July 29, 2016

Secretary John B. King, Jr.
U.S. Department of Education
400 Maryland Avenue SW, Room 3E231
Washington, DC 20202
Re: Docket ID ED-2016-OESE-0032, Comments on Notice of Proposed Rulemaking

Dear Dr. King:

On behalf of TESOL International Association (TESOL), a professional association for English language educators, I would like to thank you for the opportunity to provide comments and feedback to the Department of Education (ED) concerning the proposed rulemaking for accountability and state plans as they pertain to the *Every Student Succeeds Act* (ESSA). TESOL represents over 11,000 English language education professionals from the United States and around the world. Thousands of our members in the U.S. teach English Learners (ELs), many of whom are recently arrived immigrants, migrants and refugees.

TESOL is optimistic that ESSA will provide our nation's growing EL population with the necessary support and resources required to become proficient English-speakers and high-achieving students, and sincerely appreciates the opportunity to help guide ED through the rulemaking process, especially as those rules affect teachers and ELs across our country. We especially appreciate the fact that the Department has taken into account current research in the draft regulations in regards to English learners and the English language development process. As has been well documented, the population of English learners is incredibly heterogeneous, and often changes dramatically from year to year within a school district. The efforts to acknowledge the diversity of the English learner population, and the many factors that impact the English language development process, are positive steps forward in helping to provide an equitable education for all students.

As TESOL and its members are focused on English-as-a-second-language (ESL) education, our comments are focused on the following sections of the draft regulations:

Goals for Progress in Achieving English Language Proficiency (§200.13)

TESOL appreciates the efforts by ED in requiring states to determine goals for progress in achieving English language proficiency for their English learners. While setting goals at the state level is impractical, TESOL supports the recommendation that states establish uniform procedures for setting long-term goals and measurements of interim progress for English learners that can be applied consistently and equitably to all English learners. The association has long advocated that accountability decisions for English learners take into account language proficiency level, so we appreciate and support the requirement that this serve as the basis for long-term goal setting.

TESOL also supports and applauds the efforts that ED has made to recognize the diverse needs and abilities of ELs in other parts of §200.13, particularly within the proposed regulation requiring states to take at least one student variable into account when determining long-term goals for ELs. Currently these variables include: time in language instruction, age, grade level, native language proficiency, and limited or interrupted formal education. This requirement is a good start, but TESOL believes ED should go further in requiring states to take all of these factors into consideration when creating long-term EL goals, not just a minimum of one. Furthermore, TESOL recommends that ED require states to take into account the total time an English learner has been in U.S. schools, as many students may have recently arrived in a district, but may have been in U.S. schools for several years.

In addition, the socioemotional needs of EL students should be taken into consideration when creating goals for achieving English language proficiency, as many ELs come from disadvantaged communities, and others may be recent arrivals to the United States, facing significant challenges as immigrants or refugees. These extenuating circumstances, as well as other hardships many ELs face, can affect their socioemotional wellbeing and should be taken into consideration by Local Education Agencies (LEAs) when setting academic goals for ELs.

Establishing State Determined Maximum Timelines for Achieving English Language Proficiency (§200.13)

Within the proposed rules for accountability, ED solicited comments related to the potential establishment of state-determined maximum timelines for the achievement of English language proficiency for "long terms ELs" (§200.13). TESOL cautions that the establishment of such timelines, while certainly ambitious, may not directly result in an increase of English language proficiency by ELs, regardless of their "long term" status. All students, especially ELs, have extremely diverse backgrounds, needs, and abilities, making a prescribed timeline for the attainment of English language proficiency nearly impossible to calculate and adhere to. In addition, setting a maximum timeline may not only create the possibility of added pressure and anxiety on struggling students, but also on their teachers, who may feel overburdened if certain students cannot meet a prescribed deadline for achieving English language proficiency.

Moreover, although students may achieve English language proficiency according to a proficiency assessment, they often are in need of additional support services in order to succeed academically. Establishing a maximum timeline may create an incentive to stop all services, even if a student needs additional support beyond the point that they are determined to be fully English proficient. If the decision is made to require that states determine a maximum timeline, states should then be required to provide research and data to justify the timeline, as well as procedures for allowing exceptions on a case-by-case basis.

Further Defining Subgroups of Students (§200.16)

As acknowledged in the draft regulations, the English learner subgroup is the only population of students categorized by what is a temporal factor: English language proficiency. The size and composition of this subgroup within a state changes as students attain academic-level English

proficiency (and thus leave the subgroup), and other students with lower levels of English proficiency arrive. Allowing the state to include the academic performance of former English learners for up to four years after they leave the subgroup in the Academic Achievement indicator would provide a more accurate picture of the performance of the English learner population.

TESOL supports the draft regulations that if a state chooses to include the performance of former English learners in this manner, they must include all English learners, and would not be allowed to select only higher-achieving students. This would prevent states from presenting misleading information about the progress of English learners.

TESOL also supports the draft regulations that states either select a single statutory exemption for the inclusion of recently arrived English learners in its accountability system and apply that exemption uniformly, or that states determine uniform procedures for making student-level decisions that take into account the English language proficiency level and other characteristics. If states choose the latter option, the procedures should take into account all the other characteristics, parallel to the recommendations made under §200.13.

Disaggregation of Data as it Relates to n-Size (§200.17)

Current proposed regulations set the n-size for reporting data on subgroups at no more than 30 students. As many states have lowered their n-size over the last several years, TESOL is concerned that such a high n-size will allow some schools to hide data on subgroups that do not meet the 30 student threshold for data reporting. For example, after lowering its n-size from 50 to 30, Virginia saw 139 schools held accountable for ELs, up from 104. Even more significantly, after lowering the n-size from 50 to 30, Mississippi schools responsible for reporting data on ELs increased from 15 to 447. In order to include data on the greatest number of ELs, while still protecting their identity, TESOL recommends that final regulations set the n-size to 10 students.

Summative Ratings for School Performance (§200.18)

TESOL urges ED to promote transparency about school quality and performance by removing the proposed regulation that reduces the entirety of a school's performance to a summative number or grade. These summative ratings can, as ED itself noted in the proposed regulations, hide the poor performance of a school in a particular area, such as English language proficiency. Instead, ED should only promote a dashboard that includes a school's performance on multiple academic and school quality indicators. By having clear, disaggregated data at the forefront of the school rating system, parents and stakeholders, who have been entrusted with improving student outcomes, will be accurately informed.

Supporting of All Students, Entrance and Exit Procedures for ELs (§299.19)

While ED revised the language of §299.19, TESOL recommends that ED add clarifying language pertaining to students who have exited the English Learner subgroup to stress that exited students have attained English language proficiency, but may still be receiving services from the LEA. While the

regulations are clear that the criteria must be applied to both the Title I subgroup and the Title III services, LEAs may still provide support services with local funds. Without clarification, the possibility exists for assuming that the exit criteria, as required by ESSA, are establishing deadlines for when students are eligible for services, even if state and local funds may be used to provide additional support services for students who are determined to have achieved English proficiency.

Thank you for the opportunity to provide input as ED finalizes ESSA rules and regulations. TESOL looks forward to working with you and your staff in moving forward with the implementation of this important legislation, and in improving education for all our learners.

Sincerely,

Rosa Aronson, PhD, CAE
Executive Director