



February 10, 2015

The Honorable John Kline
Chairman, House Education and Workforce Committee
Washington, DC 20510

Dear Chairman Kline:

The National Down Syndrome Congress (NDSC) is the country's oldest national organization for people with Down syndrome, their families, and the professionals who work with them. We provide information, advocacy and support concerning all aspects of life for individuals with Down syndrome, and work to create a national climate in which all people will recognize and embrace the value and dignity of people with Down syndrome.

Most students with Down syndrome are participating in alternate assessments on alternate academic achievement standards. Therefore, we are providing specific legislative language recommendations to ensure that the students who take these assessments will have the opportunity to graduate high school prepared for postsecondary education or the workforce, which is the purpose of Title I of the Student Success Act. We are also providing general recommendations to address critical elements of accountability that are missing from the Student Success Act.

Before making our recommendations we would like to note that the Student Success Act contains some key provisions that consider the interests of students with disabilities:

- annual assessments in grades 3-8 and once in high school for reading and math;
- disaggregation of data by student categories in current law;
- the 95% student participation rate for all students as well as for student subgroups in annual assessments;
- the use of universal design for learning principles in assessment design as defined in the Higher Education Act of 1965;
- the "parent right to know" provision, requiring that parents be informed that they may request information regarding qualifications of the student's classroom teacher; and

- provisions with respect to charter schools and students with disabilities represents a step forward.

NDSC shares your goal to see that every student has the opportunity to achieve to high standards and be prepared for post-secondary education and careers. We hope to work with you to address the concerns in this letter. Please contact Ricki Sabia with any questions at ricki@ndscenter.org.

Recommendations for Alternate Assessment Provisions

Summary of Recommendations:

- Throughout the bill refer to academic content standards and academic achievement standards separately based on the context of the provision, instead of using “academic standards” to refer to them interchangeably.
- Instead of requiring alternate academic achievement standards to promote access to the curriculum, require them to provide access to and ensure progress in the general education curriculum for the grade in which the student is enrolled, consistent with the Individuals with Disabilities Education Act.
- Add a cap on the number of students who take an alternate assessment based on alternate academic achievement standards equal to 1% of all students assessed; to be applied at the local education agency and state levels.
- Require that the guidelines used by Individualized Education Program (IEP) teams are provided to parents and include a clear explanation of any effects of state and local policies on the student's education resulting from participating in an alternate assessment based on alternate academic achievement standards.
- Change the language about informing parents of the decision that their child will take the alternate assessment based on alternate academic achievement standards to say that parents are involved in that decision as members of the IEP team and add language stating that parents should be informed of any effect that participating in that assessment may have on their child's academic preparation to earn a regular high school diploma.
- Require that states provide evidence, not merely document, that students who take an alternate assessment based on alternate academic achievement standards are included and make progress in the general education curriculum and participate in assessments based on that curriculum, consistent with the individuals with Disabilities Education Act (delete “to the extent practicable.”)
- Include language to ensure that students who participate in an alternate assessment based on alternate academic achievement standards in one subject will not automatically participate in that assessment for all subjects.

- Include language to prevent states from precluding students who take an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.
- Require that all state assessments be developed using the principles of universal design for learning.
- Delete the exception to the definition of regular high school diploma for students with the most significant cognitive disabilities that would allow these students to be counted for graduation rate as graduates with a regular high school diploma, even if they earned a lesser credential.
- Require that states develop valid and reliable standard-based measures for determining student academic growth for students taking alternate assessments based on alternate academic achievement standards.

Legislative Language and Rationales

New language bolded, deleted language struck-through

Recommendation: Change the term “academic standards,” wherever it appears in the legislative language, to refer to either “academic content standards” or “academic achievement standards” depending on the context.

Rationale:

Referring to the content standards and achievement standards with one term “academic standards” loses the distinction between the two types of standards. It is critically important to be clear that the assessments are based on achievement standards (grade-level or alternate academic achievement standards) that define “how well” students show achievement on grade-level content standards. The grade-level and alternate academic achievement standards, defining different levels of achievement, are both aligned to the same state academic content standards, which is “what” all students are learning. Students who take alternate assessment based on alternate academic achievement standards must have curriculum and assessments aligned to the same academic content standards, the same “what”, as all other students in order to be involved in and make progress in the general education curriculum pursuant to the Individuals with Disabilities Education Act

Recommendation: Amend as follows:

p. 24 line 10

“(D) **ALTERNATE ACADEMIC ACHIEVEMENT STANDARDS.**—

Notwithstanding any other provision of this paragraph, a State may, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, if—

“(i) the determination about whether the achievement of an individual student should be measured against such standards is made separately for each student **in each**

subject being assessed; and

“(ii) such **alternate academic achievement** standards—

“(I) are aligned with the State academic **content** standards required under subparagraph (A);

“(II) ~~promote~~ **provide** access to **and ensure progress in** the general curriculum, **for the grade in which the student is enrolled, to ensure complete and consistent alignment with the Individuals with Disabilities Education Act;** and

“(III) reflect professional judgment as to the highest possible standards achievable by such student; **and**

(IV) are designated in the individualized education program developed for each child under section 614(d) (3) of the Individuals with Disabilities Education Act as the academic achievement standard that will be used for the student.

Rationale: The amendments requested in (D) (ii) are necessary to ensure that students who take an alternate assessment based on alternate academic achievement standards are involved in and make progress in the general education curriculum, consistent with section 614 (d)(1) (A)(i) of the Individuals with Disabilities Education Act, and to ensure that the type of assessment they will take is recorded in their individualized education programs (IEPs).

Recommendation: Amend as follows:

p. 31 line 11

“(C) ALTERNATE ASSESSMENTS.—A State may provide for alternate assessments aligned with the alternate academic **achievement** standards adopted in accordance with paragraph (1)(D), for students with the most significant cognitive disabilities, if the State—

(i) ensures that for each subject, the total number of students in each grade level assessed in such subject using the alternate assessments, calculated separately at the State and Local Education Agency level, does not exceed 1 percent of the total number of all students in such grade level who are assessed in such subject at the State and Local Education Agency levels, respectively;

~~“(i) (ii)~~ **(ii)** establishes and monitors implementation of clear and appropriate guidelines for individualized education program teams, **including parents** (as defined in section 614(d)(1)(B) of the Individuals with Disabilities Education Act) to apply when determining when a child’s significant cognitive disability justifies assessment based on alternate **academic** achievement standards, **which include a clear explanation of any effects of state and local policies on the student's education resulting from participating in this alternate assessment ;**

~~“(ii) (iii)~~ **(iii)** ensures that parents of such students, **as part of the IEP teams, are involved in the decision** ~~are informed~~ that their child’s academic achievement will be measured against such alternate **academic achievement** standards **and informed of any effect that participation in the alternate assessment on**

alternate academic achievement standards may have on their child's academic preparation to earn a diploma

- ~~(II) whether participation in such assessments may preclude the student from completing the requirements for a regular high school diploma, as determined by the State;~~
- ~~“(iii)_(iv) demonstrates~~ **provides evidence** that such students are, ~~to the extent practicable,~~ included **and make progress** in the general curriculum **for the grade in which the students are enrolled** and that such alternate assessments are aligned with such curriculum, **consistent with the Individuals with Disabilities Education Act;**
- ~~(iv)(v) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled; and~~
- ~~(v) (vi) ensures that regular and special education teachers and other appropriate staff know how to administer the alternate assessments, including making appropriate use of accommodations, for students with disabilities;~~
- (vii) requires separate determinations about whether a student should be assessed using challenging State alternate academic achievement standards for each subject assessed;**
- (viii) ensures that students who take alternate assessments based on alternate academic achievement standards are not precluded from attempting to complete the requirements, as defined by the State, for a regular high school diploma; and**
- (ix) certifies that all the State's assessments are developed using the principles of universal design for learning as defined in section 103 of the Higher Education Act of 1965.**

Rationale:

- The amendment requested in the first sentence is to clarify that alternate academics standards refers to alternate academic achievement standards.
- The amendment requested in (C) (i) adds a 1% cap to be applied at the state and local education agency levels on the number of students who may take an alternate assessment based on alternate academic achievement standards. This cap equals approximately 10% of students with disabilities. The cap is necessary to protect the interests of individual students and to protect the meaningful interpretation and use of state assessment results. Incidence data reflects that far less than 1% of all students have the most significant cognitive disabilities. Therefore, the cap will be more than high enough for its intended purpose.
- The amendment requested in (C) (ii) addresses the importance of ensuring that IEP teams, including parents, are aware of any state and local policies that can affect a student's education by taking an alternate assessment. An informed decision cannot be made without knowledge of

the consequences and a determination whether those consequences are appropriate at this point in a student's education.

- The amendments requested in (C) (iii) address the fact that parents are members of the IEP team and should be involved in making the decision whether their child should participate in an alternate assessment based on alternate achievement standards rather than simply be informed of the decision. They also need information on any academic impact of taking the assessment, in order to be informed participants in the IEP team decision making-process.
- The amendments requested in (C) (iv) are necessary to ensure that students who take an alternate assessment based on alternate academic achievement standards are involved in and make progress in the general education curriculum, consistent with section 614 (d)(1) (A)(i) of the Individuals with Disabilities Education Act. This educational right is so important that states should provide evidence, not merely document, that these students are included and make progress in the general education curriculum and that the assessments they take are aligned to that curriculum.
- The amendment adding (C) (vii) is necessary to ensure that students who may need to take an alternate assessment based on alternate academic achievement standards for one subject are not automatically given that assessment for all subjects being assessed.
- The amendment adding (C) (viii) addresses the inequity of denying students who take an alternate assessment based on alternate academic achievement standards the opportunity to attempt to complete the requirements of a regular high school. Currently 32% of the states remove students who take this assessment from the diploma track. This often occurs as early as third grade. It is not possible to be certain of a child's educational potential or to know what the diploma requirements might be by the time he/she graduates. In addition, there is no question that a regular diploma is critically important for career and college opportunities. Therefore, it is exceedingly inappropriate and harmful for a state to preclude any student from attempting to earn this important credential.
- The amendment adding (C) (ix) addresses the importance of using assessments that are developed using the principles of universal design for learning to allow all students to demonstrate their knowledge and skills and maximize the number of students with disabilities who take the regular assessment.

Recommendation: Amend as follows:

Delete the exception for students with the most significant disabilities in the provision defining "regular high school diploma"

~~"(35) REGULAR HIGH SCHOOL DIPLOMA.—~~

~~"(B) EXCEPTION FOR STUDENTS WITH SIGNIFICANT COGNITIVE~~

~~DISABILITIES.—For a student who is assessed using an alternate assessment aligned to alternate academic achievement standards under section~~

~~1111(b)(1)(D), receipt of a regular high school diploma as defined under subparagraph (A) or a State-defined alternate diploma, obtained within the time period for which the State ensures the availability of a free appropriate public education and in accordance with section 612(a)(1) of the Individuals with Disabilities Education Act shall be counted as graduating with a regular high school diploma for the purposes of this Act~~

Rationale: It is inconsistent with academic accountability and skews the data to count students who take the alternate assessment on alternate academic achievement standards as *if* they graduated with a regular high school diploma for graduation rate purposes, even if they don't actually earn a regular high school diploma. A lesser credential should not be counted.

Recommendation: In any provisions referring to measures of student academic growth as part of the accountability system, or for any other purpose, add the requirement that a State must develop valid and reliable standard-based measures for determining student academic growth for students taking alternate assessments based on alternate academic achievement standards.

Rationale: Student growth measures have become an increasingly important component of state accountability systems. Many states do not have defensible standards-based measures for student growth to apply to students who take alternate assessments based on alternate academic achievement standards. This leads to the students being excluded from critical components of the accountability system or to the use of inappropriate measures of student growth such as progress on IEP goals. IEPs are not the curriculum for students with disabilities, rather they represent the skills needed to access the same grade-level curriculum used for all students.

General Recommendations

Summary of Recommendations:

- Require state and local education agencies (SEAs and LEAs) to report results for all subgroups and include the results in accountability measures, except if the number of students in the subgroup falls below 10. Also, confidence intervals should not be set higher than 95%.
- Require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets;
- Require SEAs and LEAs to intervene when schools or districts identify achievement gaps between students with disabilities and the general population of students.
- Ensure that students with disabilities must be kept on track to graduate high school and have the access to the general curriculum;

- Provide support to states and school districts to ensure that teachers have the skills and knowledge necessary to instruct diverse learners;
- Prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety;
- Create grant programs that provide SEAs and LEAs with support to implement school-wide positive behavioral interventions and supports;
- Maintain funding for competitive grant programs support and address the social/emotional, physical and mental health needs of students;
- Eliminate the authorization of “preparation academies” which create separate and lower standards for the preparation of new teachers and leaders; and
- Prohibit the elimination of maintenance of effort provisions.

Rationales for General Recommendations

ACCOUNTABILITY SYSTEMS

Exceptions to disaggregation of data: The bill allows an exception to the disaggregation of student data where “the number of students in a category is insufficient to yield statistically reliable information.” This provision has historically been misused by many States which have set a wide variety of “n” sizes (e.g., California’s “n” size of 100) as determinants of statistical reliability to avoid reporting school and school district assessment outcomes for students with disabilities. Thus, language regarding disaggregation should be amended to ensure that a substantial percentage of schools and districts within a State are held accountable for all students. The provision should be changed to allow an exception only where “the number of students in a category falls below ten.” The National Center for Education Statistics (NCES) recommends that schools and districts use a minimum of 10 students for subgroup size limitation. Whenever possible, results include the actual numbers of students in the category except where such data would reveal personally identifiable information about an individual student. A subgroup size of 10 students would accomplish this.

Addressing Achievement Gaps: SEAs and LEAs should be required to intervene when schools or districts determine, using the disaggregated data, that there is, or continues to be, a gap between the achievement of students with disabilities and the general populations of students. The transparency of data must be used to trigger additional resources and interventions when achievement gaps occur.

GRADUATION

Targets and Disaggregation: All students – including those with disabilities – must leave high school prepared to succeed in postsecondary education and/or in the workplace. All students with disabilities should be on the path to receive a regular diploma and the vast majority of them should be expected to graduate. No students with disabilities should be denied the opportunity to pursue this achievement. The Student Success Act does not include any requirement that states and districts set graduation goals and/or targets for all students and every

category of students, nor does it place any emphasis on graduation in state accountability planning and reporting on use of Title I funds. ESEA must require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets. If these targets are not set, it is feared that schools will push out low performing students to bolster their school's perceived academic performance.

EDUCATORS

Skills and Knowledge: Requirements in Title II should ensure that all general and special education teachers have the skills and knowledge necessary for teaching grade-level content. States must be required to ensure that qualified teachers are available in every school. The Student Success Act also does not provide for the equitable distribution of teachers in high-need schools, which can lead to a disparate impact on low-income students with disabilities.

ESEA should provide support to states and school districts to ensure that teachers are profession-ready before becoming the teacher of record, including that they hold a bachelor's degree and demonstrate in-depth content knowledge in their area of licensure; fulfill the requirements of a state-approved preparation program that includes clinical experiences that use models of accomplished practice and instructors with K-12 experience; complete a comprehensive residency program in partnership between a teacher preparation program and a local school district that engages teacher residents in a series of school-based experiences and teaching enrichment opportunities under the guidance of accomplished educators; and demonstrate proficiency through a valid and reliable classroom-based performance assessment. The authorization of "preparation academies" would undermine this standard and should be eliminated.

STUDENT HEALTH AND SAFETY

Use of restraint and seclusion: ESEA should prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety, prohibit the use of aversive behavioral interventions that compromise health and safety, and protect all students from physical and mental abuse. An ESEA reauthorization must include supports for SEAs and LEAs to require the use of evidence-based, positive and preventative strategies to promote a positive school culture and climate and keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe. This is also important since research has shown that when schools have a positive school climate and meet the social, emotional and behavioral needs of students, academic achievement improves.

Social/emotional and mental health: Addressing students' social/emotional, physical and mental health needs is critical to ensuring they are prepared to learn. Unfortunately, the Student Success Act consolidates a number of

competitive grant programs providing targeted funding to school districts for services and supports that address the whole child, such as the Elementary and Secondary School Counseling Program, 21st Century Community Learning Centers, and the Carol White Physical Education. The block grant approach will require school districts to make difficult choices among an array of critical services, resulting in fewer students receiving the supports they need to succeed.

FUNDING

Maintenance of effort: We strongly oppose the elimination of the “maintenance of effort” provision. This provision, a cornerstone of ESEA since passage in 1965, requires districts that receive Title I funding to maintain approximately the same spending levels on education from year to year. Title I funding is designed to help low income and disadvantaged students, including students with disabilities. Without the maintenance of effort provision, states and local school districts will be free to slash education budgets while remaining eligible to receive annual Title I federal funds, thus weakening the power of federal investments to raise achievement for disadvantaged children.