



January 21, 2016

Ms. Deborah Spitz
U.S. Department of Education
400 Maryland Ave. SW
Washington DC 20202

Re: Request for Information ED-2015-OESE-0130
Implementing Programs under Title I of the Elementary and Secondary Education Act

Dear Ms. Spitz,

The National Center for Special Education in Charter Schools (NCSECS) is dedicated to ensuring that students with disabilities have equal access to charter schools and that public charter schools are designed and operated to enable all students to succeed. We write to provide input regarding implementing regulations for Title I of the Elementary and Secondary Education Act (ESEA), which impacts all public Title I schools, including charter schools.

NCSECS worked intently with the civil rights community throughout the ESEA reauthorization process – on The Every Student Succeeds Act – and have high hopes the updated law will successfully foster high achievement and equity. NCSECS is deeply interested in the implementation of the new ESEA because charter schools *are* public schools and should be explicitly included in State Title I planning. Charter schools must also be open and accessible to all students on par with traditional public schools. Therefore, we make the following recommendations to The U.S. Department of Education (ED) that we believe are essential to assuring Title I creates and supports access and improved outcomes for underserved students and strengthens the impact of ESEA on both traditional public and charter schools.

1. **State Title I Planning:** ED must reinforce to states with charter school laws that including charter authorizers in developing the state plan is required. Additionally, NCSECS urges that Title I planning also fully include the state director of special education and parent advocates to support the important alignment of Title I with the Individuals with Disabilities Education Act (IDEA) as well as other civil rights statutes; reinforcing the State's commitment to fund every district equitably to support teachers and students. When states fully include important stakeholders such as charter authorizers, special education experts and parent advocates in Title I planning, the State will assure that all public schools, including charters, are expected to meet clear and tangible parameters outlined and upheld by federal and state law and that all students' needs are anticipated.
2. **Title I allocations:** ED must determine what additional regulations or guidance would assure correct allocations to all charter school LEAs. States continue to lack clarity on the process to make correct allocations to charter schools and charter school LEAs under Title I. The inconsistency has a direct impact on the LEA and also the school's ability to operate effectively and assure student success.

3. **State Accountability System:** Require States to develop accountability systems that prioritize and make resources available to districts and schools that ensure high quality programs are available and provided to all students. If evidence indicates student subgroups within any school are not meeting State-defined outcomes, then districts and their respective schools should work together to provide targeted support and intervention within a reasonable timeframe that benefits the student group not meeting state-set standards.

NCSECS urges ED to reinforce wherever possible, the importance of every student having ready access to schools, including charter schools, prepared to provide them with a high quality education. Data emerging from states with weak accountability systems confirm the need for such systems. In an effort to ensure charter schools meet their potential to provide individual students with a quality education and catalyze broader system improvement, meaningful accountability is essential. When school or district designed interventions aren't working, schools must implement alternative approaches to promote and support academic progress for students. Delaying intervention wastes time and harms students. Therefore, new Title I regulations should reinforce that every school and district must account for and support the academic performance of all students.

Define terms such as “consistent underperformance;” “substantial weight” and “much greater” as they relate to the appropriate weight of indicators for annual meaningful differentiation of public schools in a State accountability system. Also, ED must provide additional clarity regarding the technical requirements the “additional indicator(s) of school quality or student success” must meet to be included in a State’s accountability system.

Clarify that States

While recognizing that ESSA provides states with some discretion in developing their accountability plans, they still:

- Must count every student in all applicable subgroups, under all indicators and metrics used in the accountability system
- Must assure that no less than 95% of students are participating in required annual assessments
- Must include all students in measures of student growth such as growth models and may not exclude any student/student group for any reason
- May not combine groups of students for purposes of meaningful differentiation in a State’s accountability system under the Act.

4. **Minimum Subgroup (N) Size:**

- **ED must recommend an acceptable range for statistically significant N sizes a State may consider as the basis for calculating and reporting student subgroup performance as part of the state accountability system.** Such N sizes must ensure statistical reliability while continuing to protect student privacy and ED must also provide technical assistance as needed and strictly enforce the consistent use of a statistically reliable N size that is comparable across subgroups.
- **ED must conduct the required study on “best practices for determining valid, reliable, and statistically significant minimum numbers of students for each of the subgroups of students for the purposes of inclusion as subgroups of students in an accountability system” within 90 days of ESSA enactment, as required by the statute.** The minimum subgroup size, or “n” size, established by many States under No Child Left Behind resulted in seriously limiting accountability for students with disabilities. A 2013 report of subgroup sizes used in States, *The Inclusion of Students with Disabilities in School Accountability Systems* (<http://ies.ed.gov/ncee/pubs/20134017/>), found that across 40 states with relevant data for the 2008–09 school year, *slightly more than a third (35 percent) of public schools were accountable for the performance of the students with disabilities subgroup, representing just over half (58) percent of tested students with disabilities in those states.* While the required study must not recommend a specific

subgroup number, it should include recommendations regarding the maximum number and percentage of students and student subgroups that could be excluded from school-level accountability determinations due to n size.

- **ED must clarify that while subgroup size must be the *same for all subgroups*, subgroup size may vary depending on the metric, i.e., proficiency, participation and graduation rate.** While subgroup size for **proficiency** involves statistical reliability (i.e., the degree of confidence associated with the decision of whether or not enough students in a subgroup performed above the cut point for proficiency to meet the annual objective), **test participation** and **graduation rate** calculations are only tempered by the requirement to not reveal personally identifiable information (i.e., the inability to determine from the subgroup values reported how an individual student performed on an indicator).

5. **Achievement Standards & Assessments: ED must issue regulations, guidance and technical assistance on “alternate academic achievement standards” and “alternate assessments aligned to alternate academic achievement standards” (AAAS)** to ensure stakeholders fully understand the requirements as set forth in ESSA.

- **AAAS:** ED must further clarify in the following areas regarding the AAAS:
 - Establish and implement a ‘documented and validated standards-setting process’;
 - Reinforce that the AAAS are designed only for students with the most significant cognitive disabilities;
 - Ensure the AAAS are aligned to the challenging state academic content standards;
 - Ensure the AAAS promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;
 - Clarify that the term “*challenging state academic standards*,” which is defined in ESSA to refer to both content and achievement standards, must be interpreted as referring only to achievement standards in the provision about using accommodations to increase the number of students with significant cognitive disabilities who are taking the general assessments based on “challenging state academic standards” for the grade level in which the student is enrolled (this is necessary to avoid the common misconception that alternate assessments are not based on grade-level content standards);
 - Ensure that any student who meets the AAAS is on track to pursue postsecondary education or employment, consistent with the purposes of Rehabilitation Act (Public Law 93–112) as amended by the Workforce Innovation and Opportunity Act of 2014.
- **Alternate Assessments aligned to Alternate Achievement Standards (AA-AAAS):** ED must clarify and reinforce, through regulation, the following requirements related to the AA-AAAS:
 - Reinforce the statutory requirement of a state level cap not to exceed 1% of the total number of students in grades assessed;
 - Clarify the consequences for exceeding the 1% cap;

- Establish criteria for requesting a Secretarial waiver to exceed the 1% cap which should match the prior requirements in the Department’s 2003 regulation on this issue¹ which states:

“An SEA may request from the Secretary an exception permitting it to exceed the 1.0 percent cap. The Secretary will consider granting, for a specified period of time, an exception to a State if the following conditions are met:

(i) The SEA documents that the incidence of students with the most significant cognitive disabilities exceeds 1.0 percent of all students in the grades assessed.

(ii) The SEA explains why the incidence of such student exceeds 1.0 percent of all students in the combined grades assessed, such as school, community; or health programs in the State that have drawn large numbers of families of students with the most significant cognitive disabilities, or such a small overall student population that it would take only a very few students with such disabilities to exceed the 1.0 percent cap.

(iii) The SEA documents that it is fully and effectively addressing the requirements of § 200.6(a)(2)(iii).”

- Clarify that any student that is assessed via the AA-AAS in excess of the 1% cap shall be counted as non-proficient for purposes of accountability, unless a State has an approved waiver to exceed this cap;
- Reaffirm that all students will participate in a state assessment based on the state content standards for their enrolled grade level. The AA-AAS should measure proficiency on the grade level content standards by using alternate academic achievement standards, while the general assessment measures proficiency using grade-level academic achievement standards;
- Emphasize that parents will be informed, through the development of an individualized education program, the impact of having their child participate in the AA-AAS,
- Ensure participation in the AA-AAS will not preclude a child from attempting to complete the requirements for a regular high school diploma and clarify that this means more than saying they can stay on diploma track; the students must receive instruction designed to help them meet this goal;
- Reinforce that students participating in the AA-AAS will be included in and make progress in the general education curriculum for the grade in which they are enrolled;
- Strongly encourage the use of Universal Design for Learning in the assessment process;
- Reinforce the need to build the expertise of both general and special educators in determining when and how to administer the alternate assessment and promoting the highest expectations of students at all times; and
- Clarify that provisions in the law about students participating in the AA-AAS, or their parents, apply when a student participated in an AA-AAS in the most recent assessment period and/or will participate in the next AA-AAS, in either or both subjects.
- **Assessments:** ED must issue regulations to provide states and stakeholders with clarity in the following areas:
 - **Grade-Level Assessments:** ED must assure states uphold the requirement that students with disabilities are to be assessed using the assessments for their enrolled grade. Regulations should explicitly state that practices such as “out-of-level,” “below-level,” and/or “instructional level” assessments do not

¹¹ Federal Register: December 9, 2003 <http://www2.ed.gov/legislation/FedRegister/finrule/2003-4/120903a.html>:

satisfy the accountability provisions of the Act. Students not assessed at their enrolled grade level must be counted as non-participants.

- **Computer-adaptive assessments (CAT):** Regulations must clarify provisions about measuring the student’s level of academic proficiency and growth using items above or below the student’s grade level, and the limitation on the use of out-of-grade-level scores within a State’s accountability system, as indicated by the statute. For students with the most significant cognitive disabilities, the CAT provisions state that the requirement to measure proficiency on the challenging state academic standards for the student’s grade-level does not apply; however the term “challenging state academic standards,” which is defined in ESSA to refer to both the content and achievement standards, must be clarified as only referring to achievement standards for the student’s grade level in this section (an alternate CAT must not be exempt from alignment with the state content standards for the student’s grade level).
 - **Locally selected assessments:** ED must notify States that any district choosing to use a nationally-recognized high school assessment in lieu of the State-designed academic assessment must assure that any and all assessments are fully accessible to students with disabilities.
 - **Alternate formats and interoperability:** ED must recognize and reinforce to states that students with disabilities are allowed to use other alternative formats and the assistive technology they regularly rely on when accessing the general education curriculum to take assessments and that States must assure such access so students have effective and meaningful accessibility to assessments. The availability of alternative formats and the interoperability of assessment design is necessary to permit students, who require the use of alternative formats and/or assistive technology, to demonstrate their content knowledge. Such policy includes students with the most significant cognitive disabilities so they too may demonstrate their academic achievement relative to the challenging State academic content standards or alternate academic content standards. Lack of availability of alternative formats and assessment interoperability results in students either not being able to access the assessment or not being able to demonstrate content knowledge accurately during the assessment due to the undue burden of needing to test while using unfamiliar technology. ED must encourage states to avoid the valid and known barriers created for students with disabilities when assessments are designed without consideration for alternative formats and interoperability, as well as to take this opportunity to update regulations in order to have assessments comport with IDEA and Department of Justice guidance on this issue.
6. **Stakeholder engagement/Public Reporting:** ED must provide recommendations to help guide states in conducting a meaningful planning process that ensures all Title I schools encourage and promote meaningful engagement and input of all parents/guardians and that schools communicate and provide information and data in ways that are accessible to all parents (e.g. written, oral, and translated).
7. **Adjusted Cohort Graduation Rate (ACGR):** ED must uphold the 2008 Graduation Rate Regulation and continue to require use of the Four-Year Adjusted Cohort Graduation Rate (ACGR) for reporting and accountability purposes at the school, district, state and federal levels for all groups of students. The use of extended-year cohorts, such as five- and six year rates should continue to be allowed. However, these extended year rates should be reported separately and the emphasis should remain on graduating students in four years.
- **Define “students with disabilities” in the ACGR:** Define the “students with disabilities” subgroup in the ACGR. Currently, states are defining students who are counted in the “students with disabilities” subgroup of the ACGR in a variety of ways. According to the U.S. Department of Education, states may define the subgroup as (a) only students who both entered and exited high school as an IEP student, (b) only students who had an IEP at graduation, (c) any student who had an IEP at any time between

entering high school and graduation, (d) some other definition. ESSA regulations should eliminate this inconsistency so that the reported ACGR for students with disabilities is consistent across states. We recommend defining the “students with disabilities” subgroup as any student who has an IEP **for the majority of the time in the cohort (i.e., both the 4-year and extended cohorts)**. The Department should also make clear that minimum subgroup size (N) size for the ACGR should only be established for purposes of protecting personally identifiable information. There is no need for the n size for graduation calculation to be “statistically sound.”

- **Include Alternate Diplomas in the ACGR:** Require that any State electing to exercise the option provided in the ACGR definition under ESSA to count all students with the most significant cognitive disabilities assessed using AA-AAS and awarded a State-defined alternate diploma that is standards-based; aligned with the State requirements for the regular high school diploma; and obtained within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act ([20 U.S.C. 1412\(a\)\(1\)](#)) to be counted as having graduated and to report disaggregated data on the percentage of the students with disabilities subgroup that are such students.

8. **Diploma Options:** Issue regulations to clarify that states may develop a State-defined *alternate diploma* provided this new diploma option meets all statutory requirements and promotes postsecondary success of students with the most significant cognitive disabilities without lowering expectations or reducing access to the general curriculum or a state’s regular high school diploma. Furthermore, the Department should clarify that an alternate diploma only applies to the ACGR and does not meet the definition for a high school diploma in ESSA or IDEA. Additionally, students receiving such diploma must not be counted in the IDEA 618 data collection as “graduated with a regular high school diploma.”

In conclusion, the core of the charter concept is to create new and high quality education opportunities for students by extending autonomy in exchange for robust accountability systems. Absent rigorous accountability structures that include clear consequence for failure to meet performance metrics explicitly outlined for both Title I and charter contracts, the charter concept is unlikely to reach its potential. NCSECS appreciates the opportunity to comment and make recommendations to implement the new ESEA.

Sincerely,



Lauren Morando Rhim, Ph.D.

NCSECS.ORG

National Center for *Special Education* in Charter Schools