MEMO

To: State & Local Arts Education Leaders
From: Narric Rome
Vice President, Government Affairs & Arts Education
Date: December 13, 2016
Re: Arts Education in the State Accountability Regulations

On November 28, the U.S. Department of Education (USED) released final regulations pertaining to state accountability plans and set deadlines of April 3, 2017, or September 18, 2017 for when each state must submit their plan.

These plans come after extensive public comments (over 21,000), including comments Americans for the Arts filed with 51 national and state organizations.

USED listened to our comments, and in their final regulations, corrected the error: The final regulations now include “arts” in the list of subjects included in a well-rounded education. USED stated, “The proposed regulations inadvertently omitted ‘arts’ from the list of subjects in § 299.19(a)(1)(ii). We are revising the final regulations to correct this omission.”

There are also a number of additional clarifications concerning well-rounded education, as outlined below, including statements that USED “agrees that access to a well-rounded education is a key goal supported by the ESEA…”.

The release of this final regulation completes a multi-year federal advocacy cycle by the arts education sector and demonstrates the value of advocating for federal changes that can substantially improve state and local arts education opportunities.

Below are excerpts from the final regulation that relate to the arts and a well-rounded education. Whether or not there were changes cited, each notation provides insight into the implementation of the ESSA law, and how advocates might seek to strengthen arts education in state and local implementation. For instance, USED highlighted comments they received on additional requirements and reporting mechanisms to ensure equitable access to a well-rounded education. While often agreeing with the feedback – a strong endorsement to these efforts – they also emphasized streamlining where possible and the statutorily protected role of state and locals to determine curricula.

In sum, this final release should help boost state and local advocates’ efforts in ensuring access to a quality, well-rounded education that includes the arts for all.

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MENTIONS OF “WELL-ROUNDED” AND/OR “ARTS” IN THE FINAL STATE ACCOUNTABILITY REGULATIONS

The Department made a number of changes in § 299.19, which provides the requirements for a State Education Agency (SEA) to describe how it will ensure a well-rounded and supportive education for all students, including the following:

- Section 299.19(a)(1) is amended to clarify that State must describe use of title IV, part A funds and funds from other included programs, including strategies to support the continuum of a student's preschool-12 education and to ensure all students have access to a well-rounded education. Such description must include how the SEA considered the academic and non-academic needs of the subgroups of students identified in § 299.19(a)(1)(iii).

CONSIDERATION OF ADDITIONAL ACADEMIC SUBJECTS

Discussion: …However, we agree with commenters emphasizing that a well-rounded education includes subjects beyond reading/language arts and mathematics, and this is a valuable opportunity for States under the ESEA. Under the ESEA and our regulations, a State may include additional subjects in its statewide accountability system. We further address this concern in response to comments in §§ 200.13 and 200.14, which establish the requirements for the long-term goals and indicators used in the State accountability system.

Changes: None.

ACADEMIC ACHIEVEMENT INDICATOR

Discussion: Finally, there are significant opportunities for States to design multi-measure accountability systems under the law and the final regulations that emphasize student performance and growth at all levels, not just proficient and above, as well as non-test-based measures that examine whether the school is providing a high-quality and well-rounded education. For example, we encourage States to consider using measures of student growth on their annual assessments, as these measures can identify schools where students that are not yet proficient but are making significant gains over time and closing achievement gaps. States may also consider adding measures related to students taking and succeeding in accelerated coursework as a School Quality or Student Success indicator to recognize the work schools are doing with high-performing students and encourage schools to increase access to and participation in advanced pathways for all students.

Changes: We have revised and reorganized § 200.14(b)(1)(i) to clarify that a grade-level proficiency measure is based on the State's academic achievement standards under section 1111(b)(1) of the Act, including alternate academic achievement standards for students with the most significant cognitive disabilities defined by the State consistent with section 1111(b)(1)(E) of the Act.

SCHOOL QUALITY OR STUDENT SUCCESS INDICATOR

Discussion: We agree with commenters that the inclusion of the School Quality or Student Success indicator(s) in the statewide accountability systems required by the ESEA, as amended by the ESSA, presents an opportunity for States to develop robust, multi-measure accountability systems that help districts and schools ensure each student has access to a well-rounded education and that take into account factors other than test scores and graduation rates in differentiating school performance. Given that States must include indicators beyond academic achievement and graduation rates, we disagree with commenters who asserted that
accountability systems are solely focused on these factors. We recognize that the statute requires only one School Quality or Student Success indicator, but anticipate that most States will take advantage of statutory flexibility to develop or adopt multiple indicators, particularly in view of the examples included in the statute itself.

Changes: None.

Comments: Many commenters provided feedback on the proposed requirement in § 200.14(d) that any measure used within a State’s indicators of Academic Progress and School Quality or Student Success be supported by research that performance or progress on such a measure is likely to increase student achievement, or at the high school level, graduation rates. ... Some commenters supported the requirement but recommended modifying the regulations to allow States to demonstrate that proposed measures used in indicators of School Quality or Student Success are supported by research that performance or progress on such measures is likely to increase at least one of a variety of outcomes beyond student achievement and graduation rates, including student educational outcomes, college completion, postsecondary or career success, employment or workforce outcomes, civic engagement, military readiness, student access to and participation in well-rounded education subject areas, or student learning and development.

Discussion: The requirement that measures used for indicators of Academic Progress and School Quality or Student Success be supported by research demonstrating a link to increased student achievement was not intended to limit such measures to those that improve State assessment results. Rather, our intention was to include a wide variety of measures of student learning such as grade point average, course completion and performance, or credit accumulation. We maintain that a requirement linking indicators of School Quality or Student Success to student outcomes is critical to fulfill the goal of title I to close educational achievement gaps and to reasonably ensure compliance with the more specific requirements in section 1111(c)(4) that the State’s accountability system should improve “student academic achievement.” Accordingly, this requirement falls squarely within the scope of title I, part A of the ESEA, as amended by the ESSA, consistent with section 1111(e) and is consistent with the Department’s rulemaking authority under GEPA, the DEOA, and section 1601(a) of the ESEA, as amended by the ESSA. Further, these requirements do not contravene the provisions in sections 1111(e)(1)(B)(iii)(IV)-(V) of the ESEA, as amended by the ESSA, because they do not prescribe either the weight of any measure or indicator or the specific methodology that States must use to meaningfully differentiate and identify schools. However, we recognize that many measures may be supported by research demonstrating a positive impact on a broader array of student outcomes that are related to college and career readiness and are revising § 200.14(d) accordingly.

Changes: We have revised § 200.14(d) to provide States with additional flexibility to demonstrate that the Academic Progress and School Quality or Student Success indicators are supported by research that performance or improvement on such measures is likely to increase student learning, like grade point average, credit accumulation, or performance in advanced coursework, or, for measures within the indicators at the high school level, graduation rates, postsecondary enrollment, postsecondary persistence or completion, or career readiness.
ANNUAL MEANINGFUL DIFFERENTIATION OF SCHOOL PERFORMANCE: PERFORMANCE LEVELS, DATA DASHBOARDS, SUMMATIVE DETERMINATIONS, AND INDICATOR WEIGHTING

Discussion: We disagree that a requirement for a single summative determination, as revised in the final regulation, will unfairly differentiate schools based on the students they serve. We believe such criticisms may be rooted more in concerns with the accountability system required in the past under NCLB, which primarily considered student test scores and graduation rates, and that these concerns are significantly mitigated by changes in the accountability systems that will be implemented under the new law. Under § 200.18, States, in consultation with stakeholders, must develop a multi-indicator system for annually differentiating schools that looks beyond achievement measures to take into account a more well-rounded picture of school success. As a result, schools could be recognized for the significant progress they are making in helping low-achieving students grow academically to meet State standards, improvements in school climate or the percentage of English learners who progress toward language proficiency, and reductions in rates of chronic absence, among many other measures that could be added within one of the new accountability indicators.

Changes: None.

STATE RESPONSIBILITIES: GREATEST NEED AND STRONGEST COMMITMENT; REQUIREMENT TO EVALUATE EFFORTS; RENEWING GRANTS

Comments: One commenter suggested that the regulations include a commitment to delivering a well-rounded education for all students in proposed § 200.24(c)(4)(iii) as a factor to be considered in determining strongest commitment.

Discussion: The Department agrees that access to a well-rounded education is a key goal supported by the ESEA, as amended by the ESSA, but notes that an emphasis on a well-rounded education may not be consistent with the requirements of comprehensive and targeted support and improvement plans, which generally must focus on the specific academic needs of students that led to identification. For this reason, we decline to make changes in response to this comment.

Changes: None.

ENSURING ALL STUDENTS HAVE THE OPPORTUNITY TO MEET STATE STANDARDS

Comments: …Other commenters suggested that the Department include additional requirements in § 299.19, such as consultation requirements specific to this section; efforts to engage families of traditionally underserved students; and reporting on equitable access to a well-rounded coursework.

Discussion: The Department appreciates commenters' support of the requirements in proposed § 299.19(a). However, to streamline and reduce burden in the preparation of consolidated State plans, we are revising the requirements in § 299.19(a) to focus on the use of funds for title IV, part A and other included programs to support the continuum of a student's education and provide equitable access to a well-rounded education and rigorous coursework. We also are revising § 299.19(a)(1) to ensure that each SEA supports LEAs doing this work, as well the remaining subsections in § 299.19(a) to require descriptions of the SEA's strategies for school conditions, technology, and parent engagement to the extent that an SEA intends to use Federal funds for such purposes which may have significant benefit to students.
Changes: We have revised § 299.19(a)(1) to focus on the use of funds provided under title IV, part A and other included programs to support the continuum of a student’s education and provide equitable access to a well-rounded education and rigorous coursework. We also have revised § 299.19(a)(2) to require an SEA to provide descriptions of its strategies only if it intends to use funds from title IV, part A funds or included programs for the specific activities detailed in paragraph (a)(2).

OPTIONAL CONSOLIDATED STATE PLANS
Finally, § 299.19 requires States to describe how they will use Federal education program funds to provide all students equitable access to a well-rounded and supportive education, and includes program-specific requirements necessary to ensure that such access is provided to particularly vulnerable student groups, including migratory students, neglected and delinquent children and youths, English learners, and homeless children and youths. We believe that the requirements in this section would accomplish this purpose with minimal burden on, and cost to, States, consistent with section 8302(b)(3) of the ESEA, as amended by the ESSA.

ACADEMIC ACHIEVEMENT
Comments: Some commenters requested that the Department require States to set goals for academic subjects beyond reading/language arts and mathematics, with some asserting that what they described as the overly narrow focus on reading/language arts ignores the need for a well-rounded education, including access to arts and music education. One commenter specifically recommended that States be required to establish goals for science, while another commenter wrote that proposed § 200.13 over-emphasizes student performance on standardized tests.

Discussion …The statute gives States flexibility to establish goals for other subjects if they choose, and we do not wish to limit State discretion to address their own needs and priorities in this area in the final regulations.

Changes: None.

SCHOOL QUALITY OR STUDENT SUCCESS INDICATOR
Comments: Some commenters suggested that the Department add a requirement that States hold schools accountable for providing students with access to programs that address particular needs of students, including access to arts, music, and world language programs, in order to support development of the whole child.

Discussion: We share the commenters’ interest in ensuring that all students receive a well-rounded education that will prepare them for success beyond the classroom. However, the Department is statutorily prohibited from mandating curricula either directly or indirectly, as such decisions are a State and local responsibility.

Changes: None.

EVIDENCE-BASED INTERVENTIONS: COMPREHENSIVE AND TARGETED SUPPORT AND IMPROVEMENT PLANS
One commenter suggested changing the provisions to require that interventions maintain access to well-rounded education for all students, including access to, and participation in, music and the arts as well as other well-rounded education subjects supported by the ESEA, as amended by the ESSA.

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Discussion: We appreciate the support of some commenters for the regulations regarding evidence-based interventions. While we appreciate the suggested revisions to the language in §§ 200.21(d)(3) and 200.22(c)(4), the Department believes, with one exception, that the current language is clear and declines to amend the regulations. Specifically, we are revising the provisions in proposed §§ 200.21(d)(3)(iv) and 200.22(c)(4)(iii) that stated that an intervention may be selected from a State-approved list of interventions consistent with § 200.23(c)(2) to more clearly articulate these optional State authorities. Specifically, we are revising final §§ 200.22(d)(3)(iv) and 200.22(c)(3)(iv) so that it pertains only to “exhaustive or non-exhaustive” lists of evidence-based interventions that may be established by the State and so that it references the optional State authority in § 200.23(c)(2). We are further clarifying that, in the case of a State choosing to establish an exhaustive list of evidence-based interventions under § 200.23(c)(2), the evidence-based interventions in the support and improvement plan must be selected from that list, while in the case of a State opting to establish a non-exhaustive list under § 200.23(c)(2), the evidence-based interventions may be selected from that list. We are also adding § 200.22(d)(3)(v) as a separate provision to clarify that the evidence-based intervention selected in a comprehensive support and improvement plan may be one that is determined by the State, consistent with State law, as described in section 1111(d)(1)(3)(B)(ii) of the ESEA, as amended by the ESSA, and § 200.23(c)(3). We believe these revisions help clarify how a State may utilize the authorities described in § 200.23(c)(2)-(3), and the distinctions between them. These revisions in no way alter an LEA or school’s discretion to choose an evidence-based intervention from those included on a State-established list, exhaustive or otherwise.

Changes: We have revised §§ 200.21(d)(3)(iv) and 200.22(c)(4)(iv) to more clearly articulate the distinctions between the optional State authorities for lists of State-approved interventions and State-determined interventions, as described in § 200.23(c)(2)-(3), and their impact on the evidence-based interventions used in school support and improvement plans. Specifically, in the case of an exhaustive list of interventions established by the State consistent with § 200.23(c)(2), the intervention must be selected from that list, while in the case of a State establishing a non-exhaustive list, the intervention may be selected from that list. In addition, for comprehensive support and improvement plans, § 200.21(d)(3)(v) clarifies that the intervention may be one that is determined by the State, consistent with State law, as described in section 1111(d)(1)(3)(B)(ii) of the ESEA, as amended by the ESSA, and § 200.23(c)(3).

RECOMMENDATIONS TO INCLUDE ADDITIONAL INFORMATION ON STATE AND LEA REPORT CARDS
Several commenters requested that the Department require additional data elements or information not required by the statute be included on State and LEA report cards, including, for example, disaggregation by additional subgroups such as justice-involved youth and American Indians; further disaggregation within subgroups currently required including Asian American/Pacific Islanders, English learners, and students with disabilities; indication of subgroups too small for reporting; reporting on whether an LEA chooses the exemption under § 200.21(g) for a high school identified for comprehensive support and improvement and, if so, the reason for such exemption; more prominent information on subgroups whose performance declined so that school-level declines are not attributed to any one subgroup; data on access to technology resources; data on access to the arts in high- versus low-poverty schools; and information on how LEAs will use funds under title I and elsewhere to support activities that coordinate and integrate before- and after-school programs.

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Discussion: … With respect to additional requirements that commenters recommended the Department add to the State and LEA report card regulations, while we agree that States and LEAs should strive to develop report cards that convey data and information in ways that maximize use by parents and others, we believe that the requirements for State and LEA report cards under section 1111(h) of the ESEA, as amended by the ESSA, and §§ 200.30 through 200.37 sufficiently ensure that State and LEA report cards will be transparent and maximally useful to parents and other stakeholders. Further, States and LEAs can, if they choose to do so, display graphically, or in other ways, comparisons of State, LEA, and school performance on data elements other than student academic achievement on the assessments required under section 1111(b)(2). States choosing to meet the cross-tabulation assurance under section 1111(g)(2)(N) of the ESEA, as amended by the ESSA, via their State report cards, can provide the data—as well as other data reported on report cards—in certain file formats to ensure that it can be easily downloaded and analyzed. The Department believes that doing so would facilitate use by a wide range of consumers of report cards, including people who may use the data to identify trends that may be of use to States, LEAs, and schools in engaging in data driven decision making. However, we are not requiring States to do so, as this may impose additional burden for some States.

Changes: None.

ENSURING ALL STUDENTS HAVE THE OPPORTUNITY TO MEET STATE STANDARDS

ARTS

Comments: Many commenters requested that the Department include “arts” in the list of subjects described under proposed § 299.19(a)(1)(ii) regarding equitable access to a well-rounded education and rigorous coursework.

Discussion: The proposed regulations inadvertently omitted “arts” from the list of subjects in § 299.19(a)(1)(ii). We are revising the final regulations to correct this omission.

Changes: We have revised § 299.19(a)(1)(ii) to include “arts” in the list of subjects included in a well-rounded education.