



Topics for Non-Regulatory Guidance: Every Student Succeeds Act

The U.S. Department of Education (ED) has the authority to develop regulations on statutes that are binding and treated like an extension of the law. ED can also publish non-regulatory guidance. Non-regulatory guidance is not binding and does not impose any new requirements beyond those in the law and regulations; rather, it is intended to help the public understand how ED is interpreting the law and to provide clarification and examples of best practices. ED has invited comments about the ESSA topics that would benefit from such guidance. The following requests were submitted by email to ED.

Meaningful Stakeholder Consultation

ESSA requires state implementation plans to be developed in consultation with stakeholders, including parents. NDSC has been collecting information about ESSA plan development activities in the states, which we have shared with ED. We have become very concerned that parents are not being given meaningful opportunities to be involved in most states. States are holding stakeholder input meeting in various cities without communicating the schedule to groups that represent parents of students with disabilities. Other states have assembled workgroups or committees to start working on ESSA plan development without including any representatives of the disability community. It is imperative for ED to publish guidance on this topic as soon as possible because these activities have been going on in most states since early April, and much earlier in some states.

NDSC requests guidance to clarify that the parent consultation requirement for ESSA plan development is not satisfied by selecting just any parent or two for a committee or workgroup, even if those parents are from the state PTA. ESSA specifically focuses on certain subgroups of students, including students with disabilities. We hope the guidance states that, at a minimum, there should be parents representing each of these groups of students on the committee or workgroups that will develop the ESSA state plan. Also, NDSC requests clarification that inviting parents of students with disabilities to give public comment at the committee or workgroup meetings or form focus groups is not meaningful consultation when the other stakeholders have a seat at the table, actively engaging in plan development. In addition, it is important for guidance to clarify that holding stakeholder input meetings prior to plan development does not satisfy the

requirement for involving parents in stakeholder consultation, if none of these parents are involved in the committee or workgroups that will develop the plan.

NDSC also hopes that the guidance will also provide best practices for achieving “meaningful” stakeholder consultation. One best practice is to notify state groups representing stakeholders, such as parents of students with disabilities, about the date, time and location of any meetings or information about any public comment period. This notification should be provided with enough time for them to spread the word. There also should be best practices described in the guidance about the public comment period after plan development. One example of a best practice is to ensure that parents see the actual proposed plan and not just a PowerPoint or a summary and that changes are made to the plan based on the public feedback. NDSC signed on to the letter from the Leadership Conference on Civil and Human Rights about parent engagement and we request that best practices from that letter be added to the guidance.

Alternate Assessments *(all the subtopics below can be in a single guidance)*

State Definition of Students with the Most Significant Cognitive Disabilities

NDSC requests guidance to states, which emphasizes the requirement under ESSA that students who participate in the state alternate assessment receive instruction derived from enrolled grade academic content, and that students cannot be put into an alternate assessment without first having received such instruction. ESSA requires that alternate assessments be based on the state’s challenging academic content standards for all students. ESSA also requires that states promote involvement and progress in the general education curriculum for students who take an alternate assessment, that states cannot preclude these students from attempting to complete the requirements for a regular high school diploma, and that proficiency on an alternate assessment means that students are on track to pursue postsecondary education or integrated competitive employment.

For all the reasons stated above, it is important for states to have guidance explaining that the state definition for students with the most significant cognitive disabilities should reflect that a student cannot be identified as fitting into this category unless he/she has had IEP goals and instruction based on the enrolled grade state content standards. States using the National Center and State Collaborative (now called Multi-State) alternate assessment or the Dynamic Learning Maps alternate assessment already have participation criteria in their guidelines for IEP Teams, which reflects this requirement. These guidelines can be identified as examples of best practices. There is also a need for guidance and technical assistance to help ensure that educators know how to provide instruction to these students that is derived from enrolled grade state content standards. For example, the information and instructional resources housed on the NCSC Wiki (<https://wiki.ncscpartners.org>) provide best practices and materials that would be very useful to share with all educators.

Waiver of the 1% Cap on Participation for Alternate Assessments

States need ED guidance and technical assistance regarding best practices to keep the participation rate within the 1% cap. Alternate assessments are designed and field tested for students with intensive instructional needs and the data will not be valid if the cap is permitted to be exceeded, except in very rare circumstances. Disability advocates have long known that the 1% cap is more than sufficient to include all students with the most significant cognitive disabilities, if that term is defined properly and the guidelines are followed with fidelity by IEP teams.

Regular Diploma

Although ESSA clearly states that students who take an alternate assessment are not to be precluded from attempting to complete the requirements for the regular high school diploma, parents report that there is already confusion around this issue. Apparently educators are still saying that if students require any modifications/adaptations to their schoolwork, they cannot stay on diploma track. NDSC is requesting guidance from ED to clarify that these modifications/adaptations do not undermine the ESSA requirement that students who take alternate assessments have the opportunity to try to earn a regular high school diploma. All students who take alternate assessments need some degree of modifications/adaptations or they would be taking the general assessment.

As a best practice, schools should not be permitted to determine that a student who takes an alternate assessment will not earn a regular diploma until the same point that decision would be made for any other student. Even if the student is not expected to earn a regular diploma, the attempt to work towards completing diploma requirements changes the way educators deliver instruction to these students, elevates academic performance, and increases the chance that these students will be enrolled in postsecondary education programs or gain competitive, integrated employment after high school.

Alternate Diploma for Students Who Take Alternate Assessments

NDSC also requests that ED provide guidance to explain that the alternate assessment described in ESSA is not a regular diploma for purposes of the Individuals with Disabilities Education Act. In other words, receiving this alternate diploma does not terminate eligibility under IDEA, so the students have the right to continue receiving services until the age that eligibility ends in the state. In addition, states would benefit from guidance on what a meaningful alternate diploma would look like. NDSC also requests that guidance on this topic include information about the use of the alternate diploma for Adjusted Cohort Graduation Rate (ACGR) purposes. We refer you to the details in the position paper that NDSC, along with a small workgroup of other disability advocates, recently shared with ED on this topic.

Educational Setting for Students Who Take Alternate Assessments

As the National Center and State Collaborative study shows (<http://bit.ly/1nTjLcw>), students who take an alternate assessment are almost exclusively educated outside the general education classroom. The study also explains these educational

placements are negatively impacting the students' progress in the general education curriculum, which ESSA requires states to promote. NDSC requests guidance and technical assistance to help states better implement the least restrictive environment provisions and promote progress in the general education curriculum under ESSA. When such a huge percentage of these students are not being educated with their nondisabled peers, it becomes clear that IEP teams are too often making placement decisions based on the type of assessment the student takes, rather than following the law. NDSC also hopes ED will collect national data on this issue to determine whether anything changes as ESSA implementation moves forward.

Universal Design for Learning

NDSC requests that ED issue guidance on universal design for learning (UDL) as a best practice. ESSA mentions UDL in a number of places, especially its role in accessible assessment design. However it is also critically important that states, districts and schools understand how to implement UDL for instruction.

ESSA includes UDL in its definition of comprehensive literacy instruction. What few people understand is that ESSA requires comprehensive literacy instruction to be implemented across all content areas. This is especially important to clarify in guidance because it doesn't make sense to implement UDL solely in reading or English-language arts lessons. It would be especially helpful to have guidance that ties together the UDL provisions in ESSA, The Higher Education Opportunity Act and the National Educational Technology Plan.

Subgroup Accountability

NDSC is certain there will be guidance needed about a number of the guardrails built into ESSA for subgroup accountability. However it is difficult to specify those topics without first seeing the proposed accountability regulations. Based on what some states are already discussing, we know that any accountability guidance should emphasize that there must be accountability and disaggregation of data for every student subgroup listed in ESSA, without eliminating or combining any student subgroups. Also, it will be important to clarify that the 95% participation rule in ESSA is applied to all students at a school and each student subgroup. Therefore, the rule is violated when 95% of the students in one subgroup are not assessed, even if the rule is met for the other subgroups. A third issue that we already know would benefit from guidance is the state selection of minimum subgroup size. States should be made aware of the 2010 and 2013 Institute for Education Sciences studies on this topic, which recommend minimum subgroup sizes to preserve confidentiality and subgroup accountability.

School Climate

NDSC requests that ED issue guidance and provide technical assistance on best practices for improving school climate and safety by eliminating bullying, addressing the inappropriate and dangerous use of restraints and seclusion, and increasing the number of students with disabilities who are educated in the general education classroom. The need for guidance and technical assistance on inclusive education is

especially needed with respect to students who have Down syndrome, and other intellectual and developmental disabilities, because of the overwhelming number who are not educated in the general education classroom, as discussed earlier.

When we talk about civil rights and the discrimination against other groups of students, terms like school climate and feeling accepted and safe are used. When almost all students who take an alternate assessment are educated away from their nondisabled peers in special education classes, where there is a much higher incidence of restraint and seclusion, the situation has to be examined and dealt with in the same way. Any school that segregates and/or sends away a significant portion of any group of students who is, or should be, educated at that school does not have a safe and supportive school climate. Any school that does not take strong action to address bullying and to eliminate the use of restraint and seclusion also does not have a safe and supportive school climate.

Such treatment of students with Down syndrome sends the message to the other students in their schools that certain students with disabilities do not have the right to be safe and treated with respect and are not worthy of being educated alongside them. That creates a breeding ground for the attitudes that lead to bullying.

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