



Every Student Succeeds Act (ESSA) Guide to State Plan Development Decisions and Recommendations for Advocacy

This document is designed to help advocates who want to provide detailed recommendations to their state departments of education regarding the development of their ESSA implementation plan. These NDSC recommendations cover key issues in the areas of accountability, standards and assessments, UDL and teacher qualifications. ESSA provides states with discretion on many more issues than are covered in this document, but we have addressed some of the most critical decisions your state will make. If you would rather use talking points that address ESSA concerns with less specificity, they can be found at <http://www.ndsccenter.org/wp-content/uploads/ESSA-General-Public-Comment-Talking-Points.pdf>. The most important thing to remember when sharing input with your state is that the requirements in ESSA represent the MINIMUM your state must do to improve student performance. Your state can choose to aim higher. For information about stakeholder input opportunities in your state, see the NCSC document at https://docs.google.com/document/d/1eKUcLDdsZwSwVbOsm_0C5YEsNapZB_oWBoQqnGhHMkA/edit.

State Accountability System

Subgroups of students:

ESSA contains many provisions that specifically apply to “subgroups,” including the reporting of data by subgroups (called “disaggregation”) and provisions that hold schools accountable for subgroup achievement and assessment participation. These rules are very important because they apply to all of the student subgroups listed in ESSA, including the “students with disabilities” subgroup. In addition to students with disabilities, the subgroups covered are economically disadvantaged students, students from major racial and ethnic groups and English learners.

Recommendation: To advocate on the many issues that affect all the subgroups, consider collaborating with organizations at the state and local levels that represent students in the other subgroups and students with other types of disabilities. Together you can be more powerful.

Minimum subgroup size (n-size)- The state sets the minimum number of students needed for data about a student subgroup (e.g. students with disabilities) to be publically reported and for the subgroup to be counted in the accountability system. Schools can ignore the disability subgroup for reporting and accountability purposes if the n-size is higher than the number of students in the disability subgroup. For example, if the n-size selected by the state is 30 and a school has 29 students with disabilities in the grades being assessed

(e.g. grades 3-5 combined for an elementary school), it doesn't have to report data on the disability subgroup or count that subgroup for accountability purposes. Even if that subgroup has very poor academic performance the school will not be identified for support and improvement based on that data, as it would be if the n-size was met.

Recommendations: If your state has already proposed an n-size, ask about the number and percentage of schools that will not be held accountable for the disability subgroup if that n-size is used. Also, ask about the number and percentage of students with disabilities in the state who will be invisible in the accountability system because their schools do not have a large enough disability subgroup to meet the n-size. You should advocate for an n-size of 10 or lower. There are studies supporting this recommendation at <https://nces.ed.gov/pubs2011/2011603.pdf> and <http://all4ed.org/wp-content/uploads/2016/06/NSize.pdf>. Some states (e.g. Maryland) already have an n-size less than 10, which has been determined to address both confidentiality and statistical reliability concerns; the two reasons states argue for a higher n-size

Long-term goals: ESSA requires states to set long-term goals regarding assessment scores and graduation rates, as well as set interim measurements of progress toward the goals. However, states may choose to set additional long-term goals. Goals for all subgroups must be set for the same number of years, but for subgroups of students who are behind on the interim measures, the long-term goals must take into account the improvement necessary to make significant progress in closing statewide proficiency and graduation rate gaps, as well as gaps in other goals that are set. In other words, greater progress toward the goals will be required in the same timeframe for these struggling subgroups.

Recommendations: Consider whether there are other long-term goals that are important in your state for improved student outcomes besides assessment proficiency and graduation rates and whether the number of years your state picks for long-term goals to be met is unreasonably long. Also consider whether the long-term goals and interim measures for the disability subgroup represent high expectations. It may be possible to set a goal specific to the disability subgroup, e.g. improvement in the percentages of students educated 80% or more of the day in the general education classroom.

Additional indicators for accountability system: ESSA lists the first four bullets, below, as required indicators to be used in determining which schools need support and improvement. ESSA also includes a provision requiring the state to pick at least one additional indicator of school quality and student success.

- Academic achievement measured by proficiency on the required state assessments and, in the states discretion, student growth measured by these assessments (for all public schools based on their long-term goals)
- A measure of student growth, not necessarily using the state assessment or another statewide academic indicator (for all public elementary and middle schools)
- The graduation rate (for all public high schools, based on the long-term goals)
- Progress in achieving English language proficiency (for all public schools)

- No less than one indicator of school quality or student success that is valid, comparable, and statewide; and may include measures of the following indicators (for all public schools):
 - student engagement
 - educator engagement
 - student access to and completion of advanced coursework
 - postsecondary readiness
 - school climate and safety
 - any other indicator the state chooses

Recommendations: Teacher qualifications and experience, including equitable distribution of experienced teachers would make a valuable school quality or student success indicator for your state to choose. Advocacy for an indicator for teacher qualifications may be very important now that the highly qualified teacher requirements under NCLB are being phased out, unless your state is choosing to retain high standards for general and special educators. In-school and out-of-school suspensions are another valuable indicator for you to suggest. There are other indicator(s) for school quality or students success that may have value. However, it is important to ensure that the state can show evidence linking the indicator(s) to improved academic outcomes, evidence that the indicator(s) can be measured objectively, and evidence that the indicator(s) can be reported separately for each subgroup in each school across the state.

Annual meaningful differentiation of schools: This refers to how the indicators are weighted in school rating systems in order to determine which schools are identified for targeted support and improvement or comprehensive support and improvement. ESSA states that the four required indicators are each to be given “substantial weight.” In addition, when these four indicators are looked at together, they must be given “much greater weight” than the additional indicator(s) the state selects for school quality or student success. It is important to ensure that academic indicators carry much more weight than the non-academic indicators in the accountability system. It is also important to ensure that the results on the indicators for each subgroup are counted separately.

Recommendations:

- Oppose any state effort to combine student subgroups or eliminate any subgroups for measuring results on the indicators. ESSA forbids both of these practices and the proposed regulations underscore this point.
- Advocate for the term “substantial weight” to mean that each of ESSA’s four required indicators will weigh at least 20% in the accountability calculation. Advocate for the term “much greater weight” to mean that the combined weights of the four ESSA required indicators make up at least 80% of the accountability calculation.
- Advocate for your state to provide a summative score for each school so it is easy to compare the overall ratings. That doesn’t mean the schools can’t also break down the components that make up a summative score (using what are referred to as data dashboards) to provide the public with a more complete view of the data. This is similar to a rubric on a school project that provides a total score, as well as a score on the components of the project.

Significance of 95% participation rate rule in accountability systems: ESSA requires that 95% of all students in a school, as well as 95% of the students in each student subgroup in a school, must participate in state assessments. Under NCLB, a school that violated the 95% participation rule for a student subgroup would not make Adequate Yearly Progress. This significant consequence meant that almost all students with disabilities were assessed—a goal that disability advocates fought hard to achieve. Now states will determine how much (or little) impact the violation of the 95% participation rule will have in the accountability system.

Recommendations: Unless 95% assessment participation is achieved or exceeded (for the whole school and EACH subgroup), the school should not be rated as satisfactory (or above) in whatever “rating” system the state uses for accountability. For example if a state is using an A-F rating system and a C grade is considered satisfactory, then a school that doesn’t meet the 95% participation rate requirement should get a D. Missing 95% participation for even one subgroup should cause this consequence. An equivalent consequence would be for the school to be automatically identified for targeted support and improvement for failure to meet the rule. Strong consequences for violating the 95% participation rate requirement will encourage schools to help parents and educators understand how opting out of assessments undermines the accountability system and the accurate identification of schools for targeted and comprehensive support and improvement.

Identification of Schools for Targeted Support and Improvement: These are schools where one or more subgroups are “consistently underperforming” (a term not defined in statute) or are low-performing (with performance as low as the students in the lowest-performing schools in the state). Most schools where students with disabilities are struggling will end up in the consistently underperforming category.

Recommendations:

- States should define “consistently” as two years, which is the time frame in the proposed federal regulations.
- “Underperforming” should mean that the subgroup is not meeting, or not on track to meet, the state’s long-term goals and interim measures of progress for academic achievement.
- Classification as an underperforming subgroup should not be based on a comparison to any other group of students (e.g. a struggling disability subgroup should be considered underperforming based on its achievement, even if many students without disabilities at the school are also struggling).

Criteria for exiting targeted support and improvement: ESSA provides that schools can exit from targeted support and improvement if they meet “state-determined exit criteria.” If the schools haven’t met these criteria in a “state-determined number of years” because they still have “low-performing” subgroups, they will be identified for comprehensive support and improvement. States are not required to identify a school for comprehensive support and improvement if it continues to have “consistently underperforming” subgroups. It is true that these subgroups are not performing as poorly as low-performing subgroups, but they are still underperforming. Your state has the discretion to address this

omission. Otherwise, schools with consistently underperforming subgroups will be stuck in targeted support and improvement indefinitely and never receive the much higher amount of funding or the state monitoring attached to schools that are identified for comprehensive support and improvement.

Recommendations: The exit criteria should require that a school no longer have the problems that caused the school to be identified for targeted support and improvement in the first place. If possible try to get your state to require that schools have to sustain this progress for two consecutive years before exiting targeted support and improvement. This will help keep schools from bouncing in and out of the list of identified schools. Also, advocate for your state to identify a school for comprehensive support and improvement in three years if the schools have not met the exit criteria, regardless of whether the schools have consistently underperforming or low-performing subgroups.

Identification of schools for comprehensive support and improvement: ESSA requires this level of improvement and support for the lowest performing 5% of Title I schools, high schools that graduate 67% or fewer of its students (based on 4 year graduation rate), and Title I schools that have been identified for target support and improvement due to low performing subgroup(s) for a state-determined number of years. However, the state also has discretion to identify other statewide categories of schools for comprehensive support and improvement.

Recommendations:

- ESSA allows for the identification of schools for comprehensive support and improvement at least every three years. Advocate for your state to do this every year. Remember that most of these schools will have subgroups that have already been doing poorly for years by this point.
- Your state should exceed the statute's minimum requirements and identify schools for comprehensive support and improvement before student achievement and graduation rate get so low.
- As discussed earlier, your state should use the discretionary language in the statute to require that schools with consistently underperforming subgroups move into comprehensive support and improvement after three years if they have not met exit requirements, instead of staying in targeted support and improvement indefinitely.

Criteria for exiting from comprehensive support and improvement: The state has to determine the exit criteria for schools that have been identified for comprehensive support and improvement and determine the number of years before the state moves to more rigorous action if the exit criteria have not been met.

Recommendations:

- The exit criteria should require that a school no longer have the problems that caused the school to be identified for comprehensive support and improvement in the first place.
- If possible try to get your state to require that schools have to sustain this progress for two consecutive years before exiting comprehensive support and improvement.

- Advocate for your state to move to more rigorous state action after two to three years if the school has not the exit requirements.
- Ask your state to consider the best-case scenario, using the NDSC recommendations for all the “state determined” timeframes and assuming your state allows schools with consistently underperforming subgroups to move into comprehensive support and improvement. If a subgroup is consistently underperforming for two years before its school gets targeted support and improvement and then moves to comprehensive support and improvement after three more years and then gets more rigorous state action after two years; seven years will have already passed by the time the school gets more rigorous state action. Longer timeframes than those recommended by NDSC are clearly unreasonable when added together like this.

Assessments and Standards (some of these issues may not be addressed in the state ESSA plan but come up later)

Relationship of content and achievement standards: *Content* standards refer to “what” students are taught and *achievement* standards refer to “how much” they are expected to learn. The state’s general assessment is based on the “grade-level” academic achievement standards, whereas alternate assessments are based on “alternate” academic achievement standards. This gets very confusing. Even though the expectation for “how much” the student who takes an alternate assessment will learn is different than the achievement expectations for those taking the general assessment, that does not mean students who take alternate assessments are not supposed to receive instruction derived from the content standards for their enrolled grade. These students may have the required content and assignments modified (so they do not cover the full breadth and depth of the state content standards), but they must still be based on the content standards for the grade in which the student is enrolled. The bottom line is that there is one set of content standards for all students, but two achievement standards on state assessments. For more information see Brief #1 at <http://www.ncscpartners.org/resources>.

Recommendations: Ensure that the distinction between content and achievement standards is clear in your state plan and that “enrolled grade” is mentioned with respect to instruction and IEP goals for students who take alternate assessments.

State definition of “students with the most significant cognitive disabilities:” This group of students represents those who will take alternate assessment in your state. Your state department of education will define the criteria for determining who these students are for purposes of participating in that assessment. The definition will be part of the guidelines that states must provide to IEP teams. The proposed federal regulations provide the following parameters for the definition:

“...a State definition of ‘students with the most significant cognitive disabilities’ that would address factors related to cognitive functioning and adaptive behavior, such that

- (i) The identification of a student as having a particular disability as defined in the IDEA must not determine whether a student is a student with the most significant cognitive disabilities;

- (ii) A student with the most significant cognitive disabilities must not be identified solely on the basis of the student’s previous low academic achievement, or status as an English learner, or the student’s previous need for accommodations to participate in general state or districtwide assessments; and
- (iii) Students with the most significant cognitive disabilities require extensive, direct individualized instruction and substantial supports to achieve measurable gains on the challenging state academic content standards for the grade in which the student is enrolled.”

Recommendations:

At a minimum you state should follow the parameters above. It is especially important that they include the concept in (iii) that a student with the most significant cognitive disabilities is working on the state academic content standards for the grade in which the student is enrolled. If you think you can push your state further, the following participation criteria, which are closely aligned to what is used by many states for the Dynamic Learning Maps (DLM) Alternate Assessment and the Multi-State Alternate Assessment (MSAA) are even stronger. The second criterion makes it very clear that the student must be working on enrolled grade content before a determination can be made about participation in the alternate assessment. In addition, criterion three is more specific about what distinguishes a student with a significant cognitive disability from one with the MOST significant cognitive disabilities:

- The student has a significant cognitive disability. This is determined by a review of the student’s records, which indicate that the student has a disability or multiple disabilities that significantly impact intellectual functioning and adaptive behavior related to academics across content areas.
- IEP goals and instruction for this student are derived from the enrolled grade level state content standards and address knowledge and skills that are appropriate and challenging for this student; and
- The student requires extensive, repeated, individualized instruction and support that is not of a temporary or transient nature and uses substantially adapted materials and individualized methods of accessing information in alternative ways to acquire, maintain, generalize, demonstrate and transfer skills across multiple setting.

In addition, you should advocate for the state’s guidelines for IEP teams to make it clear that participation in an alternate assessment is not determined by the child’s educational setting, IQ, or disability category. It should be made clear that the type of assessment a student takes is not part of the placement decision.

State-defined alternate diploma for students who take an alternate assessment: Under ESSA students who take an alternate assessment can work toward a regular high school diploma. However, even if they don’t earn a regular diploma, ESSA permits states to count certain students who take the alternate assessment AS IF they earned a regular high school diploma, for purposes of calculating graduation rate. ESSA only allows this pretense if the students have earned an alternate diploma that meets the criteria set out in the statute. According to ESSA, the alternate diploma must be standards-based, aligned to the regular high school graduation requirements and be earned before the age at which

students are no longer eligible for services under IDEA in that state (usually age 21). Although NDSC does not like the fact that schools can count these students as if they earned a regular diploma, the silver lining may be that states are encouraged to develop a meaningful alternate diploma.

Recommendations: If your state is going to develop the alternate diploma described in ESSA, it will be important to advocate for the statutory requirements to be implemented in a way that gives the alternate diploma meaningful connections to the state content standards and the regular diploma requirements. Otherwise, your state will get credit for your child as a graduate without having to provide a challenging education based on the state content standards. States may try to say that a diploma based on IEP goals is sufficient. That is unacceptable. Even if the goals are standards-based, they will reflect only a small part of the general education curriculum. IEPs are not intended to cover every subject, only the skills needed to make progress in the general education curriculum. In addition, the criteria for meeting IEP goals are too subjective to be the basis of a meaningful alternate diploma. It is also important for the state to make it clear that the alternate diploma DOES NOT terminate services under IDEA, as would happen if the student earned a regular high school diploma.

Universal Design for Learning (UDL): ESSA includes a number of provisions about using UDL in assessment design, as well as provisions about accommodations and computerized assessments. ESSA also includes a very large grant on comprehensive literacy instruction. One of the components of the definition of comprehensive literacy instruction is that it must incorporate the principles of UDL. Since comprehensive literacy instruction is supposed to occur across content areas, this UDL requirement should impact more than reading/language arts instruction.

Recommendations:

- Find out how the state will ensure that students with disabilities are provided adequate instruction in how to use the features in the state assessment.
- Find out how the state will ensure that students with disabilities are provided ample time to practice using the features in the state assessment.
- Ensure that the state plan includes the steps the state has taken to incorporate UDL into the design of assessments
- Find out if your state is applying for the innovative assessment system authority under ESSA and, if it is, ask questions to ensure that students who take alternate assessments are meaningfully considered in the development of the innovative assessment system and that UDL is used.
- Even if your state isn't involved in the comprehensive literacy instruction grant, the UDL requirements serves as support for its importance in high quality instruction. Advocate for UDL in all aspects of assessment and curriculum design, instruction, teacher preparation and staff development. See recommendations for state implementation of UDL in a report from the Maryland UDL Task Force at <http://bit.ly/1YorEmG>.

Teacher Related Issues

Definition of “effective” teacher: States will define what an “effective” teacher is and are required to differentiate between effective and ineffective teachers.

Recommendations: Evidence of effectiveness could include: 1) preparation that includes extensive clinical experience with a demonstration of instructional skill 2) passage of a performance assessment in order to be certified or to complete a preparation program 3) a level of state certification that reflects demonstrated instructional effectiveness 4) results from a teacher evaluation system that includes demonstrated effectiveness in instructing students with disabilities.

Definition of experienced teacher: States will define “inexperienced” teachers. ESSA requires that states monitor the equitable distribution of such teachers for high poverty and minority students. Many states will be tempted to define experienced as one year or more since there is such a shortage of teachers for these students and such high turn over. **Recommendation:** Any teacher with less than three complete years of experience should be considered “inexperienced.” Research supports three years as a measure of experience. Also, you should advocate for states to monitor the use of inexperienced teachers for students with disabilities.

Qualifications for special education teachers: ESSA eliminated the highly qualified teacher requirements in IDEA for special educators. ESSA only requires them to be certified and have a Bachelors degree, which can be in any subject.

Recommendations: Teachers who are “special education teachers” should have been prepared for such roles with research based instructional strategies in special education teacher preparation programs. If they do not have these qualifications they should be considered “out of field teachers.”

Teacher certification: In their state plans, states must describe their certification systems. These systems and the designations within them (e.g. provisional, temporary, emergency, beginning, full, permanent, expert) may be misleading and lacking in transparency. If a teacher is “fully certified”, what does that mean? Did they just pass a test? Did they complete an extensive preparation program? Did they have only a few weeks of preparation?

Recommendation: Advocate for a certification system that is meaningful to parents and reflects levels of accomplishment.

Equitable distribution of inexperienced, out of field and ineffective teachers for special education students: Certain categories of students tend to end up with these teachers more than others. Because of the severe shortage of special education teachers, states will be tempted to lower standards for those teachers and not reveal the disproportionate exposure that special education students have to inexperienced, out of field and ineffective teachers. While states are required to report on the equitable distribution of inexperienced, out of field and ineffective teachers for low income and minority students, they are not required to do so for students with disabilities.

Recommendations: Although monitoring and reporting of the equitable distribution of these teachers is not required for students with disabilities, your state can choose to do

this. Remind your state that ESSA requirements represent the minimum that states must do and that you expect your state to do better than that.

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