



**Comments to Texas
First Draft of the Every Student Succeeds Act (ESSA)
Consolidated State Plan**

August 10, 2017

Submit comments to essa@tea.texas.gov

The Texas draft plan is available on the page at [http://tea.texas.gov/About TEA/Laws and Rules/ESSA/Every Student Succeeds Act/](http://tea.texas.gov/About%20TEA/Laws%20and%20Rules/ESSA/Every%20Student%20Succeeds%20Act/). The comment period runs through August 29, 2017.

These comments focus on those issues most critical to subgroup accountability and to students with disabilities (SWDs).

Overall Comment:

It is very unfortunate that – in a majority-minority state such as Texas – the ESSA state plan is not available in Spanish.

Meaningful Stakeholder Consultation

ESSA requires the state to conduct outreach and get input from stakeholders, including parents, for the development of this draft plan. This recent template from ED does not require a description of how the stakeholder consultation was achieved.

Assessments

Universal Design for Learning

States are required to develop their assessments using the principles of universal design for learning (UDL). Unfortunately, the March 2017 state plan template provided by the U.S. Department of Education (ED) does not require a discussion on how the state is meeting this requirement. However, that does not absolve the state from its responsibility to meet the UDL requirements in the law as it develops its assessments.

Alternate Assessments

ESSA requires states to define “students with the most significant cognitive disabilities.” This definition is to be used in IEP team guidance regarding which students meet the criteria for participation in the state’s alternate assessment aligned with alternate academic achievement standards.

ESSA sets a cap on the number of students who may participate in an alternate assessment in the state at 1% of all students in the assessed grades (combined) which equates to roughly 9-10% of students with disabilities. Based on assessment participation data for the 2015-2016 school year (see table below), TX is likely exceeding this cap at the elementary and middle school levels.

PARTICIPATION OF CHILDREN WITH DISABILITIES (IDEA) IN STATEWIDE ASSESSMENTS

Grade and Subject Assessed	General Assessment (%)	Alternate Assessment (%)	Non-participant (%)
4th grade reading/language arts	85	14	1
8th grade reading/language arts	87	12	1
High school reading/language arts	89	7	4
4th grade mathematics	85	14	1
8th grade mathematics	87	12	1
High school mathematics	90	8	2

Source: 2017 Part B Data Display available at osep.grads360.org.

While not a required part of the state plan, the TX plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments. Also, TX should create a process for stakeholder engagement when it develops its definition of students with the most significant cognitive disabilities, including input from parents and organizations representing these students. (Additional information on this is available in this NCEO document at <https://nceo.umn.edu/docs/OnlinePubs/NCEOBrief12OnePercentCap.pdf>.)

It is critically important to ensure that the alternate assessment is used only for those students for whom the test was designed and field-tested and does not inappropriately lower achievement expectations for students who should take the general assessment. It is also important for the definition of students with the most significant cognitive disabilities to acknowledge that these students are working on the grade level content standards, even though the achievement expectations are not the same as for students taking the general assessment.

Subgroups (page 6)

N-Size (page 6)

N-size (minimum subgroup size) is critically important. If it is set too high many schools will not be held accountable for the students with disabilities subgroup because there are not enough students with disabilities at the school, (in the assessed grades for assessment proficiency and in the graduating class for graduation rate), to equal or exceed the N-size. For example, if the state uses 30 for the N-size, a school that has 29 students with disabilities in the assessed grades (e.g. grades 3-5 combined for an elementary schools) will not have to include the disability subgroup in any accountability determinations related to assessments. This means that the school will not be identified for targeted support and improvement for a consistently underperforming disability subgroup, even if that would have happened had the N-size of 30 been met. Similarly, a high school with less than 30 students with IEPs in the graduating class will not be held accountable for the graduation rate of the disability subgroup.

TX will use an N-size of 25 for subgroup accountability purposes (e.g. assessment proficiency and graduation rate) and for reporting data.

The table that appears on pages 7-8 which, according to the descriptive text, is intended to “summarize the impact at the district and campus level for all students and six student groups based on a minimum size of 10 for all students and 25 for student groups based on 2016 data,” appears to indicate that using an N-size of 25, 44% of campuses (i.e., schools) will be exempt from accountability for the special education subgroup. Or, since it is unclear what is meant by “impact,” the table might indicate that 44% of campuses will be held accountable. Either way, this low level of accountability is unacceptable. Additionally, the plan doesn’t provide any information regarding the impact of N-size on subgroup accountability for graduation rate. This information should be provided.

Setting minimum subgroup size is a highly consequential decision, particularly as it relates to the students with disabilities (i.e., special education) subgroup. Inclusion in this subgroup is driven by subjective decisions regarding special education eligibility. It has been documented that the potential exists for schools to manipulate their special education population in order to keep the subgroup under the N-size thus avoiding accountability for this group of students. A lower N-size (as low as 10) can ensure both statistical reliability across accountability metric calculations and privacy protection while ensuring that the largest number of schools are held accountable. See <http://all4ed.org/reports-factsheets/n-size> and <https://nces.ed.gov/pubs2011/2011603.pdf>.

According to the plan, TX will not apply an N-size to the “all students” group in order to preserve accountability for very small schools. However, ESSA requires that the

N-size be the same for all students and for each subgroup of students in the state (Sec 1111 (c) (3)(A)(i)). Therefore, this proposal does not comply with the Act.

ESSA requires states to describe in their plans how the N-size was determined by the state in collaboration with teachers, principals, other school leaders, parents, and other stakeholders.

The TX plan (at page 8) does not indicate that parents were involved in determining N-size.

Long-term goals (page 11 and Appendix A)

TX has set long-term goals to be accomplished in year 2031-2032, a timeline of 14 years.

Academic Achievement

TX sets the same academic proficiency goals for all student subgroup. Since special education students are by far the lowest performing subgroup, the proficiency goals are extremely aggressive. Schools will be judged by either meeting the interim targets or meeting a Safe Harbor (required improvement) measure.

TX should make a commitment to maintain these goals over time and not adjust them based on actual achievement. Constantly re-setting targets renders the long-term goal meaningless.

It should be noted that the TEA has developed a State Systemic Improvement Plan (SSIP) as required by the Individuals with Disabilities Education Act (IDEA) and has prioritized increasing the reading proficiency rate for all children with disabilities in grades 3-8 against grade level and alternate achievement standards, with or without accommodations, as its State-identified Measurable Result (SiMR) of its SSIP. ESSA requires that the state plan coordinate with other programs, such as those under the IDEA. The SSIP is the major initiative of the TEA special education improvement activities. As such, the SSIP and SiMR should be integrated with the state ESSA plan. (More information on alignment of ESSA and SSIP is available at <https://ncsi.wested.org/news-events/tool-checking-for-alignment-in-every-student-succeeds-act-plans-and-state-systemic-improvement-plans/>)

Graduation Rate

TX is setting a long-term statewide goal for the four-year graduation rate at 96 percent for all students and each student subgroup.

This represents aggressive improvement for special education students. It is important to point out that TX has increased the 4-year adjusted cohort graduation

rate (ACGR) of students with disabilities by only 1 percentage point over 5 years – from 77% to 78%. See table below.

4-Year Adjusted Cohort Graduation Rate (ACGR), Children with Disabilities

State	2010-2011	2011-12	2012-13	2013-14	2014-15
TX	77	77	78	77	78

The plan should also make clear how TEA is calculating graduation rates for the English Learner, Economically Disadvantaged, and students with disabilities subgroups since students move in and out of these groups during their time in the cohort. For example, is TEA counting any student who, at any time during the cohort, belonged to one of these subgroups or counting student’s subgroup status upon exiting, or some other methodology.

The annual determination process regarding state implementation of the IDEA, based upon states’ Annual Performance Report/State Performance Plan, rates states’ graduation rate calculated on how special education students are exiting school each year (regular diploma, certificate, dropping out) rather than the ACGR. Using this calculation method, 58% of TX special education students are exiting school with a regular high school diploma. This stands in sharp contrast to the reported ACGR of 78% for special education students. These two rates, while calculated differently, should not be substantially different. Therefore, the ACGR that is being reported by TEA should be examined to discover the reason(s) for such variation.

The ACGR should report only those students earning a regular high school diploma, which is defined in ESSA as: “standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, ... and 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.”

The significant discrepancy between the ACGR and the exiting rates suggests that TEA is reporting diplomas that do not meet the definition above in its ACGR data for students with disabilities.

Indicators (page 14)

Certain indicators will be used to provide meaningful differentiation between schools for the accountability system. How well or poorly schools do on the measures for these indicators (for all students and each subgroup) will determine if they are identified for comprehensive or targeted support and improvement. The indicators will also be the basis for the information that is reported for each school. Most of the indicators and their measures are required by ESSA, others are left to

state discretion. These distinctions are critically important. States are required to add at least one indicator of School Quality or Student Success to the indicators defined by ESSA. These are referred to as the non-academic indicators. Although they are supposed to be linked by evidence to improved academic outcomes, they are not direct academic indicators like those required by the statute, which measure achievement, growth, graduation rate and English language proficiency.

We note that the Indicator table on pages 17-19 states (for each indicator) “Long-term and interim targets as well as weighting will be determined based on stakeholder feedback.” Since long-term goals and interim targets for indicators appear in Appendix A, we question whether the state will set different long-term and interim targets than those listed in Appendix A. This should be clarified in the final plan.

Academic Achievement:

The TEA plan indicates that proficiency on science and social studies assessments will be included in the academic achievement indicator. This is not allowed under ESSA. The academic achievement indicator is measured only by proficiency on state assessments in reading/language arts and math. ED has already advised states that submitted plans in April/May 2017 of this.

School Quality or Student Success Indicator (SQSS):

TEA plans to use achievement outcomes on STAAR grade 3-8 in reading and mathematics as one of its SQSS indicators. However, this appears to replicate the academic achievement indicator. Furthermore, SQSS metrics are not to be academic in nature.

Annual Meaningful Differentiation of Schools (page 20)

The system for determining meaningful differentiation of schools is neither fully articulated nor explained in a manner that is understandable by most. TEA should provide examples of the system and more detail. It is completely unclear as to how subgroup performance will be included in the system.

Weighting of indicators (page 17)

ESSA requires substantial weight be given to each academic indicator defined in the statute (Academic Achievement, Other Academic Indicator, Graduation Rate and English Language Proficiency) and that, in the aggregate, these indicators should have much greater weight than the SQSS indicator(s) selected by the state.

The draft plan does not provide information on the weighting of indicators, stating that “weighting will be determined based on stakeholder feedback.”

This information is a critical (and required) component of the statewide accountability system. Since the TEA plan is out for public comment until August 29, 2017 and the plan must be submitted to USED on Sept. 18, 2017, it would appear that this information will not be available to the public for comment prior to the submission of the final plan.

Different Methodology for Certain Types of Schools

This information is not provided.

Identification of Schools (page 21)

Comprehensive Support and Improvement (CSI)

ESSA requires states to identify for CSI:

- The bottom 5% of Title I schools. If the state elects to identify additional (non-title I) schools, it must ensure that the bottom 5% of title I schools are included in those identified.
- High schools that fail to graduate a third or more of their students. The regulations that were repealed in March 2017 required that the 4-year Adjusted Cohort Graduation Rate be used for this purpose. Without the regulations states are permitted to use longer graduation rates (e.g. 5 year), but it should be discouraged because it removes the emphasis on on-time graduation.

Lowest 5% of Title I Schools:

TEA will use the system described under Annual Meaningful Differentiation of Schools to identify CSI schools, using a tiered approach based on overall school grade. The system does not provide any detail on how student subgroups are factored in to the grading.

Public high schools failing to graduate at least one-third of its students:

TEA will identify all high schools with lower than 67 percent 4-year graduation rate. We commend TEA for using ONLY the 4-year ACGR for identification of high schools for CSI. TEA should note that the ESSA requirement is to identify high schools graduating 67% or less rather than less than 67%.

Frequency of Identification: TEA will annually identify campuses for comprehensive support and improvement beginning with the August 2018 accountability release, which is based on School Year 2017-2018 performance data.

Targeted Support and Improvement (TSI) (page 22)

ESSA requires states to identify for Targeted Support and Improvement (TSI) two distinct categories of schools:

- Any school with one or more consistently underperforming subgroups

- Any school in which one or more subgroups of students are performing at or below the performance of all students in the lowest performing schools (referred to as low- performing subgroups)

The importance of the minimum subgroup (N-size) size becomes critical in the identification of TSI schools. Many TX schools will not be held accountable for the students with disabilities subgroup if the state uses an N-size of 25. So, while the details of how the state will identify TSI schools are important, many schools will escape the possibility of TSI identification entirely due to the N-size being used.

Consistently underperforming subgroups:

The TEA plan states: “Subgroup achievement will be monitored annually through the Closing the Gaps domain (see Appendix B). Any campus that has one or more significant achievement gap(s) between subgroups will be identified for targeted support and improvement. TEA defines consistently underperforming as a school having one or more subgroups that do not meet interim benchmark goals for three consecutive years.”

This definition is confusing in so much as it mentions BOTH achievement gaps between subgroups AND performance against interim goals (presumably these are academic achievement or graduation goals). Achievement gaps between subgroups within a school should not be part of the definition of consistently underperforming subgroup(s).

We recommend that a consistently underperforming subgroup be defined as a subgroup that has not met, or is not on track to meet, the state defined long-term goals or interim measures for that subgroup for two consecutive years.

Additional Targeted Support (schools with a low-performing subgroup or subgroups):

The TEA draft plan states “Any campus that is not identified for comprehensive or targeted support, and receives an F-rating in the Closing the Gaps domain will be identified for additional targeted support. Identification will begin with the August 2018 school ratings and will occur on an annual basis.”

This approach does not comply with ESSA. Low performing subgroups are identified based on whether a subgroup or subgroups are performing as poorly as the “all student” group in the lowest 5% of Title I schools.

Annual Measurement of Achievement – (At least 95% Assessment Participation Rate Requirement (page 23)

ESSA requires that at least 95% of all students in the assessed grades (and at least 95% of each subgroup - including the disability subgroup) must be included in the state's annual assessments.

The TEA plan states “A participation rate of less than 95 percent on statewide math and reading/language arts assessments will be included on the Closing the Gaps domain report. Campuses that do not meet the 95 percent rate will be notified and develop strategies to address as part of their annual campus needs assessment for Title I funding.”

This is a wholly inadequate response to this important ESSA requirement.

States must provide information on how the participation rate (for all students and all subgroups) will factor into the accountability system. Merely noting participation on a school report does not satisfy this requirement. Furthermore, ESSA requires that in calculating proficiency rates for the Academic Achievement indicator the denominator must include every student who was supposed to be tested, even if they opted out, once the participation rate falls below 95 percent. The TEA plan should acknowledge this requirement.

It is important to keep in mind the impact of the participation rate requirement on students with disabilities. A “non-punitive” approach such as that proposed by TEA would likely led to widespread exclusion of historically underperforming subgroups-similar to the situation that existed prior to the No Child Left Behind Act (which was replaced by the Every Student Succeeds Act).

We believe the appropriate impact on the accountability system is that a school should not get a satisfactory rating for any year the participation requirement is not met for any subgroup. TEA can also consider the options in the ESSA accountability regulations regarding how to factor the failure of schools to meet the participation rate requirement into the accountability system. Even though Congress repealed these regulations in March, they still provide excellent guidance on many difficult ESSA implementation issues.

Continued Support for School and LEA Improvement (page 24)

Exit Criteria for CSI and TSI Schools (page 24)

The TEA plan does not provide the number of years needed to exit TSI, stating only that “Targeted support campuses will exit when they no longer meet identification criteria in the Closing the Gaps domain. Campuses are expected to exit within three years.”

School Conditions (page 29)

State plans are required to describe strategies to reduce

- Incidents of bullying and harassment;
- The overuse of discipline practices that remove students from the classroom; and
- The use of aversive behavioral interventions that compromise student health and safety

The TEA plan only addresses activities designed to address discipline and fails to provide information regarding bullying and harassment and use of aversive behavioral interventions. The plan should also address specifically students with disabilities since this group of students are disproportionately impacted.

.A discussion of UDL should be added in “School Conditions” because UDL improves accessible learning opportunities and reducing frustration that can lead to suspension and aversive behavioral intervention. There are many ways UDL can be used to improve the TX state plan so that it supports a fair, equitable and high quality education for all students. For more information on UDL and ESSA state plans see <http://www.udlcci.org/policytwo-pagerdraft-2-3-17-update2/>.

School Transitions (page 30)

The dropout rate of students with disabilities in TX was 15% in SY 2014-2015. Given this, the plan should include specific strategies on how the state will improve the dropout rate of this population.

Children and Youth who are Neglected, Delinquent, or At-Risk (page 35)

In the section on Title I, Part D (Prevention and Intervention Programs for Children and Youth who are Neglected, Delinquent, or At-Risk) there is no mention of students with disabilities. According to data from the National Technical Assistance Center for the Education of Neglected or Delinquent Children and Youth (<http://www.neglected-delinquent.org>) **21%** of students served under Subpart 1 in TX in 2013-14 had IEPs and **18%** of students served under Subpart 2 had IEPs. The TEA plan should state specifically how it will ensure that students in such facilities are provided with special education and related services as needed, as well as how child find will be carried out.

Supporting Effective Instruction (page 37)

The majority of TX students with Intellectual Disabilities (58%) and Multiple Disabilities (64%) spend most of their school day in segregated classroom (See Part B 2017 Texas Data Display at <https://osep.grads360.org>). The TEA plan should, therefore, provide a commitment to critically important strategies such as

promoting UDL implementation and significantly improving the capacity of educators to implement inclusive best practices.

Student Support and Academic Enrichment Grants (page 49)

The TEA plan makes no mention of how these grants will be used to support and improve use of technology.

Additionally, given the recent Texas law banning the TEA policy that forced LEAs to keep identification for special education below 8.5% of enrollment, the plan should include activities to improve and reform the referral, evaluation, and identification of students who may be in need of special education. (Source: <https://www.houstonpublicmedia.org/articles/news/education-news/2017/05/12/200810/texas-lawmakers-send-ban-on-special-ed-cap-to-governor/>)

UDL and inclusive best practices should also be part of this section of the plan.

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See ESSA resources at <https://www.ndscenter.org/political-advocacy> (click on policy documents and webinar archives)

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