



January 21, 2016

Deborah Spitz
U.S. Department of Education
Room 3E306
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2015-OESE-0130: Implementing Programs under Title I of the Elementary and Secondary Education Act

Dear Ms. Spitz:

The Consortium for Citizens with Disabilities (CCD) appreciates the opportunity to respond to the request for information regarding the implementation of programs under Title I 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 to be proactive in supporting states and school districts in implementing ESSA through the promulgation of regulations, non-regulatory guidance and technical assistance. However, as we saw under the No Child Left Behind Act (NCLB), non-regulatory guidance without corresponding regulations was not adequate to ensure implementation. The Department's voice is critical to ensuring ESSA meets its goal, 'to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.' As we all know and agree, every student with a disability deserves this opportunity.

CCD recognizes that some topics outlined below will be subject to negotiated rulemaking, specifically in the areas of academic assessments, standards and supplement not supplant. In this negotiated rulemaking process, CCD strongly urges the Department to include nationally recognized experts in the education and assessment of students with disabilities, including experts on alternate assessments, as well as groups of people with disabilities who have received their education through public schools. CCD will provide nominations of groups and individuals when the opportunity arises. In addition, parents who are advocates and represent each student subgroup should be included in the process.

As you know, shining a light on the performance of students with disabilities has allowed individuals with disabilities, families, educators, and policymakers to better identify areas of success and struggle. As we look forward to consider how ESSA will drive even

deeper understanding and change to improve outcomes for students with disabilities, CCD is keenly aware the Department has an opportunity to protect and promote vulnerable populations that have been historically marginalized.

It is with this in mind that CCD respectfully requests that the Department provide regulations, non-regulatory guidance, and technical assistance in the following areas:

- **Define “Students with Disabilities Subgroup:** Reaffirm that the “students with disabilities” subgroup under ESSA is comprised only of students meeting the IDEA definition of a child with a disability (as established under NCLB). Only students currently eligible for special education are to be counted in this subgroup. Students who have exited special education may not be counted in the subgroup.
- **State Accountability Systems:** Meaningful inclusion of students with disabilities in state accountability systems continues to be a priority for CCD. While ESSA includes students with disabilities in such systems, the Department must further clarify important details to ensure quick action by schools and states when students with disabilities are underperforming. The Department must also reinforce that students with disabilities are not separated from the general population of students when it comes to accountability, as has been proposed by some states.

Specifically, the Department must define terms such as “consistent underperformance;” “substantial weight” and “much greater” as they relate to the appropriate weight of indicators for annual meaningful differentiation of public schools in a State within the accountability system; and provide additional clarity regarding the technical requirements the “additional indicator(s) of school quality or student success” must meet to be included in a State’s accountability system.

The Department should make clear through regulations that students must be counted in all applicable subgroups under all indicators and metrics used in a State’s accountability system.

The Department should make clear that combining groups of students for purposes of meaningful differentiation in a State’s accountability system is prohibited under the Act.

Additionally, it is critical for the Department to issue regulations and/or guidance to provide clarity in the following areas: (1) the method by which the state identifies consistently underperforming subgroups within a school, measures progress toward goals, and establishes a timeline for action when subgroups of students are not making progress; (2) the ‘minimum number of students’ often referred to as the “n size”; (3) the 95 percent participation rate in the annual measurement of achievement of students; and (4) that when a State uses a measure of student growth within its accountability system that such measures,

such as growth models, must include all students and may not exclude students for any reason.

- **Minimum Subgroup Size**

The minimum subgroup size, or “n” size, established by many States under NCLB resulted in seriously limiting accountability for students with disabilities. A 2013 report of subgroup sizes used in States, *The Inclusion of Students with Disabilities in School Accountability Systems* (<http://ies.ed.gov/ncee/pubs/20134017/>), found that across 40 states with relevant data for the 2008–09 school year, slightly more than a third (35 percent) of public schools were accountable for the performance of the students with disabilities subgroup, representing just over half (58) percent of tested students with disabilities in those states.

Therefore, we strongly urge the Department to:

- Issue the required study on “best practices for determining valid, reliable, and statistically significant minimum numbers of students for each of the subgroups of students for the purposes of inclusion as subgroups of students in an accountability system” within 90 days of ESSA enactment, as required by the statute.

While the required study must not recommend a specific subgroup number, it should include recommendations regarding the maximum number and percentage of students and student subgroups that could be excluded from school-level accountability determinations due to n size.

The Department should make clear in regulation that – while subgroup size must be the same for all subgroups that require disaggregation of information by each subgroup of students – subgroup size may vary depending on the metric, i.e., proficiency, participation and graduation rate.

While subgroup size for **proficiency** involves statistical reliability (the degree of confidence associated with the decision of whether or not enough students in a subgroup performed above the cut point for proficiency to meet the annual objective), **test participation** and **graduation rate** calculations are only tempered by the requirement to not reveal personally identifiable information (the inability to determine from the subgroup values reported how an individual student performed on an indicator).

- **Nondiscrimination and Effective and Meaningful Opportunity to Participate in Assessments.** CCD urges the Department to issue regulations and guidance ensuring effective and meaningful opportunity for students with disabilities to participate in assessments. Ensuring students with disabilities are allowed to use alternative formats and the assistive technology they regularly rely on when accessing the general education curriculum, is a large part of effective and meaningful accessibility of assessments. The availability of alternative formats and interoperability of assessment design is necessary to permit students, who

require the use of alternative formats and/or assistive technology, to demonstrate their content knowledge. Effective and meaningful access to assessment allows students who use alternative formats and/or who use assistive technology, including students with the most significant cognitive disabilities, to demonstrate their academic achievement relative to the challenging State academic content standards or alternate academic content standards. Lack of availability of alternative formats and assessment interoperability results in students either not being able to access the assessment or not being able to demonstrate content knowledge accurately during the assessment due to the undue burden of needing to test while using unfamiliar technology. CCD believes the Department must recognize the barrier created for students with disabilities when assessments are designed without consideration for alternative formats and interoperability, as well as to take this opportunity to update regulations in order to have assessments comport with IDEA and Department of Justice guidance on this issue.

- **Achievement Standards & Assessments:** To provide additional clarity to States and school districts, the Department should issue regulations, guidance and technical assistance on “alternate academic achievement standards” and “alternate assessments aligned to alternate academic achievement standards” to ensure stakeholders fully understand the requirements as set forth in ESSA.
 - **Alternate Academic Achievement Standards (AAAS):** At a minimum we request that the Department, through regulation, further clarify in the following areas regarding the AAAS:
 - Establish and implement a ‘documented and validated standards-setting process’;
 - Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;
 - Ensure the AAAS are aligned to the challenging state academic content standards;
 - Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;
 - Clarify that the term “challenging state academic standards,” which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on “challenging state academic standards” for the grade level in which the student is enrolled (this is necessary to avoid the common misconception

that alternate assessments are not based on grade-level content standards);

- Ensure that any student who meets the AAAS is on track to pursue postsecondary education and employment, consistent with the purposes of Rehabilitation Act (Public Law 93–112) as amended by the Workforce Innovation and Opportunity Act of 2014. This issue is of utmost importance to CCD.
- **Alternate Assessments aligned to Alternate Achievement Standards (AA-AAS):** We urge the Department to clarify and reinforce, through regulation, the following requirements related to the AA-AAS:
 - Reinforce the statutory requirement of a state level cap not to exceed 1% of the total number of students in grades assessed;
 - Clarify the consequences for exceeding the 1% cap;
 - Establish criteria for requesting a Secretarial waiver to exceed the 1% cap which should match the prior requirements in the Department's 2003 regulation on this issue¹ which states:

"An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:

 - (i) *The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.*
 - (ii) *The SEA explains why the incidence of such students exceeds 1.0 percent of all students in the combined grades assessed, such as school, community, or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.*
 - (iii) *The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii)."*

¹¹ Federal Register: December 9, 2003 <http://www2.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>:

- Clarify that any student that is assessed via the AA-AAS in excess of the 1% cap shall be counted as non-proficient for purposes of accountability, unless a State has an approved waiver to exceed this cap;
 - Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level. The AA-AAS should measure proficiency on the grade level content standards by using alternate academic achievement standards, while the general assessment measures proficiency using grade-level academic achievement standards;
 - Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS,
 - Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;
 - Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;
 - Strongly encourage the use of Universal Design for Learning in the assessment process;
 - Reinforce the need to build the expertise of both general and special educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times; and
 - Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.
- **Assessments:** In addition to the implementation of the alternate assessment based on alternate academic achievement standards, CCD urges the Department to issue regulations to provide states and stakeholders with clarity in the following areas:
 - **Grade-Level Assessments:** As established under NCLB, students with disabilities are to be assessed using the assessments for their enrolled

grade. This requirement must be upheld in ESSA. Thus the Department should explicitly state that practices such as “out-of-level,” “below-level,” and/or “instructional level” assessments do not satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.

- **Computer-adaptive assessments (CAT)**
 - Provisions about measuring the student’s level of academic proficiency and growth using items above or below the student’s grade level, and the limitation on the use of out-of-grade-level scores within a State’s accountability system, as indicated by the statute; and
 - For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student’s grade-level does not apply; however the term “challenging state academic standards,” which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student’s grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student’s grade level).
- **Locally selected assessments**, including the decision of a local educational agency to use a nationally-recognized high school assessment in lieu of the State-designed academic assessment, and the importance of locally selected assessments being accessible to students with disabilities.
- **Title I State and Local Educational Agency Report Cards:** CCD urges the Department to issue regulations clarifying State and LEA report card requirements in areas such as:
 - Reinforcing the statutory requirements related to the State’s accountability system, including specifying the methodology for determining “consistent underperformance” and “the time period used by the State to determine consistent underperformance” on the State report card.
 - Align the LEA report card to reflect new LEA responsibilities in implementing the State’s accountability system, specifically in the areas of how LEAs will monitor a school that receives Targeted Support and Improvement and the number of years to determine if the school’s plan has been unsuccessful and additional action that will need to occur and the LEA’s role in determining this additional action.
 - Further define the requirement that State report cards include the results on the State academic assessments in reading and mathematics in grades 4 and 8 of the National Assessment of Educational Progress compared to the

national average of such results. Specifically, the results should be reported at the all student level and each of the student groups reported separately by NAEP. The students with disabilities subgroup should reflect the achievement of only students with IEPs.

- **Title I State and Local Plans:** CCD urges the Department to issue regulations clarifying State and local plan requirements. This clarity will help ensure transparency of information for families, educators and policymakers. CCD specifically encourages the Department to focus on those parts of the plans that relate to how states/school districts will improve conditions for learning including: reducing incidents of bullying and harassment in schools; examining overuse of discipline practices; and reducing the use of aversive behavioral interventions (such as restraints and seclusion).
- **Educator Equity:** CCD urges the Department to issue regulations and guidance that reinforce the importance of ensuring students from disadvantaged backgrounds are not disproportionately taught by ineffective, inexperienced, out-of-field educators. CCD urges that inexperienced be defined as three years of experience or less. We would also like to urge the Department to promote state consideration of the distribution of beginning teachers who have not completed their preparation before becoming the teacher of record and the distribution of teachers who are fully state certified. While the Title I LEA Plans outline this student population as students from low-income and minority backgrounds, CCD believes the Department must take this opportunity to recognize that students with disabilities also come from low income and minority backgrounds and analyze their access to well-prepared educators. Expanding teacher shortages in special education must not result in lower entry standards for special education teachers.
- **Adjusted Cohort Graduation Rate (ACGR)**
 - **Uphold the 2008 Graduation Rate Regulation:** CCD urges the Department to continue to require use of the Four-Year Adjusted Cohort Graduation Rate (ACGR) for reporting and accountability purposes at the school, district, state and federal levels for all groups of students. The use of extended-year cohorts, such as five- and six year rates should continue to be allowed. However, these extended year rates should be reported separately and the emphasis should remain on graduating students in four years.
 - **Define “students with disabilities” in the ACGR:** CCD urges the Department to issue regulations to define the “students with disabilities” subgroup in the ACGR. Currently, states are defining students who are counted in the “students with disabilities” subgroup of the ACGR in a variety of ways. According to the U.S. Department of Education, states may define the subgroup as (a) only students who both entered and exited high school as an IEP student, (b) only students who had an IEP at graduation, (c) any student who had an IEP at any time between entering

high school and graduation, (d) some other definition. ESSA regulations should eliminate this inconsistency so that the reported ACGR for students with disabilities is consistent across states. CCD recommends defining the “students with disabilities” subgroup as any student who has an IEP **for the majority of the time in the cohort (both the 4-year and extended cohorts)**. The Department should also make clear that minimum subgroup size (N) size for the ACGR should only be established for purposes of protecting personally identifiable information. There is no need for the n size for graduation calculation to be “statistically sound.”

- **Including Alternate Diplomas in the ACGR:** The Department should also require that any State electing to exercise the option provided in the ACGR definition under ESSA to count all students with the most significant cognitive disabilities assessed using AA-AAS and awarded a State-defined alternate diploma that is standards-based; aligned with the State requirements for the regular high school diploma; and obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act ([20 U.S.C. 1412\(a\)\(1\)](#)) to be counted as having graduated and to report disaggregated data on the percentage of the students with disabilities subgroup that are such students.
- **Diploma Options:** The Department must issue regulations to clarify that states may develop a State-defined *alternate diploma* provided this new diploma option meets all statutory requirements and promotes postsecondary success of students with the most significant cognitive disabilities without lowering expectations or reducing access to the general curriculum or a state’s regular high school diploma. Furthermore, the Department should clarify that an alternate diploma only applies to the ACGR and does not meet the definition for a high school diploma in ESSA or IDEA. Additionally, students receiving such diploma must not be counted in the IDEA 618 data collection as “graduated with a regular high school diploma.”
- **Family Engagement:** CCD urges the Department to promote ways and provide examples of how states may better include parents, advocates and other stakeholders early in the Title I plan development process. Stakeholder groups should be sent notice of opportunities for input and they must be given the actual plan to review (not just a PowerPoint or summary as occurred with the ESEA waiver applications). Stakeholders must also be given sufficient time to analyze and provide input.

In closing, CCD recognizes there will be many additional provisions of ESSA, including others within Title I, that will require the Department's strong voice and regulatory presence to ensure that students with disabilities are meaningfully included.

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 every student with a disability achieve their full potential.

Sincerely,

ACCSES

The Advocacy Institute

American Council of the Blind

American Dance Therapy Association

American Foundation for the Blind

The Arc

Association of Assistive Technology Act Programs

Association of University Centers on Disabilities

Autism Speaks

Bazelon Center for Mental Health Law

Brain Injury Association of America

Council of Parent Attorneys and Advocates

Council for Exceptional Children

Council for Learning Disabilities

Disability Rights Education & Defense Fund

Easter Seals

Higher Education Consortium for Special Education

Learning Disabilities Association of 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

National Down Syndrome Society

Perkins

School Social Work Association of America

TASH

Teacher Education Division of the Council for Exceptional Children

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The Consortium for Citizens with Disabilities is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society.