



Comments to Proposed Regulations to 34 CFR Parts 200 and 299 of the Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act—Accountability and State Plans.

Submitted via <https://www.regulations.gov/#!submitComment;D=ED-2016-OESE-0032-0001>

U.S. Dept. of Education
Office of Elementary and Secondary Education
Docket ID ED–2016–OESE–0032

OVERVIEW

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. We believe that the U.S. Department of Education (ED) took important steps in the proposed regulations to protect the interests of students with disabilities, low-income students, students of color, English learners, and other historically marginalized students. There are also areas in which NDSC urges ED to go further in order to ensure that the guardrails for accountability in the Every Student Succeeds Act are implemented in a manner consistent with the law’s purpose: “to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”

RESPONSES TO PARTICULAR ISSUES RAISED BY ED IN THE NPRM

Options for States to identify “consistently underperforming” subgroups of students

- The definition of “consistently underperforming” should not be based on a comparison to the performance of other students in the school or state. The fact that the comparison group of students is not performing well should not impact a determination that a subgroup or subgroups at a particular school is underperforming.
- 200.19(3)(c)(iii) and (iv) should be removed from the regulations because they are based on comparisons between groups of students. If that does not happen, then the regulations should be modified to provide that a state that uses option (iii) or (iv) should also include subgroups that would be considered consistently underperforming under option (i) when identifying schools for support and improvement.
- No additional options should be added.

- Option (i) is the most useful and understandable to all stakeholders because it ties to the long-term goals and interim measures of progress set by the State for the subgroup.
- Option (v), which permits states to come up with another method to determine “underperforming,” should state that the method should not be based solely on a comparison between student groups and should be understandable by all stakeholders to promote transparency.

Options for States to meaningfully address low assessment participation rates

- The final regulations should make it clear that the options for actions in the regulations for missing the 95% participation rate requirement do not prevent a State from establishing actions that are more rigorous than the proposed actions.
- An additional option for meaningfully addressing low assessment participation should be that schools that fail to assess at least 95% of all students, or 95% of each subgroup of students, would not earn a satisfactory rating as defined by that State’s accountability system.
- The option that a school will have a lower summative score should be amended to state that the score should be substantially lowered each year that the 95% participation requirement is not met (e.g. an B school would become a C school and the following year would become a D school)
- The option for the school to be given the lowest performance level on the Academic Achievement indicator should be amended to state that the lowest performance level must also be given for the Academic Growth indicator (if the assessments are used to measure growth).

Including students who have exited special education in the children with disabilities subgroup for the purpose of calculating the Academic Achievement indicator

- Students who are no longer receiving services under IDEA should NOT be included in the children with disabilities subgroup for the purpose of calculating the Academic Achievement indicator under ESSA.
- This will create inaccurate data because of a disconnect between the group of students for whom the long-term goals and interim measures of progress has been designed (IDEA students) and the groups of students (IDEA students and those no longer receiving services under IDEA) whose performance would be used to determine the attainment of these goals for the Academic Achievement indicator.
- The past reason for including students who no longer receive services under IDEA in the disability subgroup is not relevant under ESSA because of the changes made by the law in the accountability rules.

Standardization of the criteria for including students in their corresponding subgroups within the adjusted cohort graduation rate

- The criteria used to identify children for inclusion in the children with disabilities subgroup for the adjusted cohort graduation rate (ACGR) should be standardized to make the ACGR rates more comparable across States.
- Only students meeting **both of the following criteria** should be reported:

- The student was a student with a disability as defined in 602(3) of the Individuals with Disabilities Education Act at the time of being awarded a regular high school diploma and
- The student was a student with a disability as defined in 602(3) of the Individuals with Disabilities Education Act for the majority (i.e., more than 50 percent) of the time in the cohort.

SUMMARY OF OTHER KEY RECOMMENDATIONS

- When distinguishing between the academic achievement standards for the general assessment and alternate assessment, it is important for the final regulations to use wording that helps educators understand that alternate academic achievement standards for students who take an alternate assessment must be based on the same enrolled grade-level State content standards as all other students. The wording of the statement in the regulations that the “State must apply the same high standards of academic achievement to all public school students in the State, except for students with the most significant cognitive disabilities,” may inadvertently reinforce the misconception that these students do not learn content from the grade in which they are enrolled. It is not necessarily apparent from this statement that the alternate achievement standards are based on the enrolled grade content standards.
- NDSC supports the many important provisions in the regulations regarding stakeholder consultation in various aspects of the accountability system, including State and LEA plan development. However, in order to ensure meaningful consultation, parents and state/local disability organizations must be made aware of these opportunities and be told how to find the information about the State and LEA plans. So far, many States has not been transparent regarding stakeholder input opportunities and the membership of their ESSA State plan committees.
- The final regulations should require the inclusion of at least one parent and one organization member who specifically represent students with disabilities on the committees/workgroups engaged in the development of the State and LEA plans under ESSA. Currently, very few States have any representation from the disability community on their State plan development committees/workgroups. Having a seat at the table is essential for meaningful consultation.
- The options for determining when a subgroup is “consistently underperforming” that are based on comparisons to other groups should be eliminated because they undermine the expectation that supports and interventions will be provided when any student group in any school is not meeting or on track to meet State long-term goals and interim measures of progress. NDSC strongly supports the proposed regulation that does not allow a subgroup to be underperforming for more than two years before is considered to be consistently underperforming.
- NDSC requests a change in the regulations to add subgroups that continue to be consistently underperforming, even after three years of the school being identified for targeted support and improvement, to the definition of chronically low-performing subgroups (or some other change to the regulations that will require, or at least encourage, States to identify schools with these subgroups for

- comprehensive support and improvement, instead of indefinitely remaining in targeted support and improvement).
- NDSC is concerned about the huge difference between funding for schools identified for targeted support and improvement and those identified for comprehensive support improvement. This funding gap should be balanced to help ensure that schools identified for targeted support and improvement do not end up doing so poorly that they have to be identified for comprehensive support and improvement.
 - NDSC supports the regulations designed to reinforce the inclusion of all students in the state's assessment system through the 95% participation rate requirement, but requests that state options for addressing low assessment participation be strengthened to make them more meaningful.
 - It should be clear that all students who did not participate in a State assessment should be counted as non-proficient when the 95% participation rate is not met and that students who opt out of state assessments must be included in the denominator for participation calculation.
 - NDSC supports the requirement that States provide justification for setting the minimum subgroup size (n-size) above a certain number. However, NDSC asserts that the n-size of 30 attached to this requirement in the proposed regulations should be greatly reduced to prevent too many students with disabilities, in too large a percentage of schools, from becoming invisible in their States accountability system. There is evidence that an n-size of 10 should be encouraged, and justification of a higher number should be required. Also the information required from States regarding their n-size should be expanded to include information on the number and percentage of schools that would not be held accountable for one or more student subgroups
 - A regular high school diploma, including the alternate diploma described in ESSA that is considered a regular high school diploma for the purposes of calculating graduation rate, should not be based in whole or in part on whether the students IEP goals are met, even if those goals are standards-based.
 - NDSC urges ED to add the segregation of students with disabilities in separate classes, including those who take alternate assessments, to the list of school practices that need to be reduced in order to improve school environments and increase equitable access to the well rounded education and rigorous coursework necessary for improved post-school outcomes.
 - NDSC supports a summative score for the accountability system, which may be also be broken down into data dashboards.

DETAILED COMMENTS AND RECOMMENDATIONS

General comment on web site accessibility: The proposed regulations include numerous references to the websites of State Education Agencies (SEAs) and Local Education Agencies (LEAs) as an acceptable means by which to disseminate information to the public. For example, SEAs may provide their proposed State plan, approved State plan and annual State report cards on their websites. However, ED's Office for Civil Rights (OCR) has recently reported receiving numerous complaints regarding the

accessibility of Web site operated by SEAs and LEAs, and has determined that a serious problem exists with regard to access for people with disabilities in numerous States. Given this, ED should include in the final regulations a provision that SEA and LEA websites used for dissemination of information required under ESSA must meet minimum accessibility standards, such as the Web Content Accessibility Guidelines 2.0 Level AA. OCR has referenced these guidelines in recent resolutions. See, for example, Virginia Beach (VA) City Public Schools, Office for Civil Rights, Southern Division, D.C. (Virginia), 11-15-1344 and Edinburg (TX) Consolidated Independent School District, Office for Civil Rights, Southern Division, Dallas (Texas), 06-15-1722 available at <http://www2.ed.gov/about/offices/list/ocr/frontpage/faq/readingroom.html>

200.12 Single Statewide Accountability System

Recommendation

200.12(b)(2) states that the State accountability system must be informed by the State's long-term goals and measurements of interim progress under § 200.13. This regulation should use a stronger term than "be informed." An example would be "driven by."

200.13 Long-term goals and measures of interim progress

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provision:

Achievement must be measured separately for math and reading/language arts in the long-term goals and measures of interim progress.

Recommendations

- Amend the following language in the preamble to clarify that although students with the most significant cognitive disabilities are assessed based on alternate academic achievement standards, their instruction should be derived from the same challenging enrolled grade State content standards as all other students. By referring to the "challenging State academic standards," instead of differentiating between content and achievement standards, the current language gives the false impression that the challenging State academic content standards do not apply to students who take alternate assessments.

"Section 1111(b)(1) also requires that all students be held to the same challenging State academic **content** standards **for the enrolled grade**. ~~except for~~ Students with the most significant cognitive disabilities ~~who are~~ may be assessed based on alternate academic achievement standards, as permitted under section 1111(b)(2)(D)(i). To ensure that all students are treated equitably and expected to meet the same high standards, and that all schools are held accountable for meeting these requirements, proposed §200.13 would clarify that long-term goals must be based on the ~~same~~ academic achievement standards and definition of "proficiency" for the State's general assessment, ~~and for all students, with the exception of~~ **except that for** students with the most significant cognitive disabilities **they will be based on alternate academic achievement standards and definition of "proficiency"** ~~who take an~~ for the State's alternate

assessment. ~~aligned with alternate academic achievement standards.~~”

- Amend the following language in proposed regulation 200.13(a)(2)(i), which describes what a State must do when establishing the long-term goals and measurements of interim progress for improved academic achievement as measured by grade-level proficiency on assessments, as follows (new language in bold).

The State must -- Apply the same high standards of academic achievement to all public school students in the State, except **that academic achievement** ~~as provided~~ for students with the most significant cognitive disabilities **is measured using alternate academic achievement standards, which are aligned to the challenging state academic content standards for the enrolled grade**, consistent with section 1111(b)(1) of the Act;

The proposed regulatory language excludes students who take alternate assessments from “the same high standards of academic achievement” that apply to all other students. Even though this is meant to be a reference to the alternate academic achievement standards, it can easily be misinterpreted if the reader does not fully understand how the alternate academic achievement standards are developed. The wording of the provision may give the impression that there are low standards of achievement for students with the most significant cognitive disabilities, when, in fact, achievement standards are aligned to the same grade-level state academic content standards that apply to all other students.

In addition, the wording may give the impression that the achievement of students who take alternate assessments is not included when determining whether the disability subgroup is meeting long-term goals and measurements of interim progress.

- Add disability to the list of characteristics that may be considered for English learners in 200.13(c)(2)(ii).

200.14 Accountability indicators

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provisions:

- Reading/language arts and mathematics must be equally considered within the Academic Achievement indicator.
- The State would be required to ensure that each measure it selects to include as an Academic Progress or School Quality or Student Success indicator is supported by research finding that performance or progress on such measure is likely to increase student academic achievement or, for measures used within indicators at the high school level, graduation rates.

- Academic Progress and School Quality or Student Success indicators must produce varied results across all schools in order to support the statutory requirements for meaningful differentiation and long-term student success.
- Indicators include all students similarly across the State, including historically underserved populations, so that all students are held to the same high expectations.
- States must choose a different indicator to measure School Quality or Student Success than it uses to measure Academic Achievement.

Recommendation: If the state decides to use student growth based on annual assessments for its Academic Progress indicator, there must be a valid and reliable growth model established for measuring student growth based on the State's alternate assessment. Many states have not developed appropriate growth models for alternate assessments and use inappropriate growth measures unrelated to the assessment that do not mirror growth measures for other students, e.g. growth based on meeting IEP goals.

200.15 Participation in assessments and annual measurement of achievement

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provisions:

- Each State must measure participation rates for purposes of the 95% participation rule, separately in reading/language arts and mathematics.
- In order to count a student who is assessed based on alternate academic achievement standards as a participant for purposes of meeting the 95% participation requirement, the State must have guidelines that meet the requirements described in the Act and must ensure that its LEAs adhere to such guidelines.
- The systematic exclusion of any subgroup of students from required assessments by a State, LEA or school is prohibited.
- When a school misses the 95% participation rate for all students, or for one or more subgroups of students, it must develop and implement an improvement plan that addresses the reason or reasons for low participation in the school and include interventions to improve participation rate in subsequent years.
- A school that fails to assess at least 95% of all students or 95% of each subgroup of students must develop and implement an improvement plan that is developed in partnership with stakeholders (including principals and other school leaders, teachers, and parents), includes one or more strategies to address the reason or reasons for low participation rates in the school and improve participation rates in subsequent years; is approved by the LEA prior to implementation, and is monitored, upon submission and implementation, by the LEA.
- An LEA with a significant number of schools that fail to assess at least 95% of all students or 95% of each subgroup of students, must develop and implement an improvement plan that includes additional actions to support effective implementation of the school-level plans, and is approved and monitored by the State.

- Proposed regulation 200.15(b)(2)(iii) in which a school that fails to assess at least 95% of all students or 95% of each subgroup of students is identified for, and must implement, a targeted support and improvement plan.
- The State plan and report card must explain how the requirements of this regulation have been met.

Recommendations

- Stakeholders involved in developing the schools plan to improve a low participation rate for a subgroup or subgroups should include at least one parent of a student from each subgroup that has not met the 95% participation rate requirement. This is necessary because only a parent with a child in the impacted subgroup can provide critical information on how to improve the participation rate.
- The regulations should state that a school that fails to assess at least 95% of all students, or 95% of each subgroup of students, should not be identified with a satisfactory rating as defined by that State’s accountability system. The only option in the proposed regulations that is the equivalent of an unsatisfactory rating is the one that calls for the school to be identified for, and implement, a targeted support and improvement plan.
- Other options with a similarly strong impact on the school’s rating should be added to the regulation because the negative consequences of low assessment participation are so significant.
- The option that says such a school will get a lower summative rating could mean that the school simply goes from a B+ rating to a B, which is a minor consequence. The language for this option should make it clear than the summative rating should be substantially lowered each year that the requirement is not met.
- The option for the school to be given the lowest performance level on the Academic Achievement indicator might also turn out to have a limited impact on the overall rating and doesn’t address the impact of low participation on the validity of the Academic Growth indicator (if it is based on the annual assessments). Both these issues should be addressed in the final regulations.
- States should be required to provide technical assistance to help schools explain to families why their child’s participation in the assessment is important to the integrity of the accountability system and how the system is used to ensure that students who are struggling get needed supports.
- NDSC supports proposed regulation 200.15(d)(3) but requests that it be amended as follows in bold to ensure there is no doubt that the sole impact of this provision is on the calculation of the 95% participation rate:

To count a student who is assessed based on alternate academic achievement standards described in section 1111(b)(1)(E) of the Act as a participant for purposes of meeting the **95% participation rate** requirements of this section, the State must have guidelines that meet the requirement described in section 1111(b)(2)(D)(ii) of the Act and must ensure that its LEAs adhere to such guidelines.
- This section should make clear that the two methods of calculation found in

- (b)(1)(i) and (ii) results in all non-participants being counted as non-proficient when the 95% participation rate is not met. The only students who may be excluded from the calculation are those students who were enrolled in the school for less than half of the academic year, as stated in 200.20(b). The regulations should make clear that students who opt out of state assessments must be included in the denominator for participation calculation. Students who took the State alternate assessment, but were not counted as participants for calculating the 95% participation rate because the State has not developed appropriate guidelines for IEP teams, should be counted as participants for calculating proficiency.
- The regulations should make it clear that the proposed actions for missing the requirement do not prevent a State from establishing a factor for the requirement that is more rigorous than those proposed. Clearly this is what is intended by use of the words “at least” in 200.15 (b)(2) however, this point should be further emphasized

200.16 Subgroups of students

Comments: NDSC appreciates and supports many parts of this proposed regulation and the related preamble language, including the following provisions:

- States must include *each* of the required subgroups of students separately when establishing long-term goals and measurements of interim progress, measuring school performance on each of the indicators, annually meaningfully differentiating schools, and identifying schools for comprehensive and targeted support and improvement.
- Preamble language, which--
 - Clarifies that students from different subgroups cannot be combined into one large subgroup, or super-subgroup, as a substitute for considering each of subgroups separately, and
 - Explains why super-subgroups are so detrimental to the students in these subgroups and to the transparency and validity of the accountability system.
- With respect to an English learner with a disability for whom there are no appropriate accommodations for one or more domains of the English language proficiency assessment as determined by the student’s individualized education program (IEP) team or 504 team on an individualized basis, a State must, in measuring performance against the Progress in Achieving English Language Proficiency indicator, include such a student’s performance on the English language proficiency assessment based on the remaining domains in which it is possible to assess the student.

Recommendations:

- 200.16(c) seems to allow the use of other subgroups besides the ones listed in paragraph (a)(2) as long as they are listed in the State plan. It must be clearly stated in paragraph (c) of this proposed regulation that it is not permitted to combine any of the subgroups listed in (a)(2) as an additional subgroup.

- Add language to the proposed regulations, consistent with universal design for learning (UDL), which would allow accommodations for students with disabilities who have limited or no oral speech, to take the “speaking” components of State assessments, including the Progress in English Language Proficiency Assessments, using text to speech, sign language, and/or augmentative and assistive communication devices. The construct for “speaking” measures communication skills, which do not solely involve oral speech.

200.17 Disaggregation of data for accountability purposes

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provisions (although edits are requested for some of them):

- States must receive approval for their decision about the minimum number of students who must be in a subgroup in order for the subgroup to be counted in accountability determinations or for data to be reported by subgroup (called minimum subgroup size or “n” size) if it exceeds a certain number.
- In order for a higher number to be approved the State has to provide a justification, including data on the number and percentage of schools that are not held accountable for the results of each required subgroup of students in the State’s system of the annual meaningful differentiation of schools in its State plan.
- For any n-size, the State plan must include information regarding the number and percentage of all students and students in each subgroup for whose results schools would not be held accountable.
- The n-size must be small enough to ensure the maximum inclusion of each student subgroup in accountability decisions and school identification, including measuring student progress against the State’s long-term goals and indicators and notifying schools with consistently underperforming subgroups of students for targeted support and improvement, consistent with the statutory requirements to disaggregate data for such purpose.
- If a subgroup under 200.16(a) is not of sufficient size to produce statistically sound and reliable results, a State must still include students in that subgroup in its State assessments.
- If the number of students in a subgroup is not statistically sound and reliable at the school level, a State must include those students in disaggregated information at each level for which the number of students is statistically sound and reliable (e.g., the LEA or State level).

Recommendations

- The proposed regulations state that the n-size must be the same for all purposes of the statewide accountability system. However, NDSC believes that metrics that do not require statistical reliability (e.g. for measuring participation rate or graduation rate, even for accountability purposes) should be permitted to have a lower n-size than metrics that do require statistical reliability (determining whether enough students in a subgroup performed above the cut score to meet

- proficiency objectives).
- NDSC believes, that States should be required to get approval and provide justification for an n-size over 10. The Institute for Education Sciences recommends a minimum subgroup size of 10 or lower for confidentiality purposes.¹ The Alliance for Excellent Education recommends a maximum n-size of 10 for all metrics.² Therefore, we disagree with the proposed regulation to the extent it sets this limit at 30. It implies that this is an acceptable n-size and States with lower n-sizes may be tempted to raise their n-size to 30. Some states already have an n-size lower than 10.
 - The provision in 200.17(a)(2) (iv), which requires the State plan to include information regarding the number and percentage of all students and students in each subgroup for whose results schools would not be held accountable with the State's proposed n-size, should be expanded to include information on the number and percentage of schools that would not be held accountable for one or more student subgroups. The provision should also be amended to be clear that it applies for all indicators (regardless of whether the proposed group size is the same or different across indicators). We also propose adding this information to the requirements for state and local report cards.
 - The proposed regulations should clearly state that students must be counted in all subgroups to which they belong under all indicators in the State's accountability system that require disaggregation.

200.18 Annual Meaningful Differentiation of School Performance

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provisions:

- The system of annual meaningful differentiation must be based on all of the indicators in the State accountability system for all students and for each subgroup of students.
- The four substantially weighted indicators, together, would not be deemed to have much greater weight in the system if performance on the other not substantially weighted indicator could remove a school from identification.
- An indicator would not be considered to have substantial weight, and the overall system would not be meaningfully differentiating among schools, if low performance on an indicator failed to result in a school being rated differently than a school performing at the highest level on every indicator.
- States must establish at least three distinct performance levels for schools, reported separately for each indicator, in a way that is consistent with attainment of the State's long-term goals and measurements of interim progress, and ensure that LEAs include how each school fared against these performance levels,

¹ Institute for Education Sciences, (2010), U.S. Department of Education, *Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting* retrieved at: <https://nces.ed.gov/pubs2011/2011603.pdf>

² <http://all4ed.org/wp-content/uploads/2016/06/NSize.pdf>

separately by indicator, as part of the description of the accountability system on annual LEA report cards.

- The levels should indicate distinct differences in performance in user-friendly terms that the local community, especially students' parents, can understand.
- States must provide schools with summative ratings, across all indicators, and report those ratings for each school on LEA report cards.

200.19 Identification of schools

Comments: NDSC appreciates and supports many parts of this proposed regulation, especially the requirement that when identifying consistently underperforming schools a school's performance should be considered for no more than two years.

Recommendations:

- The definition of consistently underperforming should not be based on a comparison to the performance of other students in the school or state, as permitted by two options in the proposed regulations. The fact that the comparison group of students is not performing well should not impact a determination that a subgroup or subgroups at a particular school is underperforming.
- The statute and proposed regulations are unclear about what happens when a school with a consistently underperforming subgroup or subgroups has been implementing a targeted improvement and support plan for three years without meeting exit requirements. NDSC requests a change in the regulations to add subgroups that have been consistently underperforming for this long to the definition of chronically low-performing subgroups (or another change that requires, or at least encourages, States to identify schools with consistently underperforming subgroups for comprehensive support and improvement after three years), instead of keeping them indefinitely in targeted support and improvement. This is especially important considering the difference in funding attached to comprehensive support and improvement as compared to targeted support and improvement.

200.20 Data procedures for annual meaningful differentiation and identification of schools

Recommendations for changes: Require that the procedure used for averaging data across school years and combining data across grades be identified in LEA report cards, in addition to State report cards.

200.21 Comprehensive support and improvement

Comments: NDSC appreciates and supports many parts of this proposed regulation, especially the requirement that parents and other stakeholders must participate in the development of the needs assessment and comprehensive support and improvement plan, as well as participate in an ongoing manner in the plans' implementation.

Recommendations:

- When parents are given notice that a reason why the school was identified is because of a chronically low-performing subgroup or subgroups, they should also be told which subgroup(s) are impacted.
- Stakeholders involved in the development of the needs assessments and comprehensive support and improvement plan should include representatives of families from any subgroup or subgroups that were the reason for the plan.
- The minimum number of required interventions in the comprehensive support and improvement plan related to subgroup performance should be changed from “one or more” to “two or more for each subgroup for which the school has been identified.” The needs of the students within a subgroup and between subgroups are different. If the school is identified for both math and English language arts, there should be an additional number of interventions required because interventions also vary by subject area.
- The language requiring interventions to be supported by evidence from a sample population or setting that overlaps with the population or setting of the school to be served, should be changed to refer to the population of students in the subgroup or subgroups that led to the school being identified for comprehensive support and improvement.
- The proposed regulations should amend the language that permits the LEA to forego implementation of improvement activities in the case of a school that has a total enrollment of less than 100 students. Language should be added to (g)(2) to say that this provision does not apply to schools that predominantly serve students with disabilities. These schools must have the persistent causes of low graduation rate addressed.
- In addition to requiring that the comprehensive support and improvement plan, and any amended plan, are made available to parents, this regulation should require that parents must be notified about its availability and how to find it. The regulation should also require that if availability will be online, the school must also make a hard copy of the notice and plan available, or provide online access to the documents at the school, for parents who do not have a home computer.

200.22 Targeted support and improvement

Recommendations:

- The statute failed to clearly address what happens to consistently performing subgroups when targeted support and improvement is not working. There should be language added to clarify that schools identified for targeted support and improvement due to a consistently underperforming subgroup or subgroups that do not meet exit criteria after three years must be identified for comprehensive support and improvement. This would better align the treatment of consistently underperforming and low performing subgroups.
- Stakeholders involved in the development of the targeted support and improvement plan should include representatives of families from any subgroup

- or subgroups that were consistently underperforming or low-performing.
- If a school has both consistently underperforming and low-performing subgroups all the students in these groups should be considered the “lowest-performing students.”
 - The minimum number of required evidence-based interventions in the targeted support and improvement plan should be changed from “one or more” to “two or more for each subgroup for which the school has been identified.” The needs of the students within a subgroup and between subgroups are different and will respond to different evidence-based interventions. If the school is identified for both math and English language arts, there should be an additional number of evidence-based interventions required because interventions also vary by subject area.
 - The language requiring interventions to be supported by evidence from a sample population or setting that overlaps with the population or setting of the school to be served, should be changed to refer to the population of students in the subgroup or subgroups that led to the school being identified for targeted support and improvement.
 - In addition to requiring that the targeted support and improvement plan, and any amended plan, are made available to parents, this regulation should require that parents must be notified about its availability and how to find it. The regulation should also require that if availability will be online, the school must also make a hard copy of the notice and plan available, or provide online access to the documents at the school, for parents who do not have a home computer.
 - If a school does not meet the exit criteria in the required number of years this regulation requires the school to amend its targeted support and improvement plan to include additional actions that encourage interventions that either meet a higher level of evidence than the interventions included in the school’s original plan or increase the intensity of effective interventions in the school’s original plan. Another option that should be added is “increase the number of evidenced-based-interventions” because existing interventions might be effective with certain students, but not with others.

200.23 State responsibilities to support continued improvement

Recommendations: The regulations should provide parameters for the term “significant number of schools” to ensure that LEAs receive the support they need.

200.24 Resources to support continued improvement

Recommendations: NDSC urges the reconsideration of huge discrepancy between the amounts allocated for comprehensive support and improvements and the amounts allocated for targeted support and improvement. It is important to provide adequate funding to schools identified for targeted support and improvement to ensure they do not end up needing comprehensive support and improvement. This funding gap is especially worrisome for the affected students at schools that have been identified for targeted support and improvement because of a consistently underperforming subgroup or subgroups. Under the proposed regulations these schools may stay in targeted support

and improvement indefinitely, even if there are not improved student outcomes. As stated earlier, NDSC recommends that the proposed regulations clarify how these schools move to comprehensive support and improvement if the exit criteria have not been met.

200.30 Annual State report card

Comments: NDSC appreciates and supports all the details that this proposed regulation requires the State to include in its State report card.

Recommendations:

- The regulation says that the State report card should, at a minimum, be available on a single page of the State Education Agency’s website. However, it should also be required that if dissemination of the State and/or Local Education Agency (LEA) report card will solely be online, schools must provide online access to the report cards (in an accessible manner), for parents who do not have a home computer.
- The State report card should be required to identify any subgroup for which data is not disaggregated because of subgroup size.
- Regulations should expand State report card requirement related to the minimum subgroup size to include the following data:
 - The number and percentage of all students and students in each subgroup for whose results schools are not held accountable in the State accountability system for annual meaningful differentiation;
 - The number and percentage of schools not held accountable for one or more subgroup of students in the state accountability system.

200.31 Annual LEA report card

Comments: NDSC appreciates and supports all the details that this proposed regulation requires the LEA to include in its report card.

Recommendations

- The regulation says that the LEA report card should, at a minimum, be available on a single page of the LEA’s website. However, it should also be required that if dissemination of the LEA report card will solely be online, schools must provide online access to their LEA’s report card (in an accessible manner), for parents who do not have a home computer.
- The LEA report card should be required to identify any subgroup for which data is not disaggregated because of subgroup size.
- Also, regulations should expand the LEA report card requirement related to the minimum subgroup size to include the following data:
 - The number and percentage of all students and students in each subgroup for whose results schools in the LEA are not held accountable in the State accountability system for annual meaningful differentiation;

- The number and percentage of schools in the LEA not held accountable for one or more subgroup of students in the state accountability system.

200.34 High school graduation rate

Recommendations

- Amend preamble language: Under ESSA, an alternate diploma must be standards-based and aligned with the State requirements for a regular high school diploma; therefore, the alternate diploma may not be based solely on meeting IEP goals even if they are fully aligned with the State’s grade-level academic content standards.
- Amend definition of regular high school diploma as follows:

(2) “Regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals. ~~that are not fully aligned with the State’s grade-level academic content standards.~~

Neither a regular nor alternate high school diploma should be based, wholly or in part, on meeting IEP goals, even if they are fully aligned with the State’s grade level academic content standards. To do so undermines the definition of both a "regular high school diploma" and the “alternate diploma” in the statute and is inconsistent with the purpose of IEP goals, which do not represent a student’s curriculum, but rather the skills needed to make progress in the general education curriculum.

- Amend 200.34(e)(4) to allow students with the most significant cognitive disabilities who are awarded a State’s alternate diploma that meets the criteria in the statute to be counted as a four-year graduate at the conclusion of the year in which the diploma is awarded (or during the summer session immediately following). Delete language requiring an annual update of four-year cohort graduation rates. This follows the intent of the statute to allow States, districts, and high schools to take credit for students who have earned an alternate diploma in the most recent year – not 3-4 years later. It is important that the alternate diploma provision provide an incentive for States to develop a meaningful alternate diploma that meets the statutory requirements.
- The regulations should clearly state that an alternate diploma as defined by the statute is NOT to be treated as a regular diploma for purposes of determining the termination of services under IDEA. The treatment of the alternate diploma as a

regular high school diploma is solely to be used in the calculation of the graduation rate.

- Amend this regulation to require States and LEAs to disaggregate the number and percentage of students with disabilities reported in the four-year ACGR into two categories: those earning a regular high school diploma at the conclusion of their fourth year, or during a summer session immediately following their fourth year and those students with the most significant cognitive disabilities earning a State-defined alternate diploma within the time period for which the State ensures the availability of a free appropriate public education.

200.36 Postsecondary enrollment

Recommendation: As part of the information required to be reported on postsecondary enrollment, State and LEA reports cards should separately report information on the percentage of students who graduate with a State-defined alternate diploma, who are attending postsecondary programs for students with intellectual disabilities, as well as the percentage who are attending postsecondary programs through a traditional route.

299.13 Overview of State plan requirements

Comment: NDSC appreciates and supports many parts of this proposed regulation, especially the provisions clarifying the requirements for meaningful consultation of stakeholders and public comment.

Recommendation: In the overview require that the SEA highlight the description of how it addressed the issues and concerns raised through consultation and public comment and any changes made as a result of this input, so that families can easily understand the impact made by their involvement. The amount of stakeholder engagement in the future is dependent on whether individuals and organizations believe that their concerns are given significant consideration and weight.

299.15 Consultation and coordination

Comments: NDSC appreciates and supports many parts of this proposed regulation, including the following provisions:

- The SEA must describe how it engaged in timely and meaningful consultation with stakeholders in the development of each of the 4 components of the consolidated plan.
- Stakeholders must include parents and families; community-based organizations, and civil rights organizations, including those representing students with disabilities, English learners, and other historically underserved students.

Recommendations:

- In order to ensure meaningful consultation, the final regulations should require States and LEAs to be transparent about these consultation opportunities and

distribute this information to parents and state/local disability organizations. Stakeholder input information has been very difficult to find in most states.

- Stakeholders also should be sent information about where they can find the State and LEA plans, as well as information about school support and improvement plans.
- The final regulations should require at least one parent and one organization member who specifically represent students with disabilities on the committees/workgroups engaged in the development of the State and LEA plans under ESSA. Currently, very few States have done that for their State ESSA plans.

299.16 Challenging academic standards and academic assessments

Comments: NDSC appreciates and supports many parts of this proposed regulation, especially the following provisions:

- The State plans must provide evidence that the alternate academic achievement standards meet the requirements of the statute.
- The State plans must identify alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards for students with the most significant cognitive disabilities.

299.17 Accountability, support, and improvement for schools

Comments: NDSC appreciates and supports all the details that this proposed regulation requires the State to include in its consolidated plan.

299.18 Supporting Excellent Educators

Recommendations:

- Expand 200.18(a)(2) to include a description in the State plan of the State's system to ensure adequate preparation of new general and special educators to teach students with disabilities.
- Expand section (b)(1)(iv) that requires the State's system to ensure adequate preparation of new educators, particularly for low-income and minority students, to also refer to the other main student subgroups that are the focus of ESSA, including students with disabilities.
- Amend section (b)(2)(i) of the proposed regulation to include a reference to universal design for learning (UDL). UDL is recognized in ESSA as an essential component of comprehensive literacy instruction and applies across content areas. Students with low literacy are specifically referenced in this section. UDL is also in the Higher Education Act with respect to teacher preparation and is recommended in the National Educational Technology plan. Instruction based on the needs of all the diverse learners listed in (b)(2)(i) will be more readily achieved if UDL is being implemented.

- Include students with disabilities in the State system for determining the rates at which ineffective, out of field or inexperienced teachers disproportionately teach certain student groups. NDSC has grave concerns about the impact of these teachers on students with disabilities; especially those who are still not being educated in general education classrooms.

299.19 Supporting all students

Comments: NDSC appreciates and supports many parts of this proposed regulation, especially the provisions about equitable access to a well-rounded education and rigorous coursework.

Recommendations for changes:

In 200.19(a)(1)(iii) add the segregation of students with disabilities in separate classrooms and schools to the list of activities to be reduced in order to improve school conditions. Many schools have failed to properly implement the Least Restrictive Environment provisions for students with disabilities, especially students who take alternate assessments.³ The excessive removal of these students from the general education classroom not only undermines a meaningful opportunity to work towards a regular high school diploma and/or postsecondary education and employment, but also creates an environment that is more likely to result in incidents of bullying and harassment as well as use of aversive behavioral interventions.

³ Kleinert, H.et.al. *Where Students with the Most Significant Cognitive Disabilities Are Taught: Implications for General Curriculum Access*, posted at <http://www.ncscpartners.org/Media/Default/PDFs/Resources/NCSC%20LRE%20Article%20Exceptional%20Children%20EC%201670%20APA.pdf>