

Congress of the United States

Washington, DC 20510

July 28, 2017

The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary DeVos:

We strongly urge you to maintain the U.S. Department of Education's (Department) established review and feedback process for consolidated state plan submission, as required by the Every Student Succeeds Act (ESSA). Our staff was recently informed by staff at the Department that you intend to change the existing practice of providing transparent feedback letters to states detailing the ways in which state plans may need to be revised in order to meet ESSA's requirements. Effective today, July 28th, your staff will conduct private phone calls with state educational agencies to discuss Department concerns with state plans prior to finalizing feedback letters to states. It is our understanding that, based on the conversation during these non-public phone calls, the Department may alter its written feedback to state agencies, thus limiting the extent of potential plan revisions despite identified ambiguities or statutory inconsistencies. Furthermore, it will also limit the public's knowledge about the agreements reached between the Department and states regarding the draft plans. We are deeply concerned that this decision will result in inconsistent treatment of state agencies, leading to flawed implementation of our nation's education law and harm to our nation's most vulnerable students.

A verbal agreement in a nonpublic setting is not an appropriate substitute for publicly available discourse with states. Put simply, if your staff needs more information to better understand a plan's components, so do parents, teachers, civil rights advocates, members of Congress, and other stakeholders. Moving forward with this change in process midway through review of state plans creates an uneven playing field for states and fails to provide transparency and accountability for students, taxpayers, and members of Congress charged with oversight of the law's implementation. We also believe this new process is in violation of section 1111(a)(5) of the Elementary and Secondary Education Act (ESEA), as amended by ESSA.

This change in process will result in an inconsistent ESSA plan review standard across states. Of the 16 states and District of Columbia that submitted state plans in the first submission window, eight have already received detailed feedback letters. Prior to embarking on the state plan feedback process, the Department pledged that all states would receive such letters, along with peer review feedback, on a rolling basis. Consistent and transparent implementation of the law has been a primary demand from state and local

educational agencies since ESSA's December 2015 enactment. Recognizing this, you said in a letter to Chief State School Officers earlier this year, "One of my main priorities as Secretary is to ensure that States and local school districts have clarity during the early implementation of the law."¹ Changing the rules after the process is already well underway does just the opposite. Doing so is unfair to state agencies and imposes a highly subjective standard in plan review.

In reaction to the ESEA Flexibility Plan approval process under the previous administration, Congress worked in a bipartisan manner to include new provisions that require public review of Department feedback during the state plan development and approval process. ESEA section 1111(a)(5) states, "all written communications, feedback, and notifications under this subsection shall be conducted in a manner that is transparent and immediately made available to the public on the Department's website."² Private, undocumented conversations between the Department and states to potentially alter publicly available Department feedback of draft plans are noncompliant with section 1111(a)(5), as the information provided to states through such calls constitutes Department "feedback" and must be made public.

In explaining your rationale for this concerning change, your staff justified these actions as necessary because of complaints that the Department's feedback letters provided to states thus far were too long. We respectfully remind you that ESEA requires the Department to enforce all statutory requirements. If state plans are missing key information, are confusing or unclear, or contain violations of the law's requirements, it is the Department's statutory obligation to provide feedback concerning such needed revisions to ensure compliance prior to plan approval. The length of such feedback is immaterial, so long as the quality of the feedback is sufficient. While we recognize the need for more conversations with states to explain the feedback, those discussions should not alter the publicly available feedback letters.

We oppose the proposed changes to the ESSA plan review process and strongly urge you to reconsider this decision that removes transparency and consistency in implementation of the new law. Should such proposed changes be realized, please provide the following information no later than Friday, August 4, 2017:

1. Written justification for the change in policy regarding the ESSA state plan review process, including any communication sent internally regarding this topic.
2. Written justification of compliance from the Department's Office of General Counsel regarding this change in ESSA state plan review policy.
3. All communication between outside constituencies and the Department, including Congressional offices, regarding this change of ESSA state plan review policy.
4. A description of how you intend to make publicly available the full communication, including transcripts, between the Department and states during

¹ http://blogs.edweek.org/edweek/campaign-k-12/2017/02/betsy_devos_to_state_chiefs_ESSA_full_speed_ahead.html?intc=main-mpsmvs

² 20 U.S.C. 6311(a)(5)

- the state feedback calls in order to comply with ESSA section 1111(a) (5).
5. A description detailing the length of time in which you will make available such transcripts.

Sincerely,



PATTY MURRAY
Ranking Member
U.S. Senate Health, Education, Labor,
And Pensions Committee



ROBERT C. "BOBBY" SCOTT
Ranking Member
U.S. House of Representatives
Committee on Education and the
Workforce