



COMMENTS ON CHAIRMAN ALEXANDER'S ELEMENTARY AND SECONDARY EDUCATION ACT (ESEA) DISCUSSION DRAFT

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

Most students with Down syndrome are participating in the alternate assessments on alternate academic achievement standards. Therefore we are providing specific legislative language recommendations to ensure that the students who take these assessments will receive the high quality education that is promised to all children in the Statement of Purpose for Title I of the Chairman's ESEA Discussion Draft. We will also be providing general recommendations to address other concerns with the Discussion Draft.

Chairman Alexander, in his recent remarks on reauthorization of ESEA, acknowledged that the federal government has a very special role in ensuring that students do not experience discrimination based on who they are or what their disability might be. The Chairman's discussion draft goes even further when it states that the purpose of Title I is to ensure that all children have a fair and equitable and significant opportunity to receive a high-quality education that prepares them for postsecondary education or the workforce and to close the achievement gap. This statement of purpose recognizes that there is still much work to be done.

There are some provisions in the Discussion Draft that represent important elements of the accountability that will be necessary to achieve the Title I goals. For example NDSC is pleased to see the retention of the requirement for disaggregation of data by student categories (subgroups) in current law, as well as the 95% student participation rate in state assessments, and the provision requiring parents to be informed of their right to request information regarding the qualifications of their child's classroom teacher. Also,

the inclusion of important requirements with respect to charter schools and students with disabilities represents a step forward.

Unfortunately, there are many critical elements of accountability and oversight that are missing from this Discussion Draft. We understand there is a great deal of pressure to provide greater flexibility in this ESEA reauthorization by leaving the details of accountability systems up to the state's discretion. However, the recent history of ESEA implementation has shown us that too many states have used flexibility to weaken accountability, especially for the historically underserved subgroups who are most in need of a fair, equitable and significant opportunity for a high-quality education. For example, the use of unnecessarily high minimum subgroup sizes (e.g. the 100 student "n" size used in California) greatly diminished school and local education agency accountability for these subgroups in many states. States accept federal funds through ESEA, which must be tied to federal requirements designed to ensure that the funding is being used to meet the purposes of the law.

NDSC appreciates the opportunity provided by Chairman Alexander to share the following comments on the Discussion Draft. Please contact Ricki Sabia with any questions at [ricki@ndsccenter.org](mailto:rickett@ndsccenter.org).

Comments Relating to Alternate Assessments on Alternate Academic Achievement Standards

SUMMARY OF RECOMMENDATIONS

- Refer to academic content standards and academic achievement standards separately based on the context of the provision, instead of using "academic standards" to refer to them interchangeably.
- Instead of requiring alternate academic achievement standards to promote access to the curriculum, require them to provide access to and ensure progress in the general education curriculum for the grade in which the student is enrolled, consistent with the Individuals with Disabilities Education Act.
- Add a cap on the number of students who take an alternate assessment based on alternate academic achievement standards equal to 1% of all students assessed; to be applied at the local education agency and state levels.
- Require that the guidelines used by Individualized Education Program (IEP) teams are provided to parents and include a clear explanation of any effects of state and local policies on the student's education resulting from participating in an alternate assessment based on alternate academic achievement standards.
- Change the language about informing parents of the decision that their child will take the alternate assessment based on alternate academic achievement standards to say that parents are involved in that decision as members of the IEP team and add language stating that parents should be informed of any effect that participating in that assessment may have on their child's academic preparation to earn a regular high school diploma.

- Require that states provide evidence, not merely document, that students who take an alternate assessment based on alternate academic achievement standards are included and make progress in the general education curriculum and participate in assessments based on that curriculum, consistent with the Individuals with Disabilities Education Act (delete “to the extent practicable.”)
- Include language to ensure that students who participate in an alternate assessment based on alternate academic achievement standards in one subject will not automatically participate in that assessment for all subjects.
- Include language to prevent states from precluding students who take an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.
- Require that all state assessments be developed using the principles of universal design for learning.

LEGISLATIVE LANGUAGE AND RATIONALES

Recommendation: Amend the provision below by deleting the language that is struck through. In addition, change the term “academic standards,” wherever it appears in the legislative language, to refer to either “academic content standards” or “academic achievement standards” depending on the context.

Page 13

“(A) IN GENERAL.—Each State shall provide an assurance that the State has adopted challenging academic content standards and academic achievement standards (~~referred to in this Act as ‘challenging State academic standards’~~) that will be used by the State, its local educational agencies, and its schools to carry out this part.

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

Recommendation: Amend the provision below by deleting the language that is struck-through and adding the language in bold.

Page 14

“(E) ALTERNATE ACADEMIC ACHIEVEMENT STANDARDS.—Notwithstanding any other provision of this paragraph, a State may, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards—

(i) are aligned with the challenging State academic **content** standards under subparagraph (A);

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

“(iii) reflect professional judgment of the highest achievement standards attainable by those students; and

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

Rationale: The amendments requested in (E) (ii) are necessary to ensure that students who take an alternate assessment based on alternate academic achievement standards are involved in and make progress in the general education curriculum, consistent with section 614 (d)(1) (A)(i) of the Individuals with Disabilities Education Act. The amendments requested in (E) (i) and (iii) are necessary to use the correct terms “academic content standards” and academic achievement standards” instead of combining them into the term “academic standards.”

Recommendation: Amend subsections (III) in both Option 1 and Option 2 by deleting the language that is struck-through and adding the language in bold.

Page 18 Option 1 language

“(III) alternate assessments aligned with grade-level academic **achievement** standards, unless the State develops alternate assessments aligned with alternate academic **achievement** standards, consistent with subparagraph (F), for students with the most significant cognitive disabilities; and

Page 27 Option 2 language

“(III) alternate assessments aligned with grade-level challenging State academic **achievement** standards, unless the State develops alternate assessments aligned with alternate challenging State academic **achievement** standards, [consistent with subparagraph (C)] for students with the most significant cognitive disabilities; or

Rationale: When “alternate” academic standards are mentioned in this draft bill it must be interpreted as a reference to alternate academic achievement standards. There are no alternate academic content standards. As explained in an earlier rationale, academic content standards are the same for all students (the “what” that shapes the general education curriculum). However, there can be alternate academic achievement

standards (“how well” students are expected to achieve on the state content standards). The amendments to the two provisions, above, are necessary to retain that important distinction. We do not support Option 1, which would eliminate the requirement for annual testing, but suggest this amendment for HELP Committee discussion purposes.

Recommendation: Amend subparagraph (F) by deleting the language that is struck-through and by adding the language in bold.

Page 30

“(F) ALTERNATE ASSESSMENTS FOR STUDENTS WITH DISABILITIES.—A State may provide for alternate assessments aligned with alternate challenging State academic **achievement** standards for students with the most significant cognitive disabilities, if the State—

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

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

~~“(ii)~~ **(iii) ensures that the parents of those students are informed involved in the decision** that their child’s academic achievement will be ~~based on~~ **measured against** alternate challenging State academic **achievement** standards **and are informed of any effect that participation in the alternate assessment on alternate academic achievement standards may have on their child’s academic preparation to earn a diploma;**

~~“(iii)~~ **(iv) documents-provides evidence** that students with the most significant cognitive disabilities are, ~~to the extent practicable,~~ **included and make progress** in the general curriculum and in assessments aligned with that curriculum, **consistent with the Individuals with Disabilities Education Act;**

~~“(iv)~~ **(v) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with disabilities who are tested against academic achievement standards for the grade in which a student is enrolled; and**

~~(v)~~ **(vi)** ensures that regular and special education teachers and other appropriate staff know how to administer assessments, including making appropriate use of accommodations, for students with disabilities;
(vii) requires separate determinations about whether a student should be assessed using challenging State alternate academic achievement standards for each subject assessed;
(viii) ensures that students who take alternate assessments based on alternate academic achievement standards are not precluded from attempting to complete the requirements for a regular high school diploma; and
(ix) certifies that all the State's assessments are developed using the principles of universal design for learning as defined in section 103 of the Higher Education Act of 1965.

Rationale:

- The amendment requested in the first sentence is to clarify that alternate academics standards refers to alternate academic achievement standards.
- The amendment requested in (F) (i) adds a 1% cap to be applied at the state and local education agency levels on the number of students who may take an alternate assessment based on alternate academic achievement standards. This cap equals approximately 10% of students with disabilities. The cap is necessary to protect the interests of individual students and to protect the meaningful interpretation and use of state assessment results. Incidence data reflects that far less than 1% of all students have the most significant cognitive disabilities. Therefore, the cap will be more than high enough for its intended purpose.
- The amendment requested in (F) (ii) addresses the importance of ensuring that IEP teams, including parents, are aware of any state and local policies that can affect a student's education by taking an alternate assessment. An informed decision cannot be made without knowledge of the consequences and a determination whether those consequences are appropriate at this point in a student's education.
- The amendments requested in (F) (iii) address the fact that parents are members of the IEP team and should be involved in making the decision whether their child should participate in an alternate assessment based on alternate achievement standards rather than simply be informed of the decision. They also need information on any academic impact of taking the assessment, in order to be informed participants in the IEP team decision making-process.
- The amendments requested in (F) (iv) are necessary to ensure that students who take an alternate assessment based on alternate academic achievement standards are involved in and make progress in the general education curriculum, consistent with section 614 (d)(1) (A)(i) of the Individuals with Disabilities Education Act. This educational right is so important that states should provide evidence, not merely document, that these students are included and make

progress in the general education curriculum and that the assessments they take are aligned to that curriculum.

- The amendment requested in (F) (v) clarifies that students are assessed against achievement standards and is consistent with our general recommendation against using one term “academic standards” to refer to both content and achievement standards.
- The amendment adding (F) (vii) is necessary to ensure that students who may need to take an alternate assessment based on alternate academic achievement standards for one subject are not automatically given that assessment for all subjects being assessed.
- The amendment adding (F) (viii) addresses the inequity of denying students who take an alternate assessment based on alternate academic achievement standards the opportunity to attempt to complete the requirements of a regular high school. Currently 32% of the states remove students who take this assessment from the diploma track. This often occurs as early as third grade. It is not possible to be certain of a child’s educational potential or to know what the diploma requirements might be by the time he/she graduates. In addition, there is no question that a regular diploma is critically important for career and college opportunities. Therefore, it is exceedingly inappropriate and harmful for a state to preclude any student from attempting to earn this important credential.
- The amendment adding (F) (ix) addresses the importance of using assessments that are developed using the principles of universal design for learning to allow all students to demonstrate their knowledge and skills and maximize the number of students with disabilities who take the regular assessment.

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

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

General Comments on the ESEA Discussion Draft*

*based in large part on comments NDSC helped develop as a member of the Consortium for Citizens with Disabilities

SUMMARY OF RECOMMENDATIONS (FOLLOWED BY RATIONALES)

- Maintain annual state assessments of all students in grades 3-8 and once in high school in reading and math.
- Include all students with disabilities in state and district-level assessments.
- Remove the option for local education agencies to create and use their own assessments in lieu of state assessments.
- Ensure that any assessments are peer-reviewed and held to the professional assessment standards of being reliable, valid, and rigorous for the purposes of measuring student achievement with accommodations for students with disabilities.
- Require state and local education agencies to report results for all subgroups and include the results in accountability measures, except if the number of students in the subgroup falls below 10. Also, confidence intervals should not be set higher than 95%.
- Require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets.
- Require state and local education agencies to intervene when schools or districts identify achievement gaps between students with disabilities and the general population of students.
- Ensure that students with disabilities are working towards a regular high school and have access to the general curriculum.
- Provide support to state and local education agencies to ensure that general and special educators have the skills and knowledge necessary to instruct diverse learners, including how to use the universal design for learning principles.
- Prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety.
- Create grant programs that help state and local education agencies implement school-wide positive behavioral interventions and supports.
- Maintain funding for competitive grant programs that support and address the social/emotional, physical and mental health needs of students.
- Ensure that all assessments and curricula are designed and implemented using universal design for learning and that all assessments are fully accessible.
- Prohibit the transfer of funds between Titles II and IV.
- Prohibit the elimination of maintenance of effort provisions.

ASSESSMENT SYSTEM

- Annual Assessments: It is imperative to continue the assessment requirements in current law, e.g., annual assessments of all students in grades 3-8 and once in high school in reading and math. Results from such assessments are critical to measure achievement gaps among categories of students, student growth and school/district/state effectiveness.
- Inclusion of all students: Students with disabilities must be included in all state and district-level assessments. The vast majority of students will participate in the general assessment with accommodations as needed. States must provide either an alternate assessment on grade-level academic achievement standards or an alternate assessment based on alternate academic achievement standards for those students with the most significant cognitive disabilities. Neither a state nor local educational agency should be allowed to develop any other type of alternate assessment for students with disabilities, including, but not limited to, an alternate assessment on modified achievement standards.
- Locally-designed Assessments: Local educational agencies must not be permitted to develop and administer their own assessments in lieu of the State-designed academic assessment system. The provision allowing these assessments raises many questions related to validity and reliability for students who historically underperform, including students with disabilities. It would also result in little, if any, comparability of assessment results across a state.
- Federal review and approval of assessments: The Discussion Draft eliminates the authority of the Secretary related to the peer review and approval of state assessment systems. The Secretary must be required to play an important role in assuring the validity and reliability of the development of both the general assessment and the alternate assessment on alternate achievement standards and to ensure that the assessments are aligned to the state content standards. Both data and experience with past assessments show that alternate assessments that were not fully aligned to grade level academic content standards were submitted for peer review by the states. We are also concerned that states that are currently involved in an alternate assessment consortia may choose not to implement those assessments with fidelity, especially if federal peer review of state assessments is eliminated from ESEA. In addition, peer review is necessary to ensure that all assessments are appropriately accessible to allow students to demonstrate their full range of knowledge and skills, as well as provide appropriate accommodations for students with disabilities.

ACCOUNTABILITY SYSTEMS

•Exceptions to disaggregation of data: The Discussion Draft continues to allow an exception to the disaggregation of student data where “the number of students in a category is insufficient to yield statistically reliable information.” This provision has historically been misused by many States which have set a wide variety of minimum subgroup sizes (“n” sizes) as determinants of statistical reliability to avoid reporting school and school district assessment outcomes for students with disabilities (e.g. California’s “n” size of 100) and using that data for accountability. Language regarding disaggregation should be amended to ensure that a substantial percentage of schools and districts within a State are held accountable for all categories of students. The National Center for Education Statistics (NCES) recommends that schools and districts use a minimum subgroup size of ten students and we support that recommendation. The use of high confidence intervals also affect subgroup accountability and should be no higher than 95%, which is used in most medical studies.

•Addressing Achievement Gaps: State and local education agencies must be required to provide additional resources and targeted interventions when schools or districts determine, using the disaggregated data, that there is or continues to be a gap between the achievement of students with disabilities and the general population of students.

GRADUATION

All students, including those with disabilities, must leave high school prepared to succeed in postsecondary education and/or in the workplace. All students with disabilities should be on the path to receive a regular diploma and the vast majority of them should be expected to graduate. No students with disabilities should be denied the opportunity to pursue this achievement. The Discussion Draft should require that states and districts set graduation goals and/or targets for all students and for every category of students listed in current law, and place an emphasis on graduation rate in state accountability planning and reporting on use of Title I funds. States should also be required to provide support if one (or more) categories of students do not meet annual targets.

EDUCATORS

Requirements in Title II should ensure that all general and special education teachers have the skills and knowledge necessary for teaching grade-level content using universal design for learning. States must be required to ensure that qualified teachers are available in every school. The equitable distribution of teachers in high-need schools is long overdue. ESEA should contain provisions to ensure that teachers are fully prepared before becoming the teacher of record, including that they: hold a bachelor’s degree and demonstrate in-depth content knowledge in their area of licensure; fulfill the requirements

of a state-approved preparation program that includes clinical experiences with models of accomplished practice and instructors with K-12 experience; complete a comprehensive residency program in partnership between a teacher preparation program and a local school district that engages teacher residents in a series of school-based experiences and teaching enrichment opportunities under the guidance of accomplished educators; and demonstrate proficiency through a valid and reliable classroom-based performance assessment.

STUDENT HEALTH AND SAFETY

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

•Social/emotional and mental health: Addressing students' social/emotional, physical and mental health needs is critical to ensuring they are prepared to learn. Unfortunately, the Discussion Draft consolidates a number of competitive grant programs providing targeted funding to school districts for services and supports that address the whole child. The block grant approach will require school districts to make difficult choices among an array of critical services, resulting in fewer students receiving the supports they need to succeed.

UNIVERSAL DESIGN FOR LEARNING AND FULL ACCESSIBILITY

All national, state and district-wide assessments must be developed using the principles of universal design for learning and must be fully accessible. Furthermore, universal design for learning and full accessibility must also be incorporated into all curriculum objectives, materials, teaching methods, classroom instruction and classroom assessment. While we are glad that the Discussion Draft calls for the alternate assessment on alternate achievement standards to be developed using “universal design,” the term should be changed to universal design for learning and apply to all assessments. The term universal design for learning should be defined by referring to section 103 of the Higher Education Act of 1965

FUNDING

•Transferability of Funds: Title VI, Sec. 6101 allows states to transfer funds from the title for which specific funds are allotted, to be used in another area. This provision specifically allows for the transfer of funds between Titles II and IV, both of which are critical to the successful implementation of the law. Title IV programs, already limited through the block grant approach of the bill, must receive adequate funding to ensure appropriate services are available to students. Title II ensures well-prepared teachers and principals and assistance in providing ongoing training to all school personnel. This transfer of funds provision should be removed.

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

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