



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

August 14, 2017

The Kansas (KS) plan was released on July 31, 2017 and is available at <http://www.ksde.org/Portals/0/ECSETS/PubComment/ESSAStatePlan-Proposed.pdf>. The public comment period runs for 30 days.

Submit comments to waiver@ksde.org. A comment form that can be attached to the email can be found at <http://www.ksde.org/Agency/Division-of-Learning-Services/Early-Childhood-Special-Education-and-Title-Services/Every-Student-Succeeds-Act-ESSA>.

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

PLAN TEMPLATE. On March 13, 2017, the Secretary of Education released a revised template for states to use to submit their ESSA plan applications. The template can be found on this webpage, along with other explanatory materials <https://www2.ed.gov/admins/lead/account/stateplan17/plans.html>.

Meaningful Stakeholder Consultation

ESSA requires the state to conduct outreach and get input from stakeholders, including parents, for the development of this draft plan. The revised template from ED does not require a description of how the stakeholder consultation was achieved. However, KS should be encouraged to provide information on how stakeholders, including the disability community, were meaningfully consulted in the development of this plan.

Assessments (page 8)

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.

While not a required part of the state plan, the KS plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments. Also, KS 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.

N-Size (page 13)

N-size (minimum subgroup size) is critically important. If it is set too high many schools will not be held accountable for the disability 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.

KS will use an N-size of 30 for subgroup accountability purposes (e.g. assessment proficiency and graduation rate) and 10 for reporting data. **A study using data from the 2009-10 school year showed that with an N-size of 30 only 21% of KS schools were held accountable for the students with disabilities subgroup performance and only 49.8% of KS students with disabilities were in schools that were held accountable for their performance. See table below:**

KS # of eligible schools	# of eligible schools with data	% of eligible schools with data	# of SWD-accountable schools	% of SWD-accountable schools	# of SWDs in SWD-accountable schools	% of SWDs in SWS-accountable schools
1,177	1,141	96.9%	241	21.1%	12,841	49.8%

Source: Harr-Robins, J., Song, M., Hurlburt, S., Pruce, C., Danielson, L., and Garet, M. (2013). *The Inclusion of Students With Disabilities in School Accountability Systems: An Update* (NCEE 2013-4017). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, Appendix C, page 54, available at <https://ies.ed.gov/ncee/pubs/20134017>.

KS does not provide any current data on the impact of an N-size of 30 for either assessment or graduation rate accountability so we assume that maintaining an N-size of 30 will continue to have a devastating impact on the accountability for the disability subgroup. KS should release up to date impact data for both assessment and graduation accountability including a comparison with smaller N-sizes (10-15-20-25). An example of such a data analysis is available in the Ohio Department of Education’s [Topic Discussion Guide](http://education.ohio.gov/getattachment/Topics/Every-Student-Succeeds-Act-ESSA/Nsize-Topic-Discussion-Guide.pdf.aspx) at <http://education.ohio.gov/getattachment/Topics/Every-Student-Succeeds-Act-ESSA/Nsize-Topic-Discussion-Guide.pdf.aspx>

KS says the N-size was determined in consultation with groups including the Kansas Assessment Advisory Council, Kansas Technical Advisory Council, CETE, and the Elementary and Secondary Education Act Advisory Council, consisting of educators, students, parents and, families, including representation from the Kansas Parent Information Center and Families Together. **It is difficult to believe that any representatives of the disability community would have agreed to an N-size of 30 if they were provided with information on how it impacts disability accountability.**

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. Contrary to the 30 N-size justification presented by KSDE, a lower N-size (as low as 10) can ensure statistical reliability across accountability metric calculations and privacy protection while ensuring that the largest number of schools is held accountable. (See <http://all4ed.org/reports-factsheets/n-size> and <https://nces.ed.gov/pubs2011/2011603.pdf>.)

We strongly encourage advocates for students with disabilities to request the impact data outlined above and to work to ensure that the KS accountability system will include as many schools and students as possible. The importance of N-size is further discussed under Targeted Support and Improvement and Annual Measurement of Achievement.

Long-term goals (page 15 and Appendix A)

KS has set long-term goals to be accomplished by 2030, a timeline of 13 years. The plan explains that this timeline was selected because “The timeline equates to a cohort of students entering kindergarten in the year 2017, matriculating through the educational system, and on track to graduate college and/or career ready without need for remediation.”

Academic Achievement

KS sets the same academic proficiency goals for all student subgroups. Since students with disabilities are by far the lowest performing subgroup, the proficiency goals are extremely aggressive.

KS 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 KS has developed a State Systemic Improvement Plan (SSIP) as required by the Individuals with Disabilities Education Act (IDEA) and has prioritized increasing the percentage of students with disabilities who score at grade level benchmark on AIMS web General Outcome Measure, reading assessment for grades Kindergarten through 5th grade in targeted buildings to 37.50% by 2018 as the State-identified Measurable Result (SiMR) of its SSIP. ESSA requires that the ESSA state plan coordinate with other programs, such as those under the IDEA. The SSIP is the major initiative of 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

KS is setting a long-term statewide goal for the four-year graduation rate at 95% for all students and each student subgroup.

This represents aggressive improvement for students with disabilities. It is important to point out that KS has increased the 4-year adjusted cohort graduation rate (ACGR) of students with disabilities by 4 percentage points over 5 years. See table below.

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

State	2010-2011	2011-12	2012-13	2013-14	2014-15
KS	73	77	78	77	77

It should be noted that KS has one of the smallest gaps between the 4-Year ACGR for students with disabilities and non-SWD students at just 9.6 percentage points compared to a nationwide gap of 21 percentage points (Source: Building a Grad Nation Annual Update 2017, page 58, available at <http://gradnation.americaspromise.org/report/2017-building-grad-nation-report#driver-3-students-with-disabilities>). This small gap is commendable on its surface. However, the discrepancy between the proficiency rates* of high school students with disabilities in reading/language arts (6%) and math (3%) and the percentage of students with disabilities graduating in 4 years with a regular high school diploma (77.4%) calls into question the rigor of the graduation requirements in general and, more specifically, if students with disabilities are, in fact, being held to the same graduation requirements. (*High school proficiency rates on KS general assessment are from the KS 2017 Part B Data Display available at <https://osep.grads360.org/>)

Indicators (page 27)

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.

Academic Achievement:

The KS plan indicator is tied closely to the long-term goal for academic achievement, as it should be. It is specifically stated that the indicator will be measured for each subgroup. The plan should acknowledge the ESSA requirement for proficiency calculation when assessment participation falls below 95% for all students and any student subgroup. Specifically, ESSA requires non-participants below 95% to be counted as non-proficient in proficiency calculations (Sec. 1111(c)(4)(E)(ii))

Other Academic Indicator

KS has chosen to use an academic gap measure (comparing each subgroup's performance to "all student" performance) for its other academic indicator. The plan states:

"The gap measure will be derived from the Assessment Performance Index (API). Kansas has been using the API as an academic performance indicator since the implementation of the ESEA Flexibility Waiver. The API acknowledges the movement of subgroups, students, schools and districts to higher proficiency levels."

Graduation Rate

The KS graduation rate indicator is tied to the long-term goal and will be disaggregated by subgroups.

School Quality or Student Success Indicator (SQSS):

KS plans to use the API to measure the decrease in the percent of students scoring in the lowest levels (1 and 2). **It is unclear how this metric differs significantly from the Other Academic Indicator being proposed.**

Congress added the SQSS indicator in order to allow states to incorporate factors other than test scores into the statewide accountability system. Many states are using SQSS indicators based on chronic absenteeism, college-career readiness, course completion, etc.

Annual Meaningful Differentiation of Schools (page 36 and Appendix B)

The system for determining meaningful differentiation of schools is not explained in a manner that is understandable by most. There is a great deal of internal inconsistency. KS should provide examples of the system. Instead of solely using the indicators for school ratings, KS says it will use the five indicators plus an A+ index that is focused 60% on assessment performance, as well 40% on a host of risk

factors. The plan says there is more information about the A+ index in Appendix B. However, we could not find an Appendix B as part of the plan.

ESSA requires the system for determining meaningful differentiation of schools to be based on all indicators for all students and for each subgroup of students (Sec. 1111 (c) (4)(C). The law does not allow any other factors, like an A+ index, to be used in addition to the indicators. We understand that KS began this system of identification in 2016 (as described in the document at http://www.ksde.org/Portals/0/ECSETS/ESEA/CSI_Schools.pdf.) However, the system does not comply with ESSA and will need to be revisited for this application. KS could consider incorporating the risk factors into the SQSS indicator as a possible way to continue the system.

In this section of the plan there are descriptions of how schools will be identified for CSI and TSI as well as something called Universal Support and Improvement (USI). This USI category of schools is not a term from the law. Apparently, it is the way KS refers to all public schools that are not identified for CSI or TSI.

Weighting of indicators (page 37)

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 KS draft plan does not provide information on the weighting of the indicators. It only provides weighting for assessment performance and the combination of risk factors that make up the A+ index, as described above. It is confusing that in one place the plan refers to 40% weight for four indicators but in other places refers to 40% for risk factors.

This information on the weight of indicators is a critical (and required) component of the statewide accountability system. Since the KS plan is out for public comment until the end of August and the plan must be submitted to ED on September 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. It is critical for stakeholders to know how certain types of schools will be included in the statewide accountability system.

Identification of Schools (38)

Note: Additional and often conflicting information on identification of schools is provided on pages 36-37 under Annual Meaningful Differentiation of Schools. **KS**

seems very confused about the criteria in ESSA for identifying schools for TSI and CSI.

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.
- Title I schools with chronically Low-performing subgroup(s)

On page 36 of the KS plan the categories of schools eligible for CSI is described as follows:

“Schools Eligible for Comprehensive Support and Improvement (CSI)

- a. All schools with all students or any subgroup of students with a graduation rate of less than or equal to 67 percent in the four-year adjusted cohort.
- b. All Title I schools with all students or any subgroup of students that are identified using the A+ index.
- c. All Title I schools identified for targeted assistance due to consistently underperforming subgroups who have failed to make necessary gains for three years.”

However, this doesn’t appear to be consistent with what is described in the section on identifying schools for support and improvement.

Lowest 5% of Title I Schools:

KS provides a long explanation of how the lowest performing 5% of Title I schools will be identified, but we could not make sense of it in the context of the law or in the context of the description on page 36 of the plan of schools eligible for CSI that includes: All Title I schools with all students or any subgroup of students that are identified using the A+ index.

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

On page 39 the KS plan says it will identify schools for CSI that graduate less than 67% of all students or any subgroup in the four-year adjusted cohort, which will be reported on the KSDE dashboard beginning in 2019. The reference to “less than 67%,” should be “equal to or less than 67%.”

Title I Schools with chronically low-performing subgroups

This is the third category of schools that is to be identified for CSI. These schools received TSI because they had low-performing subgroups for a state defined number of years and now are moved to CSI. On page 36 the KS plan refers to these as schools with consistently underperforming subgroups, which is not in accordance with the law. Low-performing and chronically low-performing subgroups are distinct categories of schools with lower bars for performance than should be used for schools with consistently underperforming subgroups.

Frequency of Identification

ESSA states that schools must be identified for CSI at least once every three years.

KS has decided to adhere to this minimum requirement, whereas some other states are electing to identify schools more frequently.

Targeted Support and Improvement (TSI) (page 47)

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 size becomes critical in the identification of TSI schools. Many KS schools will be exempt from accountability for the students with disabilities subgroup if the state uses an N-size of 30. So, while the details of how the state will identify TSI schools are important, many schools will escape the possibility of TSI identification entirely. The identification of schools with consistently underperforming subgroups is especially important for students with disabilities to ensure action is taken even if they are not in Title I schools and before their performance is so low that they are considered a low-performing subgroup.

Consistently underperforming subgroups:

The KS plan provides the following definitions:

“Consistently” means:

- a. At least lasting for two or more years;
- b. Within same subgroup(s);
- c. On the same or lower levels.

“Underperforming” means:

- a. Lowest 5 percent of API scores and/or;

b. Below -1.5 standard deviation (σ) from the state means of state all student groups' API scores.

The plan goes on to say:

“The KSDE identifies TSI schools annually using the gaps between each subgroup API and the mean API of the all student groups across all schools statewide. A Title I school is eligible for Targeted Support and Improvement, if it:

- is not a CSI school,
- has a subgroup of at least 30, and
- has one or more subgroups consistently with combined math and English language arts API scores that are below -1.5 standard deviation from the mean API of the state's all student groups of schools over three years.

This definition is confusing in many ways. It sets too low a bar for consistently underperforming schools, is not based on all the indicators, and it seems to limit schools with consistently underperforming subgroups to Title I schools, which is not permitted.

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 KS plan says: “Every three years, beginning in 2020, the KSDE will identify schools that have not made enough progress in achievement on the Kansas State Assessment for ELA and math, and remain in the lowest performing 5 percent of Title I schools.”

This is not how schools with low-performing subgroups are defined in the law. They are not limited to Title I schools. They are any schools that have a subgroup or subgroups that perform as low as the “all student” group in the lowest 5% of Title I schools (sec. 1111 (d)(2)(C0-(D))

Annual Measurement of Achievement – (At least 95% Assessment Participation Rate Requirement (page 48)

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. ESSA states that failure to meet this requirement is to be factored into the process for annual meaningful differential of schools.

The KS plan states “If a district, school, or subgroup misses the 95percent participation rate target for two consecutive years, the district will be flagged by the Kansas Integrated Accountability System (KIAS), which is the statewide accountability system. The KSDE will provide ongoing technical assistance to the district in support of reaching the 95 percent participation rate.”

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 flagging a district and providing technical assistance 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 KS 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 KS 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. KS 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.

Exit Criteria for CSI and TSI Schools (page 49)

The KS plan lists many conditions for exiting TSI or CSI status. However, we believe the only acceptable route for exiting is if the schools no longer meet the ESSA required criteria for being identified for CSI and for TSI (for schools with low-performing subgroups). **KS first needs to define schools with consistently underperforming subgroup(s) appropriately. Then these schools should only exit TSI when they no longer meet the identification criteria.**

Technical Assistance for LEAs (page 51)

ESSA requires the state to provide technical assistance to districts serving a significant number or percentage of schools identified for CSI or TSI. We are glad to see that the plan mentions, Families Together, the KS Parent Training and Information Center as a partner in providing this technical assistance.

We are also glad to see UDL mentioned in this section. However, as we will point out, there are many ways UDL can be used to improve the KS state plan so that it supports a fair, equitable and high quality education for all students BEFORE districts are in such a dire position. For more information on UDL and ESSA state plans see <http://www.udlcci.org/policytwo-pagerdraft-2-3-17-update2/>

School Conditions (page 66)

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 KS plan addresses some activities designed to address bullying, harassment and discipline. We were glad to see there is also a paragraph on strategies for reducing aversive behavioral interventions. This section of the plan should specifically address students with disabilities since this group of students is disproportionately impacted.

A discussion of UDL should be added in “School Conditions” because UDL improves accessible learning opportunities and reduces frustrations that can lead to suspension and aversive behavioral intervention. UDL also helps educators better understand the learning strengths and needs of their students to improve classroom management. Training in Multi-Tier System of Supports (MTSS) is mentioned in this section. UDL is a necessary component of MTSS in order for it to be properly implemented.

School Transitions (page 68)

The dropout rate of students with disabilities in KS was 16.7% in 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 78)

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>) **31%** of students served under Subpart 1 in KS in 2014-15 had IEPs and **29%** of students served under Subpart 2 had IEPs. The

KS 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 81)

41.4% of KS students with Intellectual Disabilities and 34.2% of students with Multiple Disabilities spend most of their school day in segregated classrooms or in special schools according to the Part B 2017 KS Data Display at <https://osep.grads360.org> The KS 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. This is especially true because a great deal of work on inclusive best practices and UDL is being done at Kansas University.

KS, in the “Improving Skills of Educators” portion of the template (page 86), which asks questions about how the state will address students with specific learning needs, talks mostly about mentoring and induction programs with a mention of professional development. There is also a paragraph devoted to MTSS. UDL should be a critical component of MTSS to ensure that students are being provided with accessible instruction and are able to demonstrate what they have learned.

Also, the section on teacher preparation (page 87), where KS discusses preparation program standards for instructing and assessing all learners, can be improved by implementing the UDL principles and guidelines.

Student Support and Academic Enrichment Grants (page 91)

The purpose of this program is to improve students’ academic achievement by increasing the capacity of states, local educational agencies (LEAs), schools, and local communities to:

- Provide all students with access to a well-rounded education;
- Foster safe, healthy, supportive, and drug-free environments that support student academic achievement; and
- Increase access to personalized, rigorous learning experiences supported by technology.

The KS plan does not provide details about how any of these goals will be met other than to refer to one initiative that includes evidenced based interventions around mindfulness and self-care, restorative practices, resiliency, mental health disorders of childhood and adolescence, and trauma informed schools. Nothing is mentioned about technology and personalized learning or how ALL students will have access to a well-rounded education.

Once again there is no mention of implementing UDL, even though it provides access to personalized, rigorous learning experiences supported by technology; an element of this section of the statute. Also, decades of research support the importance of inclusive education for providing students with disabilities access to a well-rounded education. Yet the draft plan does not describe an initiative to improve access to a quality education in the general education classroom.

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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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