



## **EVERY STUDENT SUCCEEDS ACT: FREQUENTLY ASKED QUESTIONS AND IEP TIPS**

### **Background**

The reauthorization (amendment process) for the Elementary and Secondary Education Act (ESEA), formerly known as the No Child Left Behind Act (NCLB) was completed when the President signed the Every Student Succeeds Act (ESSA) into law on December 10, 2015. ESSA is the name that ESEA will be known by until it is reauthorized again. ESEA has been around since 1965 and its main purpose has been as a civil rights law, to address the inequities in educational opportunities for certain populations of students, including students with disabilities.

NDSC advocacy, in collaboration with other advocacy organizations, added many more protections to ESSA than were expected when Congress started with a draft bill in January 2015. In addition, NDSC took the lead in advocating for important changes in the legislative language that directly impacts students who take alternate assessments, many of whom are students with Down syndrome. NDSC was able to use ESSA as a vehicle for changing significant problems related to the rules that have governed alternate assessments since 2003. The new provisions can be used at Individualized Education Program (IEP) meetings, in conjunction with IDEA requirements, to raise academic expectations and increase inclusion for students with Down syndrome.

In spite of the positive changes in ESSA, NDSC remains concerned about the unprecedented level of discretion ESSA gives to states in determining how districts and schools will be held accountable for the student groups that ESEA was intended to help, such as students with disabilities. Strong advocacy at the state level will be necessary to ensure that your new state accountability system, which will be put into effect by the 2017-18 school year, adequately includes the performance of students with disabilities and requires timely action if these students are not meeting standards. NDSC will be developing a separate document with tips for state advocacy.

Congressional staff has confirmed that most of the standards and assessment provisions in ESSA are intended to take effect in August 2016. Therefore, it makes sense for IEP teams to take ESSA provisions into account now. One cautionary note is that the multiple effective date provisions in ESSA are complex

and conflicting interpretations may arise. Hopefully, the U.S. Department of Education will provide clarification in the coming months.

This document will answer frequently asked questions about the changes in the alternate assessment rules in ESSA, and provide tips on how to use the new legislative language at IEP meetings. ***Even if your child does not take an alternate assessment, there is information in this document that will be helpful to you regarding high academic expectations, education in general education classrooms, Universal Design for Learning, and preparation for post-school success.***

## **Frequently Asked Questions and IEP Tips**

### **Who can participate in an alternate assessment?**

ESSA mandates that no more than 1% of all assessed students (which equals about 10% of students with disabilities) can participate in a state's alternate assessment, instead of the general assessment. This is the first time there has been a limit on the percentage of students who can participate in an alternate assessment. The prior 1% cap was on the number of advanced and proficient scores that could be used for accountability purposes. The fact that the 1% cap in ESSA applies to the number of students who participate in the assessment, means that states will look more closely at school districts that are putting too many students into the alternate assessment.

Your state alternate assessment is only for students with the most significant cognitive disabilities. It is up to the state to define the criteria that IEP teams use to determine who these students are. ESSA states that parents must be informed if the IEP team makes a decision that their child will participate in the state's alternate assessment and must be told of any ways in which the assessment can impact his/her completion of the regular diploma requirements.

### **TIPS:**

If your child currently takes an alternate assessment or you suspect that the IEP team will recommend this assessment, you should request a copy of the state participation criteria for the alternate assessment BEFORE attending the IEP meeting. The criteria will help you be prepared for this discussion as an IEP team member and understand whether or not the alternate assessment is appropriate for your child. Usually, you can also find these criteria on your state's Department of Education website. If you disagree with the decision of the IEP team, you should be able to use the Individuals with Disabilities Education Act (IDEA) due process procedures in the same way you would for any other dispute regarding an IEP team decision (e.g. placement decisions).

### **Do the state content standards, which determine the general education curriculum, apply to all students?**

The answer to this question has not changed from NCLB to ESSA, but it is so important and confusing that it should be explained. There are two types of standards: academic content standards and academic achievement standards.

The content standards describe WHAT is taught in each grade. The achievement standards describe HOW MUCH, at a minimum, students are expected to learn to be proficient on the state's general and alternate assessment.

ALL students regardless of the assessment he or she takes are required to have instruction based on the state academic content standards for the grade in which he or she is enrolled. The difference for students who take an alternate assessment is that the expectations for achievement are modified with respect to the grade-level content. Therefore, proficiency on the alternate assessment is based on "alternate academic achievement standards." Proficiency on the general assessment is based on "grade-level academic achievement standards."

### **TIPS:**

These names for the achievement standards sometimes create a misperception that students taking alternate assessments have a different curriculum than students who take the general assessment. If this comes up at your IEP meeting, you can point out that the achievement standards for BOTH assessments are aligned to the same grade-level academic content standards, as discussed above. Here is an example: Cindy is taking the alternate assessment in a grade that covers geometry. The alternate assessment should be aligned to the grade level content for geometry, but will cover it with less breadth and depth and permit a greater variety of ways for the student to show what he or she knows.

You should insist on a standards-based IEP for your child. The National Center and State Collaborative has a series of short briefs that address many issues related to high academic expectations for students who take alternate assessments at <http://www.ncscpartners.org/resources>. NDSC strongly encourages you to read them and share them with your child's school. The briefs include information about the difference between content and achievement standards (Brief #1) and how to develop a standards-based IEP (Brief #5).

IDEA also addresses this issue of curriculum. There is no mention of a different curriculum for any students with disabilities; there is only the general education curriculum. Recently, the U.S. Department of Education published guidance at <http://1.usa.gov/1Pq61Ru>, to clarify that all IEPs must be aligned with the State's academic content standards for the grade in which the child is enrolled and specifically applies this rule to students with significant cognitive disabilities on page 5.

### **What does ESSA say about postsecondary education and employment?**

There is an increased focus on post-school outcomes for all students in ESSA. An important provision in ESSA, which was advocated for by NDSC, requires that the alternate academic achievement standards upon which alternate assessments are based, must ensure that students who meet these standards are on track to pursue postsecondary education or employment. The employment language in ESSA is linked to the Workforce Innovation and Opportunity Act (WIOA), the focus of which is competitive integrated employment for individuals with disabilities (working alongside nondisabled peers for minimum

wage or higher). That means the assessment and instruction should be designed to address the academic skills and knowledge that are needed for these post-school outcomes.

**TIPS:**

This new provision is a good way to start a conversation about the ways in which your child's IEP should prepare him or her for postsecondary education and/or competitive integrated employment. This conversation should start at a young age to ensure that your child develops the needed independence to be successful as an adult. For example, accommodations and adaptations to instruction materials should be designed to allow the student to do the schoolwork as independently as possible. It also applies to other school issues. For example, riding the regular school bus will better prepare a student for using public transportation later. In addition, academic instruction that includes the student in the general education curriculum is a key indicator for post-school success.

During transition, starting at ages 14 - 16 depending on the state, ESSA and WIOA should be used at IEP meetings to advocate for competitive, integrated job experiences prior to exiting high school. Also, the transition goals should reflect any interest in pursuing postsecondary education.

This legislative language about postsecondary education and employment goals can also be used to advocate for your child to be educated in general education classes. It is much easier for an individual with intellectual disabilities to be successful in an integrated workplace or on a college campus if he or she had experience working with nondisabled peers during elementary and secondary education. There are many studies connecting inclusion to positive post-school outcomes. The National Center and State Collaborative developed a policy paper in 2013, which described college and career readiness for students who take alternate assessments and how participation in general education classes is connected to post-school success.<sup>1</sup>

**Does ESSA go beyond “access to the curriculum” to a higher standard?**

ESSA includes strong language requiring states to promote the involvement and progress of students who take an alternate assessment in the general education curriculum. This would, of course, be the expectation for students taking the general assessment as well. This language raises the bar above the current focus on “access to the curriculum,” which has too often been interpreted as mere exposure to some concepts, without any concerted effort to help the students make progress towards the state content standards. This ESSA language is consistent with IDEA's requirement, in regulation 300.320(2)(4) that

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<sup>1</sup> Kleinert, H., Kearns, J., Quenemoen, R., & Thurlow, M. (2013). NCSC GSEG Policy Paper: Alternate Assessments Based on Common Core State Standards: How Do They Relate to College and Career Readiness? Minneapolis, MN: University of Minnesota, National Center and State Collaborative [found at <http://bit.ly/1Of6BAP>] Summary of the paper is at <http://bit.ly/1nhFWc0>

the IEP include services and supports designed to enable students with disabilities to be involved in and make progress in the general education curriculum. It is much more powerful to have this language appear in both laws.

**TIPS:**

As part of the discussion about how your child's education is preparing him or her for postsecondary education or employment, educators should be asked to discuss what steps are being taken to promote involvement in and progress in the general education curriculum. At the IEP meeting, the team should discuss whether all the services and supports are in place to enable your child to be involved in and make progress in the general education curriculum. Also, your child should have a standards-based IEP, as discussed earlier.

**How does ESSA change state policies regarding alternate assessments and the regular high school diploma?**

Many states have allowed schools to automatically take students who participate in an alternate assessment off diploma track. To make matters worse, this often happens at a very young age when it is not clear how the student will develop or how diploma requirements may change by the time that student is approaching the end of high school. Under ESSA, students who take an alternate assessment must be given the opportunity to try to meet the requirements of a regular diploma.

**TIPS:**

If the rest of the IEP team is recommending that your child take an alternate assessment, ask for information on how participation in an alternate assessment would affect your child's opportunity to attempt to meet the requirements of a regular high school diploma. If you are told that your child will not be on diploma track because of participation in the alternate assessment, explain to them that ESSA does not allow states to have a policy like this. Ask to be shown where this policy is written. If your state and district continue to have such a policy on the books, some state/local advocacy will be needed to bring the policies in line with ESSA.

Usually a student who participates in an alternate assessment requires substantially adapted materials. It is part of the participation criteria in many states. If you are told that these adaptations will not be permitted if your child stays on diploma track, explain that this statement is not consistent with the ESSA requirement that students who participate in an alternate assessment must not be precluded from attempting to meet regular diploma requirements. This does not mean the student will earn a diploma -- the degree of the adaptations might get in the way of completing the diploma requirements -- but there must be the opportunity to try. Even if your child does not earn a regular diploma, the effort to work towards the diploma will increase his or her level of academic knowledge and skills.

### **What does ESSA say about alternate diplomas?**

For calculating graduation rates, ESSA allows states to count students who take an alternate assessment and have not completed the requirements of a regular high school diploma as if they received a regular diploma, BUT only if they are awarded a State-defined alternate diploma that is-

- Standards-based
- Aligned with the State requirements for a regular high school diploma
- Obtained within the time period for which the State allows students with disabilities under IDEA to stay in public school—usually until age 21

This language in ESSA will encourage states to develop a meaningful alternate diploma instead of offering only certificates of completion, certificates of attendance or other lesser diplomas to those students who take alternate assessments and have not been able to complete the requirements of a regular high school diploma by the time they exit high school.

#### **TIPS:**

In the next year or two, states may be developing an alternate diploma that meets these requirements. If your state develops this alternate diploma, it is important to ensure that your child is given the opportunity to attempt to meet the requirements of a regular diploma as required by ESSA. Students should not be automatically tracked into an alternate diploma because he or she participates in the state's alternate assessment. However, if your child is unable to complete the regular diploma requirements, the alternate diploma could be a good option. Whether or not it is a meaningful diploma will depend on how faithfully the state follows the criteria in ESSA for developing the diploma. State level advocacy will be needed.

### **How does ESSA support advocacy for an education in the general education classroom?**

ESSA doesn't say anything directly about Least Restrictive Environment (LRE), which in IDEA creates a presumption that a student with disabilities will be educated in the general education classroom. However, there are provisions in ESSA that undermine the arguments made by some teachers against educating students with disabilities in the general education classroom, especially students who take an alternate assessment.

#### **TIPS:**

One argument that is often made against a general education classroom placement is that the student with a disability is working on a different curriculum. As explained earlier in this paper, ESSA is now clearly in line with IDEA with respect to promoting inclusion in and progress in the general education curriculum for every student with a disability, regardless of the state assessment that he or she takes. In addition, ESSA makes it clear that the same state content standards apply to all students.

The commitment to the general education curriculum in ESSA and IDEA does not mean a student cannot get modifications to the curriculum, if needed. These modifications are often used as an excuse to remove students from general education classes. If this is an issue at your child's IEP meeting, you should inform the IEP team about IDEA Regulation 300.116(e), which states that "a child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum."

Another argument that is often used in placement decisions for students who take alternate assessment, is that these students are not on diploma track and can't be in the classroom with students who are working toward a diploma. First of all, the LRE provisions in IDEA do not apply differently to students who are not expected to earn a diploma. Now you can also point out that under ESSA, students who take alternate assessments cannot be prevented from working towards a regular diploma, as discussed earlier in this paper.

### **What does ESSA say about accommodations?**

ESSA contains language that encourages states to develop, share information on and promote the use of accommodations to increase the number of students with significant cognitive disabilities who can take the general assessment instead of the alternate assessment. There are also numerous provisions in ESSA that discuss the need for appropriate accommodations for all students with disabilities and professional development on the use of these accommodations in instruction as well as assessment. There are also grants within ESSA that can be used by states and districts for these purposes.

### **TIPS:**

The IEP team should discuss the accommodations your child needs before determining whether he or she can participate in the state's general assessment with the help of these accommodations, instead of participating in the alternate assessment. Prior to the IEP meeting that will cover grade 3 or higher, request a copy of the state's most recent accommodations policy so you will be prepared for this discussion.

### **In what ways is Universal Design for Learning supported by ESSA?**

Universal Design for Learning (UDL) is defined and mentioned numerous times in ESSA, clearly making it an accepted practice for elementary and secondary education. In fact, in the large literacy instruction grant that is part of ESSA, the incorporation of the principles of UDL is a component of the definition of comprehensive literacy instruction.

UDL is a framework for curriculum, instruction and assessment that requires multiple means of engaging students, multiple means of providing students with information, and multiple means for students to interact with that information and demonstrate what they have learned. NDSC strongly believes that UDL is the key to including ALL students in the general education curriculum. When UDL is used to develop instructional objectives, assignments and assessments, fewer

last minute modifications and adaptations are needed. Planning is done from the start to allow for different ways of participating in lessons and demonstrating mastery of the objectives, which meet the needs of all students in the class. It applies to students with and without disabilities, so the use of UDL also facilitates an education in the general education classroom for students with disabilities.

**TIPS:**

Now that UDL has been accepted as a best practice in ESSA, as well as in the Higher Education Act K-12 teacher preparation provisions, the National Educational Technology Plan (<http://1.usa.gov/1RGZSRq> pages 19-22, 57, 63, 82, and 84), and various U.S. Department of Education projects, you can reasonably ask your school what they are doing to implement UDL, especially in your child's classroom. If they are not using UDL, you can share the following resources. Also, some of the means by which your child is engaged, processes information and demonstrates knowledge can be included in the IEP as accommodations.

- Background and implementation information [www.udlcenter.org](http://www.udlcenter.org)
- Free UDL Learning tools <http://bit.ly/1ONcGTT>
- Implementation and research on UDL <http://udl-irn.org>
- Recommendations for UDL implementation from the Maryland State Department of Education (including school implementation) <http://bit.ly/1H6okHJ>
- Tools and Tips for creating a UDL professional learning community at your school <http://bit.ly/1nNtHVI>

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