



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 6, 2020

Senator Rob Wagner
900 Court Street NE S215
Salem OR 97301

Re: ESSA and SB 1572

Dear Senator Wagner:

You have asked if Senate Bill 1572 would place Oregon in violation of the Every Student Succeeds Act (ESSA).¹ Our understanding of the primary concern regarding SB 1572 in relation to ESSA is that requirements for high school diplomas in Oregon would not be consistent and that the state would not have a standard high school diploma because school districts would take a greater role in establishing high school diploma requirements. We do not agree that SB 1572 causes a conflict with ESSA.

Senate Bill 1572 removes the authority of the State Board of Education to establish requirements for high school diplomas that are in addition to the requirements prescribed in statute by ORS 329.451. The removal of the board's authority to establish high school diploma requirements effectively voids OAR 581-022-2000. That rule establishes additional requirements for high school diplomas, including subject-specific credit requirements² and the requirement to demonstrate proficiency in essential skills.³ Many of the subject-specific credit requirements would be codified in statute with the enactment of SB 1572, but some of the requirements established by the board would be permanently removed. We are unaware of any concerns under ESSA related to the removal of the other requirements.

The concerns that have been expressed about SB 1572 in relation to ESSA involve the authority of school districts to establish high school diploma requirements. Based on testimony presented by the Department of Education, the department is concerned that the discretion allowed to school districts in adopting high school diploma requirements makes it "more difficult to ensure that the diploma standard meets minimum requirements for federal law."⁴ Additionally, the department expresses concern that "[s]tatewide irregularity in graduation requirements may impact Oregon's adherence to ESSA regulations."⁵

In SB 1572, school districts have two opportunities to establish high school diploma requirements. The first opportunity is provided in ORS 329.451 (2)(a), which has been law since

¹ 20 U.S.C. 6301 et seq.

² OAR 581-022-2000 (6).

³ OAR 581-022-2000 (7).

⁴ See testimony presented by the Department of Education at <https://olis.oregonlegislature.gov/liz/2020R1/Downloads/CommitteeMeetingDocument/211328>.

⁵ *Id.*

2007.⁶ Under that provision, school districts are granted the authority to establish high school diploma requirements. We believe that authority is to establish *additional* requirements only, because the high school diploma requirements provided in statute are expressed in language that is mandatory and no other provision in the statute authorizes school districts to waive or remove requirements. Senate Bill 1572 does not change this authority for school districts that has been in statute for over a decade.

The second opportunity for school districts to establish high school diploma requirements is new language in SB 1572. In amended ORS 329.451 (2)(c), a school district may establish requirements for a high school diploma that are based on recommendations developed by the State Board of Education. As with the requirements discussed above, these requirements would be in addition to other requirements prescribed by statute because the requirements prescribed in statute are mandatory and the new language does not authorize the waiver or removal of those requirements. Any requirements adopted under the new language also would have some consistency as they would be based on recommendations developed by the board.

Under SB 1572, school districts retain their authority to implement additional high school diploma requirements and are granted new authority to implement further additional high school diploma requirements. The result of SB 1572 is that high school diploma requirements may differ among school districts because school districts are authorized to decide whether to implement requirements that are in addition to the requirements prescribed by statute. This difference is of concern to the Department of Education for purposes of complying with ESSA.

The Every Student Succeeds Act imposes accountability standards on states and many measurements of accountability refer to a regular high school diploma.⁷ Under ESSA, the term “regular high school diploma” is defined to mean “the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards.”⁸ As explained above, SB 1572 would cause all state standards for a high school diploma to be encapsulated in ORS 329.451 and no other source. A high school diploma that complies with ORS 329.451 would comply with all state standards.

Under ESSA, the regular high school diploma is the diploma that is awarded to the preponderance of students in the state. ESSA does not define the term “preponderance,” nor were we able to find any other guidance from the U.S. Department of Education in the time allowed to prepare this opinion. Based on the definition in *Webster’s Third New International Dictionary* (unabridged ed., 2016), we believe the likely definition applicable in this situation is “majority.” Therefore, we believe that the ESSA accountability measures that rely on a regular high school diploma would be based on a high school diploma that meets the requirements prescribed by ORS 329.451 and that is awarded to a majority of the students in this state.

The Department of Education, however, has concerns that a majority of the students in this state may not be earning a standard high school diploma because of the discretion provided to school districts to implement high school diploma requirements. As we explained above, school districts may implement requirements that are only in *addition* to the state standards prescribed by statute. The authority granted to school districts does not allow school districts to circumvent state standards, but school districts can add to those standards. As provided in U.S.

⁶ See section 1, chapter 407, Oregon Laws 2007.

⁷ For example, accountability measures related to the adjusted cohort graduation rates.

⁸ 20 U.S.C. 7801 (43).

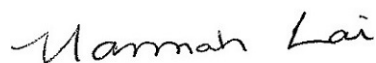
Department of Education guidance, the term “regular high school diploma” includes “any ‘higher diploma’ that is awarded to students who complete requirements above and beyond what is required for a regular high school diploma.”⁹ Any requirements implemented by a school district would be above and beyond what is required for a regular high school diploma as provided by statute, and we believe the preponderance threshold will be met.

We hope this helps. Please let us know if we can be of further assistance.

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Very truly yours,

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⁹ “Every Student Succeeds Act High School Graduation Rate Non-Regulatory Guidance,” U.S. Department of Education, January 2017, available at <https://www2.ed.gov/policy/elsec/leg/essa/essagraderateguidance.pdf>.