



September 18, 2017

The Honorable Betsy Devos
Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202

Re: Regulatory Reform Task Force Request for Comments (Docket ID: ED-2017-OS-0074)

Dear Secretary DeVos:

I am writing on behalf of the National Association of State Boards of Education (NASBE) to respond to the Department of Education's request for comment regarding outdated, unnecessary or ineffective regulations. Our members appreciate this opportunity to recommend ideas for reducing unnecessary federal burdens, empowering greater State and local decision-making, and identifying key regulations that help States protect the nation's most vulnerable populations. Developing and implementing a balanced federal regulatory framework – one that values clarity and accountability but avoids over-prescription – will facilitate innovation and improvement.

The Every Student Succeeds Act (ESSA) provided needed flexibility to State and local leaders working to strengthen their schools and ensure all students graduate prepared to succeed. ESSA's more nuanced accountability framework, less rigid school turnaround provisions, and improved approach to encouraging educator effectiveness, provided relief long sought by states, without disrupting the most important accountability reforms of the last 15 years. The new law also helpfully removed requirements associated with the No Child Left Behind waiver framework that discouraged State leadership in some areas. Congress's decision, earlier this year, to use the Congressional Review Act to eliminate additional federal regulations, presented state leaders with an additional opportunity to innovate and demonstrate their commitment to excellence and equity.

Together, these changes addressed many of our members' highest priority concerns, but we are writing to provide the following additional ideas for the Regulatory Reform Task Force's consideration.

I. DOWNSIZE NON-REGULATORY GUIDANCE AND ENSURE STAKEHOLDERS ARE ABLE TO DISTINGUISH BETWEEN GUIDANCE AND REGULATION.

Our members welcomed the non-regulatory guidance published by the Department of Education following ESSA's passage. The exemplars, evidence and implementation ideas cited in federal guidance often support State and local success. Nonetheless, we encourage the Department to eliminate old, outdated guidance and help stakeholders better understand the difference between guidance and regulation. Dated guidance issued under the No Child Behind Act, the Goals 2000 Educate America Act, and even the Improving America's Schools Act still finds its way into discussions in the field about implementation of ESSA, Title I and Title II and other longstanding programs. The Department should act decisively to eliminate outdated guidance and reassert any relevant legacy information as part of new guidance material that is clearly aligned to current law and, to the extent possible, issued only in response to the needs of States, local districts, schools, and other recipients of federal education funds. Additionally, many local stakeholders, especially smaller school districts that lack counsel, often misunderstand the important distinction between regulations and guidance. This confusion sometimes stifles needed changes by creating uncertainty and fear about legal repercussions that do not exist. We urge the Department to authoritatively clarify this distinction for stakeholders as part of this regulatory review process and routinely address the matter as part of every future guidance document it publishes.

II. MAINTAIN REGULATIONS THAT FACILITATE STATE AND LOCAL DATA USE FOR LEGITIMATE EDUCATIONAL PURPOSES WHILE PROTECTING STUDENT PRIVACY

The Family Educational Rights and Privacy Act (FERPA) and related regulations provide important privacy protections for students and their families. The FERPA regulations approved by the Department of Education in 2008 and 2011 support the law's effective implementation by providing clarity to States and districts about invaluable data sharing permitted by the law that supports the effective use of data to personalize learning, support school and district level decisions, and inform policy. Effective data use also promotes transparency for families and communities and reduces the need for prescriptive accountability regulations. For example, the regulations inform how to balance transparency and student rights and makes clear that States are permitted to conduct logical activities, such as re-sharing student data with the school districts that provided the information in the first instance. We also strongly support the invaluable work of the Privacy and Technical Assistance Center (PTAC). PTAC's services recognize that schools typically do not need more privacy laws and regulations; they need better implementation of the requirements already in place. PTAC's resources and personnel have helped States, school districts, schools, and other

stakeholders understand what steps they need to better take to protect students' privacy. We strongly urge you not to eliminate these important regulations and to continue supporting PTAC to help stakeholders protect students' privacy.

III. MAINTAIN IMPORTANT PROTECTIONS FOR THE NATION'S MOST VULNERABLE STUDENTS

Our members strongly support the Department's regulations that are designed to protect vulnerable students and ensure educational opportunity for all students regardless of race, national origin, color, sex, religion or disability status. The regulations published under the authority provided to the Department by the Individuals with Disabilities Education Act offer important protections designed to ensure that covered students, including eligible infants and toddlers, receive the services they need. The new assessment regulations under ESSA Title I, Part A also promote equity by ensuring challenging academic content standards apply to all students and requiring appropriate assessment accommodations for students to demonstrate what they know and can do. State Board Members are committed to ensuring students with special needs, and other vulnerable populations receive the benefits they are entitled to under State and federal law and we encourage you to work closely with affected families before undertaking any changes in this important area.

Thank you for carefully considering these ideas. NASBE, and our members, would be pleased to answer any questions you may have about our recommendations and look forward to working with you and your team to support the Task Force's work.

Sincerely,

Kris Amundson
President and Chief Executive Officer
NASBE