



September 7, 2016

Ms. Jessica McKinney
U.S. Department of Education
Room 3W107
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2016-OESE-0047

Comments submitted via Regulations.gov

Dear Ms. McKinney:

The National Down Syndrome Congress (NDSC) is a member-sustained, nonprofit organization, which works to promote the interests of people with Down syndrome and their families through advocacy, public awareness, and information. NDSC appreciates the opportunity to respond to the proposed innovative assessment regulations for the Every Student Succeeds Act (ESSA).

We especially want to thank the U.S. Department of Education (the Department) for the high level of rigor in the application requirements. As the Department reviews comments on the proposed regulations there will be those who perceive the level of rigor as too high. However, we urge the Department to retain the rigor. It is essential that the innovations be well studied and evaluated by independent reviewers to ensure a high level of reliability and technical quality before they are used for accountability purposes with the goal of scaling the assessments statewide.

Below, please find our comments on the proposed regulations:

200.77 Demonstration authority application requirements

Recommendation: Amend 200.77(a) as follows:

(a) Consultation. Evidence **from the stakeholders listed below**, that the SEA or consortium has developed an innovative assessment system in **meaningful** collaboration, with partners, including —

- (1) Experts in the planning, development, implementation, and evaluation of innovative assessment systems; and
- (2) Affected stakeholders in the State, or in each State in the consortium, including—
 - (i) Those representing **organizations or parents who advocate for** the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the Act;

Rationale: NDSC appreciates the specific mention of those representing children with disabilities. However, experience with the stakeholder process for state plan development tells us that the regulations need to define collaboration with partners in a way that ensures stakeholder consultation is meaningful, continuous and includes external partners, not just educators or administrators who work in special education departments.

Even though states often claim they have provided the disability community with input opportunities, these opportunities are often not publicized and are difficult to find out about, unless you know where to look. That is why there should be a requirement that the evidence of collaboration come from the stakeholders themselves.

Recommendation: Add additional language to 200.77(b)(1) to make it clear that the innovative assessment must be administered to all students and all student subgroups within the Local Education Agencies (LEAs), or schools within an LEA, or specific grades and/or subject.

Rationale: It is important that a school, LEA or State is prohibited from administering an innovative assessment that excludes certain subgroups of students.

Recommendation: Amend 200.77(b)(2) as follows:

(2) Align with the State academic content standards under section 1111(b)(1) of the Act **for the grade in which the student is enrolled**, including the full depth and breadth of such standards, **for general or alternate assessments**;

Rationale: It is important to be clear that the State academic content standards referred to in this regulation are for the grade in which the students are enrolled. The reference to alternate assessments is necessary to emphasize that alternate assessments are aligned to the same State academic content standards that apply to all other students. Some people may read the “full depth and breadth language as not applying to alternate assessments, even though these regulations clearly permit innovative alternate assessments to be developed.

Comment: NDSC strongly supports keeping the proposed language at 200.77(b)(5)-(7), which requires that the innovative assessment provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, provide appropriate accommodations consistent with section 1111(b)(2) of the Act, and, incorporate the principles of universal design for learning; requires that the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act applies to the innovative assessment, and that the assessment must generate an annual summative determination for each student. These requirements are all critical to maintaining full accountability of students with disabilities

Recommendation: NDSC asks the Department to strengthen the reference to universal design for learning in 200.77(b)(5) by removing the words “as appropriate.”

Rationale: It is difficult to envision a situation where it would not be appropriate to incorporate the principles of universal design for learning in an innovative assessment.

Recommendation: Amend 200.77(d)(2) as follows:

(2) Ensure that all students and each subgroup of students under section 1111(c)(2) of the Act in participating schools and LEAs are held to the same challenging academic **content** standards under section 1111(b)(1) of the Act as all other students **and are assessed on the aligned academic achievement standards**, except that students with the most significant cognitive disabilities may be assessed **on these content standards** with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet ~~such~~ **the challenging academic State content standards for their enrolled grade;**

Rationale: There is a great deal of confusion in the field about the difference between content standards and achievement standards and the wording of this provision will only exacerbate that confusion. Therefore, it is critically important to revise this language to clarify that all students, including those who take alternate assessments must be assessed on and provided instruction and support to meet the challenging State academic content standards for the grade in which the student is enrolled.

Recommendation: Proposed 200.77(d)(4) requires States to “ensure that each LEA informs parents of students in participating schools about the innovative assessment consistent with section 1112 (e)(2)(B) of the Act at the beginning of each school year during which an innovative assessment will be implemented.” This requirement should be expanded to include a requirement that if the innovative assessment is solely a general assessment, the parents of students with the most significant cognitive disabilities attending participating schools must be informed that their children will not participate in the innovative assessment and be provided

with information on how such students will be assessed.

Rationale: Parents need to be fully informed about how their students are participating in the assessment system, even when they are not included in the innovative assessment.

200.78 Demonstration authority selection criteria.

Comment: NDSC strongly supports the retention of proposed 200.78(b)(1)(ii)(A), which requires States to show prior experience in the development or use of “effective supports and appropriate accommodations consistent with section 1111(b)(2) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;”

Research and lessons learned from assessment administration continue to show that students with disabilities do not receive needed accommodations, frequently due to a lack of trained personnel and/or administrative convenience. (See, for example, Lessons Learned About Assessment from Inclusion of Students with Disabilities in College and Career Ready Assessments at <http://www.cehd.umn.edu/NCEO/OnlinePubs/LessonsLearnedAboutAssessment.pdf>) Thus, it is critical that States seeking innovative assessment demonstration authority be required to articulate the State(or LEA) experience with providing effective supports and appropriate accommodations.

Recommendation: Amend 200.78(b)(1)(ii)(C) as follows:

(C) Standardized and calibrated scoring rubrics for innovative assessments, with documented evidence **from independent reviewers** of the validity, reliability, and comparability of determinations of student mastery or proficiency on the assessments.

Rationale: To ensure that the evaluation is truly unbiased, it is essential that independent, external reviewers, who have no financial interest in the assessment, provide evidence of validity, reliability and comparability.

Recommendation: Amend 200.78(b)(3) as follows:

- (3) The extent and depth of State and local support for the application for demonstration authority in each SEA, including each SEA in a consortium, as demonstrated by signatures from the following:
- (i) Superintendents (or equivalent) of LEAs, including LEAs participating in the first year of the demonstration authority period.
 - (ii) Presidents of local school boards (or equivalent, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iii) Local teacher organizations (including labor organizations, where applicable), including within LEAs participating in the first year of the demonstration authority.

(iv) Other affected stakeholders, ~~such as~~ **including** parent organizations, **disability organizations**, civil rights organizations, and business organizations.

Rationale: The language regarding evidence of support from parents, disability and civil rights organizations should be as strongly worded as the provisions for educators and administrators.

In closing, NDSC appreciates the opportunity to provide feedback on critical areas of the ESSA proposed innovative assessment regulations and looks forward to continuing to be an advocate for students with Down syndrome and other disabilities as we continue with the regulatory process. Thank you for your efforts to ensure accountability for the students we represent.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ricki Sabia".

Ricki Sabia
Senior Education Policy Advisor
National Down Syndrome Congress