February 1, 2018

The Honorable Karen Salmon
Superintendent of Schools
Maryland State Dept. of Education
200 West Baltimore Street
Baltimore, MD 21201-2595

Mary L. Gable
Assistant State Superintendent
Division of Student, Family and
School Support/Academic Policy
Maryland State Dept. of Education
200 West Baltimore Street
Baltimore, MD 21201-2595

Dear Superintendent Salmon and Assistant Superintendent Gable:

We write regarding the Maryland State Dept. of Education (MSDE) Every Student Succeeds Act (ESSA) Consolidated State Plan as approved by the U.S. Dept. of Education (USED) on January 16, 2018.[1] Specifically, we wish to express both disappointment and concern regarding the minimum N-size that the MSDE intends to use for graduation rate.

Over the course of the past many months, we reviewed and submitted comments on more than 40 draft state ESSA plans.[2] Our reviews and comments have focused on issues regarding students with disabilities. We reviewed and commented on the two Consolidated State Plan drafts put out by MSDE. Our concern arises from the confusion regarding the N-size for graduation that was proposed by MSDE in these drafts.

[1] Secretary Approval Letter, January 16, 2018, available at https://www2.ed.gov/admins/lead/account/stateplan17/mdapprovalstateplanltr118.html
[2] See http://www.advocacyinstitute.org/ESSA/ESSA-StateDraftPlanAnalysis.shtml

Draft 1 of the MSDE Consolidated State Plan dated December 5, 2016[3] included the following information regarding minimum subgroup size:

> "The minimum group size for each achievement and gap narrowing measure will be reported on all ESEA student groups at n=10. The increase in population size from n=5 is in response to consultation with stakeholders. Even though statistical safeguards were put in place, the low n size created confusing variability over time, privacy concerns, and situations where a few students made an unintended large impact. The minimum group size for the adjusted cohort graduation rate used in the college and career measure remains the same from the prior ESEA Flexibility Waiver at n=30." (Page 33)

At the time Draft 1 was released for public comment, the Federal ESEA regulations governing Accountability and State Plans had been published (November 29, 2016) to become effective on January 30, 2017.[4] Those regulations included a requirement that the N-size must be the same for all indicators (§200.17 (a)(2)(ii)). Our comments on Draft 1 clearly stated that the draft did not comply with Federal regulations[5] and we assumed that MSDE would reduce its N-size for the graduation indicator in its accountability plan from 30 to 10. Ultimately, the U.S. Congress withdrew these Federal regulations on March 9, 2017 via the Congressional Review Act.

Draft 2 of the MSDE Consolidated State Plan dated June 27, 2017[6] did **not** include a statement indicating the MSDE's intent to use an N-size of 30 for its graduation rate indicator. Draft 2 stated:

> "Maryland has established the minimum number of students for purposes of accountability as greater than 9 (> 9) or an n size of 10 (n=10). This minimum will protect individual students from possible identification, consistent with the Family Education Rights to Privacy Act." (Page 10)

Given this statement, we concluded that MSDE intended to use a minimum N-size of 10 for **all ESEA provisions that require disaggregation of information by each subgroup of students for accountability purposes including graduation. Thus, we did not raise this issue in our comments on Draft 2 that we submitted to MSDE.[7]**

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[3] Maryland Every Student Succeeds Act (ESSA) Consolidated State Plan DRAFT #1, December 2016 available at http://www.marylandpublicschools.org/about/Documents/DAPI/ESEA/MarylandConsolidatedStatePlanDRAFT1.pdf

[4] 81 FR 86076 available at https://www.federalregister.gov/documents/2016/11/29/2016-27985/elementary-and-secondary-education-act-of-1965-as-amended-by-the-every-student-succeeds

[5] Comments to MSDE Draft 1 available at http://www.advocacyinstitute.org/ESSA/StatePlanAnalysis/Maryland.NDSC.AI.Analysis-12-15-16.pdf

[6] Maryland Every Student Succeeds Act (ESSA) Consolidated State Plan DRAFT #2, June 2017 available at http://www.marylandpublicschools.org/about/Documents/ESSA/MarylandsESSAConsolidatedStatePlan-DRAFT2.pdf

[7] Comments on MSDE Draft 2 submitted by Candace Cortiella, Director, The Advocacy Institute and Ricki Sabia, Senior Education Policy Advisor, National Down Syndrome Congress available at

Given the information in Draft 2, we were surprised to see the N-size language appear when the MSDE submitted its Consolidated State Plan to the U.S. Dept. of Education on September 18, 2017.[8] The submitted plan stated:

> "Maryland has established the minimum number of students for purposes of accountability as greater than 9 (> 9) or an n size of 10 (n=10). This minimum will protect individual students from possible identification, consistent with the Family Education Rights to Privacy Act. However, the n-size for the graduation indicator will remain at 30 (n=30)." (Page 11)

The submitted plan included a table providing a breakdown of the number and percent of students and schools across student groups that would be included in accountability determinations with a minimum n-size of 10 students. However, no information was provided regarding the number and percent of students and schools across student groups that would be included in accountability determinations with an n-size of 30 for the graduation indicator.

This discrepancy was brought to the attention of the MSDE by USED when it provided the Peer review notes for Title I and Title III on December 12, 2017. [9] Peer reviewers commented that

> "MD identifies two different minimum student group sizes depending on the accountability category being evaluated but without justification for the two different criteria. The plan provides good evidence of the impact of N=10 on the inclusion of students across different student groups in the state accountability system, but lacks evidence on N=30 when analyzing graduation rates." (Page 8)

While USED's Interim feedback letter[10] did not require the MSDE to address this concern in a revised plan, it did encourage MSDE to read the full peer notes for additional suggestions and recommendations for improving the consolidated State plan.

However, MSDE did not address the concerns of the peer reviewers in its revised plan. **Consequently, the plan approved by USED[11] maintains the use of an N-size of 30 for graduation without an explanation or data.**

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http://www.marylandpublicschools.org/about/Documents/DAPI/ESEA/ESSADraft2Comments2017/MDSecondESSANDSC.070317.pdf

[8] Maryland Every Student Succeeds Act (ESSA) Consolidated State Plan Final available at http://www.marylandpublicschools.org/about/Documents/ESSA/MDESSASubmissionConsolidatedStatePlanFinal.pdf

[9] Peer review notes for Title I and Title III are available at https://www2.ed.gov/admins/lead/account/stateplan17/mdpeernts.pdf

[10] USED Interim feedback letter dated December 12, 2017 available at https://www2.ed.gov/admins/lead/account/stateplan17/mdinterimfeedbackltr.pdf

[11] Maryland Every Student Succeeds Act (ESSA) Consolidated State Plan Final available at http://www.marylandpublicschools.org/about/Documents/ESSA/ESSAMDSubmissionConsolidatedStatePlan011018.pdf

The issue of graduation rate is particularly crucial for students with disabilities as this student group is typically reported to have the lowest 4-year adjusted cohort graduation rate (ACGR). As advocates for students with disabilities, we were pleased to see that ESSA intentionally enhanced the role of graduation rate in state accountability systems, by requiring two important actions:

- identify all high schools that fail to graduate one-third or more of its students in four years for comprehensive support and improvement and
- identify schools with consistently underperforming subgroups for targeted support and improvement (TSI).

In its approved ESSA plan, MSDE states the following regarding identification of schools for TSI:

> "Any school with one or more underperforming student groups, defined as a group that does not meet its school-level annual targets over two years based on all applicable indicators in the State accountability system will be identified as a consistently underperforming student group TSI school. Student groups included for identification are students from major racial and ethnic groups (disaggregated as American Indian/Native American, Asian, Native Hawaiian or Other Pacific Islander, Black/African American, Hispanic/Latino of any race, White, or Two or more races), students who are economically disadvantaged, students with disabilities, and English learners."[12] (Page 43)

Using an N-size of 30 for graduation means that only high schools with subgroups of students of 30 or more in the graduating class will be scrutinized for identification for TSI. Without information on the number and percent of students and schools across student groups that would be included in the graduation indicator using an N-size of 30, stakeholders are unable to understand the impact on student groups as ESSA implementation begins.

Maryland reports a significant 4-year ACGR gap between all students and students with disabilities—with 66.9% of students with disabilities earning a regular high school diploma in 4 years compared to 87.6% of all students in 2015-2016.[13] **This gap is unlikely to narrow if significant numbers of high schools escape accountability for the students with disabilities subgroup due to the large N-size that MSDE plans to use.**

To address this lack of transparency provided to the public during the comment period, we strongly urge MSDE to take the following actions:

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[12] Maryland Every Student Succeeds Act (ESSA) Consolidated State Plan Final available at http://www.marylandpublicschools.org/about/Documents/ESSA/ESSAMDSubmissionConsolidatedStatePlan011018.pdf

[13] Common Core of Data SY 2015-2016 4-year ACGR available at https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2015-16.asp

- Release information on the number and percent of students and schools across student groups that will be included in the accountability system's graduation rate indicator using an N-size of 30 compared to an N-size of 10.
- Provide a public comment period during which stakeholders may submit formal comments to MSDE on this information and make all submitted comments public.
- Present information and public comments to the Maryland State Board of Education for its review and consideration.
- Based on public comment and MSBE review, determine if MSDE should change its minimum N-size for graduation from 30 to 10. Such a change will require MSDE to submit a revised plan to USED for review and approval as stated in the Secretary's approval letter[14].

We further request that MSDE provide a written response to this letter within 30 days, which should include its plans to address this issue.

Please contact us with any questions. Our contact information appears below.

Sincerely,

Ricki Sabia
Senior Education Policy Advisor
National Down Syndrome Congress
2520 Locustwood Place
Silver Spring, MD 20905
PH: 301-452-0811
Email: ricki@ndsccenter.org

Candace Cortiella
Director
The Advocacy Institute
P.O. Box 565
Marshall, VA 20116
PH: 540-364-0051
Email: Candace@advocacyinstitute.org

cc:
Mr. Andrew R. Smarick, President, Maryland State Board of Education
Marcella E. Franczkowski, Assistant State Superintendent, Division of Special Education/Early Intervention Services, Maryland State Department of Education

[14] Secretary Approval Letter, January 16, 2018, available at https://www2.ed.gov/admins/lead/account/stateplan17/mdapprovalstateplanltr118.html