



## IDEA Series

Every Student Succeeds Act and  
Students with Disabilities



**National Council on Disability**

February 7, 2018

National Council on Disability (NCD)  
1331 F Street NW, Suite 850  
Washington, DC 20004

***(IDEA Series) Every Student Succeeds Act and Students with Disabilities***

National Council on Disability, February 7, 2018  
Celebrating 30 years as an independent federal agency

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## National Council on Disability

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An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

### Letter of Transmittal

February 7, 2018

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit this report titled *Every Student Succeeds Act and Students with Disabilities*. This report is part of a five-report series on the Individuals with Disabilities Education Act (IDEA) that examines the Every Student Succeeds Act (ESSA)'s amendments to IDEA, explains their likely impact on students with disabilities as ESSA implementation moves forward, and provides recommendations.

As you know, the right of students with disabilities to receive a free and appropriate public education in the least restrictive environment is solidly rooted in the guarantee of equal protection under the law granted to all citizens under the Constitution. In 2015, ESSA was enacted to further advance educational equity and serve the interests of all students, and contains several key provisions that align with IDEA, such as Challenging State Academic Standards, Student Academic Assessments, and State Accountability Systems. Under ESSA, parents of students with disabilities should have access to clear information that assists them in knowing how their children are doing in school compared to the state standards, assurance that their children are included in state accountability systems as all other students, and that their children have an equitable shot at getting the coveted prize of high school: a "regular" diploma.

To understand better how students with disabilities may be impacted by ESSA, the research for this focused on how ESSA addresses students with disabilities through standards, assessment, and accountability, and details the findings.

The Council stands ready to assist the Administration in ensuring the right to a free and appropriate public education for students with disabilities as set forth in IDEA.

Respectfully,

A handwritten signature in black ink, appearing to read "Clyde E. Terry".

Clyde E. Terry  
Chairperson

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(The same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the U.S. House of Representatives.)



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# Acknowledgments

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# Executive Summary

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In the past 20 years, students with disabilities have made substantial educational progress—academic test scores, high school graduation rates, and college-going rates have all increased. This progress, in part, is related to the inclusion of students with disabilities in standards-based reform. With standards-based reform, educators must pay attention to what all students should be able to know and do for the grade level assigned and address gaps in academic performance, including that of students with disabilities. In 2015, Congress passed the Every Student Succeeds Act (ESSA), establishing the current federal parameters for standards-based reform.

To understand better how students with disabilities will be impacted by ESSA, the National Council on Disability (NCD) commissioned a report to study this in part by asking:

- How do policies in ESSA impact students with disabilities? Specifically, how does ESSA address students with disabilities through standards, assessment, and accountability?

To address these questions, NCD conducted a mixed methods study gathering relevant policy, qualitative, and quantitative information. In particular, forums convened to gather parent and student perspectives and interviewed several local and state administrators and researchers.

This report finds that ESSA maintains key provisions to ensure the inclusion of students with disabilities in accountability systems. However, ESSA also affords states greater flexibility in how accountability systems are established. ESSA includes additional assessment provisions to utilize effectively accommodations for students with disabilities and additional provisions to better support students with the most significant cognitive disabilities. Finally, to improve opportunities for student learning, ESSA requires states to engage stakeholders in the state planning process and address school conditions for student learning and the overuse of harsh disciplinary tactics, including seclusion and restraint.

To ensure ESSA implementation best supports the needs of students with disabilities, NCD recommends that Department of Education officials, peer reviewers, and states guarantee state plans by:

- Maintaining inclusion of all students with disabilities in accountability systems
- Supporting state-designed general and alternate assessment systems that accurately measure the performance of students with disabilities through accommodations and embedding principles of universal design for learning (UDL)

- Effectively supporting students with the most significant cognitive disabilities to increase access to the general education curriculum
- Promoting the use of evidence-based practices to provide intervention and support to schools and districts identified for improvement
- Creating plans to reduce the use of harsh discipline practices, especially seclusion and restraint
- Including meaningful stakeholder engagement in all aspects of ESSA planning and implementation

## List of Acronyms

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AAS	alternate academic achievement standards
AA-AAS	alternate assessment aligned with alternate academic achievement standards
AA-MAS	alternate assessments on modified achievement standards
ADA	Americans with Disabilities Act
COPAA	Council of Parent Attorneys and Advocates
CRA	Congressional Review Act
EIR	Education Innovation and Research
EL	English learners
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
FOCUS	Furthering Options for Children to Unlock Success
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Program
MTSS	Multi-Tiered System of Supports
NCD	National Council on Disability
NCLB	No Child Left Behind
PBIS	Positive Behavior Interventions and Support
RRTF	Regulatory Reform Task Force
SSIP	State Systemic Improvement Plan
UDL	universal design for learning



The goal of ESSA “is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”



# Introduction

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On December 10, 2015, President Obama signed the Every Student Succeeds Act (ESSA)<sup>1</sup> into law. ESSA reauthorized the Elementary and Secondary Education Act (ESEA), replacing the previous reauthorization, the No Child Left Behind (NCLB) Act. In a departure from NCLB, ESSA returns considerable authority to states and school districts, but it maintains the core tenants of standards-based reform.

The standards-based reform movement is based largely on the theory that establishing a system of standards, assessment, accountability, and school improvement

will increase student achievement.<sup>2</sup> Academic content standards represent a consensus of what students should know and be able to

do. Assessments measure achievement against the standards to determine if students are meeting them. Accountability systems are tied to performance on those assessments to determine how effectively schools are teaching students to the standards. Finally, schools underperforming in the accountability system are required to take action to improve student academic outcomes.

These principles of standards, assessment, accountability, and school improvement have been included in the past three iterations of the

ESEA (Improving America's Schools Act of 1994, NCLB, and now ESSA).

## Background and Context

### *Inclusion of Students with Disabilities in Standards-Based Reform*

Prior to NCLB, states had developed standards-based accountability systems, yet students with disabilities were excluded systematically from participating in the assessments.<sup>3</sup> This exclusion of students with disabilities was problematic in that testing results provided inaccurate

information about school performance, referrals to special education increased, and students with disabilities were subjected to lower expectations.<sup>4</sup>

In response, the 1997 reauthorization of the Individuals with Disabilities Education Act (IDEA) required that states include students with disabilities in state assessment systems, including through the development of alternate assessments.<sup>5</sup> Four years later, NCLB went further by requiring (1) students with disabilities be held to the same expectations as students without disabilities, (2) schools publicly report the performance of students with disabilities, and (3) schools be held accountable for their

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*ESSA returns considerable authority to states and school districts, but it maintains the core tenants of standards-based reform.*

performance just as any other subgroup of students. As a result, parents and educators now had tangible information about how students with disabilities were performing in reading, math, and high school graduation as compared to their peers. Also, the academic and graduation outcomes of students with disabilities were no longer hidden and schools and districts were compelled to use the data to provide targeted intervention to help improve the outcomes of students.

### ***The 1% Rule and the 2% Rule***

After the passage of NCLB, the increased transparency and strict school improvement requirements tied to academic performance resulted in a backlash to accountability.<sup>6</sup> Some states were criticized for “gaming the system” through mechanisms such as establishing low standards, low proficiency targets, and high N sizes<sup>7</sup> (*N size* refers to the minimum number of students needed to form a student subgroup for federal reporting and accountability purposes).<sup>8</sup> Other stakeholders pushed for greater flexibility in the law’s requirements so that schools could receive higher ratings in state accountability systems.

To increase flexibility, the Department of Education issued two regulations directly impacting students with disabilities that became known as the “1% rule” and the “2% rule.” In 2003, the Department of Education issued regulations permitting the use of alternate assessments aligned to alternate academic achievement standards (AAS) for students with

the most significant cognitive disabilities known as the “1% rule.”<sup>9</sup>

The new 1% rule permitted states and districts to count the proficient and advanced scores of students with disabilities assessed on an alternate assessment aligned with alternate academic achievement standards (AA-AAS) as proficient on the regular assessment (the regular assessment is the test all other students take, aligned to the regular state standards). Therefore, this allowed states to count students taking an alternate assessment as proficient on the general assessment. States could count the scores of students taking AA-AAS as proficient as long as the number of student scores counted did

not exceed 1 percent of all students assessed. Understanding the required use of 1 percent as a cap on the scores that could be used of all students in the policy

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*[T]he academic and graduation outcomes of students with disabilities were no longer hidden . . .*

can be confusing because in fact, the policy *only* applied to students with disabilities not to the general student population. To help clarify, 1 percent of all students in the general population is approximately 10 percent of all students with disabilities, which means states could include up to 10 percent of the scores of students with disabilities taking AA-AAS as proficient when calculating the proficiency of students with disabilities.<sup>10</sup>

After the development of the 1% rule, all states developed AA-AAS. In the 2013–2014 school year, states varied in their use of AA-AAS with participation rates ranging from about 0.5 to 2 percent of all students.<sup>11</sup> In considering the impact of the policy, stakeholders raised concerns that some states had established

policies preventing students taking AA-AAS from receiving a regular high school diploma<sup>12</sup> and that participation on AA-AAS corresponded with segregated placements for academic subjects.<sup>13</sup>

In response to requests for greater flexibility to include students with disabilities in accountability systems, in 2007, the Department of Education released the “2% rule,” permitting alternate assessments against *modified* academic achievement standards. The 2% rule allowed districts and states to count students with disabilities who were “unlikely to achieve grade-level proficiency” as proficient if they scored proficient on alternate assessments on modified achievement standards (AA-MAS) as long as students included as proficient did not exceed 2% of all students assessed (2% translates to approximately 20% of students with disabilities).<sup>14</sup>

Disability advocates raised concerns that the implementation of the 2% rule inappropriately lowered expectations for students with disabilities and created a loophole to remove students with disabilities from the general assessment and from accountability systems.<sup>15</sup> To justify the regulation, the Department of Education pointed to research suggesting that approximately 1.8 to 2.5 percent of all students were unable to reach grade-level reading standards in a given year.<sup>16</sup> Importantly, in studying the issue further, researchers discovered that persistently low-performing students were both students with disabilities and students without disabilities.<sup>17</sup> The 2% rule permitting lower expectations, however, applied

only to students eligible for special education services.

Implementation of the 2% rule supported advocates’ concerns about creating a problematic loophole. In total, 16 states developed AA-MAS to implement the 2% rule. In the 2011–2012 school year, participation on AA-MAS varied across the states—11.7 to 52.9 percent of students with disabilities.<sup>18</sup> Researchers found that some students were given the AA-MAS even when they had scored proficient on the regular assessment in the previous year.<sup>19</sup> Researchers also found African American students with disabilities were much more likely to be assessed against these easier assessments.<sup>20</sup> Additionally,

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*Researchers found that some students were given the AA-MAS even when they had scored proficient on the regular assessment in the previous year.*

in California, some districts assessed more than 70 percent of their students with disabilities on AA-MAS. Acknowledging the problems associated with the 2% rule, in 2013,

the Department of Education initiated steps to eliminate it.<sup>21</sup> In August 2015, a final rule was published that prohibited the 2% rule. To justify the decision, the Department of Education stated:

Nearly all states have developed and are administering new high-quality general assessments that are valid and reliable and measure students with disabilities’ knowledge and skills against college- and career-ready standards. Including students with disabilities in more accessible general assessments aligned to college- and career-ready standards promotes high expectations for students with disabilities,

ensures that they will have access to grade-level content, and supports high-quality instruction designed to enable students with disabilities to be involved in, and make progress in, the general education curriculum—that is, the same curriculum as for nondisabled students.<sup>22</sup>

### ***Benefits of Inclusion in Standards-Based Reform***

Despite the potential loopholes to accountability, since the passage of NCLB, studies have documented the numerous benefits of including students with disabilities in the ESEA. For instance, in 2003, 33.6 percent of students with disabilities who left special education dropped out of school,<sup>23</sup> but by 2014, the dropout rate decreased to 18.5

percent.<sup>24</sup> With the increased transparency and accountability for the performance of students with disabilities, previous National Council on Disability (NCD)

reports highlighted that students with disabilities were performing better academically and graduating high school at higher rates.<sup>25</sup> NCD reports also acknowledged stakeholders attributing the positive impact to the fact that “students with disabilities were no longer ignored,” and that educators were “becoming aware of what students with disabilities are capable of achieving if they are held to high standards and expectations.”<sup>26</sup>

The civil rights and disability communities have long held that the ESEA provides some important protections for historically underserved student groups, including students with

disabilities. With a joint interest in assuring all students have access to a quality public education and exit high school prepared for success in college or career, the business, civil rights, and disability community worked collaboratively to advocate for these principles in ESSA reauthorization.<sup>27</sup> Specifically, the coalition advocated for maintaining strong accountability systems, as those systems set expectations for what it means to be a good school,<sup>28</sup> maintaining a strong focus on subgroup performance, and safeguarding access to the general education curriculum for all learners.

### ***Mechanisms of IDEA and ESSA***

The underlying mechanisms of ESSA and IDEA have caused some to argue that the laws conflict

with one another.<sup>29</sup>

ESSA’s mechanism is a “top-down” approach that requires states to establish consistent standards, assessment, and an accountability system accounting for

the performance for all students, disaggregated<sup>30</sup> by student subgroup; whereas IDEA is a “bottom-up” approach that focuses on serving the individual student through the Individualized Education Program (IEP). Despite the concerns about a potential conflict in these approaches, both Congress and the Department of Education saw the two laws as complementary. In fact, in 2005 the Department noted:

Both laws have the same goal of improving academic achievement through high expectations and high-quality education programs. NCLB works to achieve that

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***[I]n 2003, 33.6 percent of students with disabilities who left special education dropped out of school, but by 2014, the dropout rate decreased to 18.5 percent.***

goal by focusing on school accountability, teacher quality, parental involvement through access to information and choices about their children’s education, and the use of evidence-based instruction. IDEA complements those efforts by focusing specifically on how best to help students with disabilities meet academic goals.<sup>31</sup>

A key aspect of IDEA is to ensure the student has access to and makes progress in the general education curriculum.<sup>32</sup> In November 2015, the Department of Education issued a Dear Colleague Letter to define the general education curriculum further aligning NCLB and IDEA.<sup>33</sup> Specifically, the Department indicated that because of NCLB’s requirement(s), the general education curriculum should be aligned with the state academic content standards for the grade in which the student is enrolled. As such, a student’s IEP should focus on supporting students in providing access to making progress with the state academic standards.

As Congress completed the bipartisan passage of ESSA in 2015, they again upheld and updated provisions of ESSA in alignment with IDEA and acknowledged that both work together to help support the improvement of outcomes for students with disabilities. Because of this, it is critical to understand how the policies in ESSA can impact students with disabilities. Therefore, in this report, we consider the following questions.

### **Research Questions**

- How do policies in ESSA impact students with disabilities? Specifically, how does ESSA address students with disabilities through standards, assessment, and accountability?

### **Research Questions Addressed in Report**

- How do policies in ESSA impact students with disabilities? Specifically, how does ESSA address students with disabilities through standards, assessment, and accountability?
- How do the policies within ESSA amend or align with IDEA?
- To the extent that state plans or planning processes are available, how have states addressed students with disabilities and their families in their plans or planning process?

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- To the extent that state plans or planning processes are available, how have states addressed students with disabilities and their families in their plans or planning process?

### **Research Methods**

To address these questions, the NCD research team conducted a mixed-methods study gathering stakeholder perspectives, as well as policy and quantitative information.

### **Qualitative Analysis**

To gather stakeholder perspectives, the NCD research team conducted interviews and held five forums, four regional and one national. Specifically, the NCD team conducted 20 semistructured interviews with key stakeholders, including Department

of Education officials, state and local administrators, and representatives from disability rights organizations, professional associations, and parent organizations to determine perspectives on the potential impact of ESSA on students with disabilities.

In the second phase of research, we gathered perspectives from parents and students, through four regional forums in California, Illinois, Texas, and Virginia. NCD recruited participants through the Council of Parent Attorneys and Advocates (COPAA)'s member network, local parent networks, and state and national partners in the forum locations. In total, 72 people participated in the regional forums. Only 30 percent of regional forum participants were COPAA members and 70 percent were non-COPAA members. Of the 72 participants in the regional forum, 38 percent were parents or students of color.

The third phase of data collection occurred during an online forum at COPAA's national conference. In total, 58 people participated in the national forum. Twenty-three percent were people of color. An additional 23 people responded through an email address.<sup>34</sup> In addition to the 72 participants at the regional forums, 81 people responded in the national forum and the email responses.

With this information, we describe experiences for these populations of students; identify any potential gaps in services, policy, and research; and make recommendations to improve opportunities for students with disabilities.

In all settings, NCD used a semistructured question protocol to gain perspectives about parent and child experiences with IDEA. Data was recorded and transcribed to identify themes among the experiences (see appendix for protocols).

## ***Policy Analysis and Literature Review***

To address these research questions, we reviewed the statute, related federal regulations, and federal Dear Colleague Letters (often referred to as federal guidance) to assess the current policies within ESSA. We focused both on the policies that explicitly mention students with disabilities and IDEA and on those policies that have the potential to impact students with disabilities. We also have reviewed research and literature on the impact of standards-based reform on the educational experiences of students with disabilities. Finally, we reviewed some of the initial state plans to evaluate the inclusion of students with disabilities within those plans.

With the change in administration—from President Obama to President Trump—and the start of a new Congress, we have closely monitored and reviewed activity of the Administration and 115th Congress through May 2017 and the impact of such activities on ESSA and on students with disabilities.

## ***Limitations***

In this study, NCD recruited participants through COPAA's member network, local parent networks, and state and national partners in the regional focus group locations. The interviewees were based purposefully on location and position. Therefore, the qualitative data identified in the report should not be viewed as generalizable, but rather as perspectives of individuals within those positions. Additionally, implementation of the law does not begin until the 2017–2018 school year. As such, the stakeholder perspectives are prospective in nature and additional studies will be needed to assess the impact of ESSA on students with disabilities after implementation.

# Chapter 1: ESSA Provisions Specific to Students with Disabilities<sup>35</sup>

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The goal of ESSA “is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”<sup>36</sup> As noted earlier, ESSA seeks to accomplish this goal by requiring states to establish standards, assessments, and accountability systems. ESSA is designed to support all students, including students with disabilities, in expanding educational opportunity and improving students’ outcomes.

IDEA focuses specifically on ensuring eligible students with disabilities are provided individualized services and supports to enable them “to be involved in and make progress in the general education curriculum.”<sup>37</sup>

## Standards

Title I of ESSA requires states to set challenging academic standards in reading, math, and science that must apply to all public schools and all “public school children.”<sup>38</sup> State-designed K–12 standards must align with higher education institution entrance requirements without the need for remediation and relevant state career and technical education standards. The law also requires that states adopt language proficiency standards for English learners (EL).<sup>39</sup>

Additionally, Title I of ESSA permits states to develop AAS for students with the most significant cognitive disabilities. AAS must be aligned to the state’s challenging academic content state standards, promote access to the general education curriculum, and reflect professional judgment of the highest possible standards achievable. Importantly, AAS must align to ensure students are “on

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***AAS must align to ensure students are “on track to pursue” postsecondary education or competitive integrated employment.***

track to pursue” postsecondary education or competitive integrated employment.<sup>40</sup> The law does not permit states to develop any other

alternate or modified achievement standards for students with disabilities other than AAS.<sup>41</sup>

With the implementation of more rigorous standards in recent years, one state administrator noted, “These days you are seeing real instruction in the standards. Teachers [are] empowered.” She added, that as a result, they are “providing more support on grade-level instruction . . . [and] access to more inclusive settings for our students.”<sup>42</sup>

## Assessments

States are required to implement annual assessments in reading and math for each grade

from third through eighth grades and once in high school.<sup>43</sup> States must also test students in science once in the following grade spans: third through fifth grades, sixth through ninth grades, and tenth through twelfth grades. States must assure that students with disabilities—as defined by IDEA or Section 504—taking the general assessment must be provided appropriate accommodations, which may include the use of assistive technology, “necessary to measure the academic achievement.” State-designed assessments should also be developed, incorporating principles of universal design for learning (UDL) “to the extent practicable.”<sup>44</sup>

The law requires the results of students to be reported by student subgroups (disaggregated) at the state, district, and school levels including a subgroup for students with disabilities. States must continue to test and report disaggregated assessment data on no less than 95 percent of all students as well as 95 percent of students in each student subgroup: low-income, race/ethnicity, disability, EL, and any other subgroup established by the state.<sup>45</sup>

### ***Alternate Assessment Aligned with Alternate Achievement Standards (AA-AAS)***

States may continue to use a statewide AA-AAS for students with the most significant cognitive disabilities.<sup>46</sup> A student’s IEP team makes the determination for inclusion in AA-AAS.

With past implementation raising concerns that students assessed on AA-AAS increased segregation and prevented access to the general

education curriculum,<sup>47</sup> Congress, in ESSA, required that IEP teams have more transparent conversations about assessment decisions. Specifically, through the IEP process, parents must be informed that their child’s performance will be measured against alternate achievement standards. They must discuss how the decision to take the AA-AAS may affect the child completing requirements for a regular diploma. The state must also ensure that the decision to assess a student on AA-AAS does not preclude him or her from attempting to complete a regular high school diploma.<sup>48</sup>

The law requires states to adhere to a 1 percent student participation cap at the state level for each required subject.<sup>49</sup> This new statutory cap exceeds the previous 1% rule under NCLB, which capped the counting of proficient scores. Under the new cap, states must ensure that they do not test students on the AA-AAS more than 1 percent of all tested students by subject. Districts do have flexibility if they need to exceed the 1 percent participation cap, and states are prohibited from applying a cap at the local level.

States may request a waiver from the Department of Education on the 1% participation cap. In the final assessment regulations, the Department added clarity on how states may request waivers.<sup>50</sup> Specifically, waiver requests must be submitted 90 days prior to the start of the testing window for the subject area in which the cap is expected to be exceeded. With ESSA’s implementation timeline, such requests could be submitted as early as December 2017. State

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***States must continue to test and report disaggregated assessment data on no less than 95 percent of all students as well as 95 percent of students in each student subgroup . . .***

waivers are reserved for exceptional situations, in which states need to assess additional students with the most significant cognitive disabilities with alternate assessments. Waiver requests must provide transparent state-level information on the number and percentage of students, including by subgroup, taking the alternate assessment. Clarifying language provided by the Department of Education states:

Recognizing that a state should do everything it can to ensure students are being held to the appropriate standards and that only students with the most significant cognitive disabilities should be taking the alternate assessment aligned with alternate achievement standards, and to ensure that it is making substantial progress toward reducing the percentage to fewer than 1 percent, the regulations require a state seeking a waiver to have a plan of action to meet the 1 percent limit in the future.<sup>51</sup>

Data from 2014–2015 alternate assessments based on AAS suggests that more than half of the states will need to address the 1% cap on participation because in that year they exceeded the 1% cap. The wide range of participation rates in the alternate assessment (from less than 0.6% to more than 2.0%) indicates that some states have successfully assessed less than 1% of students on AA-AAS. However, most states will need to specifically address the overuse of the AA-AAS and provide technical support to districts and IEP teams.

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*[M]ost states will need to specifically address the overuse of the AA-AAS and provide technical support to districts and IEP teams.*

In utilizing the AA-AAS for students with the most significant cognitive disabilities, ESSA requires the state to meet several conditions in addition to those outlined above.<sup>52</sup> Specifically, the state must promote involvement and progress in the general curriculum for students with the most significant disabilities consistent with IDEA. Through the state plan, the state must describe that general and special educators know how to administer the AA-AAS and how to use appropriately accommodations for students with disabilities on all assessments. They also must describe how the alternate assessments incorporate principles of UDL. Finally, to increase the number of students with

the most significant cognitive disabilities participating in and assessed against the general assessment for the grade in which he or she is enrolled, the

state must “develop, disseminate information on, and promote the use of appropriate accommodations.”<sup>53</sup>

Stakeholders identified challenges with the IEP teams making the decisions on assessment in their experience with previous implementation of the AA-AAS under NCLB. Parents noted the conversation frequently occurs at a young age and ties to decisions on placement. One parent advocate commented, “Where it becomes contentious is the general education [discussion], and deciding the placement of the child, the goals and [whether they take] the alternate assessment. Schools are bringing it up to parents in kindergarten, first grade, second, third grade. And then, when the parents try and get the child off of that

[it's difficult]."<sup>54</sup> Another parent said, "the options were always presented as binary—either life skills class at the expense of academics [and the regular classroom] or life skills get pushed aside for academics. Why can't the child have both?"<sup>55</sup>

With the new requirement for IEP teams to discuss the options for assessment(s) as it relates to the child's access to the general curriculum and to a regular diploma, both schools and families will need training and information. One local administrator acknowledged the benefits of the new statutory language around

information during the IEP meetings, "Teachers [under NCLB] were challenged by how to manage and navigate the conversation with the parents when the decision for alternative assessments may take the child off track [for a regular diploma]. The new statutory language can help. [It gives] more power to the team and family."<sup>56</sup>

### ***Locally-Selected Assessment and Computer Adaptive Assessments***

For the high school assessment, ESSA includes a new provision permitting districts to use a nationally recognized high school assessment, approved by the state, in lieu of a state high school assessment.<sup>57</sup> To ensure these tests are truly "nationally recognized," the regulations clarify they must be given in multiple states, be recognized by institutions of higher education, and provide the same benefits to all students—including EL and students

with disabilities.<sup>58</sup> The final regulations make clear that students with disabilities must be permitted to access accommodations on any locally-selected assessment in accordance with the state accommodations guidelines under IDEA. The regulations further stipulate that it is the additional responsibility of the state to ensure that a student who requires and uses accommodations is not denied any benefit afforded to a student who does not need such an accommodation. Finally, a state cannot approve an assessment that offers some students a benefit, such as a college reportable score, that

would not be available to another student taking the same assessment with accommodations.<sup>59</sup>

States may develop computer-adaptive tests, which allows for above and below grade-level test items; however, for the purposes of ESSA,

such assessments must measure and report test results against grade-level academic standards.<sup>60</sup> States may also allow districts to develop innovative assessments under the Innovative Assessment Pilot, which applies to no more than seven grantees approved by the Secretary of Education.

### **State Accountability System**

Under ESSA, states are required to develop their own statewide accountability system and use the system to make annual accountability determinations.<sup>61</sup> States must develop a single accountability system based on standards and establish "long-term goals" for proficiency in reading and math and graduation rates as

well as state-determined “interim measures of progress.”

## Measuring School Performance

States must use the following indicators to measure school performance within the state accountability system:

1. Academic achievement as measured by the annual statewide assessments in English and mathematics
2. A measure of student growth or other academic indicator for elementary schools
3. For high schools, the four-year adjusted cohort graduation rate and may include an extended-year adjusted cohort graduation rate
4. Progress in achieving English language proficiency for EL
5. At least one “indicator of school quality and student success”

In determining the performance of schools, ESSA requires that each of the first four indicators have substantial weight in the system and, taken together, the first four indicators must have “much greater weight” than the indicators selected for the “additional” indicator in the accountability system calculation. The Secretary of Education is prohibited from prescribing any indicators or the weights for any of the indicators in the system.<sup>62</sup>

The performance of students must be described in the aggregate and disaggregated for low-income students, EL, students from

major racial and ethnic groups, and students with disabilities. States may continue to set their own minimum group size or N size for subgroup disaggregation and accountability purposes with the caveat that such N sizes are statistically reliable.

## *Fifth Indicator or Additional Indicator*

The indicator of school quality and student success, frequently called the *fifth indicator* or *additional indicator*, must be comparable, valid, reliable, and allow for meaningful differentiation across schools.<sup>63</sup> This indicator can be a measure related to student engagement, educator engagement, advanced coursework, postsecondary readiness, school climate, and safety. The selected indicators must be statewide and the same for all subgroups of students, but the indicator may be different by grade span (e.g., high school versus elementary school). Since the passage of ESSA, as states develop draft consolidated implementation plans, representatives from the business, civil rights, and disability communities have advocated that states consider these five questions to guide decisions on this new indicator:

1. Is the indicator focused on students?
2. Can the indicator be measured by the student group?
3. Is the indicator aligned with readiness for post-high school success?
4. Does the indicator differentiate between schools?
5. Can the indicator hold the weight of accountability?<sup>64</sup>

## School Improvement

Within the accountability system, the indicators are used to identify, differentiate, and report on all public schools. At least every three years, states must identify schools for comprehensive support and improvement. The schools identified must include the following:

- The lowest-performing 5 percent of schools receiving Title I funds in the state
- All high schools with graduation rates below 67 percent
- Schools where a subgroup is consistently underperforming the same as the lowest 5 percent of schools and does not improve after a state-determined number of years

The state is required to determine the number of years for intervention and the exit criteria. Once identified, the district determines the school's improvement plan. The state must review school progress after four years.

In addition to the identification of the schools for comprehensive support and improvement, the district must identify and oversee targeted support and improvement in any school when one or more subgroup is underperforming. In this case and for these schools, the district determines when intervention begins and ends except if the school is then identified

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*As states submit their plans, it will be critical to analyze their proposals for determining underperforming subgroups and the requirements of districts to oversee support and intervention in identified schools.*

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*While the definition for a regular high school diploma is not new, the definition of an alternate diploma is new to the law.*

as a consistently underperforming school in the state. With this new policy and limited opportunities for clarity from the Department of Education, the provision could be implemented in as many ways. As states submit their plans, it will be critical to analyze their proposals for determining underperforming subgroups and the requirements of districts to oversee support and intervention in identified schools.

Reflecting on the shift in ESSA back toward the states, Dr. Thomas Hehir, former director of the Office of Special Education programs, noted, "We still have guardrails in inclusion in accountability systems. . . . It wasn't that long-ago kids weren't even tested. The downside is how they will play out in 50 different accountability systems because so much discretion is at the state-level."<sup>65</sup>

## State Diploma Options and Students with Disabilities

ESSA defines both a *regular high school diploma* and an *alternate diploma*. While the definition for a *regular high school diploma* is not new,<sup>66</sup> the definition of an *alternate diploma* is new to the law. The definition gives states the option to create a diploma for students who cannot meet the requirements of a regular diploma. The purpose of defining the *alternate diploma* was to ensure that the requirements are still aligned to the state

standards and to the requirements for a regular diploma. States have asked for a way to count students with the most significant cognitive disabilities as graduates and this provides one pathway for states to do so.

Because students with significant cognitive disabilities typically receive IDEA services through age 21 (or beyond if allowed by state law), ESSA stipulates that a student must receive the alternate diploma within the time period that a student is eligible to receive services under IDEA. Importantly, a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential cannot count as an alternate diploma.<sup>67</sup>

While it is too early to know which states<sup>68</sup> will develop an alternate diploma that meets the requirements of ESSA, one stakeholder said, “States are still making sense of the new policy and there seems to be interest. There are some positives to developing the alternate [diploma] such as: the opportunity to count students positively in graduation [rates]; and, it provides an opportunity for states [to work] with stakeholders to develop a meaningful diploma.”<sup>69</sup>

Parents are also clearly seeking more information and better options for their children with regard to diplomas and diploma options. One parent said, “in our state, a special education eligible child usually graduates with the lowest level diploma. This inhibits them towards attending a university after graduation.”<sup>70</sup> Another family member noted concerns about her brother being educated in “an alternative curriculum,” adding that he was then only eligible for a certificate of completion.<sup>71</sup>



## Disciplinary Practices, Including the Use of Seclusion and Restraint

Within the state plans, ESSA also requires states to include a description of how they will support districts “to improve school conditions for student learning, including through reducing— (i) incidences of bullying and harassment; (ii) the overuse of discipline practices that remove students from the classroom; and (iii) the use of aversive behavioral interventions that compromise student health and safety.”<sup>72</sup> The *ESSA Conference Report* clarifies that the term *aversive behavioral interventions* means seclusion and restraint.<sup>73</sup>

Parents from the forums emphasized concerns related to discipline in schools. One

## Disciplinary Practices

In 2013–2014, 70,000 students with disabilities were subjected to seclusion and restraint, and students with disabilities had more than double the suspension rate of students without disabilities.

parent described that after multiple suspensions and a “lack of effort by the school to find solutions,” they ultimately felt their child was “type cast” as a “bad student” and removed him from school.<sup>74</sup> Another parent said her son was frequently removed from the class for disciplinary reasons adding he was “missing a lot of instructional time, [and] as a result he fell way behind.”<sup>75</sup> In 2013–2014, 70,000 students with disabilities were subjected to seclusion and restraint, and students with disabilities had more than double the suspension rate of students without disabilities.<sup>76</sup> Previous NCD reports have recommended Congress pass legislation to establish uniform standards on seclusion and restraint in schools to “ensure the safety and dignity of every student.”<sup>77</sup>

These new provisions in ESSA state plan are critical in ensuring states address these discrepancies. Yet, in early analyses of ESSA state plans, it appears that states are merely restating the statutory language rather than describing what they will do to support districts as required by the law. In some ESSA plans, states describe implementing Positive Behavior Interventions and Supports (PBIS), which may be beneficial. However, the plans do not ensure that such implementation targets and decreases the

use of seclusion and restraint and exclusionary discipline.<sup>78</sup>

## Professional Learning and Curricular Supports

ESSA's Title II (Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders) provisions eliminate the “highly qualified teacher” requirements under NCLB and replaced it with the requirement that states assure teacher certification or licensing requirements are aligned with the state’s challenging academic standards.<sup>79</sup> ESSA made conforming amendments to IDEA regarding teachers and assures that special education teachers must obtain full state certification as a special education teacher; have not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and hold at least a bachelor’s degree.<sup>80</sup> ESSA also eliminated the ESEA waiver requirement that states implement teacher evaluation systems. States may use Title II funds to implement such a system if they choose.

ESSA's Title II, Part A (Teacher and Principal Training and Recruiting Fund) and Title IV, Part A (Student Support and Academic Enrichment Grants) are now block grants to states and districts. The allowable uses of funds are flexible and interchangeable between these two programs as long as the state and district can show how activities are aligned with state standards, the growth or improvements for teachers and principals, and how data will be used to improve the activities. In the case of a school district, they must also show the state how they will prioritize funds to provide support to personnel in the state’s lowest performing schools.<sup>81</sup> Because of the

flexibility offered through federal law and the requirements to provide comprehensive and targeted improvement support to identified schools, states and districts could invest in training to support Multi-Tiered Systems of Support (MTSS) including PBIS, UDL, and other evidence-based programs that support the learning of all students, including students with disabilities.

In explaining how using data to support the targeting and allocation of resources works to both the state's and the students' advantage, one state administrator said, "[Because of our

planning model], we can take the requirements of ESSA and IDEA and merge them. We have what we refer to as the Integrated Accountability System whereby districts submit data electronically and we can do a data analysis of all requirements to help identify where to put the professional learning resources and identify which districts and schools may need corrective action. We use data to make decisions about where our resources are going to go to support every student having improved outcomes." ESSA was designed with this flexibility and accountability at the state level in mind.



## Chapter 2: Other Policy Considerations

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### Federal Funding of ESSA and School Choice

**O**n May 23, 2017, the President released the fiscal year 2018 (FY2018) budget, which provides \$59 billion in discretionary funding for the Department of Education. This represents \$9 billion in cuts or a 13 percent reduction below the FY2017 level.<sup>82</sup> In the President’s FY2018 budget, the state Title I formula for ESSA is reduced by \$1 billion; however, the Administration has added an additional \$1 billion to a specific program in Title I—the Furthering Options for Children to Unlock Success (FOCUS) program, which would support the establishment and expansion of systems that differentiate funding based on student characteristics and allow the funds a student generates to follow the student to a school of choice.<sup>83</sup> The funding and FOCUS program builds on a new pilot program included in ESSA that allows up to 50 school districts to adopt a weighted student funding formula that would combine federal, state, and local dollars into a single funding stream tied to individual students.<sup>84</sup> Under the pilot, districts would provide funding to schools based on the number

of students they enroll and the characteristics of those students (e.g., EL, low-income, or students with disabilities). If a student leaves one school and moves to another, the receiving school is given the money designated for the student. In comparison, the current funding model used by most states-to-school districts provides funds based on staffing ratios and through specific funded programs. Under the predominant model, when a student changes schools, all or

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most of the funding stays with the local or original public school. The FY2018 budget also includes \$250 million for competitive awards through the Education Innovation and Research

(EIR) program to provide scholarships for students from low-income families to attend the private school of their parents’ choice.

### Charter Schools

ESSA currently authorizes public school choice through Title IV, Part C (Expanding Opportunity Through Quality Charter Schools).<sup>85</sup> In the reauthorization, the charter school program was amended to address concerns that charter schools are under enrolling and underserving students with disabilities.<sup>86</sup> Specifically, the

law requires grantees address recruitment, enrollment, and retention practices to promote access for all students including students with disabilities. Additionally, it requires charter authorizers to monitor schools on their ability to meet the needs of students with disabilities enrolled in their schools. The President's FY2018 budget includes a \$168 million increase for the charter school program.

### ***Private School Choice***

Neither ESSA nor IDEA authorizes private school choice (vouchers,<sup>87</sup> education savings plans,<sup>88</sup> scholarships, or tax credits<sup>89</sup>). Congress and the Administration have actively discussed several policy routes to implement the Administration's stated agenda to expand

school choice. The appropriations process provides one mechanism for school choice policy.

For instance, the FY2017 Omnibus Funding Bill

included \$45 million for the District of Columbia school voucher program under the Scholarships for Opportunity and Results (SOAR) Act. As previously discussed, the FY2018 proposed budget expands public school choice with an additional \$1 billion through FOCUS, adds \$250 million in the EIR program to provide scholarships for students from low-income families, and expands the charter school program. Binding action on the FY2018 budget is required by September 30, 2017; however, Congress may need to pass a continuing resolution and/or an omnibus bill to complete the appropriations process.

Parallel to the FY2018 appropriations process, Congress is actively discussing a new tax bill that

could include funding for tax credits, education savings accounts, or both to provide school choice funding options to states and/or individual families. Additionally, several bills currently introduced in the House and Senate may be considered. For instance, the Creating Hope and Opportunities for Individuals and Communities through Education (CHOICE) Act (H.R. 691 and S. 235) permits IDEA and Title I funding to be used by parents at a school of their choice. Other proposals create block grants for vouchers and opportunities for tax credits or target specific populations of students such as Native American Indians or military families.

Importantly, any choice program developed may differentially impact students with

disabilities and their rights depending on the structure of the program. For instance, under a school choice program where a family with a child eligible

under IDEA selects a private school, the child becomes a "parentally-placed" private school student<sup>90</sup>—the parent rather than the IEP team has made the decision to enroll the child in a private school. This means a child can lose his or her individual right to a free appropriate public education under IDEA, and parents lose their procedural safeguards under the law. To maintain rights under IDEA, a private school choice proposal would need to specify explicitly the rights to which students and their families are entitled under such a program. As for anti-discrimination protections, if the private school accepts federal money through a voucher program, the schools would be obligated to comply with Section 504 of the

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***Neither ESSA nor IDEA authorizes private school choice (vouchers, education savings plans, scholarships, or tax credits).***

Rehabilitation Act.<sup>91</sup> Under a tax credit proposal or an education savings plan, where a private school may not accept federal funds, the school may be considered a public accommodation under Title III of the Americans with Disabilities Act (ADA).<sup>92</sup> As a public accommodation, the school is required to provide reasonable modifications for students with disabilities. Religious schools are not subject to the requirements of Title III of the ADA.

## Regulatory Process

Using the Congressional Review Act (CRA), the 115th Congress and the current Administration has sought to rollback what republicans consider burdensome regulations issued by the Obama Administration. The CRA allows Congress to vote to revoke regulation made final within 60 continuous legislative days of when Congress received final notice of the regulation. After rescinding the regulation, the federal agency is not permitted to issue any new regulations if they are considered “substantially similar” until the statute is reauthorized.<sup>93</sup> In March 2017, the President signed a joint resolution eliminating ESSA Title I accountability regulations made final in November 2016.<sup>94</sup> Without the regulations to guide implementers and add transparency to the Department’s state plan expectations, stakeholders will need to

evaluate the Department’s state plan approval process carefully.

Additionally, on February 24, 2017, the President signed Executive Order 13777 (the Order), Enforcing the Regulatory Reform Agenda to reduce regulatory burdens through regulatory reform. Because of the Order, a regulatory reform officer was appointed and the Regulatory Reform Task Force (RRTF) was established for the U.S. Department of Education. It is the

responsibility of the RRTF to conduct an analysis of all departmental regulations and make recommendations for regulations to repeal, replace, or modify. On May 25, 2017, the RRTF provided a progress report and issued a public notice seeking comments on an initial canvass

of education regulations and policy-oriented guidance. The public is invited to comment and make specific recommendations to repeal, replace, or modify

existing regulations or guidance by August 21, 2017. Public outreach from Department of Education offices is underway and the Order along with the Office of Management and Budget directed the agency to include in its FY2019 Annual Performance Plan five performance indicators focused on carrying out regulatory reduction and associated cost savings.<sup>95</sup> At this writing, the RRTF has not indicated whether the current regulations for Title I (Part 200) will be kept, modified, or rescinded.<sup>96</sup>

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*In March 2017, the President signed a joint resolution eliminating ESSA Title I accountability regulations made final in November 2016.*

## State Planning Process: Accountability for Students with Disabilities

States have two timelines for submitting their initial plans: April 3, 2017, or September 18, 2017. On March 13, 2017, Secretary DeVos reissued a Revised Consolidated State Plan template for state use to develop their ESSA plans.<sup>97</sup> The revised template came just a few weeks before the April 3 submission deadline.

The new template eliminated elements,<sup>98</sup> including removal of ESSA's stakeholder engagement requirements.<sup>99</sup> Advocates believe this removal diminishes vital grassroots input to ESSA plans. They said, "This action disregards Section 1111(a)(1)(A) of ESSA, which requires state education agencies to meaningfully consult a wide variety of stakeholders that are vital to the implementation and success of the law."<sup>100</sup>

Despite these actions, stakeholders from our interviews acknowledged positive efforts with collaboration. For instance, a participant representing state departments of special education state administrator said, "We have states that are being more intentional around stakeholder engagement. What's exciting is that we're hearing more how states are working hard to make sure the right folks are at the table from the beginning. Special education directors for example [are] part of ESSA plan development in their states and that is encouraging."<sup>101</sup>

In discussing the ongoing challenge of ensuring students with disabilities are fully considered throughout ESSA planning process, one state administrator commented, "It's

proactive for us to have Title I and IDEA on the same [internal] team."<sup>102</sup>

In states such as Kansas, programmatic directors responsible for early education, special education, and all ESSA titles are housed in the same department. With this shared planning, the focus is on the success of all children and providing support to districts to influence a systemic approach to student learning and achievement.

While the semistructured interviews revealed positive developments regarding planning in some states, we also know that it has been challenging for stakeholders (in some states)

to provide input given that many of the plans issued publicly for comment were lacking in the very details that advocates cared about. One advocate said, "The problem is that a

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*In states such as Kansas, programmatic directors responsible for early education, special education, and all ESSA titles are housed in the same department.*

lot of the missing information on the draft was essential but we were unable to review and comment on it."<sup>103</sup> For example, North Carolina and Arkansas issued their plans for public comment but the drafts lacked most information essential to determining any impact on students with disabilities.

Furthermore, the revised ESSA template eliminated the requirement to submit data on the number and percentage of students in each student subgroup that would not be included in the accountability calculation due to minimum N size. This means that states, as part of their ESSA plans, do not need to report on how many students and schools are left out of the accountability system.<sup>104</sup> The higher the N size, the less likely it is for schools and districts to

be identified for comprehensive or targeted support and improvement under Title I. The ESSA template also affected how student graduation can be reported and eliminated a requirement for disaggregated graduation data by student subgroup. Finally, the new ESSA template does not require information regarding the state's use of AA-AAS. With the new template and elimination of the regulation, states cannot count students exited from special education as part of the students with disabilities subgroup in the years following their exit.

As of May 12, 2017, 16 states and the District of Columbia have submitted ESSA plans deemed ready for peer review by the Secretary of Education.<sup>105</sup> All other states will submit their plans in September 2017. An initial analysis<sup>106</sup> of early drafts of ESSA state plans reveals some concerns or disconnects that may impact all disadvantaged students, including students with disabilities. These issues primarily relate to accountability, school improvement, and alignment with IDEA.

Specifically, states show considerable variability in how they approach the inclusion of subgroups in accountability. For instance, with N size, submitted state proposals' N size range from 0 to 30, meaning some states may still be excluding many students and schools in the accountability system. Some states are proposing to use a "super subgroup"<sup>107</sup> in schools not meeting

N size; however, Congress clearly established that differentiation of student subgroups is an essential focus of ESSA.

States have also demonstrated variability with their accountability systems. For instance, states are proposing a wide range of years to achieve long-term goals (from 6 to 20 years).

Many states do not provide details on the methodology to identify schools or districts for comprehensive or targeted support and intervention. In fact,

some states are explicitly excluding schools from identification for intervention and support when they have a high percentage of special education students. While ESSA allows states to apply different approaches to identifying schools, it does not allow for outright exclusion from accountability based on subgroups.<sup>108</sup>

Additionally, it is unclear if states have created meaningful plans for factoring the 95 percent participation rate on assessments into the accountability system as required by ESSA.

Additionally, state plans showed little alignment between other efforts to improve opportunities for students with disabilities and ESSA plans. Of the 15 or so plans reviewed, only one state, New Mexico, mentions the State Systemic Improvement Plan (SSIP). This lack of alignment between Title I and IDEA plans can be problematic. For instance, many states' SSIP goals are focused on improving reading

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*In fact, some states are explicitly excluding schools from identification for intervention and support when they have a high percentage of special education students.*

proficiency and/or reducing harsh disciplinary practices for students with disabilities, which may directly align with similar objectives in ESSA.

Coordination between the two plans can help to increase collaboration between general and special education and better support students with disabilities. One stakeholder noted

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*Of the 15 or so plans reviewed, only one state, New Mexico, mentions the State Systemic Improvement Plan (SSIP). This lack of alignment between Title I and IDEA plans can be problematic.*

states should consider “to what extent they can leverage the good work they have already been doing.”<sup>109</sup> Finally, even though ESSA presents

opportunities for states to support efforts to make classrooms more accessible to all students through UDL, few states mention UDL implementation in their planning.

## Chapter 3: Findings

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Analyzing the provisions of ESSA, the current status of state plans, and the perspectives of stakeholders, in this report, we recognize the following findings:

- **Inclusion in accountability:** ESSA maintains key provisions to ensure students with disabilities are included in state accountability systems and are held to the same expectations as students without disabilities.
  - **State authority:** ESSA returns considerable authority to the states in establishing parameters of accountability systems. Specifically, state decisions on provisions related to N size, the fifth indicator, 95 percent participation, and defining schools for comprehensive and targeted support for chronically underperforming subgroups can have a considerable impact on students with disabilities.
- **Assessment provisions:** ESSA establishes that states are required to develop no more than two assessment options, meaning most students with disabilities should be taking the general assessment (with accommodations as appropriate). The law also introduces new options for high school assessment. This creates both opportunities and challenges in assessing students with disabilities.
- **Students with the most significant cognitive disabilities:** ESSA includes provisions to support students with the most significant disabilities. Specifically, ESSA establishes key provisions around alternate achievement standards, alternate assessments, and alternate diplomas to improve opportunities for students with the most significant cognitive disabilities. ESSA clarifies that parents are to be fully apprised by the IEP team of the impact of choosing alternate standards and assessments for their child.
- **State plans:** States have an important opportunity to engage stakeholders in meaningful ways to implement ESSA. States also have the responsibility to help districts invest in professional learning that includes MTSS, PBIS, UDL, and other evidence-based practices to improve academic outcomes as well as address and reduce the use of harmful aversive practices such as the use of seclusion and restraint.



## Chapter 4: Recommendations

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To ensure that students with disabilities are supported as schools, districts, and states begin to implement ESSA, policymakers should consider the following recommendations.

### Recommendations

***Inclusion in accountability:*** To best support students with disabilities in accountability systems, Department of Education officials, peer reviewers, and states should ensure that:

1. Schools are held accountable for student achievement disaggregated by student subgroups, in particular as they establish N sizes for accountability.
2. State accountability systems meaningfully hold schools accountable if fewer than 95 percent of all students or of any subgroup of students are not included in the state's assessment.
3. Additional indicators or fifth indicators adopted by the state are meaningful for all populations of students and support improving academic achievement.
4. School districts identify schools in need of comprehensive or targeted support and intervention including when students with disabilities are the primary trigger for such improvement. Data and best practice show that when provided the instruction, support, services, and accommodations needed, most students with disabilities can achieve commensurate with their peers.
5. School and district improvement plans rely on the school data to adopt evidenced-based intervention and support strategies. One state administrator acknowledged the benefits of data, "For example, high school graduation: [we've found] it isn't just a challenge for special education students. We help districts work on graduation rates for all students. Achievement on state [reading and math] assessments: we can provide professional learning to support teachers who have students struggling to meet state standards."<sup>110</sup>

(continued)

## **Recommendations, *continued***

**Assessment provisions:** To best support students with disabilities in assessment, Department of Education officials, peer reviewers, and states should ensure that:

6. All assessments within the state system incorporate principles of UDL.
7. Students with disabilities are provided access to appropriate accommodations on any assessment offered by districts or the state.

**Students with the most significant cognitive disabilities:** To best support students with the most significant disabilities, Department of Education officials, peer reviewers, and states should ensure that:

8. States fully implement the new ESSA requirements regarding AA-AAS. States should utilize technical assistance, training, and support provided by the National Center on Educational Outcomes to update state criteria, train IEP teams, and work closely with parent advocates in order to assure students taking the AA-AAS are in fact appropriately assigned to that assessment.
9. Any state request to exceed the 1 percent participation cap at the state level is carefully considered and monitored to ensure students are not inappropriately included in the AA-AAS.

**State plans:** To improve conditions for student learning, Department of Education officials, peer reviewers, and states should ensure that:

10. Stakeholders are effectively engaged, including parents of students with disabilities, in the development of ESSA plans.
11. State plans include meaningful ways to reduce the use of exclusionary discipline and seclusion and restraint as well as incidents of bullying and harassment in schools. State plans should consider adopting, modifying, or enforcing state-level policies and promoting effective district-level policies to address these issues. State plans should also support practitioners in implementing alternatives to exclusionary discipline and seclusion and restraint.

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