



September 8, 2016

Ms. Jessica McKinney  
U.S. Department of Education  
Room 3W107  
400 Maryland Avenue, SW  
Washington, DC 20202

RE: Docket ID ED-2016-OESE-0047

Comments submitted via Regulations.gov

Dear Ms. McKinney:

The Consortium for Citizens with Disabilities (CCD), the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society, appreciates the opportunity to respond to the proposed regulations for selected programs under title I, part B of the Elementary and Secondary Education Act, now known as the Every Student Succeeds Act (ESSA).

This is an important time for the U.S. Department of Education (the Department) to be proactive in supporting states and school districts as they implement ESSA, particularly through the Department's promulgation of regulations, non-regulatory guidance and technical assistance.

The CCD Education Task Force seeks to ensure that the regulations regarding the Innovative Assessment Demonstration Authority will serve the interest of our nation's 5.8 million school-age students with disabilities.

**To that end, we offer the following comments, which highlight both areas of support and areas of concern.**

**§200.77 Demonstration authority application requirements**

- CCD strongly supports proposed language at §200.77(a)(2)(i) which clearly articulates that affected stakeholders in the State, or in each State in the consortium includes

“Those representing the interests of children with disabilities, English learners, and other subgroups of students under section 1111(c)(2) of the Act.

Comment: This language will ensure that the interest of children with disabilities will be included during the consultation process.

- The narrative of the NPRM, at page 44964, states that: “We also note that an SEA or consortium may propose to develop and scale: (1) an innovative assessment to be used as its general assessment in reading/language arts, mathematics, or science; (2) an innovative alternate assessment to be used as its alternate assessment for students with the most significant cognitive disabilities in any of those subjects; or (3) both.” However, this is not incorporated in the proposed language in §200.77.

Comment: CCD requests that the Department add language to §200.77 that clearly articulates the statement above.

- The requirements for the innovative assessment at §200.77(b)(1)(i)-(ii) make clear that the innovative assessment need not be administered to all students in the State nor administered in each of the grades required by the Act.

Comment: CCD strongly recommends that the Department make clear that the innovative assessment must be administered to all students and all student subgroups within the LEAs, or schools within an LEA, or specific grades and/or subject. In other words, a school, LEA or State may not administer an innovative assessment to only certain subgroups of students. The Department should ADD additional language to make this clear.

- The requirements at §200.77(b) 2-3 require that innovative assessment systems “align with the State academic content standards, including the full depth and breadth of such standards and express student results or competencies in terms consistent with the State’s academic achievement standards and identify which students are not making sufficient progress toward, and attaining, grade-level proficiency on such standards;”

Comment: CCD appreciates the clear articulation of these requirements, all of which are critical to maintaining full accountability of students with disabilities.

- CCD strongly supports proposed language at §200.77(b)(5)-(7) requiring that the innovative assessment provide for the participation of, and be accessible for, all students, including children with disabilities and English learners, provide appropriate accommodations consistent with section 1111(b)(2) of the Act, and, as appropriate, incorporate the principles of universal design for learning; requiring that the Academic Achievement indicator under section 1111(c)(4)(B)(i) of the Act applies to the innovative assessment, and that the assessment must generate an annual summative determination for each student.

CCD appreciates the clear articulation of these requirements, all of which are critical to maintaining full accountability of students with disabilities. However, to “be accessible to all students” an assessment must conform to a set of nationally accepted accessibility standards such as WCAG 2.0 for digital content. This requirement should be added to the rules to ensure states understand their obligation under the ADA to create, purchase and provide accessible content.

The shift to digital assessments provided great promise for increased access for students with disabilities. Unfortunately, the reality of digital assessment deployment has not delivered on that promise. Unless digital assessments are developed consistent with nationally recognized accessibility standards, like the Web Content Accessibility Guidelines (WCAG) 2.0, they will not be accessible and will not be compatible or interoperable with assistive technology (AT) devices that students with disabilities routinely use for instruction.

- Proposed language at §200.77(d)(2) states, in part, “except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet such standards.”

Comment: There is a great deal of confusion in the field about the difference between content standards and achievement standards and the wording of this provision will only exacerbate that confusion. Therefore, it is critically important to revise this language to clarify that all students, including those who take alternate assessments must be assessed on and provided instruction and support to meet the challenging State academic content standards for the grade in which the student is enrolled.

CCD requests that this language be revised to read (revision in **bold**): “except that students with the most significant cognitive disabilities may be assessed with alternate assessments aligned to alternate academic achievement standards consistent with section 1111(b)(2)(D) of the Act, and receive the instructional support needed to meet **the academic content standards for their enrolled grade.**”

- The requirement at proposed §200.77(d)(4) to “ensure that each LEA informs parents of students in participating schools about the innovative assessment consistent with section 1112 (e)(2)(B) of the Act at the beginning of each school year during which an innovative assessment will be implemented” should be expanded to include a requirement that students with the most significant cognitive disabilities attending participating schools who will not participate in the innovative assessment be so informed and provided information on how such students will be assessed.

Comment: CCD feels that parents need to be fully informed about how their students are participating, including when they are not included in the innovative assessment. Therefore, we request the addition of language to that effect.

## **§200.78 Demonstration authority selection criteria.**

- CCD strongly supports proposed §200.78(b)(ii)(A) “Effective supports and appropriate accommodations consistent with section 1111(b)(2) of the Act for administering innovative assessments to all students, including English learners and children with disabilities, which must include professional development for school staff on providing such accommodations;”

Comment: Research and lessons learned from assessment administration continue to note that students with disabilities do not receive needed accommodations, frequently due to a lack of trained personnel and/or administrative convenience. (See, for example, Lessons Learned About Assessment from Inclusion of Students with Disabilities in College and Career Ready Assessments at <http://www.cehd.umn.edu/NCEO/OnlinePubs/LessonsLearnedAboutAssessment.pdf>)

Thus, it is critical that SEAs seeking innovative assessment demonstration authority be required to articulate how the SEA (or LEA) will provide effective supports and appropriate accommodations.

In closing, we appreciate the opportunity to provide feedback on critical areas of the ESSA proposed regulations that will impact our nation’s 5.8 million students with disabilities. CCD pledges to continue to provide the Department with the views of people with disabilities, families, educators, employers, experts and advocates working to ensure that high expectations are upheld for all students with disabilities. CCD looks forward to continuing to be a vocal advocate for students with disabilities as the regulatory process unfolds. Our organizations stand ready to work with the Department and States across the nation to ensure they are implementing measures that will help all students with disabilities achieve their full potential.

Sincerely,

The Advocacy Institute  
The Arc  
Association of Assistive Technology Act Programs  
Brain Injury Association  
Council for Exceptional Children  
Council of Parent Attorneys and Advocates  
Higher Education Consortium for Special Education  
Judge David L. Bazelon Center for Mental Health Law  
Mental Health America  
National Association of Councils on Developmental Disabilities  
National Association of School Psychologists  
National Center for Learning Disabilities  
National Center for Special Education in Charter Schools

National Disability Rights Network  
National Down Syndrome Congress  
Teacher Education Division of the Council for Exceptional Children

CCD Education Taskforce Co-Chairs:

Eileen Dombrowski, Easter Seals	202.347.3066	edombrowski@easterseals.com
Lindsay E. Jones, National Center for Learning Disabilities	202.628.2662	ljones@ncld.org
Laura Kaloi, Council of Parent Attorneys and Advocates	202.349.2310	lkaloi@wpllc.net
Amanda Lowe, National Disability Rights Network	202.403.8335	amanda.lowe@ndrn.org
Kim Musheno, Association of University Centers on Disability	301.588.8252	kmusheno@aucd.org
Cindy Smith, Natl. Assoc. of Councils on Developmental Disabilities	202- 506-5813	csmith@nacdd.org