August 18, 2017

Ms. Pam Stewart
Commissioner of Education
Office of the Commissioner
325 West Gaines St.
Tallahassee, FL 32399

Dear Ms. Stewart,

On behalf of the membership of the Joint National Committee for Languages and the National Council for Languages and International Studies (JNCL-NCLIS) and TESOL International Association (which submitted similar comments through department’s waiver survey), we write concerning Florida’s draft plan for implementation of the Every Student Succeeds Act (ESSA) and the draft waiver requests that would accompany the plan’s submission to the U.S. Department of Education on September 18.

Several components of the draft plan would not only undermine the civil rights legacy of the law, they would further disadvantage some of the state’s most vulnerable student populations, especially English Learners (ELs). We urge withdrawal of the following waiver requests from the draft plan:

1. **Report subgroup performance on the components of the school accountability system but base the calculation and grade on all students**

   ESSA mandates that states must disaggregate student performance data into subgroups. Data about student subgroups provide a wealth of information about the equity and accessibility of a state’s educational system for historically underprivileged student groups. Indeed, one of the central pillars of ESSA is to elevate educational equity and access for all students. Rather than revising Florida’s recently adopted state accountability system to comply with components of ESSA, such as this one, which provides baselines for measuring equity and access, the state is seeking a waiver. From the standpoint of improving the education system across Florida, disaggregated data is one of the best diagnostic tools for systematically evaluating and improving education. Many student subgroups have unique needs and face unique challenges; by not disaggregating data, the efficacy of the system that addresses these challenges cannot be researched, measured, or solved holistically. Unfortunately, by seeking this waiver, Florida is not demonstrating a commitment to its most vulnerable students, but instead a concerning disregard.

2. **Use the English language arts assessment to measure English language learners’ progress and do not add an English language proficiency on the English language acquisition test (ACCESS for ELLs 2.0) measure to the school accountability calculation.**

   In the same vein of providing equity and access to high-quality education for all students, ESSA requires that EL performance be measured by achievement on English Language Proficiency (ELP) assessments. ELs were a focal point of ESSA negotiations and the driving force for many changes made in the new law, such as stricter reporting of EL progress, possibilities for increased federal funding for programs serving ELs, and inclusion of EL progress in school rating systems. Rather than comply with the law by providing ELP assessments for ELs, Florida is requesting permission to measure English learner progress by performance on English Language Arts (ELA) assessments.

   The most important component of a standardized assessment is its **validity** – the degree to which the assessment measures what it claims to measure. ELA and ELP assessments are developed to measure two very different
knowledge and skill sets among student populations with very different characteristics. Simply put, an ELA assessment is developed and normed on native English speakers, while an ELP assessment is developed and normed on non-native English speakers. Moreover, ELA assessments are imbued with academic content and cultural nuance, assessing for skills beyond mere proficiency in the English language. On these grounds, interpreting an EL's scores on an ELA assessment is an inequitable and invalid measurement of English language proficiency. An accountability system that uses this approach will obfuscate the academic progress of the fastest growing student demographic in our nation. From the standpoint of improving the state’s education system, Florida should commit to offering ELP assessments for English Learners so that proper attention and resources can be directed to Local Education Agencies (LEAs) that are not adequately serving ELs as mandated by ESSA and other federal statutes.

3. **Waive the requirements surrounding providing native language assessments**

As a rationale for requesting exemption from the ESSA requirements to provide assessments in a student’s native language, Florida has cited its Official English amendment to the state constitution. However, as recently as 2015, there have been initiatives in the state legislature to authorize accountability assessments in languages other than English, demonstrating that the Official English clause does not provide grounds to deny native language assessments.

ESSA includes provisions on native language assessments for a very important reason; an EL with a strong command of academic content who has not yet achieved a high level of English proficiency may be unable to accurately demonstrate their knowledge and capabilities. Particularly for ELs enrolled in middle and high school with a shorter window of time to demonstrate their mastery of academic subjects, offering assessments in a student’s native language can give a far more accurate read of their academic progress. From the standpoint of improving the state’s education system, Florida should commit to offering native language assessments for ELs so these students might better demonstrate their academic aptitude, thereby enabling the state to better measure their progress and ensure effective use of resources for ELs.

While we appreciate the unique characteristics of each state that inform and drive national education policy discussions, and recognize the goal of ESSA’s architects to return authority back to the state level, ESSA was written to improve upon and further expand the legacy of equity and access granted by its first iteration over fifty years ago. Rather than demonstrate a commitment to all of its students, if granted, Florida’s waivers would only further disadvantage many of the state’s most vulnerable students and expressly contradict the civil rights legacy of the law.

We appreciate the opportunity to submit our comments and concerns, and strongly urge the swift withdrawal of these waiver requests. Please do not hesitate to contact us if you have any questions or need any additional information.

Sincerely,

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