



January 15th, 2021

Melissa Siry  
Office of Elementary and Secondary Education  
400 Maryland Ave, SW  
Washington, DC 20202

Subject: Comment Request; Frequently Asked Questions Impact of COVID-19 on 2021-2022 Accountability Systems Required under the Elementary and Secondary Education Act of 1965 (ESEA)

Dear Ms. Siry,

On behalf of the National Center for Learning Disabilities (NCLD), which represents the 1 in 5 public school students with learning and attention issues, I am writing in response to the U.S. Department of Education's (ED) invitation to provide input on ED's Draft document titled "Frequently Asked Questions: Impact of COVID-19 on 2021-2022 Accountability Systems Required under the Elementary and Secondary Education Act of 1965 (ESEA)". We reiterate our long standing expectation that schools, districts, and states are held accountable to equitably meet the needs of students with disabilities even during these unprecedented times.

The purpose of the Every Student Succeeds Act (ESSA) is "to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps". Therefore, ED must be uncompromising when approving any amendment or allowing any one year temporary change to a state's education plan if the amendment will not meet the academic, social, emotional, or behavioral needs of students. This is especially important because, as acknowledged by ED, the pandemic has had a disparate impact on students of color, students who are English learners, students who are LGBTQ+, students impacted by poverty, and students with disabilities.<sup>1</sup>

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<sup>1</sup> Goldberg, S. B. (2021). Education in a pandemic: the disparate impacts of COVID-19 on America's students. U.S Department of Education Office for Civil Rights. Retrieved from: <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>

We appreciate that ED’s draft guidance reiterates the critical ESSA requirements for states to identify schools in need of supplemental resources and differentiated support on a regular basis—including following the 2021-22 school year. By designating schools needing comprehensive, additional targeted, and targeted support, they become eligible for additional federal school improvement funding (i.e., ESSA section 1003(a) funding), and they should receive additional state and school district technical assistance to design and implement evidence-based plans to address lost instructional time and other student and educator needs.

As ED reiterates in the guidance, the primary objective of state accountability systems this year should be to use these systems to direct resources and supports to the schools and students who have been disproportionately harmed—academically, socially, and emotionally—by COVID-19 and to continue these supports even after COVID-19 relief funds have been spent. This fall will be the first opportunity for states to ensure their accountability systems reflect the additional resources students need as a result of the pandemic. Further, ED’s guidance helpfully notes ways in which ESEA gives states the discretion and flexibility they need to update their accountability systems, as needed, to account for the unique challenges schools are facing at this time and to ensure students receive the supports they need. Finally, we appreciate that ED’s guidance encourages the use of Elementary and Secondary School Emergency Relief (ESSER) funding for school improvement purposes under ESEA and to address lost instructional time and other student needs through evidence-based strategies (see pgs. 4-5 and questions D-1 and D-6 of the draft FAQs). By leveraging both funding streams, districts and schools will be better-positioned to develop and/or revise improvement plans that respond to the full range of students’ needs—from academics to mental health and wraparound services—and identify and address resource equity gaps.

One way in which states can better meet the needs of students is to have the same high expectations for all students, including each subgroup of students. In NCLD’s [review](#) of state education plans in 2018, we found that only 18 states had the same long-term goals for students with disabilities as their peers. In addition, we found that many states (32) set the long-term goals for students with disabilities below 60% proficient in English Language Arts, Math or both. We recognize that some states may be filing an amendment to revise their long term goals in response to the impacts of the COVID-19 pandemic. Setting low expectations for students with disabilities is unacceptable and suggests that the state does not believe all children can succeed at high levels.

**The National Center for Learning Disabilities**

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**RECOMMENDATION: If states request amending their long-term goals, NCLD strongly recommends that ED encourages states to establish the same, ambitious long-term goals for students with disabilities as their peers.**

In addition, statewide summative assessments provide essential information to states, districts, educators, families, and the public about how student groups – including those most systemically marginalized, like students with disabilities – are doing compared to their peers. These assessments are comparable across states and districts and are one of the only sources of information available to show how districts are serving all students. We have not been able to gain significant new data during the pandemic and can't afford to continue to do so, particularly as students and schools face new and unique challenges. Even in the face of the ongoing pandemic-related challenges, ED must hold states accountable for administering state-wide assessments in the 2021-2022 school year.

ED must strongly enforce the requirements under 34 CFR §§ 200.2 – 200.9. Specifically, states must comply with 34 CFR §200.6 regarding the inclusion of students with disabilities. States have only two ways to include students with disabilities in state academic assessments. These are:

- *Assessment aligned with the challenging state academic standards for the grade in which the student is enrolled, with appropriate accommodations as needed; or*
- *Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities as defined by the state. The number of students with the most significant cognitive disabilities assessed using an alternate assessment may not exceed 1.0 percent of the total number of students assessed in the state.*

The inclusion of students with disabilities is also required by the Individuals with Disabilities Education Act (IDEA), 34 CFR §300.160, which states that “A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.”

**RECOMMENDATION: NCLD strongly recommends that the FAQ document include information on the administration of alternate assessments and the 1 percent cap on students who are assessed using these tests.**

In addition, ESSA requires states to provide “the appropriate accommodations, such as interoperability with, and ability to use, assistive technology, for children with disabilities (as defined in section 602(3) of IDEA (20 U.S.C. 1401(3))), including students with the most significant cognitive disabilities, and students with a disability who are provided accommodations under an Act other than the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), necessary to measure the academic achievement of such children relative to the challenging State academic standards or alternate academic achievement standards.” It is important that ED reiterate this requirement and clarify that these accommodations must be provided whether a student is in-person or in a remote school or testing setting.

**RECOMMENDATION: NCLD strongly recommends ED emphasize and clarify the assessment accommodation requirements under ESSA to ensure students with disabilities are equitably included in state accountability systems.**

ED must also ensure that states adhere to the ESSA requirement to assess at least 95 percent of all students, including participation from at least 95 percent of students with disabilities. This participation requirement ensures that the results of state assessments are representative of all students and each student subgroup, including students with disabilities. Administration that falls short of this participation rate must not be viewed as representative and, as such, should not be used to make accountability decisions. Last year, ED allowed states the opportunity to waive the requirement that the Academic Achievement indicator be adjusted to account for a participation rate below 95 percent. Because of this, we have two years of incomplete data to assist with targeting resources to the schools that need them the most. It is imperative that we have robust information this year to support students, families, and educators.

**RECOMMENDATION: NCLD strongly recommends that ED strengthens questions E-1 and E-4 by adding language on the statutory requirements to report assessment results and participation rates, disaggregated, on report cards for the 2021-22 school year, given uneven reporting of these data for the last two years.**

NCLD appreciates the opportunity to provide comments on this important resource. Accountability systems, as required under ESSA, are critically important to meeting the needs of students with disabilities and providing an equitable education for the millions of public school students. States have an obligation and opportunity to make sure that

our students are front and center in discussions about achievement, equity, school quality, accountability and improvement. Now more than ever, ED must ensure that states strive to make improvements in how they serve all learners. If we can provide additional information, please contact me at [lkubatzky@nclld.org](mailto:lkubatzky@nclld.org).

Sincerely

A handwritten signature in black ink that reads "Lindsay Kubatzky". The signature is written in a cursive style with a large initial "L" and a stylized "K".

Lindsay Kubatzky  
Director of Policy and Advocacy  
National Center for Learning Disabilities