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Transforming State Systems to Improve Outcomes for Children with Disabilities

ESSA: Key Provisions and Implications for Students with Disabilities

The December 2015 passage of the Every Student Succeeds Act (ESSA) provides states an opportunity to reflect on their current systems of education, and to identify what is working well, and what improvements need to be made to develop, refine and implement coherent education systems that continuously improve so that every child is ready for college, career and life success. To facilitate these outcomes, states are elevating equity in both opportunity and achievement in the development of their accountability and support systems.

This document is provided to assist State Educational Agency (SEA) staff in considering key provisions and implications for students with disabilities (SWD) in the ESSA, as they continue work to ensure that every child has an equitable opportunity to succeed and the supports necessary to do so. This resource is intended to:

- assist states in thinking about, and making connections between, improvement efforts for SWD and the state's overall vision and goals,
- suggest opportunities and responsibilities toward that end, and
- highlight some key provisions and implications for SWD in the ESSA.

STATE VISION

As states continue to identify their goals and priorities, and to consider how ESSA supports the work they want to do, state agency staff should understand the Chief's vision. This will help to inform state agency staff work and engagement with others across and outside the SEA, shape the decisions that staff need to make from where they lead, and facilitate a coherent ESSA implementation strategy. Overarching questions are:

- Do I understand my Chief's strategic vision, goals and priorities?
- How can I ensure that improvement efforts for SWD that are already underway in the state, such as the State Systemic Improvement Plan (SSIP), are aligned with the Chief's vision, goals and priorities, and the SEA's broader improvement efforts?
- To what degree are the Chief and other senior SEA leaders aware of the SSIP and its potential to serve as a leverage point in the SEA's broader improvement efforts?

OPPORTUNITIES AND RESPONSIBILITIES

While much progress has been made over the last 40 years since the passage of the Individuals with Disabilities Education Act (IDEA), there is still much work to do to ensure that all children, including children with disabilities, are prepared for success. For example, states have learned that a focus on compliance under IDEA, while necessary, is *not sufficient* to improve achievement and outcomes for SWD. As a result, states are not content to maintain environments where the achievement of compliance *alone* is viewed as success.

Rather, and in light of the passage of ESSA, states have an *opportunity* to reflect on their current systems of education and plan for improvement, and the responsibility to demonstrate leadership and commitment toward ensuring equitable opportunity and improved outcomes for every child. Specifically, as it relates to improving achievement and outcomes for SWD, some related key provisions and implications that states may want to consider are highlighted in the following chart, and are organized in the areas of standards, assessment, accountability, English learners, school improvement supports, and teachers and leader quality. Within each of these categories, we identify relevant ESSA requirements, as well as point out associated implications and/or questions.

STANDARDS	
ESSA Requirements:	**Implications/Questions**
Challenging State Academic Standards. ESSA requires the same academic content and achievement standards for all students (except alternate academic achievement standards for students with the most significant cognitive disabilities). **Alternate Achievement Standards** must be: (I) aligned with the challenging State academic content standards); (II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act; (III) reflect professional judgment as to the highest possible standards achievable by the affected students; (IV) designated in the individualized education program developed for each such student as the academic achievement standards that will be used for the student; and (V) aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment. (Section 1111(b)(1)(E) of the ESEA, as amended by the ESSA) Proposed regulations under ESSA would require each SEA to provide evidence demonstrating that: • it has adopted challenging academic content standards and aligned academic achievement	Individualized Education Programs (IEPs) must be aligned to state academic content standards for the grade level in which the child is enrolled. While this requirement is not new, the Office of Special Education and Rehabilitative Services (OSERS), in a November 2015 *Dear Colleague Letter* (see link further below), clarified this requirement, which has important implications for both instruction and assessment. • How will your state communicate with various stakeholders the importance of SWD being held to the same challenging state academic standards as their non-disabled peers? • How will you model, across the SEA, a shared commitment to high expectations for all students, including students with disabilities? • How will your state lead in supporting LEAs to ensure that the necessary conditions for teaching and learning exist, in order to prepare students for success in college, career, and life? • How will your state lead in supporting LEAs to identify and implement evidence-based practices to improve achievement and outcomes for SWD?

standards in the required subjects and grades; • its alternate academic achievement standards for students with the most significant cognitive disabilities meet the requirements of section 1111(b)(1)(E) of the ESEA, as amended by the ESSA	Related Resource: • Office of Special Education Programs (OSEP) November 16, 2015 "Dear Colleague Letter" (Guidance on FAPE)
ASSESSMENT	
ESSA Requirements:	**Implications/Questions**
Annual Assessments. States must continue to test all students on statewide assessments in the following areas: reading/language arts and math every year in grades 3-8 and once in high school (9-12); and science once in each grade span (3-5, 6-9, 10-12). These assessments must be aligned to the state's challenging academic standards.	There continue to be individuals who believe that students with disabilities cannot achieve rigorous standards or demonstrate mastery of such. As a result, there can be pressure not to include some SWD in general assessments and to push them towards an alternate assessment. • How might you leverage stakeholder relationships to identify and point to examples of success, as a strategy for helping change beliefs about student capacity and performance in assessments. • What is the culture in your state (across unique districts and schools, as well as collectively) with regard to belief systems about SWD? Related Resources: • CCSSO Critical Area Outline on Assessment • Office of Special Education Programs (OSEP) November 16, 2015 "Dear Colleague Letter" (Guidance on FAPE)
Disaggregation. ESSA requires disaggregation of assessment results by student subgroups, including children with disabilities as defined under IDEA.	• How will your state communicate with and engage stakeholders as partners concerning opportunity and achievement gaps for SWD?

Each state must determine, in consultation with stakeholders, the minimum number of students (the "n-size") that it will use for accountability and reporting of the results for all students or a subgroup. The n-size must be statistically sound, the same for all students and all subgroups, and ensure the non-disclosure of personally identifiable information. Proposed regulations under ESSA would require that, for the purposes of accountability, a State's n-size must not exceed 30, unless the State submits a justification and is approved by ED to use a higher number. The proposed regulations would also clarify that a State could use lower n-size for reporting than it uses for accountability.	• How will your state, in consultation with stakeholders, determine "n-size", to ensure that assessment results for SWD are communicated in such a way as to clearly and effectively demonstrate their performance, and, as a result, are useful in determining actionable steps toward improving achievement and outcomes for SWD?
Universal Design for Learning (UDL). All assessments must be developed, to the extent practicable, using principles of UDL. *(Section 1111(b)(2)(B)(xiii) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by ESSA)* The term "universal design for learning" means a scientifically valid framework for guiding educational practice that— (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient. *(Section 8101(51) of the ESEA; Section 103 of the Higher Education Act (20 U.S.C. 1003)*	• To what extent is there understanding, across the levels of your educational system, concerning the principles of UDL? • To what extent are the principles of UDL evident in practice across your state? • What professional learning is needed to address capacity needs related to the principles of UDL?

Accommodations. Appropriate accommodations must be provided for students with disabilities identified under the Individuals with Disabilities Education Act (IDEA), as well as those who are provided accommodations under an act other than IDEA. *(Section 1111(b)(2)(B)(vii)(II) of the ESEA)*	Accommodations facilitate student access to high-quality assessments in order to measure a student's achievement against challenging State academic content and achievement standards or alternate academic achievement standards for students with the most significant cognitive disabilities. Research suggests that providing new accommodations during an assessment (i.e., accommodations that have not been provided during instruction), has a negative impact on student performance. • What is the degree of alignment in your state between accommodations used in instruction and assessment settings? • What professional learning is needed to ensure that appropriate accommodations are provided in both instruction and assessment? • How will your state support LEAs and IEP Teams in determining what instructional and assessment accommodations are appropriate for each student? • How will your state support LEAs and IEP Teams in determining the effectiveness of the use of accommodations? • What professional learning is needed to address capacity needs related to the selection and use of accommodations?
Alternate Assessment based on Alternate Academic Achievement Standards (AA-AAS). An alternate assessment for students with the most significant cognitive disabilities is permitted under ESSA. This assessment must be based on alternate academic achievement standards aligned with challenging State academic standards and, unless a waiver is granted, is subject to a 1 percent statewide student participation cap for each required subject. NOTE: ESSA indicates that an alternate assessment for students with the most significant cognitive disabilities is permitted, and IDEA makes explicit reference to the	Most students with disabilities do not have an intellectual disability, and, when given access to effective instruction, appropriate accommodations and support, can achieve grade level standards. A small percentage of students with disabilities have an intellectual disability, and an even smaller percentage have a significant cognitive disability.

development and implementation of alternate assessments (see below). From IDEA: *"A State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs."* • Alternate assessments based on alternate achievement standards (AA-AAS) are for students with the most significant cognitive disabilities. • While states are not allowed to test more than 1 percent of the student population with the alternate assessment (unless they receive a waiver from the Federal Government), they are still required to determine how they will provide additional oversight over LEAs that administer these assessments, should an LEA be assessing more than 1 percent of their total student population via these assessments. • The state cannot impose a local cap on participation, but an LEA exceeding the cap must submit information to the State justifying the need to exceed the cap. • As part of the IEP process, parents must be clearly informed that their child's achievement is being measured against alternate achievement standards, and of "how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma." However, this "does not preclude a student with the most significant cognitive disabilities who takes an alternate assessment from attempting to complete the requirements for a regular high school diploma."	• What is your state's strategy for coordinating the "1% cap" across the state? • If not already defined by your state, how do you plan to identify and engage stakeholders as the state specifies/clarifies "most significant cognitive disability"? • What professional learning is needed to address capacity needs related to administering the alternate assessments and making appropriate use of accommodations for students with disabilities?

• States must describe steps taken to incorporate UDL, to the extent feasible, in alternate assessments.
 	
• States must describe that general and special education teachers, and other appropriate staff— know how to administer the alternate assessments; and make appropriate use of accommodations for students with disabilities.
 	
• The IEP team determines when a child with a significant cognitive disability participates in the alternate assessment. (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)
 	
  • As agreed to by the Administration through ESSA's negotiated rulemaking process, proposed ESSA regulations will require states to apply for waivers in instances where LEA-level administration of these alternate assessments would cause a state to exceed the 1% cap.
 	
  • In addition, the regulations will propose that states develop definitions for "most significant cognitive disability."	

ESSA allows for: **Computer-adaptive assessments.** States *may* decide if they want to develop and administer computer-adaptive assessments.	• How will your state support LEAs and IEP teams to ensure that appropriate accommodations for students with disabilities are identified and provided for the computer-adaptive assessments?

ACCOUNTABILITY	
ESSA Requirements	**Implications/Questions**
Goals and Measures of interim progress. States must establish ambitious long-term goals with measures of interim progress for all students and separately for each subgroup, including SWD. Long-term goals, including measurements of interim progress toward meeting such goals, must be established for, at a minimum, improved – • Academic achievement (as measured by proficiency on the annual assessments) • High school graduation rates The term set for such goals is the same multi-year length of time for all students and for each subgroup of students. • For subgroups who are behind on the measures of academic achievement and high school graduation rates, –the state must take into account the improvement necessary on such measures to make significant progress in closing statewide proficiency and graduation rate gaps The proposed regulations under ESSA would: • Clarify that student proficiency goals and measures must be based on grade-level proficiency, and that a State must use the same definition of grade-level proficiency for all students; • Specify that "taking into account" the improvement necessary for lower performing students to make significant progress means setting interim measures that require greater rates of improvement for those subgroups. The proposed regulations under ESSA would: • Reiterate that accountability indicators (with the exception of the ELP indicator), measure performance for all students and separately	These provisions afford an opportunity for special education staff and others with experience working with students with disabilities, to inform conversations and influence decisions around the establishment of ambitious long-term goals and measures of interim progress. • To the extent that SWD in the state may be behind on the measures of academic achievement and graduation rates, how will the state, in consultation with relevant stakeholders, set interim measures that require greater rates of improvement for SWD? • How will the state communicate with the public regarding the need to set interim measures that require greater rates of improvement for SWD? • How will the state support LEAs around capacity needs (e.g., ensuring that IEPs are aligned to state academic content standards for the grade level in which the child is enrolled, providing appropriate accommodations in both instruction and assessment settings, identifying and implementing evidence-based practices to improve achievement for SWD) that may arise in order that a greater rate of improvement for SWD is realized over the length of time set for the achievement of the State-established long-term goals? Related Resource • CCSSO Critical Area Outline on Accountability

for each subgroup (meaning that "super-subgroups" may not be used)	
ESSA allows for: **Including in the adjusted cohort graduation rate students awarded a state defined alternate diploma.** Students with the most significant cognitive disabilities in the cohort, assessed using the alternate assessment aligned to alternate academic achievement standards, and awarded a State-defined alternate diploma, can be counted in a state's adjusted cohort graduation rate, <u>if</u> the State-defined alternate diploma is **a)** standards-based; **b)** aligned with the State requirements for the regular high school diploma; and, **c)** obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE). The proposed regulations under ESSA clarify that, since an alternate diploma must be standards-based and aligned with the requirements for a regular high school diploma, it may not be based solely on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards. ESSA provides a new definition of regular high school diploma. See section 8101(43). (43) REGULAR HIGH SCHOOL DIPLOMA.—The term 'regular high school diploma'— (A) means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E); and (B) does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.	• Does your state have an alternate diploma based on alternate academic achievement standards? o If so, does your state plan to review its alternate diploma to ensure that it is fully aligned to the ESSA requirements for an alternate diploma? o If not, does your state plan to develop an alternate diploma based on alternate academic achievement standards that is aligned to the ESSA requirements for an alternate diploma? • If your state has, or plans to develop, an alternate diploma based on alternate academic achievement standards, how will the State communicate with the public regarding the requirement under ESSA that the alternate diploma may not be based solely on meeting IEP goals that are not fully aligned with the State's grade-level academic content standards? Regarding the provision of a free appropriate public education (FAPE): Under the Individuals with Disabilities Education Act (IDEA), a free appropriate public education (FAPE) must be available to all eligible children residing in the State between the ages of 3 and 21. Generally, a student with a disability is eligible for FAPE <u>**until**</u> he or she reaches the age of 21 *(some states say "to" 21, some states say "through" 21, and a few states have established a different age at which eligibility ceases)* <u>**or**</u> achieves a "regular high school diploma".

	*A State-defined "alternate" diploma, while standards-based and "aligned" with the State requirements for the regular high school diploma, would presumably not be "fully" aligned. Therefore, a student awarded an alternate diploma, but who is not yet 21 years of age (or whatever age the state has established for FAPE), would still be eligible for FAPE. **This interpretation may or may not change based on further guidance from the U.S. Department of Education*
ENGLISH LEARNERS	
ESSA Requirements	**Implications/Questions**
Reporting on English Learners with disabilities. Under Title III of ESEA, as amended by ESSA, eligibility entities (those receiving Title III funds) will have to report on the numbers and percentages of English Learners making progress in attaining English proficiency and meeting academic standards four years after no longer being identified as an English Learners, disaggregated by English Learners with disabilities.	This will require the ability to identify which English learners also are identified as having disabilities. • Does your state currently have systems in place that enable it to accurately identify which English learners are also identified as having a disability? • What professional learning is needed to ensure that appropriate instruction, supports and services are provided for students who are both ELs and SWD? Related Resource • CCSSO Critical Area Outline on English Learners
SCHOOL IMPROVEMENT SUPPORTS	
ESSA Requirements	**Implications/Questions**
Comprehensive Support and Improvement. States must identify the lowest-performing 5 percent of schools on state accountability index, high schools with <67 percent graduation rates, and schools with underperforming subgroups that do not improve	These provisions afford an opportunity for special education staff and others with experience working with students with disabilities, to inform conversations and influence decisions related to identifying, implementing, and evaluating evidence-based

after a state-determined number of years (not to exceed four years). LEAs must develop (and SEA must review and approve) comprehensive support and improvement plans for schools identified. Plans are required to include evidence-based interventions, and the state must take more rigorous action if schools don't meet the exit criteria. The proposed regulations under ESSA, regarding identifications, clarify that: • Data can be averaged over a period of up to three years • Identification must take place at least once every three years • States must use four-year adjusted cohort graduation rate (excludes use of extended year graduation rate) in determining whether a school is graduating at least 67 percent of its cohort. Identification under new accountability structure must take place for 2017-18 school year, based on data available in the 2016-17 school year **Targeted Support and Improvement.** LEAs must be notified of schools with one or more consistently underperforming subgroups, as defined by the state. School must develop and implement a targeted support and improvement plan. Plans must include evidence-based interventions and be approved and monitored by the LEA. The proposed regulations under ESSA regarding identification: • Requires the establishment of a uniform, statewide definition of consistently underperforming subgroups that allows for the identification of subgroups based on at least one of the following factors: o Whether a subgroup is on track to meet state's long-term goals;	interventions, and ensuring that necessary conditions for teaching and learning exist in order to prepare students for success in college, career, and life. These provisions also afford an opportunity to make appropriate connections to and leverage existing state improvement efforts (e.g., State Systemic Improvement Plan, State Personnel Development Grant, State Educator Equity Plan). • How will your state ensure that the particular needs of students with disabilities are addressed within the broader efforts around school improvement and support? • How will your state ensure that the identification and implementation of interventions to improve achievement and outcomes for SWD is supported by the strongest level of evidence, and is integrated within the broader efforts around school improvement and support? Related Resource: • CCSSO Critical Area Outline on School Improvement Supports

○ Whether a subgroup is at or below a state-determined threshold ○ Whether a subgroup is performing at the lowest performance level on one of the State's annual indicators ○ Whether a subgroup is performing significantly below the state average for all students; ○ Another, state-determined factor • Clarifies that schools with one or more subgroups performing at or below the level of Comprehensive Support and Improvement schools (bottom 5 percent) must also be identified. Identification of schools with consistently underperforming subgroups for targeted support does not have to take place until 2018-19 school year The proposed regulations under ESSA clarify that: • State-determined interventions in schools must be supported "to the extent practicable" by the strongest level of evidence • States may provide a state-approved list of intervention strategies • The implementation of school improvement plans may provide for a planning year	

TEACHER AND LEADER QUALITY	
ESSA *provides for*:	**Implications/Questions**
Additional flexibility in use of Title II dollars, including the new 3 percent optional set aside to strengthen school leadership.	• How will your state focus on your highest education workforce priorities with the additional flexibility in Title dollars to attract, prepare, develop and retain teachers and leaders for meeting the needs of students with disabilities? • How will you incorporate your state's equitable access plan into your overall planning and use of ESSA funds? • How does your state plan to leverage additional flexibility in use of Title II dollars to increase the capacity of school leaders to support the needs of students with disabilities? • How does your state plan to support LEAs on the delivery of high-quality professional development for teachers, principals, and other school leaders to better support students with disabilities? • How will your state ensure that teacher and leader quality investments made with ESSA funds address the needs of students with disabilities? Related Resource: • CCSSO Critical Area Outline on Teacher and Leader Quality
OTHER CONSIDERATIONS	
ESSA Requirements:	**Implications/Questions**
Improving conditions for teaching and learning. The SEA must develop plans on how it will support local educational agencies to improve conditions for teaching and learning, including through reducing: • incidents of bullying and harassment in schools	All of these issues disproportionately affect students with disabilities. • How will you inform conversations and influence decisions related to the development of plans to improve conditions for teaching and learning?

• overuse of discipline practices (suspensions and expulsions) • use of aversive behavioral interventions (such as restraints and seclusion)	• How will the state identify, review, analyze, and use data to inform policy and practice aimed at reducing incidents of bullying and harassment, overuse of suspensions and expulsions, and use of restraint and seclusion, as well as review the provision of appropriate behavior supports? • What efforts are currently underway in your state that could serve as a model for others (MTSS, PBIS)?

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STRATEGY

Key Questions for State ESSA Planners

As the state develops its set of strategies, you may want to consider the following questions related to implementing ESSA, concerning key provisions and implications for students with disabilities (SWD).

State Strategic Vision

1. What would success look like for each strategy you plan to develop and what is your timeline for meeting those goals?
2. What challenges do you foresee in implementing those strategies and how will you address them?
3. How will you ensure your strategies are sustainable? What is the state's plan for continuous improvement?

Funding and Policy Issues

4. Will your state need to amend policy, legislation, or regulation to implement ESSA concerning key provisions and implications for SWD, and what resources would you need to carry out that work?
5. What areas of the law require clarification from the U.S. Department of Education, and which should be clarified at the state level?
6. What staff, time, money and technology will be needed for successful implementation of this strategy and how will you allocate resources?
7. How will you use data and information systems to track and measure success to support student outcomes?

Communications and Stakeholder Engagement

8. Who are the key stakeholders you need to engage in your strategy, what are their needs and expectations and how will you build relationships with them as partners in the work?
9. How can you work with your communications team to identify which messages related to SWD need to be shared with each stakeholder group and what is your timeline for feedback?
10. How will you connect with stakeholders to share and ensure understanding of data and that they are able to work with you as partners to improve student achievement and outcomes?
11. How are you working with other states and/or CCSSO to share best practices on implementing ESSA concerning key provisions and implications for SWD?

For additional CCSSO ESSA materials, see:

http://www.ccsso.org/Resources/Programs/Every_Student_Succeeds_Act.html