



Analysis of Delaware's First Draft ESSA Plan

This document provides an analysis of Delaware's first draft of the Every Student Succeeds Act (ESSA) consolidated state plan to be submitted to the U.S. Dept. of Education in 2017. The draft plan was released on October 31, 2016 and is available at

<http://www.doe.k12.de.us/cms/lib09/DE01922744/Centricity/Domain/425/ESSA%20State%20Plan%20Draft.pdf>. Information on how to comment on the plan and about Community Conversations on the draft plan is available at <http://www.doe.k12.de.us/Page/3019#DraftComponents>. You can also email comments to ESSAStatePlan@doe.k12.de.us.

Comments on this draft plan will inform a second draft, which is scheduled to be released on December 31, 2016. You should request that changes made to this draft of the plan appear in redline in the second draft. The analysis and recommendations in this document do not cover all the questions the Delaware Department of Education (DDOE) is asking stakeholders, but focuses on those issues most critical to subgroup accountability and to students with disabilities. The page numbers referred to in this document reflect the page number noted on the bottom of the pages of the draft plan, not the pdf page number.

Long-term goals and timelines (page 1): The draft plan mentions that the current goal of Delaware's plan is "to decrease the percentage of non-proficient students by 50% in each subgroup by the end of the 2017 school year, thereby reducing the achievement gaps." However, it also says "ESSA provides an opportunity to revisit this approach." The goals must be changed. ESSA clearly requires that the long-term goals provide for faster improvement for those subgroups that are substantially behind in order to close the achievement and graduation gaps. Decreasing the non-proficient rate by 50% for each subgroup would NOT close the achievement gaps. Therefore, the rate of improvement expected in the goals should not be the same for all subgroups. The charts on pages 2-7 show the wide variance between the subgroups with respect to their starting points from the 2014-15 school year. See this paper for information on goal setting: <https://edtrust.org/students-cant-wait/setting-goals-accountability>.

In addition, since we do not know what is being considered by the DDOE, it may be helpful to comment on the fact that the statute requires goal/progress setting for each of the indicators. Thus, any approach that combines indicators (such as proficiency and growth) would not comply with the Act.

Meaningful stakeholder consultation in plan development (starting on page 12): The list of ESSA advisory committee members does not include any organization representing students with disabilities. Also, in Appendix A (where stakeholder engagement is discussed) there doesn't seem to be evidence of outreach to disability organizations. On page 24 there is discussion of involvement of stakeholders in the State Systemic Improvement Plan (SSIP) under IDEA. That is fine as far as it goes, but disability organization should be involved in all parts of the plan. Also, the SSIP and the ESSA state plan should be aligned. If you do not believe your state disability organizations were consulted in other meaningful ways, the DDOE should start doing so immediately. Also, if you were not aware of the ESSA Community Conversations held in September, you should comment on the need for greater outreach for the remaining second round of meetings that are scheduled November 29 through December 8, 2016.

Alternate Assessment (DCAS-Alt1) (page 27-28): The commentary about alternate assessments is inaccurate with respect to which students may participate in an alternate assessment. This assessment is for students with the MOST significant cognitive disabilities (the plan is missing the word "most"). Your state is required to define the term "most significant cognitive disabilities" in its guidelines for IEP teams. See recommendation for this definition on page 6 of the NDSC State Plan Advocacy Guide <http://www.ndscenter.org/wp-content/uploads/ESSA-State-Plan-Advocacy-Guide.pdf>. This guide also will help you understand a wide array of issues related to ESSA state plan development.

Parameters in the proposed federal ESSA regulations for the state definition of students with the most significant cognitive disabilities are pasted below: (The connection to grade-level state academic content standards is highlighted in bold).

"...a State definition of 'students with the most significant cognitive disabilities' that would address factors related to cognitive functioning and adaptive behavior, such that

- (i) The identification of a student as having a particular disability as defined in the IDEA must not determine whether a student is a student with the most significant cognitive disabilities;
- (ii) A student with the most significant cognitive disabilities must not be identified solely on the basis of the student's previous low academic achievement, or status as an English learner, or the student's previous need for accommodations to participate in general state or districtwide assessments; and

- (iii) Students with the most significant cognitive disabilities require extensive, direct individualized instruction and substantial supports **to achieve measurable gains on the challenging state academic content standards for the grade in which the student is enrolled.**

Although the alternate achievement standards on which the alternate assessment is based are supposed to provide “access” to the general education curriculum, ESSA also requires states that have an alternate assessment to promote involvement in and progress in the general education curriculum and not preclude students who take an alternate assessment from attempting to meet the requirements of a regular high school diploma. **This language that goes beyond “access” is very important and is a significant change from the past regulations on the alternate assessments.** It is also important to emphasize enrolled grade general curriculum in the plan discussion of the alternate assessment. Otherwise there can be a misunderstanding that the curriculum from other grades is what is meant by “grade-level” for these students. The proposed federal regulations clarify this point about “enrolled grade.”

The plan talks about measuring performance against the Delaware extensions to the Delaware state standards. ESSA clearly states that alternate assessments are based on the same content standards that apply to all other students, although the achievement on those standards will be different (hence the term alternate assessments on alternate academic achievement standards). It will be important to reach out to any assessment experts in your state to determine whether the DCAS-Alt1 meets this requirement.

The plan provides for a different assessment (DCPS) for “students who — even with accommodations — cannot participate in a meaningful way in the DCAS-Alt1 because they do not have a consistent and reliable means of communication that is understood by others.” The IEP team makes the determination about the students who fall in this category. This assessment and the process are a cause for great concern. How is it determined whether the students have a consistent and reliable means of communication and what steps the school has taken (and will take) to ensure that the students acquire a consistent and reliable means of communication? You should ask DDOE for its estimate of the number of students with disabilities who are considered to be candidates for the DCPS. Studies show a high percentage of students can acquire a communication system with the right supports. The National Center and State Collaborative (NCSC) developed an excellent 5-page brief discussing this research and the steps that should be taken. Delaware was a member of the NCSC consortium, but is not currently using the assessment. <http://www.ncscpartners.org/Media/Default/PDFs/Resources/NCSCBrief4.pdf>.

The alternate assessment created by NCSC created a detailed process for determining which students could stop the assessment because they were not providing consistent and observable responses to questions. There was also a

toolkit created to help ensure that these students had every opportunity to acquire a communication system. A decision to remove the child from the DCAS-Alt1 should not be made without a more stringent process. One question to ask is how the students are able to take the DCPS assessment if they truly cannot provide consistent and observable responses.

Another important point regarding alternate assessments is that ESSA limits the number of students who can take an alternate assessment to 1% of all students assessed (approximately 10% of students with disabilities). **All students taking either the DCAS-Alt1 or the DCPS are counted toward this cap.** An appropriate definition of “students with the most significant cognitive disabilities” and strategies/accommodations policies to ensure the cap is not exceeded are important. You should request that these issues get addressed in the second draft of the plan.

SAT as state High School Assessment for ESSA purposes (page 29): The plan indicates that the SAT is being used for the state high school assessment. There are grave concerns about the SAT’s accommodations policies and alignment with state standards. If the SAT is used as a statewide assessment required under ESSA, then the accommodations policy needs to adhere to the technical guidance put out by Department of Justice (https://www.ada.gov/regs2014/testing_accommodations.html) and also comply with the language in proposed federal regulations (<https://www.gpo.gov/fdsys/pkg/FR-2016-07-11/pdf/2016-16124.pdf>). In addition, it is important to ask how the alternate assessments and the general assessment are aligned if the SAT is used for all other students.

Universal Design for Learning (UDL) in assessment (pages 29-31): It is concerning that this section indicates there are only 6-8 tasks for each content area on the alternate assessment. It is hard to imagine how the assessment can be used to determine proficiency on state standards with such a limited number of tasks. There is no specific discussion of how UDL is used in the general assessments. The DDOE draft plan claims that the SAT and PSAT are developed according to the principles of universal assessment design. However, there is no evidence that this is the case. The study cited in the draft plan provides the requirements for universal design, but does not apply them to the SAT.

Importance of indicators used to meaningfully differentiate between schools: 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 whether they are identified for targeted or comprehensive support and improvement. The indicators will also be the basis for the information that is reported for each school, including a summative score. Most of the indicators and their measures are required by ESSA, others are left to state discretion. These distinctions are critically important.

Academic Achievement indicator (page 39-40): ESSA requires states to have an indicator of academic achievement as measured by proficiency on the annual State assessments required by the law (math and reading/English language arts). States may also add another statewide academic indicator. DDOE seems to be conflating these two indicators by asking for feedback on measures other than proficiency on state assessments to be added to the required Academic Achievement indicator. The suggested academic measures that DDOE mentions on page 40 can be used for an additional academic indicator, but not as measures for the required indicator. The non-academic measures on page 40 can only be used in a state-defined School Quality or Student Success indicator (e.g. access to fine arts programs, options in programs).

Academic progress indicator (page 40-41): Similar confusion exists in the DDOE discussion of the Academic Progress indicator. ESSA allows states to measure student growth for each public high school in the State, but the measure must be based on annual assessments. Only for elementary and middle schools may the states choose to measure progress using something other than annual assessments. Of particular concern, is the suggestion that IEP goals be used to measure academic growth. IEP goals are designed to enable students to be involved in and make progress in the general curriculum. However, many people treat IEP goals like they are the curriculum for students with disabilities. In addition, the determination of whether there is growth on IEP goals is very subjective. It is important not to incentivize low expectations in IEP goals by rewarding schools for growth on these goals. Academic Progress should only be determined using objective measures of progress in the general education curriculum that can be disaggregated by student subgroup.

High school graduation rate indicator (page 41) DDOE is seeking recommendations whether to include more than one measure for the high school graduation indicator:

1. The four-year adjusted cohort graduation rate as required
2. Extended-year adjusted cohort graduation rates: five and six-year cohort rates

However, the statute and proposed regulations are clear that ONLY the four-year adjusted cohort graduation rate can be used in the state's system of accountability for purposes of identifying high schools for comprehensive support and improvement.

From proposed federal accountability regulations: (page 34558)

“Low Graduation Rate High Schools

Proposed Sec. 200.19 would specify that **any high school with a four-year adjusted cohort graduation rate below 67 percent, averaged over no more than three years, must be identified due to low graduation rates, consistent with the statutory requirements in section 1111(c)(4)(d)(i)(II)**. However, the proposed regulations also would permit a State to set a threshold that is higher than

67 percent for identifying low graduation rate high schools, in recognition of the wide range of average graduation rates across different states.”

States may establish long-term goals and interim progress for extended-year cohort graduation rates as long as such goals are more rigorous than the goals set for the 4-year adjusted cohort graduation rate.

School Quality or Student Success indicators (pages 42-43): States are required to add at least one indicator of School Quality or Student Success. How these indicators are weighted is very important (see further discussion on page 7 of this document). The weights are mentioned in the draft plan in a chart on pages 48-49. We recommend that schools that would otherwise be identified for targeted or comprehensive support and improvement on the basis of the other indicators required by the statute, should not fail to be identified as a result of these state-defined indicators. The concern is that these indicators may not be sufficiently connected to academic achievement. It is important to ask the state for evidence linking the indicator(s) to improved academic outcomes, evidence that the indicator(s) can be measured objectively, and evidence that the indicator(s) can be reported separately for each subgroup in each school across the state.

Minimum Subgroup (n) size (page 44-46): The draft plan says there is currently a minimum subgroup size of 30 for accountability purposes and 15 for non-accountability purposes (e.g. reporting assessment data, calculating graduation rate and participation rate). However, DDOE is open to considering a lower ‘n’ size, which is good news.

The ‘n’ size determines whether data for the disability subgroup will be reported at each school, how many schools will not be held accountable for the disability subgroup, and how many individual students with disabilities will be left out of the accountability system. If a school does not have a number of students with disabilities equal to or greater than the ‘n’ size in the assessed grades, many requirements of ESSA for the disability subgroup won't apply. For example, if the ‘n’ size is 30 and the number of students with disabilities in the assessed grades at a school is 29, the school will not be identified for a targeted support and improvement plan if the subgroup is consistently underperforming (as would be required in schools where the ‘n’ size has been met or exceeded).

The table on page 46 of the Delaware draft ESSA plan gives clear info on the impact of certain ‘n’ sizes on the number of students in each subgroup who will be left out of the accountability system (presumably for assessment results). However, the important element is the number of schools, not the number of students. You should also ask for data on the number of schools that won't have to include the disability subgroup in the accountability system at the various ‘n’ sizes in addition to the number of students for both assessment and graduation. (see the Ohio Dept. of Education’s [Topic Discussion Guide](#) for examples of the data simulations for both assessment and graduation). Decisions regarding ‘n’ size should be guided by these

simulations and attempt to use an 'n' size that will result in the most schools being held accountable, as directed by the proposed regulations.

All this data will help you argue that Delaware should lower its 'n' size for all purposes to 10 or lower. There are studies supporting this recommendation at <https://nces.ed.gov/pubs2011/2011603.pdf> and <http://all4ed.org/wpcontent/uploads/2016/06/NSize.pdf>. Some states already have an 'n' size less than 10 (e.g. Maryland has an 'n' size of 5), which has been determined to address both confidentiality and statistical reliability concerns; the two reasons states argue for a higher "n" size.

The draft plan provides the following approaches to deal with subgroups that do not meet the 'n' size: Delaware proposes to either use complementary suppression or blurring techniques such as subgroup combination. When reporting percentages, blurring techniques such as top-and-bottom coding will be used as well as rounding and ranges to protect student privacy." These approaches, which obscure the actual data for the subgroups would not be necessary if the 'n' sizes are lower.

Weighting of indicators for meaningful differentiation of schools (pages 48-50): The weights DDOE proposes to use for the indicators are found in charts beginning on page 48. These charts show that DDOE does not understand what is required by ESSA for each indicator. For example, social studies is not subject for which an assessment is required under ESSA and therefore cannot be included in the Academic Achievement indicator (although it could be used in a different indicator). Also, the weights do not put enough emphasis on attaining proficiency in math and reading/language arts (and graduation rate in high school) as compared to growth.

95% Participation rule (page 51): If less than 95% of all students (and each subgroup-including the disability subgroup) are assessed, the school should not get a satisfactory rating in the accountability system. DDOE says that it has been using an equation to factor participation rate in with proficiency rates for the overall academic achievement score for each school. This equation does not comply with ESSA. DDOE must look at the choices laid out in proposed regulations regarding how to deal with schools falling short of 95% assessment participation for all students and for each subgroup. Advocates should keep in mind the impact of the participation rate requirement on students with disabilities. The "non-punitive" approach recommended does not comport with the proposed regulations on this issue and, if adopted, 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).

Identification of schools for comprehensive support and improvement (CSI) and exit criteria (pages 53-55): There is no provision in the law for what happens to schools that have been identified for targeted support and improvement for years because of a consistently underperforming subgroup. It would be helpful to suggest that DDOE add these schools (e.g. schools that have had one or more consistently

underperforming subgroups for 3 years) onto the list of schools that should be identified for CSI. Also, all schools that need CSI may not be Title I schools. Therefore, a suggestion that these supports not be limited to Title I schools is appropriate. Schools should not exit CSI until they no longer meet the criteria for identification.

Identification of schools for targeted support and improvement and exit criteria (TSI) (pages 55-57): Schools are supposed to be identified for TSI under ESSA if even one subgroup is consistently underperforming or low-performing. We recommend that a school be considered consistently underperforming if it has not met the state’s long-term goals and interim measures for the subgroup for two years. DDOE has been looking at gaps between subgroups in the past, but this doesn’t work if multiple subgroups are doing poorly. Many schools with consistently underperforming subgroups will not be Title I schools. DDOE is asking whether all schools should be considered for identification for TSI. It is important to answer “yes” to this question. DDOE is also asking if it should include the 95% participation rate requirement as an indicator to determine the need for TSI. The answer to this question should also be “yes.”

DDOE is planning to allow the local school agencies (LEAs) to determine exit criteria for schools identified for TSI because of consistently underperforming subgroups. However, that will result in a major lack of consistency across the state. DDOE should require that schools remain identified for TSI until they no longer meet the criteria for which they were identified (or until they get identified for CSI, as was recommended previously).

Supporting Effective Educators (starting on 68): There should be a mention of building capacity to implement UDL in teacher preparation and professional development. UDL improves education for all the various groups of students that are listed as needing support in ESSA. There should also be some focus on building capacity for successful inclusion. There is little focus on students with disabilities in the DDOE draft plan for supporting effective educators.

ESSA eliminated the highly qualified teacher requirements in IDEA for special educators. The statute only requires them to have a Bachelor’s degree, which can be in any subject. To address this issue “special education teachers” who are not prepared for such roles with research-based instructional strategies in special education teacher preparation programs should be considered “out of field teachers.” The DDOE defines “out of field teachers” on page 81 but does not mention what “full certification “ would mean. Also, there should be data collected on the degree to which students with disabilities are taught by ineffective, out of field, or novice teachers. Under the draft plan this will only be done for poor and minority students because that is what is federally required.

Supporting all students (starting on page 95): Look through the strategies/programs that the DDOE is suggesting and consider whether all students

with disabilities are given opportunities to benefit from them. For example, nothing in the discussion of transition to postsecondary education addresses programs for students with intellectual disabilities.

On page 104 the draft plan specifically discusses students with disabilities. Standards based IEPs and UDL are mentioned. Consider whether DDOE is adequately implementing these strategies. There are decades of studies showing that inclusion in the general education classroom supports improved academic outcomes. However, increasing and improving inclusive education is not mentioned in the section on improving access to a well-rounded curriculum for students with disabilities.

On page 106, the draft plan discusses school conditions for student learning, including activities 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 discussion sounds nice, but there are few specific recommendations except using multi-tiered system of supports. There should be more emphasis on inclusion, UDL, and positive behavioral interventions and supports (PBIS). All of these strategies impact positive school climate and reduce time away from a well-rounded education. There also should be much stronger language against the use restraints and seclusion, which is more likely to occur in segregated classrooms.

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