

August 1, 2016

Meredith Miller  
U.S. Department of Education  
400 Maryland Avenue, SW  
Room 3C106  
Washington, DC 20202-2800

**Re: Public comments to [ED-2016-OESE-0032](#): Accountability and state plans**

Dear Ms. Miller,

We, the undersigned, representing a diverse group of national and state nonprofits working in the service of increasing opportunities and access to arts education as part of a well-rounded education for all students, offer these written comments and recommendations in response to the agency's notice of proposed rulemaking on accountability and state plans in the implementation of the Every Student Succeeds Act (ESSA).

We appreciate the agency's continuous work in providing important clarity for parents, students, administrators, and educators about ESSA, while sharing agency plans for the implementation of this key and long overdue overhaul of our nation's federal K-12 education law. **We write with urgent concerns related to a key omission in the agency's new well-rounded program focus and call on the Department to take immediate action to clarify eligibility for support for the arts under ESSA.**

We thank Secretary King for his strong support and understanding of the critical role that a well-rounded education, including the arts, holds for our youth and the future strength of our country. We are also grateful for his statements calling for more equitable access to a complete education, including his [public remarks](#) this past April at the Las Vegas Academy of the Arts. As the Department's own data confirms, our nation's highest poverty schools have the least access to arts education, presenting an equity gap that must be addressed in state and local ESSA implementation.

However, **the agency's proposed rule completely omits the arts in the designation of "well-rounded" subjects of learning.** In § 299.19, supporting all students, the agency instructs that each State Educational Agency, in its consolidated State plan, must describe its strategies, rationale, and timelines for attaining:

*Equitable access to a well-rounded education and rigorous coursework in subjects such as English, reading/language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, history, geography, computer science, music, career and technical education, health, physical education, and any other subjects in which female students, minority students, English learners, children with disabilities, and low-income students are underrepresented.*

Although not meant to be exhaustive, and allowing for states to include additional subjects, **the list does not enumerate the arts—which were clearly included in the law (PL 114-95):**

*The term ‘well-rounded education’ means courses, activities, and programming in subjects such as English, reading or language arts, writing, science, technology, engineering, mathematics, foreign languages, civics and government, economics, arts, history, geography, computer science, music, career and technical education, health, physical education, and any other subject, as determined by the State or local educational agency, with the purpose of providing all students access to an enriched curriculum and educational experience.*

It is critically important in all future regulatory and non-regulatory guidance that the Department uses “arts” and not “art” to avoid the misperception that the reference is solely to the visual arts. Moreover, **as part of the legislative record and clear intent of the Senate, S. Rept. 114-231 clarifies that the term “arts” is meant to encompass all forms and disciplines of the arts:**

*For the purposes of this definition, the term ‘arts’ may include the subjects of dance, media arts, music, theatre and visual arts, and other arts disciplines as determined by the State or local educational agency.*

**The arts are the only subjects that Congress included – and the public law specified – that this proposed rulemaking specifically neglects.** This is alarming because States are already underway collecting public input about implementation plans and beginning to put these plans together, and are immediately using the Department’s proposed regulations as a base-line of expectation of what’s to come. By omitting the arts from the proposal, the inclusion of the arts in these State plans is already at a disadvantage. A clear intent of the eligibility of the arts as part of a well-rounded education may be suspect. **While States have the flexibility to include the arts, lack of commitment from the agency could factor into the designs of ESSA state plans.** In sum, the current proposal creates the same confusion that has plagued the arts in the past, as it concerns the arts’ eligibility as an expenditure of Title I, Title II, and Title IV funding, and the full array of federal resources available to close gaps in access to a complete education. **We recommend the agency specifically include “arts” in the proposed rule’s designation of “well-rounded” subjects of learning.**

**We also recommend, in addition to fixing the omission of the arts in the forthcoming final rule, that the agency immediately provide non-regulatory guidance on how to maximize federal funds to support and enhance arts education.** We appreciate the intent of the recent Dear Colleague letter provided by the Department regarding opportunities to support “humanities education,” including references to the arts among eight other subjects of learning. However, while “humanities education” addresses the academic rigor of arts appreciation and criticism, it does not acknowledge the creative and performance-based arts activities that are central to dance, music, media arts, theatre, and visual arts learning. Thus, it leaves the full depth of these rich and varied subject areas out of the well-rounded definition as written in the law.

In a July 13 call with stakeholders, Secretary King stated that the Department could also develop additional messages related to ESSA implementation. Immediate Department clarity specific to the arts would help end confusion and reinforce the eligibility of the arts under ESSA as states rapidly continue to make planning decisions. As the Department nears the release of the National Assessment of Educational Progress in the Arts in 2017, it is entering into a particularly advantageous moment to call attention to opportunities to close gaps in the quality and equity of

access to arts learning. Building on past arts-specific letters and statements, like those listed below, can serve to help teachers, students, parents, and administrators navigate a complex series of state and local decisions impacting the quality, equity, and access of education in our K-12 schools.

- Deputy Assistant Secretary Dr. Monique Chism’s 2013 [Dear Colleague](#) to Title I State Coordinators addressing questions about the eligibility of the arts,
- Former Secretary Duncan’s [2012 remarks](#) identifying the arts access gap as “an equity issue and a civil rights issue” on release of the report *Arts Education in Public Elementary and Secondary Schools, 2009-10*,
- Former Secretary Duncan’s 2009 [letter](#) to School and Community Leaders clarifying eligibility under Title I and Title II, and
- Former Secretary Paige’s 2004 [letter](#) to Superintendents reiterating eligibility under Titles I and II.

We urge the agency to provide further written guidance clarifying and demonstrating the eligibility of the arts in the full array of ESSA provisions, and specifically in state accountability plans.

Thank you for reviewing our recommendations and taking them into account. Thank you also for your continued work in the service of parents, teachers, and students.

Sincerely,

Alabama Alliance for Arts Education  
Americans for the Arts  
Arizona Citizens for the Arts  
ArtPride New Jersey  
Arts Alliance Illinois  
Arts Education in Maryland Schools Alliance  
Arts South Dakota  
Arts | Learning, the Massachusetts Alliance for Arts Education  
California Arts Advocates  
Californians for the Arts  
Chorus America  
Citizens for the Arts in Pennsylvania  
Creative Many Michigan  
Dance/USA  
DC Advocates for the Arts  
Delaware Arts Alliance  
Educational Theatre Association  
Florida Cultural Alliance  
Fractured Atlas  
Georgia Arts Network  
Hawaii Arts Alliance  
Iowa Alliance for Arts Education  
Kansas Alliance for the Arts in Education  
League of American Orchestras  
LitNet  
Local Learning: The National Network for Folk Arts in Education

Louisiana Partnership for the Arts  
Maryland Citizens for the Arts  
MASSCreative  
Minnesota Citizens for the Arts  
Mississippi Alliance for Arts Education  
National Art Education Association  
National Assembly of State Arts Agencies  
National Association for Music Education  
National Dance Education Organization  
Nebraskans for the Arts  
New Jersey Arts Education Partnership  
Ohio Citizens for the Arts  
Oklahomans for the Arts  
OPERA America  
Performing Arts Alliance  
Quadrant Research  
South Carolina Arts Alliance  
State Education Agency Directors of Arts Education  
Texans for the Arts  
Texas Cultural Trust  
The Recording Academy  
Theatre Communications Group  
Utah Cultural Alliance  
VH1 Save The Music  
Wolf Trap Foundation for the Performing Arts  
Young Audiences Arts for Learning