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February 6, 2017

The Honorable Virginia Foxx
Chair
Education and Workforce Committee
Washington D.C. 20515

The Honorable Bobby Scott
Ranking Member
Education and Workforce Committee
Washington D.C. 20515

Dear Chairwoman Foxx and Ranking Member Scott:

The Council of the Great City Schools, the coalition of the nation's largest central city public school districts, writes to support the resolution of disapproval under the Congressional Review Act (H.J.Res. 57) of the Department of Education's Every Student Succeeds Act (ESSA) regulations on accountability and State plans. As the Education and Workforce Committee knows, the Great City Schools supported the conference agreement on ESSA in December 2015 after careful consideration. In doing so, our 70 urban public school districts understood that we were supporting both the Act's provisions that we agreed with as well as provisions we had reservations about. Nonetheless, the Council did not agree to or support all the additional requirements promulgated by the Education Department to implement ESSA, because they often exceeded both the spirit and the letter of the Act.

The Council submitted extensive comments on the Education Department's proposed ESSA regulations and how they went beyond what Congress had agreed to. We also participated in multiple meetings at the Department and with other staff from the former Administration. We pointed out practical implementation problems, unnecessary and costly requirements, excessive and unauthorized provisions, and counterproductive consequences for schools and students that could result from some of the proposed regulations. Moreover, we offered detailed revisions and modifications to address these problematic issues, but we often found that they were not heeded.

The ESSA regulations under review in this Congressional Review Resolution include not only accountability provisions but also requirements for the configuration and composition of State plans, affecting some 15,000 school districts and over 55,000 schools. Some of these rules are particularly troubling—besides being outside the scope of the Act, and are in some instances, in our opinion, detrimental to schools and their students.

For instance, the Council is very concerned that some provisions of the federal ESSA regulations would restrict instructional judgments by school districts and classroom teachers that Congress never envisioned when it crafted the legislation. Examples include regulatory prohibitions on the use of multiple measures in determining eligibility for and provision of services for English language learners. The Council believes that some of these restrictions would result in the premature withdrawal of services from many of these students prior to their acquiring the English language skills necessary to succeed in rigorous academic coursework. The Council further notes that these final regulations appear to be at odds with the Department's own Office of Civil Rights and Department of Justice rulings in a number of Lau-related civil rights compliance agreements and consent decrees (See November 29, 2016 Federal Register at page 86209).

The Council is disappointed that these regulations place us in a position of opposing the educational accountability provisions and State plan rules. The Council has a long history of not only supporting, but initiating accountability measures in our urban school districts. For example, the Council began disaggregating student performance data – and publicly reporting the results – long before *No Child Left Behind Act* (NCLB) made it national policy. The Council also worked with the National Assessment Governing Board and the House and Senate Appropriations Committees to allow urban school districts individually and collectively to participate in and report results on the National Assessment of Education Progress (NAEP). The Great City Schools also designed their own performance management system that allows urban school districts to gauge and track our academic and operational progress. Still, the Council believes that it must oppose these Department rules because of their over-reaching nature.

In addition, the Department’s regulations establish new requirements and reporting activities that the research and evaluation departments of our large urban school districts find to be unproductive and costly. It is hard to imagine how smaller districts without in-house research and evaluation staff could fully comply with these new ESSA regulations without spending scarce dollars on outside consultants, as well as realistically qualify for competitive school improvement funding under section 1003 of the Act. In fact, numerous commercial vendors are now selling “ESSA-compliant programs” that school districts can purchase to meet these new Department requirements. We doubt that this is what Congress had in mind.

To be sure, there are some accountability and State plan requirements that the Council might support, and we acknowledge that improvements have been made in the final regulations over the initial drafts. On balance, however, the regulations generate substantially more concern than support. Too many requirements in the regulations are outside the boundaries of what Congress envisioned, and range from provisions that are designed to impose additional middle school course offerings to provisions expanding transportation responsibilities and costs.

Finally, we should note that the Council would have supported a similar Congressional resolution of disapproval for many of the regulations to implement NCLB. For instance, Departmental regulations on supplemental educational services were well-outside of the law and should never have been put into effect. Fortunately, waivers of NCLB requirements fixed some of the more serious flaws along with several of the poorly-crafted provisions of that Act—but it took ten years before this regulatory relief was provided.

Now under ESSA, the nation’s public schools are presented once again with implementing regulations that exceed the Act. The Council believes that the best course of action would be to disapprove the entire November 29, 2016 set of regulations, rather than attempting to “redline” inappropriate provisions from 61 pages of regulatory text posted on the Department’s ESSA website. The Act, in our opinion, provides adequate direction for the initial year of ESSA implementation which can be supplemented with guidance. Starting with a clean slate would allow for the development of a better and less-expansive regulatory portfolio and a greater reliance on non-regulatory guidance with more fidelity to the Every Student Succeeds Act. The Council, therefore, requests a yes vote on H.J. Res. 57.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Casserly". The signature is fluid and cursive, written over a white background.

Michael Casserly
Executive Director