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May 15, 2018

Ms. Erica Gonzales
Department of Elementary and Secondary Education
75 Pleasant Street
Malden, MA 02148

Dear Ms. Gonzales:

On behalf of AFT Massachusetts (AFT MA), thank you for the opportunity to comment on the proposed revisions to the school and district accountability regulations, 603 CMR 2.00.

In short, we are disappointed with the proposed revisions and with what we've seen of the proposed accountability "system" referred to in the proposed regulations.

When we asked about the "system," we were pointed by Department of Elementary and Secondary Education (DESE) staff to a PowerPoint presentation¹ that is apparently still a work in progress. In our view, this PowerPoint presentation is not a system; it's a collection of concepts, many of which are unclear, undeveloped, and confusing.

In the first part of our comments, we address the proposed regulatory revisions. In the second part, we offer some preliminary comments on the system but reserve our right to comment more fully once critical details are released.

Part I: Comments on the Proposed Regulatory Revisions

Our biggest concern regarding the proposed revisions is that "there's no there there." This is particularly the case for Sections 2.03 and 2.04, which have been stripped of specifics; what's left of the regulatory language is vague and meaningless.

Instead of providing critical details that can undergo public scrutiny, the proposed revisions simply refer to a "district and school accountability system developed by the Department and approved by the Board." The intent here is clear: the "system" will exist outside of regulations.

Furthermore, the addition of 2.03(9) in the proposed revisions—the "Notice and Consultation" paragraph—suggests that this system can be amended by the Department and Board at any time, outside of the regulatory process: "The commissioner will provide notice of proposed changes to the accountability system, including changes to the

¹ Retrieved at <http://www.doe.mass.edu/accountability/lists-tools.html>

indicators or the weighting of indicators in the accountability system, and submit the proposed changes to the Board for approval.”

The net effect of these proposals—vague, meaningless language; a “system” that exists outside of regulations; and DESE/Board authority to change the system outside of the regulatory process—is to dramatically reduce transparency, stakeholder engagement, and democratic decision-making around the central question of how school and district performance is assessed and characterized by the state.

Therefore, while we are pleased that DESE is eliminating the highly problematic Level 1-5 system, we are concerned that the regulations do not provide a clear picture of what will replace that system. We urge DESE to include more details in the proposed revisions, so that the public has a meaningful opportunity to understand and weigh in on the *substance* of what is being contemplated by DESE.

In addition to that overall critique, we have specific comments and questions as follows:

- Both sections 2.03 and 2.04 introduce a new concept/phrase, the “need for targeted support or intervention,” but the proposed revisions provide no definition. How would this need be determined? If such a designation is made, what ensues? How does this phrase relate, if at all, to the similar phrase “targeted support and improvement” used in the federal Every Student Succeeds Act (ESSA) law? The proposed revisions should provide a clear definition that answers these and other questions.
- We have concerns regarding the new “Notice and Consultation” paragraph—2.03 (9). Consistent with our overall critique, our preference is for the “accountability system” to exist within regulations and for changes to occur within the normal regulatory process. But if changes are to take place outside of the regulatory process, as the “notice and consultation” paragraph enables, there should be a formal public-comment period of at least 60 days built into the paragraph so that stakeholders and the public can provide input and feedback. We urge DESE to make that change.
- Consistent with the pattern of moving details outside of regulations and into guidance or other Department-created documents, the proposed revisions eliminate the specific conditions for school effectiveness that have guided school and district improvement efforts for many years now. Instead, the proposed revisions in 2.03(5) say that the Department shall publish “a detailed version of the standards and associated indicators.” What is the rationale for taking the specific conditions out of regulation? If new indicators are developed, will there be a public-comment period?
- The proposed revisions add language in 2.06 (10) saying that “the commissioner may remove a school from chronically underperforming status if the district in

which the school resides is designated as chronically underperforming.” We ask the Department to elaborate on this new provision. If the “chronically underperforming” status is removed, what would the school’s status become? Would the removal of the designation affect the school’s eligibility for grants and extra resources?

- The regulations make repeated references to “underperforming districts” and DESE’s authorities to intervene in such districts. While this is generally not new language, we remain confused over the statutory basis for these authorities. Chapter 69 Section 1J in state law references “underperforming schools” and “chronically underperforming schools,” and Chapter 69 Section 1K references “chronically underperforming districts,” but there is no explicit statutory reference to underperforming districts. Does the Department agree that there is no explicit authority in state law for this designation? If yes, could the Department elaborate on the basis and rationale for creating this authority in regulations? Under what circumstances might this authority be exercised?
- The regulations in 2.05(5)(c) reference the commissioner’s authority to modify turnaround plans: “Within 30 days of the issuance of the superintendent’s final turnaround plan under M.G.L. c. 69, § 1J(e), the commissioner shall review the plan and may, in consultation with the superintendent, modify the plan if the commissioner determines that...”

While this is also not new language, we remain puzzled over the statutory basis for this authority. Based on our interpretation of the statute, subsections (e) and (f) in Chapter 69 1J do not grant the commissioner this blanket authority to modify turnaround plans.

Under subsection (e), the commissioner “may propose modifications to the plan,” and “the superintendent shall consider and may incorporate the modifications into the plan if the superintendent determines that inclusion of the modifications would further promote the rapid academic achievement of students at the school or may alter or reject the proposed modifications submitted under this subsection.” This subsection makes it clear that final authority over the contents of the plan lies with the superintendent, not the commissioner.

While subsection (f) does say that “the commissioner may, in consultation with the superintendent, modify the plan,” it is our view that this authority only flows to the commissioner if there is an appeal made by a school committee or local union regarding one or more components of the plan. In other words, the commissioner does not have blanket authority to modify plans; he/she can only do so in the context of an appeal.

Therefore, it appears that the plan-modification authority given to the commissioner in 2.05(5)(c) is an example of regulatory overreach—the Board is

granting authority to the commissioner through regulation that does not exist in statute. How does the Department justify the language in 2.05(5)(c) in light of what the statute says?

Part II: Comments on the “System”

Based on our review of the DESE PowerPoint, we offer the following preliminary comments on the system, with the caveat that we reserve our right to comment more fully once critical details are released. We do not consider a PowerPoint presentation to be a “system;” rather, it is a collection of ideas still in various stages of development.

As noted earlier, we are pleased that DESE is eliminating the flawed Level 1-5 system. However, once you get “under the hood” of the new system, it doesn’t appear to be substantially different from the old leveling system. Consider the following:

- **A vertical hierarchy with five levels has simply become a horizontal categorization with 6 categories.** While the new categories don’t have numerical labels, the basic concept of classifying schools based on a normative measure (school percentile in the old system, accountability percentile in the new system) and a criterion-referenced component (PPI in the old system, “targets” in the new system) remains the same.
- **The new system’s methodology for classifying schools will still be opaque and overly complex, limiting the public’s ability to accurately gauge school quality and educators’ ability to use the measures for school improvement purposes.** For example, the accountability percentile will presumably be based on a complicated algorithm, the details of which have not yet been published by DESE. School leaders, teachers, parents, and students alike will be hard pressed to understand the algorithm and what it really signals about school performance/quality. For example, what will be the real difference in school quality, if any, between a school with a percentile of 62 and a school with a percentile of 54? Consistent with AFT MA’s March 2017 comments to DESE on the proposed ESSA Plan, we continue to reject the idea of reducing an endeavor as complex as teaching and learning to a single number.

Likewise, it’s difficult at this point to understand how the school-specific targets will be established and measured. While we are open to the idea of having criterion-referenced targets, it’s hard to ascertain at this point if the targets will be comprehensible, credible, feasible, and educationally useful. We urge DESE to release a guide as soon as possible explaining the methodology for setting targets and assessing target attainment.

- **The new system still uses the percentile metric to rank schools relative to each other, thereby ensuring that there will always be a lowest X% of schools.** Consistent with AFT MA’s March 2017 comments, we reject a rank-

order system that guarantees that a certain number of schools will always be deemed “low performers.” Under the proposed new system, schools with an accountability percentile of 10 or less (the “lowest 10%”) will automatically go into the “focused/targeted support” category, even if they’re hitting all their school-specific targets. And for one school to exit the lowest 10%, another school must enter it. This does not strike us as a fair and productive system; rather, it pits schools and students in competition with each other, discouraging collaboration and the sharing of best practices.

- **The new system’s methodology for classifying schools is still heavily biased against schools serving large numbers of high-need students, including economically disadvantaged students, English language learners, students with disabilities, and highly mobile students.** That’s because MCAS achievement scores remain the predominant factor in determining a school’s all-important percentile ranking, even though decades of research and DESE’s own data conclusively show that high-need students are more likely to struggle on the MCAS than their more advantaged peers. We are also disappointed that the proposed new system maintains the same achievement-to-growth ratio of 3 to 1. To the extent that both achievement and growth are used in any system, growth should be given equal or greater weight. And while the new system introduces some new indicators—such as progress towards English language proficiency and chronic absenteeism—these new indicators carry minimal weight relative to MCAS achievement scores. The chronic absenteeism indicator is also likely to suffer from the same systematic bias against schools serving large numbers of high-poverty and highly mobile students.
- **The system will still be perceived as being about punishment, not support.** While much of this problem stems from state law (the Achievement Gap Act) and how DESE has implemented that law, not the DESE classification system per se, the fact remains that most educators, parents, and students will continue to associate “underperforming” and “chronically underperforming” designations with stigmatization and punishment, not support. State policymakers frequently talk about their desire to attract the most qualified teachers to the schools with the greatest needs, but the current (and proposed) system works against that goal by blaming and punishing the very educators who step up to take on the greatest challenges.

Finally, we must note that implementation of the new system is being unduly rushed, arguably to the point of recklessness. The PowerPoint says that the new system will be used to classify schools beginning in Fall 2018. But the system hasn’t even been finalized yet or approved by the Board, and schools and districts still haven’t received their 2018 targets (as of this writing). It defies logic that schools will be judged on 2018 targets that they receive *after* the Spring 2018 MCAS administration. That is like a Boston Marathon hopeful finding out the qualifying time after she completes her run. We urge DESE to

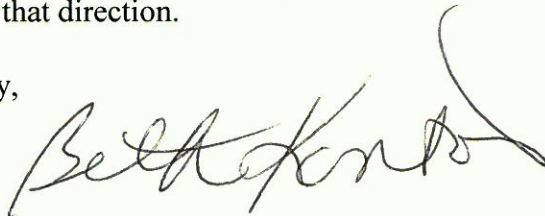
delay the implementation of any new system until stakeholders and the public have sufficient opportunity to understand how schools are being assessed.

In closing, the proposed accountability framework is a missed opportunity. The federal ESSA law has given states a chance to envision and operationalize a fundamental reimagining of school and district accountability. In our March 2017 comments, AFT MA made numerous recommendations for moving the accountability system in a new, credible, and productive direction. Instead of seizing the opportunity afforded by ESSA, DESE has essentially reproduced the same flawed and discredited system.

Why not hit the “reset” button and begin the process anew? DESE has a new commissioner, Jeff Riley, who seems genuinely open to “outside the box” thinking. There is an appetite in the field among educators and parents for a new collaborative approach that puts support for schools and students at the center. And a special Senate Subcommittee to the Joint Committee on Education led by State Sen. Pat Jehlen has just released a report, *Rethinking School Accountability*, that outlines opportunities under ESSA to chart a new direction. All these factors help create momentum for a reset. As an example of how to move forward, AFT MA would support the creation of a special task force to see if a consensus can be forged around a fundamentally different approach to school and district accountability.

Thank you again for the opportunity to express our concerns and ideas. If you’d like to discuss any of these comments, please contact me or Dan Murphy, AFT MA’s director of educational policy. We are eager to be part of a “reset” conversation and urge DESE to move in that direction.

Sincerely,

A handwritten signature in black ink, appearing to read "Beth Kontos". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Beth Kontos
President, AFT Massachusetts

cc:

State Sen. Patricia Jehlen
Members of the Board of Elementary and Secondary Education
Jeff Riley, Commissioner, DESE
Helene Bettencourt, DESE
Rob Curtin, DESE
Dan Murphy, AFT MA