



The National Down Syndrome Congress (NDSC) has submitted extensive comments in response to the proposed accountability regulations published for the Every Student Succeeds Act (ESSA) by the U.S. Department of Education (ED). The due date for public comment is August 1, 2016. ED will use the public comments to complete final regulations. The Notice for Proposed Rulemaking (NPRM) at [<http://bit.ly/282OmYh>] includes the full text of the proposed regulations, as well as a preamble that explains the changes in the regulations from those under the No Child Left Behind Act (NCLB) and provides the rationale for language in the proposed regulations.

This set of proposed regulations addresses the ways in which ESSA implementation plans and report cards at the State and local education agency (LEA) level must be developed in order to hold schools and LEAs accountable for the achievement of all students. It is important that the regulations balance the flexibility given to States in ESSA with the law's focus on the academic needs of student groups who have been historically underserved, such as students with disabilities. States must use ESSA funding in a way that is 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."

The language about academic expectations for students with disabilities in ESSA is very strong and can be used to improve implementation of the Individuals with Disabilities Education Act (IDEA), if the federal regulations help focus States and LEAs on their responsibilities to these students.

This document summarizes the most important recommendations that NDSC made to ED regarding changes we hope will be made to the proposed accountability regulations. More detailed discussion of these nine recommendations and many other important comments and recommendations can be found in the full text of the NDSC Comments on the Accountability NPRM here: <http://bit.ly/29VXXtu>.

- **Achievement Standards:** When distinguishing between the academic achievement standards (how much students are expected to learn to be considered proficient) 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 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," merely means that there are different expectations for proficiency on the grade-level State content standards for students who take an alternate assessment than there are for

students who take the general assessment. However, the wording of this statement may inadvertently reinforce the misconception that these students do not learn content from the grade in which they are enrolled. The final regulations should also make it clear that these students are included in every aspect of the accountability system.

- **Stakeholder Consultation:** The many provisions in the proposed regulations regarding meaningful stakeholder consultation in all aspects of the accountability system, including State and LEA plan development are very important. However, in order to ensure meaningful consultation, the final regulations should require States and LEAs to be more transparent about these opportunities and distribute this information to parents and state/local disability organizations. 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. So far, many States have not practiced transparency regarding stakeholder input opportunities. In addition, the final regulations should require that at least one parent and one organization member, who specifically represent students with disabilities, participate on each of the committees/workgroups engaged in the development of the State and LEA plans under ESSA. Few States have representation from the disability community on their ESSA committees/workgroups.
- **Targeted Support and Improvement for Underperforming Students Subgroups:** Schools are identified for targeted support and improvement if they have a subgroup or subgroups that are performing as poorly as students in the lowest-performing schools in the state (called low-performing subgroups) or if they have a subgroup or subgroups that meet the State’s definition of “consistently underperforming.” Most schools with disability subgroups that are struggling academically will only get identified for support and improvement if they end up in this latter category, so it is very important.

NDSC strongly supports the proposed regulation that does not allow a subgroup to be underperforming for more than two years before it is considered to be consistently underperforming. However, the proposed regulations should eliminate the options for determining when a student subgroup is “underperforming” that are based on comparisons to other groups of students. The expectation should be that any student group, which for two years has not met (nor is on track to meet) State long-term goals and interim measures of progress for either math or reading/language arts, should be identified for targeted support and improvement, regardless of how other students are performing.

- **Comprehensive support and improvement for schools with consistently underperforming subgroups:** The proposed regulations do not provide a path for schools that continue to have a consistently underperforming subgroup or subgroups to move from targeted support and improvement to comprehensive support and improvement. Only schools with “chronically low-performing

subgroups” eventually make that transition. NDSC requested that the final regulations amend the definition of chronically low-performing subgroups to include subgroups in any school that continue to be consistently underperforming three years after the school was initially identified for targeted support and improvement. If the regulations cannot be revised to take this approach, NDSC requested that ED find another way to require, or at least encourage, 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.

- **Funding for 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 and improvement. This funding gap should be balanced to help ensure that the schools identified for targeted support and improvement have the resources they need to improve subgroup performance before it gets so bad that the school is identified for comprehensive support and improvement.
- **Low Participation in Assessments:** NDSC supports the proposed regulations designed to reinforce the inclusion of all students in the State’s assessment and accountability system through the 95% participation rate requirement. This requirement applies in each school to the aggregate of all students, as well as to each subgroup. Before 95% of students with disabilities were required to be assessed, many of them were not included by their school in any state assessments. This practice excluded students from the accountability system and undermined the accuracy of the data. NDSC is pleased that the proposed regulations provides options for how the States can factor in a failure to meet this requirement. However, they must be strengthened in the final regulations to make them more meaningful. Since the State can ignore these options and create their own, it is important to provide strong examples of what States should be doing.
- **Minimum subgroup size for determining whether schools are accountable for subgroup performance and must report the subgroup data:** NDSC supports the requirement in the proposed regulations that States must 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 in the final regulations. Many schools do not have 30, 20 or even 15 students with disabilities in the combined grades for which assessments are taken (e.g. grades 3-5 in elementary school). If these schools do not have to publicly report the disability subgroup’s performance or be held accountable for it, too many students with disabilities, in too large a percentage of schools, will become invisible in their State’s accountability system. An n-size of 10 has been defended in a number of studies as being adequate for protecting student confidentiality. Some states already have an n-size lower than 10, so it must also be adequate for statistical reliability.

- **Diploma definition:** The final regulations should clarify that a diploma based on whether the student's IEP goals are met, will not be considered a regular high school diploma, even if those goals are standards-based. IEP goals are not intended to be the student's curriculum; they represent the skills needed to make progress in the general education curriculum. This change in the final regulations should also apply to the alternate diploma for students taking an alternate assessment, as described in ESSA, that is considered a regular high school diploma for the purposes of calculating graduation rate.
- **Segregation of students with disabilities:** In the final regulations, NDSC urged ED to add the segregation of students with disabilities in separate classes and schools (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.