



## **Analysis of Florida's First Draft of the Every Student Succeeds Act (ESSA) Consolidated State Plan**

July 10, 2017

Florida (FL) released the draft of its plan on June 30, 2017. The draft plan is available from the page at <http://www.fldoe.org/academics/essa.stml>. Also on this page is a link to a list of waivers that FL plans to submit along with its plan to the U.S. Dept. of Education (ED).

This public comment period runs June 30 - July 31, 2017. Comments must be submitted via an online survey at <https://www.surveymonkey.com/r/ESSA17>

FL intends to analyze the feedback and revise the draft state plan accordingly before providing to Governor Rick Scott, as required. FL will submit the state plan to ED by September 18. **Therefore, it appears that this is the only draft that will be offered for public comment.**

**Receiving federal funding for Title I is contingent upon approval of an ESSA plan by ED. In 2014 Florida received \$778,198,725 in Title I funds. Failure to comply with ESSA may put these funds at risk.**

The analysis that we provide in this document focuses on those issues most critical to subgroup accountability and to students with disabilities (SWDs).

### **Assessments**

#### Universal Design for Learning

States are required to develop their assessments using the principles of universal design for learning (UDL). Unfortunately, the revised state plan template provided by the ED in March 2017 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. Also, 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). While not a required part of the state plan, the FL plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments. Also, FL 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)**

FL reports on the following student subgroups:

- economically disadvantaged students;
- students from major racial and ethnic groups (white, black, Hispanic, Native Hawaiian or other Pacific Islander, American Indian or Alaska native, and two or more races);
- children with disabilities; and
- English Language Learners.

### **N Size (page 7)**

Florida’s minimum cell size (N size) requirement is 10 students for all accountability and reporting purposes for all students and for each subgroup. This N size will ensure that almost all schools will have a disability subgroup with enough students to be included in the accountability system. **Advocates have recommended that all states use an N size of 10 (or lower) see <http://all4ed.org/reports-factsheets/n-size> and <https://nces.ed.gov/pubs2011/2011603.pdf>.**

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.

FL plan states: “The minimum cell size was set based on Florida law in s. 1008.34(3)(a), F.S., which indicates, “If a school does not have at least 10 students with complete data for one or more of the components listed in subparagraphs (b) 1. and 2., those components may not be used in calculating the school’s grade.” This statutory language was adopted through the legislative process, which included substantial public input at committee meetings from the public and from school district representatives. In addition, the cell size is included in the State Board of Education rule governing Florida’s accountability system, Rule 6A-1.09981, Florida Administrative Code (F.A.C.). This rule was adopted at a public meeting and the department held three public workshops on the draft language before consideration by the State Board of Education. Those meetings were attended by education stakeholders and these stakeholders (including teachers, principals, other school leaders, parents, and other stakeholders) had the opportunity to provide comments on the draft rule language.”

### **Long-term goals (page 8)**

ESSA requires that states set long-term goals and interim measures for all students and for each student subgroup (e.g. disability subgroup) for academic achievement, graduation rate and English language proficiency. ESSA also states that for students who are behind, the goals and interim measures of progress must take into account the improvement necessary to make significant progress on closing statewide proficiency and graduation rate gaps.

### Academic Achievement & Graduation Rate

FL has a goal to reduce the achievement gap by one-third between each subgroup in each subject area and graduation rate by 2020 from baseline performance in 2014-2015.

**The timeline that FL sets (6 years) is much shorter than most states, which is commendable. However, the approach used for establishing the goals for each subgroup is questionable.**

**Closing gaps between subgroups is an essential requirement of ESSA. However, long-term goals should be the same for all subgroups. Alternatively, a methodology to close the proficiency gap for each subgroup could be used. Gaps between subgroups will occur naturally when subgroup goals are set using either of these approaches.**

**In addition, the subgroup goals and interim measures should be expressed in terms of percent of students proficient on state assessments in Math and Reading and percent graduating in 4 years (as they are for the overall rates in Metrics 1 and 4). The subgroup gap tables presented in Appendix A (page 56) are of little value or meaning without the corresponding rates of proficiency.**

**Additionally, FL should make a commitment to maintain goals and interim targets during the course of the timeline and to not adjust goals downward when/if actual performance falls short of the targets.**

### **Indicators (page 12)**

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:

FL's academic achievement indicator will report the percentage of students passing the English language arts and mathematics assessments. Academic progress or learning gains for high schools will also be reported.

The plan states that "The component measures the percentage of full-year enrolled students who achieved a passing score." **However, 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 did not participate in testing, once the participation rate falls below 95 percent. The FL plan should make clear that the proficiency rate will be calculated as required by ESSA.**

#### Other academic indicator:

FL will use academic progress or learning gains for elementary and secondary schools that are not high schools as the other academic indicator. Students can demonstrate a learning gain in four ways: by maintaining a score within achievement level 5; improving one or more achievement levels; maintaining a passing achievement level and increasing their score by at least one point in achievement levels 3 and 4; and for students who remain in level 1 or level 2, increasing their score to a higher subcategory within the level. This indicator includes learning gains for all students as well as learning gains of the lowest performing 25% of students regardless of the subgroup to which they belong.

Graduation Rate:

FL will use only the four-year adjusted cohort graduation rate for the graduation rate indicator.

School Quality or Student Success Indicator (SQSS):

FL will use the following as the SQSS: Science Achievement (Elementary, Middle, High), Social Studies Achievement (Middle, High), Middle School Acceleration, and High School Acceleration (college and career acceleration). Details are on pages 14-15.

**\*\*Florida is seeking a waiver from ESEA section 1111(c)(4)(B) and (C) to calculate the components of the accountability system based on all students, and to report on the performance of each subgroup separately for each component. Instead of using subgroup performance for accountability, FL proposes to use a subgroup comprised of the lowest-performing 25% of students regardless of what subgroup these students belong to. Presumably, this is an unduplicated count – in other words, students who belong to two or more subgroups are only counted once in the lowest-performing 25%. Importantly, FL does not mention this substitute subgroup in the subgroup section of its plan when asked if the state is proposing any additional subgroups of students other than the statutorily required subgroups for use in the statewide accountability system.**

**The proposed approach sought by FL will essentially render the performance of the statutorily required student subgroups irrelevant. Merely reporting subgroup performance without any impact on the accountability system will not work to improve subgroup performance. Of course, FL claims that their proposed approach captures students in the historically underperforming subgroups since these students are over-represented in the lowest-performing 25% of students.**

**In defense of its proposal, FL states that “Not only would adding subgroups into the calculation for each component make the calculation extremely complex, it would count some students many times while counting others twice (in all students and their race/ethnicity). This skews the performance for which schools are held accountable. Students who belong to more subgroups would be weighted more heavily in the accountability calculation resulting in more focus from the educators. However, students belonging to more subgroups do not necessarily have lower performance and students who belong to few subgroups may have lower performance and need support. This type of system could result in the incentives being moved away from some of the lowest-performing students to students who belong to the most subgroups regardless of their performance levels. This would work against closing the achievement gaps and against increasing overall student performance.”**

**We contend that this statement is false and that, in fact, students who belong to several subgroups are more in need of support. It is highly unlikely that this waiver will be granted since the ED is not in a position to allow a state to violate ESSA provision regardless of the strength of the argument put forward by the state.**

#### **Annual Meaningful Differentiation of Schools (page 17)**

- **Weighting of indicators (page 18)**

FL's indicator weighting is shown in the tables on pages 16 and 17. The weighting gives substantially more weight to progress (growth) than to achievement or graduation rates.

**We believe that achievement on assessments and graduation rates should be weighted more heavily than other academic indicators since they are the academic indicators most directly aligned to positive post-school outcomes.**

- **Different Methodology for Certain Types of Schools (page 18)**

The FL plan states that "alternative schools and Exceptional Student Education (ESE) center schools in Florida have a choice of whether to receive a school grade or a school improvement rating. A school improvement rating is based solely on learning gains. However, if a non-charter alternative/ESE center school chooses to receive a school improvement rating the performance data for the students enrolled at the alternative school are included in the rating for the alternative/ESE center school and are also incorporated into the school grades for the home-zoned schools the students would otherwise attend. In this way these students are also included in the school grading system."

**The number of students with disabilities in these schools (and their percent of all students with disabilities in FL) is unknown. Enrollment in ESE centers could represent a significant number of students. These schools should not be given a choice in how they are to be included in the statewide accountability system. Specifically, the performance of all students assigned to ESE center schools should be assigned to the home schools the students would attend.**

- **Identification of Schools (page 19)**

#### Comprehensive Support and Improvement (CSI)

**FL does not intend to comply with the ESSA requirements for the identification of schools for CSI. Rather, it will identify CSI schools based upon the grade given to schools, stating that schools earning two consecutive grades of "D" or a grade of "F" will be identified for CSI. Graded schools with four-year adjusted cohort graduation rates of 67% or lower will also be identified for CSI.**

FL states that: “Florida’s “D” and “F” schools may not always meet the criteria laid out in ESSA for CS&I ... but these schools are the schools that need the most support and serve students who are underperforming across each of the subgroups. In 2016-2017 Title I schools graded “F” or with two consecutive “D” grades represented 6.5% of Title I schools (132).”

Frequency of Identification: Determination will be made annually in the summer of each year.

Targeted Support and Improvement (TSI) (page 20)

ESSA requires states to identify for Targeted Support and Improvement (TSI):

- 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).

**In contrast to ESSA requirements, Florida proposes to identify its schools receiving a “D” that is not consecutive with another “D” or “F” as TSI schools.**

In defense of this proposal, which directly conflicts with ESSA, FL states ““D”-graded schools also have markedly lower subgroup performance.”

**Interestingly, FL does not indicate that the state will ask for a waiver from ESEA section 1111(c)(4)(D)**

**ESSA’s very important provisions regarding consistently underperforming subgroups and low-performing subgroups are entirely lost in the FL proposal for TSI identification.**

- **Annual Measurement of Achievement – (At least 95% Assessment Participation Rate Requirement (page 21)**

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. It is important to keep in mind the impact of the participation rate requirement on students with disabilities. States must describe how the state factors this requirement into the statewide accountability system. A “non-punitive” approach 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).

**Florida is seeking a waiver from ESEA section 1111(c)(4)(E), the requirement that a calculation must be made at the subgroup level to determine whether 95% of students have been tested and that the achievement calculation must**

be modified if a school does not test 95% of students. See page 6 of the waiver request document for information on how FL proposes to handle test participation.

Both the requirement to measure test participation by subgroup and the requirement regarding calculation of proficiency are in the Act. The U.S. Dept. of Education does not have the ability to waive clear statutory requirements.

#### Continued Support for School and LEA Improvement (page 22)

- Exit Criteria for CSI and TSI Schools (page 22)

The exit criteria for CSI and TSI schools is unclear inasmuch as the length of time needed to achieve the criteria is not stated.

#### School Conditions (page 26)

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

FL's response to this question fails short of addressing the disproportionate rate of out-of-school suspension for students with disabilities.

According to the 2015 report, *Are We Closing the Discipline Gap?* (<https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap>), **FL has the highest rate of out-of-school suspensions of students with disabilities in the nation.** At the secondary level, 37% of FL students with disabilities (56,750) received one or more out-of-school suspensions compared to 18% nationwide (2011-2012 Civil Rights Data Collection).

Clearly, FL's "training and technical assistance for Local Education Agencies (LEAs) that highlight current research and successful practices in discipline, specifically using exclusionary discipline, such as out-of-school suspension, only as a last resort" is not working.

FL should also provide specific strategies to reduce the use of aversive behavioral interventions of students with disabilities beyond stating that "each district is required to have a plan to reduce the use of restraint and seclusion with students with disabilities." According to the 2011-2012 Civil

**Rights Data Collection (ocrdata.ed.gov), 72% of the FL students who were subjected to mechanical restraint were students with disabilities, 96% of FL students subjected to physical restraint were students with disabilities, and 86% of FL students subjected to seclusion were students with disabilities. FL needs to do much more to address this issue.**

#### **School Transitions (page 27)**

**This section makes no mention of students with disabilities. Yet 19% of FL's students with disabilities drop out of school.**

**FL has developed a State Systemic Improvement Plan (SSIP) as required by IDEA and has prioritized increasing the statewide graduation rate for students with disabilities and closing the graduation gap as its State Identify Measurement Result (SIMR) of its SSIP. In its root cause analysis FL identified one cause of low graduation as loss of time in the general education classes due to disciplinary consequences such as in-school suspension, out of school suspension and expulsion, secured seclusion and restraint. (Source <http://www.fldoe.org/core/fileparse.php/7672/urlt/SSIP.pdf>)**

**ESSA requires that the state plan coordinate with other programs, such those under the Individuals with Disabilities Education Act. The SSIP is the major initiative of the Florida Bureau of Exceptional Education and Student Services. As such, the SSIP 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/>)**

#### **Children and Youth who are Neglected, Delinquent, or At-Risk (page 34)**

**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>) 54% of students served under Subpart 1 in FL in 2013-14 had IEPs and 26% of students served under Subpart 2 had IEPs. This is excessive over-representation since students with disabilities represent just 13% of FL's total school enrollment. The FL 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.**

**FL's response to the required information in this section is nothing more than a duplication of its basic program objectives. It is difficult to believe that a "tiered support plan" can be implemented in correctional facilities.**

## **Supporting Effective Instruction (page 36)**

- **Improving the Skills of Educators (page 39)**

This section requires a description of how the state will improve the skills of teachers, principals, or other school leaders in order to enable them to identify students with specific learning needs, particularly children with disabilities, English learners, students who are gifted and talented, and students with low literacy levels, and provide instruction based on the needs of such students.

The plan states “The Florida Department of Education is committed to its efforts to ensure that every student is taught by highly effective teachers and that schools are led by highly effective school leaders. In addition, the department will continue to support and ensure that skilled educators are able to identify students with specific learning needs, including children with disabilities, English Language Learners, gifted and talented students, and students with low literacy levels and ensure that the needs of each of these students are met.”

**This is an inadequate response, providing no specifics on how the state will improve the skills of teachers, principals, or other school leaders.**

**Of particular concern is FL’s complete lack of attention to Universal Design for Learning (UDL), a framework to improve and optimize teaching and learning that serves to greatly enhance multi-tiered System of Support, which FL has been and continues to implement as its primary approach to school improvement. (More information on UDL and ESSA state plans is available at <http://www.udlcci.org/policytwo-pagerdraft-2-3-17-update2/>.)**

**The plan should also provide a commitment to critically important strategies such significantly improving the capacity of educators to implement inclusive best practices.**

## **Student Support and Academic Enrichment Grants (page 45)**

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.

**This section of the plan should also include UDL implementation.**

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