



July 6, 2017

Superintendent Paolo DeMaria
Ohio Department of Education
25 South Front Street
Columbus, Ohio 43215-4183

Dear Superintendent DeMaria:

Racial Justice NOW! of Dayton, Ohio, the national Dignity in Schools Campaign (DSC), and the NAACP Legal Defense and Educational Fund, Inc. (LDF) have reviewed the revised draft sections of Ohio's Every Student Succeeds Act (ESSA) state plan and write to provide recommendations to ensure that the state's final ESSA plan promotes positive school climates and addresses persistent racial disparities across Ohio's schools and districts. We have also reviewed the ESSA state plans submitted to the U.S. Department of Education in March or April. While we are not endorsing any particular plan, we reference promising provisions from a few state plans for your consideration. As detailed in our previous letter, our key priorities are as follows:

- I. *Ensure that a diverse group of students, parents and community stakeholders—including those from historically marginalized racial and ethnic groups (e.g. Black and Latino populations) and those who are low-income, immigrant, LGBTQ, or have special needs—continue to be meaningfully engaged throughout the development of the ESSA state plan;*
- II. *Include school climate as an indicator of school quality and measure this indicator by using discipline data and school climate surveys;*
- III. *Utilize ESSA funding and other resources to support the implementation of trauma-informed approaches and mental health services to promote positive school climates for all students;*
- IV. *Select an N-size of 10 to capture as many subgroups in the state's accountability system as possible, without revealing personally identifiable information about students; and*
- V. *Ensure the successful transition of students involved in the juvenile justice system back into schools and the community by improving the quality of instruction in these facilities.*

I. Ensure that a Diverse Group of Students, Parents and Community Stakeholders—Including Those from Historically Marginalized Racial and Ethnic Groups (e.g. Black and Latino Populations) and Those Who are Low-Income, Immigrant, LBGQTQ, or Have Special Needs—Continue to be Meaningfully Engaged throughout the Development of the ESSA State Plan

Ohio must continue to ensure meaningful stakeholder engagement by taking feedback on the state’s draft plan into consideration and using this input to inform revisions to the final plan before submission to the U.S. Department of Education, as required by ESSA. To ensure transparency, we strongly urge the state to include evidence of stakeholder engagement, including a complete list of organizations and groups that the state has engaged, in a revised version of the state plan. Finally, we urge Ohio to include a description of the feedback received on the state plan, changes that were made based on this feedback, and changes that were not made and why in its final plan.

II. Include School Climate as an Indicator of School Quality and Measure this Indicator by Using Discipline Data and School Climate Surveys

We continue to urge the Department to include effective strategies to promote positive school climates and reduce the use of exclusionary discipline practices, which disproportionately impact students of color, in the Ohio state plan. The Department’s School Report Card shows that during the 2015-2016 school year, Ohio students received 202,702 out-of-school suspensions and 3,156 expulsions.¹ Even though Black students comprised only 16.5 percent of the student population, they bore the brunt of these exclusionary and overly punitive discipline practices. Black students received 52 percent (106,117) of these out-of-school suspensions and 53 percent (1,668) of the expulsions during that school year.² These impacted students lose valuable instruction time and suffer from compromised educational and life outcomes, including greater likelihood of dropping out of school, being retained a grade, or becoming involved with the juvenile justice system.³

These racial disparities exist in Ohio and nationwide even though there is no evidence that Black students misbehave more than their white peers.⁴ Over half of these suspensions in Ohio were for “disobedient/disruptive behavior,” which is subjective and left to the discretion of teachers, principals, and other school staff.⁵ This is consistent with research showing that Black students are often disproportionately disciplined for minor, subjective offenses, indicating that school staff and administrators appear more likely to negatively interpret Black students’ behavior based on their own conscious or unconscious bias.⁶

¹ Ohio Department of Education, School Report Cards, Discipline Occurrences (State): 2015-2016, <http://bireports.education.ohio.gov/PublicDW/asp/Main.aspx>.

² *Id.* See also, School Report Cards, Enrollment by Student Demographic (State): 2015-2016, <http://bireports.education.ohio.gov/PublicDW/asp/Main.aspx>.

³ See, e.g., Emily Morgan, et al., The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System, Council of State Governments Justice Center, 119, (2014), https://csgjusticecenter.org/wp-content/uploads/2014/06/The_School_Discipline_Consensus_Report.pdf.

⁴ Russell Skiba, et al, New and Developing Research on Disparities in Discipline, The Equity Project at Indiana University, 2, (Mar. 2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf.

⁵ Ohio Department of Education, *supra* note 1.

⁶ Russell J. Skiba, Robert S. Michael & Abra Carol Nardo, The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment, The Indiana Education Policy Center, (June 2000) (stating that data showing that Black students are disproportionately disciplined for minor and subjective reasons “is evidence of a pervasive and systematic bias that may well be inherent in the use of exclusionary discipline.”), <http://www.indiana.edu/~equity/docs/ColorOfDiscipline.pdf>.

We strongly urge the Department to select school climate as an indicator of school quality or student success. The Department has selected Student Engagement, as measured by chronic absenteeism, and a Prepared for Success component for this indicator. We recognize the value of incorporating measures of student success such as industry recognized credentials, dual enrollment credits, and performance on Advanced Placement tests in the state’s accountability system. We also understand the strong link between student attendance and academic achievement. However, tracking rates of chronic absenteeism alone does not provide information regarding the root causes of this problem. Schools with high rates of absenteeism, particularly among certain student subgroups, may struggle with school climate issues that fuel or contribute to this problem. If students do not feel welcome and respected and are not treated fairly at school, they will be less likely to attend. There is ample research showing that positive school climates will increase several aspects of student success, such as school attendance and academic achievement, and graduation rates.⁷ We are also concerned that using chronic absenteeism without also including school climate as an indicator of school quality may lead schools to penalize students and parents for truancy instead of addressing the issues that lead to student absenteeism, which may be beyond the family’s control.

The Department also plans to incorporate a “discipline check” into the calculation for chronic absenteeism. We support the use of expulsion data to prevent schools from meeting benchmarks for chronic absenteeism by expelling students for truancy. However, we encourage the Department to use a more comprehensive approach for incorporating discipline data into the state’s accountability system to ensure that all schools and districts with high rates of exclusionary discipline practices (e.g. in-and out-of-school suspensions, expulsions, school-based arrests, and referrals to law enforcement), especially high rates of disciplinary practices imposed on student subgroups, are identified and that these issues are addressed. Using discipline data will not result in any additional burden to districts. The Department already collects most of these data, and ESSA requires states and district to report discipline data on annual report cards.⁸

The Department also states that it will investigate the use of school climate surveys as both a school improvement tool and a potential measure to include as part of Ohio’s accountability system in the future. We support the use of school climate surveys, in addition to discipline data, for these purposes to provide a comprehensive assessment of the school environment. However, the stark racial disparities in Ohio’s school discipline practices presents a sense of urgency that leads us to encourage the Department to include such surveys in the state’s accountability system beginning in the 2017-2018 school year. The American Institutes for Research has developed free school climate surveys that states can use.⁹

Other states have incorporated school climate in their accountability systems. For example, Tennessee is including a “Chronically Out of School” indicator, which will be measured by the number of students missing 10 percent or more school days; students who are absent or *suspended out of school* will be included in this metric.¹⁰ The state is considering including all exclusionary discipline practices,

⁷ See, e.g., The School Discipline Consensus Report, *supra* note 3, at xii (stating research shows that academic achievement, attendance, and student success increases when students are in school environments where they feel “physically and emotionally safe, connected, fairly treated, and valued.”).

⁸ Every Student Succeeds Act, Public Law No. 114.95, S. 1177, 114th Cong. §1111(h)(1)(c)(viii) (Dec. 10, 2015).

⁹ National Center for Safe and Supportive Learning Environments, ED School Climate Surveys, <https://safesupportivelearning.ed.gov/edscls>.

¹⁰ Tennessee Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 71, (April 3, 2017), https://www.tn.gov/assets/entities/education/attachments/ESSA_state_plan.pdf.

including in-school suspensions, in an expanded “Opportunity to Learn” indicator in the future. Vermont is including “Safe and Healthy Schools” as a performance measure in its accountability framework.¹¹ This indicator will include school climate data and will examine the rate of exclusionary discipline practices in schools, with an emphasis on examining the disproportionate impact on historically disadvantaged students. Finally, in its plan, North Dakota provides a definition for school climate, which states that: Students learn to their potential when learning in a safe, caring and healthy environment which promotes trusted peer and adult relationships, a climate which supports student academic and social growth and leadership, and strides to motivate students to adapt to personal and academic rigors.¹² North Dakota’s plan includes school climate and student engagement as indicators of school quality as part of a comprehensive strategy to reduce incidents of bullying and harassment and the overuse of discipline practices that remove students from the classroom.¹³

III. Utilize ESSA Funding and Other Resources to Support the Implementation of Trauma-Informed Approaches and Mental Health Services to Promote Positive School Climates for All Students

The Department states that it will use Title IV, Part A funds to pilot a school climate survey. It also states that it will support districts to reduce the overuse of discipline practices that remove students from the classroom by releasing a model policy and implementation guidance to assist districts in using alternative discipline approaches, as well as by supporting the implementation of Positive Behavioral Interventions and Supports as a framework for improving school climate. We are pleased that the Department is utilizing funding and other resources to support the implementation of alternative approaches that address student behavior in positive, non-exclusionary ways. We also recommend targeting additional supports to districts most in need of such resources.

For example, Connecticut currently requires its 30 lowest-performing school districts to identify prioritized interventions, including those that address issues related to climate and culture.¹⁴ The state will create a list of evidenced-based practices for improving school climate that will provide guidance to low-performing schools and districts regarding staffing, social-emotional supports, and restorative/non-exclusionary discipline practices.¹⁵ Massachusetts will use Title IV, Part A funds to build upon its Rethinking Discipline initiative, which currently engages over 30 districts in a professional learning network to reduce the inappropriate or excessive use of long-term suspensions and expulsions, including disproportionate rates of suspensions and expulsions for students of color and students with disabilities.¹⁶ Delaware will utilize a variety of funding sources to provide statewide professional learning and training on restorative practices, which serve as an alternative to exclusionary discipline and a strategy to address the root causes of student behavior and foster positive school climate.¹⁷ The state will also support districts in the schoolwide training of all teachers on conducting restorative circles. Finally, New Mexico will use ESSA

¹¹ State of Vermont Agency of Education, Consolidated State Plan Under the Every Student Succeeds Act, 74-75, (March 2017), <http://education.vermont.gov/sites/aoe/files/documents/edu-essa-vermont-state-plan-draft-050317.pdf>.

¹² North Dakota Department of Public Instruction, Every Student Succeeds Act State Plan, 95, <https://www.nd.gov/dpi/uploads/1494/FinalINDESSAPlanforSubmission.pdf>.

¹³ *Id.* at 95.

¹⁴ Connecticut State Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 41, (April 3, 2017), http://www.sde.ct.gov/sde/lib/sde/pdf/essa/april_3_ct_consolidated_state_essa_plan1.pdf.

¹⁵ *Id.* at 57.

¹⁶ Massachusetts Department of Elementary and Secondary Education, Consolidated State Plan Under the Every Student Succeeds Act, 80, (April 3, 2017), www.mass.gov/ese/essa.

¹⁷ Delaware Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 96-97, (April 3, 2017), https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/425//April%203%20Submission/DE_consolidatedStateplan.pdf.

funds to create a process that includes a review of school discipline policies that disproportionately impact homeless students, including students of color, students with disabilities, English language learners, and those who identify as LGBTQ.¹⁸

In addition, the Department should require districts to consider school climate in the needs assessments for schools identified for comprehensive support and improvement. Specifically, the Department should encourage districts to analyze indicators such as discipline data in these needs assessments and to include strategies to promote positive school climates in their improvement plans. Improvement plans should detail strategies to reduce exclusionary discipline practices and disproportionality across race, gender, and disability—including by requesting funding for alternative practices.

IV. Select an N-size of 10 to Capture as Many Subgroups in the State’s Accountability System as Possible, without Revealing Personally Identifiable Information about Students

The Department plans to use an n-size of 15 for accountability purposes. We are pleased that the Department has lowered this number from its current N-size of 30, which excluded far too many students from the state’s accountability system. A lower N-size will include more student subgroups in the system and provide a more thorough identification of schools that are underperforming with regard to subgroup populations. However, we encourage the Department to select an N-size of 10 in its final plan. Thirteen states currently use an N-size of 10 or fewer for accountability purposes.¹⁹ Research shows that states can set an N-size of 10 and meet requirements for statistical reliability and fully protect students’ privacy.²⁰

V. Ensure the Successful Transition of Students Involved in the Juvenile Justice System Back into Schools and the Community by Improving the Quality of Instruction in these Facilities

We are pleased that the Department plans to use ESSA funds to assist the transition of justice-involved children and youth. We urge the Department to go further than what is currently detailed in the state plan by outlining a strategy for improving the quality of coursework offered in facilities to ensure alignment with challenging state academic standards.

One of Oregon’s stated goals and objectives for the use of Title I, Part D funds is to increase students’ access to quality instruction and teachers in juvenile facilities.²¹ The state requires educational programs in these facilities to be aligned with state standards in all content areas and students receiving diplomas must meet the same requirements as their public school peers. Michigan also states that its juvenile facilities will implement or develop a rigorous curriculum aligned with state standards and offer regular high school diplomas to the greatest degree possible.²² Colorado will use Title I, Part D funds to support

¹⁸ New Mexico Public Education Department, Consolidated State Plan Under the Every Student Succeeds Act, 149, (April 3, 2017), http://ped.state.nm.us/ped/ESSA_docs/NewMexicoStatePlanDraft_ESSA.pdf.

¹⁹ Jessica Cardichon, Ensuring Equity in ESSA: The Role of N-Size in Subgroup Accountability, Alliance for Excellent Education, 5, (June 2016). <http://all4ed.org/wp-content/uploads/2016/06/NSize.pdf>.

²⁰ *Id.* at 7.

²¹ Oregon Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 116, (May 3, 2017), http://www.oregon.gov/ode/rules-and-policies/Documents/OR_consolidatedStateplan.pdf.

²² Michigan Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 50, (April 3, 2017), http://www.michigan.gov/documents/mde/Michigan-ESSA-Consolidated-Plan_558370_7.pdf.

transition teams that follow children and youth from facilities back to their public schools to minimize barriers to transition and to ensure consistency in coursework and course credits.²³

Thank you for your consideration of these recommendations. If you have any questions or would like any additional information, please contact Hashim Jabar at (937) 469-7080 or hajabar@rjnohio.org.

Sincerely,

Hashim Jabar
Racial Justice NOW!
hajabar@rjnohio.org
(937) 469-7080

Zakiya Sankara-Jabar
Dignity in Schools Campaign
Zakiya@dignityinschools.org
(937) 825-1791

Elizabeth Olsson
Monique Dixon
NAACP Legal Defense and Educational
Fund, Inc.
(212) 965-2268

cc:

Colleen Grady, Senior Policy Advisor

Sarah Wickham, Senior Policy Advisor

Jo Hannah Ward, Director, Office for Improvement and Innovation

Chris Woolard, Senior Executive Director, Center for Accountability and Continuous Improvement

Brittany Miracle, Program Administrator, Center for Accountability and Continuous Improvement

Tess Elshoff, President, State Board of Education

Nancy P. Hollister, Vice President, State Board of Education

Linda Haycock, Member, State Board of Education

Kathleen A. McGervey, Member, State Board of Education

Charlotte McGuire, Member, State Board of Education

Pat Bruns, Member, State Board of Education

Lisa Woods, Member, State Board of Education

Antoinette Miranda, Member, State Board of Education

Sarah Fowler, Member, State Board of Education

Stephanie Dodd, Member, State Board of Education

²³ Colorado Department of Education, Consolidated State Plan Under the Every Student Succeeds Act, 117 (May 1, 2017), <https://www.cde.state.co.us/fedprograms/essa>.

Nick Owens, Member, State Board of Education
Meryl Johnson, Member, State Board of Education
Joseph Farmer, Member, State Board of Education
Cathye Flory, Member, State Board of Education
Rebecca Vazquez-Skillings, Member, State Board of Education
Martha Manchester, Member, State Board of Education
Eric Poklar, Member, State Board of Education
Laura Kohler, Member, State Board of Education