



RE: Docket ID ED-2015-OESE-0130: Implementing Programs Under Title I of the Elementary and Secondary Education Act

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 request for information regarding the implementation of programs under Title I of the Elementary and Secondary Education Act, now known as the Every Student Succeeds Act (ESSA). These comments support the comments submitted by the Consortium for Citizens with Disabilities and the Civil Rights Leadership Conference, as well as include additional comments that are especially important for students who take alternate assessments.

This is an important time for the U.S. Department of Education to be proactive in supporting states and school districts in implementing ESSA through the promulgation of regulations. As we saw under the No Child Left Behind Act (NCLB), non-regulatory guidance without corresponding regulations was not adequate to ensure implementation. The Department's voice is critical to ensuring ESSA meets its goal, 'to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.' As we all know and agree, every student with a disability deserves this opportunity.

NDSC recognizes that some topics outlined below will be subject to negotiated rulemaking, specifically in the areas of standards and assessments. NDSC strongly urges the Department to include in this process (and the peer review process) nationally recognized experts in the education and assessment of students with disabilities, including experts on alternate assessments, as well as people with disabilities who have received their education through public schools. In addition, parents who are advocates and represent each student subgroup should be included in the process.

The U.S. Department of Education has an opportunity to protect and promote vulnerable populations that have been historically marginalized. NDSC respectfully requests that the Department provide regulations in the following areas:

- **State Accountability Systems:**
Reaffirm that the "students with disabilities" subgroup under ESSA is comprised only of students meeting the IDEA definition of a "child with a disability" (as

established under NCLB). Only students currently eligible for special education are to be counted in this subgroup, not those who have exited special education.

The Department should make clear through regulations that students must be counted in all applicable subgroups under all indicators and metrics used in a state's accountability system. The Department should also make it clear that combining groups of students for purposes of meaningful differentiation in a state's accountability system is prohibited under the Act.

While ESSA includes students with disabilities in state accountability systems, the Department must further clarify important details to ensure quick action by schools and states when students with disabilities are underperforming.

Specifically, the Department must define terms such as "consistent underperformance;" "substantial weight" and "much greater" as they relate to the appropriate weight of indicators for annual meaningful differentiation of public schools in a state within the accountability system; and provide additional clarity regarding the technical requirements the "additional indicator(s) of school quality or student success" must meet to be included in a state's accountability system.

Additionally, it is critical for the Department to issue regulations to provide clarity in the following areas: (1) the method by which the state identifies consistently underperforming subgroups within a school, measures progress toward goals, and establishes a timeline for action when subgroups of students are not making progress; (2) the 'minimum number of students' often referred to as the "N Size"; (3) the 95 percent participation rate in the annual measurement of achievement of students (including requirements for transparency, enforcement and a significant impact on a school's rating if not met); and (4) that when a state uses a measure of student growth within its accountability system that such measures, such as growth models, must include all students and may not exclude students, including those who participate in alternate assessments, for any reason.

- **Alternate Achievement Standards and Assessments:** To provide additional clarity to states and school districts, the Department should issue regulations on the "alternate academic achievement standards" and "alternate assessments aligned to alternate academic achievement standards" to ensure stakeholders fully understand the requirements as set forth in ESSA.
 - **Alternate Academic Achievement Standards (AAAS):** At a minimum we request that the Department, through regulation, further clarify in the following areas regarding the AAAS:
 - Establish and implement a 'documented and validated standards-setting process';
 - Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;

- Ensure the AAAS are aligned to the challenging state academic content standards for the grade in which the students are enrolled;
 - Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act.
 - Ensure that any student who meets the AAAS is on track to pursue postsecondary education and employment, consistent with the purposes of Rehabilitation Act (Public Law 93–112) as amended by the Workforce Innovation and Opportunity Act of 2014. This issue is of utmost importance for positive post-school outcomes.
- **Alternate Assessments aligned to Alternate Achievement Standards (AA-AAS):** We urge the Department to clarify and reinforce, through regulation, the following requirements related to the AA-AAS:
- Reinforce the statutory requirement of a state-level cap not to exceed 1% of the total number of students in a state on grades assessed, the consequences for exceeding such cap, and the criteria for requesting a Secretarial waiver to exceed the 1% cap;
 - Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level, with the alternate assessment for students with the most significant cognitive disabilities measuring proficiency on those content standards using alternate academic achievement standards and the general assessment for all other students measuring proficiency using grade-level academic achievement standards;
 - Clarify that the term “challenging state academic standards,” which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on “challenging state academic standards” for the grade level in which the student is enrolled (this is necessary to avoid the common misconception that alternate assessments are not based on grade-level content standards);
 - Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS,
 - Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;

- Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;
 - Strongly encourage the use of Universal Design for Learning in the assessment process;
 - Reinforce the need to build the expertise of educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times
 - Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.

- **Assessments:** In addition to the implementation of the alternate assessment based on alternate academic achievement standards, NDSC urges the Department to issue regulations to provide states and stakeholders with clarity in the following areas:
 - **Enrolled Grade** Students with disabilities are to be assessed using the assessments for their enrolled grade. This requirement must be clear in ESSA. Thus the Department should explicitly state that practices such as “out-of-level,” “below-level,” and/or “instructional level” assessments do not satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.
 - **Computer-adaptive assessments (CAT)**
 - Provisions about measuring the student’s level of academic proficiency and growth using items above or below the student’s grade level, and the limitation on the use of out-of-grade-level scores within a state’s accountability system, as indicated by the statute; and
 - For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student’s grade-level does not apply; however the term “challenging state academic standards,” which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student’s grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student’s grade level.
 - **Locally selected assessments**, including the decision of a local educational agency to use a nationally recognized high school assessment in lieu of the state-designed academic assessment, and the importance of locally selected assessments being accessible to students with disabilities.

- **Multiple Test Administration.** Clarify if a student takes a state assessment for a particular subject or grade level more than once, the state must use the student's results from the first administration for purposes of reporting assessment results.
- **Title I State and Local Educational Agency (LEA) Report Cards:** NDSC urges the Department to issue regulations clarifying state and LEA report card requirements in areas such as:
 - Reinforcing the statutory requirements related to the state's accountability system, including specifying the methodology for determining "consistent underperformance" and "the time period used by the state to determine consistent underperformance" on the state report card.
 - Align the LEA report card to reflect new LEA responsibilities in implementing the state's accountability system, specifically in the areas of how LEAs will monitor a school that receives Targeted Support and Improvement and the number of years to determine if the school's plan has been unsuccessful and additional action that will need to occur and the LEA's role in determining this additional action.
 - Further define the requirement that state report cards include the results on the state academic assessments in reading and mathematics in grades 4 and 8 of the National Assessment of Educational Progress (NAEP) compared to the national average of such results. Specifically, the results should be reported at the All student level and each of the student groups reported separately by NAEP. The students with disabilities subgroup should reflect the achievement of only students with IEPs. In addition, exclusion rates for students with disabilities and for limited English proficient (LEP) students should be reported.
- **Title I State and Local Plans:** NDSC urges the Department to issue regulations clarifying state and local plan requirements. This clarity will help ensure transparency of information for families, educators and policymakers. NDSC specifically encourages the Department to focus on those parts of the plans that relate to how states/school districts will improve conditions for learning including: reducing incidents of bullying and harassment in schools; examining overuse of discipline practices; and reducing the use of aversive behavioral interventions (such as restraints and seclusion).
- **Educator Equity:** NDSC urges the Department to issue regulations and guidance that reinforce the importance of ensuring students from disadvantaged backgrounds are not disproportionately taught by ineffective, inexperienced, out-of-field educators. While the Title I LEA Plans outline this student population as students from low-income and minority backgrounds, NDSC believes the Department must take this opportunity to recognize that students with disabilities also come from low income and minority backgrounds and analyze their access to well-prepared educators.

- **Alternate Diploma:** NDSC strongly urges the Department to issue regulations clarifying that states may develop a state-defined alternate diploma, which must meet statutory requirements and promote postsecondary success of students without lowering expectations or reducing access to the general curriculum or a state’s regular high school diploma for any student with a disability. It must be clarified that the alternate diploma that can be counted under ESSA as a regular diploma for purposes of calculating graduation rate does not meet the definition for a high school diploma in ESSA or IDEA. It also should be clarified that students who receive this diploma cannot be counted as “graduated with a regular high school diploma” in the IDEA 618 data collection. States that count the alternate diploma for purposes of calculating graduation rate under ESSA should be required to report disaggregated data on the percentage of the students in the disabilities subgroup who are counted as graduates for this purpose without earning a regular diploma.

- **Adjusted Cohort Graduation Rate (ACGR):** NDSC urges the Department to issue regulations to define students with disabilities as a subgroup in the ACGR. Currently, states are defining the “students with disabilities” subgroup of the ACGR in a variety of ways, which impacts whether or not certain students are included. ESSA regulations should eliminate this inconsistency so that the reported ACGR for students with disabilities is consistent across states. and define the “students with disabilities” subgroup as any student who has an IEP for the majority of the time in the cohort (both the 4-year and extended cohorts). The Department should also make clear that minimum subgroup (N) size for the ACGR should only be established for purposes of protecting personally identifiable information. There is no need for the N size for graduation calculation to be “statistically sound.”

- **Family Engagement:** NDSC urges the Department to promote ways and provide examples of how states may better include parents, advocates and other stakeholders early in the Title I plan development process. The Department must ensure that parent/family/community consultation and engagement requirements are made meaningful. Stakeholder groups should be sent notice of opportunities for input and there must be opportunities review the plans (not just a PowerPoint or summary as occurred with the ESEA waiver applications). Stakeholders must also be given sufficient time to analyze and provide input.

In closing, NDSC recognizes there will be many additional provisions of ESSA, including others within Title I, that will require the Department’s strong voice and regulatory presence to ensure that students with disabilities are meaningfully included. We look forward to taking an active role as the regulatory process unfolds. NDSC is especially focused on the ESSA provisions that impact students who take alternate assessments and hope the Department will use us as a resource on these issues.