitors aggregate data at the state-level on teacher distribution. The State commission with primary responsibility is starved of resources, so it can only handle licensure revocation proceedings, track adverse actions, and monitor valid licensure and employment eligibility relating to misconduct, with no consideration whatsoever regarding on the job effectiveness.

California does not have a solid resourced State level system of data transparency or accountability to ensure all students have an opportunity to be taught by an effective teacher or attend a school led by an effective leader. Failure to know is not because of overall lack of resources but lack of leadership to actually appropriate available resources to move past the defenders of the status quo and develop a state-level system of transparency, support, development and accountability for teaching effectiveness that is fair, works for adults and incorporates evidence of actual student learning. Parents and the public are more likely to know the effectiveness of hospitals, doctors, and cosmetologists from state data systems and regulatory bodies than the effectiveness of certificated employees spending the largest number of hours and with the greatest potential for helping their children embark on a solid trajectory for lifelong success.

Explicitly identify State role and responsibilities and define “ambitious.” ESSA rulemaking must be explicit and consistent with the letter of Title I and the intent of Congress that in agreeing to receive and expend Title I resources, States have the obligation to establish statewide accountability systems that involve an intentional active State role of monitoring performance down to the school level. This includes establishing “ambitious” long term goals and ensuring much greater weight on academic achievement, including academic achievement growth, when monitoring school and subgroup performance, identifying schools for appropriate comprehensive support and improvement activities, and ensuring the rate of progress for improvement is greater in schools with subgroups of students that are persistently further behind.

California has a commendable history in leading most other states in the adoption of rigorous statewide academic content standards for all students. The same cannot be said for State leadership in setting ambitious parameters for districts and schools that persistently fail students and student subgroups. California currently has no statewide accountability regime whatsoever, and the most recent scheme essentially superseded by NCLB delineated a goal of 800 out of 1,000 on the Academic Performance Index (API), a score that could knowingly be reached without all subgroups attaining grade level proficiency. State growth targets and related celebrations were bizarre to parents when academic achievement by any measure continued to be well below grade level expectations and the growth target so miniscule schools had over 30 years to reach 800.

The now defunct High School Exit Exam graduation requirement set a passing cutoff score so low students could fail every algebra question and still receive a diploma, notwithstanding a State law requiring passage of algebra as a high school graduation requirement. Such policies do not represent bold leadership or ambitious goals and should not be permitted under ESSA or a

harmonized federal, State, local system of accountability purported to ensure all LEAs and schools provide all students an equitable opportunity to become college and career ready.

Formal regulatory action will provide needed clarity to States regarding the parameters and boundaries on the mandatory elements of Title I and necessary State role. Rules must underscore the obligation of States to establish ambitious long-term goals, with emphasis on academic achievement, growth, and equity. In order to ensure a uniform system of education that provides fair and equitable learning opportunities for all children, SEA responsibilities must not to be ignored, subverted or passively delegated to LEAs. Specifically, throughout, formal rules must clarify that ESSA and Title I demands the establishment of statewide systems of accountability and a State role in monitoring academic achievement at the school and subgroup level to ensure all schools and LEAs serve all children well, including economically disadvantaged children, English learners and other children with special needs.

EdVoice believes addressing the issues recommended for formal rulemaking outlined above will be particularly beneficial for California and help all States ensure resources from Title I are actually directed to provide all children, and particularly disadvantaged children, significant opportunities to receive a fair, equitable, and high-quality education, from effective teachers, principals and other school leaders, and realize the closing of educational achievement gaps as intended by the original ESEA and today's ESSA.

Respectfully,

A handwritten signature in cursive script that reads "Bill Lucia".

Bill Lucia
President and CEO