



August 25, 2017

President Michael Kirst and Board Members  
California State Board of Education  
1430 N Street, Room #5111  
Sacramento, CA 95814

RE: ESSA State Plan - "Ineffective Teacher"

Dear President Kirst and Board Members:

On behalf of EdVoice, I write in strong opposition to the proposed definition of "ineffective teacher" in the revised draft of the California State Plan for the federal Every Student Succeeds Act (ESSA). The Superintendent's latest proposed definition is reckless and has no policy, analytical or legal basis for its support. It is only consistent with the process of its release as a sleight of hand "correction" to a quickly edited and re-posted 104-page memo during summer recess. California students and teachers deserve better.

The definition provides no tie to demonstrated effectiveness based on student outcomes as intended by ESSA. As is, the definition would result in thousands, if not tens of thousands, of teachers of record with legal authorization to teach in California classrooms being nonsensically labeled at the direction of the California State Board of Education as "ineffective." A scarlet letter would be imposed on excellent teachers notwithstanding having most recently received "satisfactory" and even "outstanding" job performance evaluation ratings pursuant to assessments of certificated employee performance compliant with the California Education Code.

Mislabeling teachers who have received consistent satisfactory, and above, ratings based on evaluations that include positive outcome evidence of student progress toward grade level academic expectations would expose LEAs and the state to litigation. And, that litigation would be difficult to defeat if labeling resulted in mandatory reassignments, fewer contracted work-hours, non-reelection or otherwise alter the employment status and pay of teachers who have not earned a clear credential but have already obtained the property right of permanent status.

The Superintendent's ill-advised recommended definition contradicts and would supersede rational constructs and terminology in the California Education Code and Title V of the California Code of Regulations relating to legal authorization to teach in a K-12 California classroom. The proposed definition is irrational and extra-statutory, and would, if applied, constitute an illegal underground regulation.

Furthermore, the proposed definition blatantly obfuscates the intent of Congress and the spirit and the letter of ESSA, signed into law by President Obama. Moving beyond the highly-qualified terminology used in No Child Left Behind, in a bipartisan fashion, the Congress adopted the language of ESSA to provide flexibility while encouraging states to authentically tabulate and monitor equitable distribution of teachers with demonstrated effectiveness for all students and student sub-groups, particularly disadvantaged and minority students. In doing so, ESSA distinguishes qualification from demonstrated performance as effective in a purposeful effort to enhance the likelihood that states work to ensure every school truly provides every child an equitable opportunity to learn.

EdVoice strongly urges the Board to amend the definition of “ineffective teacher” to eliminate conflicts with the California Education Code proposed by the Superintendent and make a good faith effort to comply with the letter and intent of ESSA:

1. Delete “(b)” in Table 13 on Page 51 and not re-use the undefined term “full credential.”
2. At a minimum, replace the current language in “(b)” with the following to reflect an intentional effort to monitor demonstrated effectiveness or lack thereof:

**“(b) has an unsatisfactory performance rating on their most recent evaluation.”**

The State Board of Education has a constitutional and statutory responsibility to establish policy that is not arbitrary and capricious, is fair to all adults, and ensures every child has an equitable opportunity to access their fundamental right of a basic public education. That includes every English learner, every student in poverty and every foster youth, which represent 3.9 million students in California. The current proposal cements a culture of disregard for those children.

Congress has made it clear that monitoring equitable access to effective teachers is a role for the state when accepting federal funds. Failure to amend the definition as proposed would be a dereliction under both state and federal law.

If you any questions, please don’t hesitate to contact me directly.

Respectfully,



Bill Lucia  
President & CEO

cc: Honorable Edmund G. Brown, Jr., Governor  
Karen Stapf Walters, Executive Director, California State Board of Education  
Jennifer Johnson, Deputy Secretary of Legislative Affairs, Office of the Governor  
Judy Cias, Chief Counsel, California State Board of Education