



Analysis of New York's First Draft of the Every Student Succeeds Act (ESSA) Consolidated State Plan

June 18, 2017

(Revised from May 25, 2017 version)

New York (NY) released a draft of its plan dated May 7, 2017 at <http://www.p12.nysed.gov/accountability/documents/draft-ny-essa-plan-may-2017>. The comment period runs through June 16, 2017. The public meeting schedule is at <http://www.p12.nysed.gov/accountability/documents/ESSA-Public-Hearings.pdf>.

Changes made to this draft of the plan should appear in redline in the next draft to make it easier for stakeholders to provide input on the amendments.

The analysis that we provide in this document focuses on those issues most critical to subgroup accountability and to students with disabilities (SWDs). **It is important to note that NY educates 7% of the nation's students with disabilities, which means its ESSA plan has a significant impact on a large number of students with disabilities.**

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

Overall Comment: As we will point out throughout this analysis, the highly complex nature of various aspects of the proposed plan make it unlikely that stakeholders, especially parents, will be able to provide meaningful feedback, as required by ESSA. A critical element of ESSA is to provide transparency to the community about how schools are performing with respect to all students, and each student subgroup. This cannot be achieved unless NY develops goals, indicators and methodologies for identifying schools for targeted and comprehensive support and improvement that can be understood by stakeholders.

Meaningful Stakeholder Consultation (page 8)

ESSA requires the state to conduct outreach and get input from stakeholders, including parents, for the development of this draft plan. This recent template from ED does not require a description of how the stakeholder consultation was achieved. However, NY provided information about an ESSA Think Tank with representatives from over 100 organizations, including district leaders, teachers, parents, community members, and students. The Think Tank met at least monthly since June 2016 to assist the Department with development of New York State's ESSA state plan. A few disability organization were listed as members of this group on page 17 of this PowerPoint presentation for the NY Board of Regents <http://www.regents.nysed.gov/common/regents/files/Full%20Board%20-%20ESSA.pdf> We are pleased that there is active disability stakeholder participation in this group.

Assessments (page 9)

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 templates 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. The NY plan mentions UDL and assessments in item #6 of the list of ways the plan seeks to promote equity on page 7.

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 NY plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments. Also, NY 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.

Assessment Waiver

On the bottom of page 11 of the plan there is a statement that raises grave concern: “NYSED is considering submission of a waiver that would allow schools to administer below-grade level assessments to students with disabilities in the event that assessments are consistent with those students’ level of instruction and to use these measurements towards accountability.”

ESSA and the Federal assessment regulations, which resulted from negotiated rulemaking with a large group of stakeholders, require that ALL students with disabilities, including those with the most significant cognitive disabilities, must take assessments based on the content standards for the grade in which they are enrolled (34 CFR §200.6 (a)(2)(i)), although the expectation for achievement on the alternate assessment is different than for the general assessment.

NYSED has previously submitted the same request for ED approval to administer below grade level assessments to certain students with disabilities, including those who should be taking the general assessment, as part of its ESEA Flexibility. We remind NY that ED issued a letter denying this request on June 5, 2015. That letter is appended to this analysis. Disability advocacy organizations unanimously opposed that request. NY should abandon this request, which has already been rejected by ED, and focus on raising the level of instruction, instead of lowering academic expectations, for students with disabilities.

Subgroups (page 15)

In NY, the racial/ethnic student groups are American Indian or Alaska Native, Black or African American, Hispanic or Latino, Asian or Native Hawaiian/Other Pacific Islander, White, and Multiracial.

NY also includes the following student groups in its accountability system, as required by ESSA:

- Economically Disadvantaged
- English Learners
- Students with Disabilities

N Size (page 16)

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.

NY will use an N size of 30 for accountability purposes (e.g. assessment proficiency and graduation rate), an n size of 40 for calculating assessment participation, and five for reporting data.

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. The NY plan says stakeholders were consulted and provided a variety of recommendations including lowering the n-size to less than 30. NY concluded that lowering the N size did not lead to the inclusion of significantly more students and schools in the accountability system to warrant lowering the reliability of the resulting decisions. There is no evidence that stakeholders were provided an analysis of the impact of lower N sizes on the percentage of schools that would not be accountable for the disability subgroup for assessment and graduation rate and the number of students with disabilities in the state who would not be part of the accountability system for both assessment and graduation with an N size of 30.

The 2013 IES study, ([The Inclusion of Students With Disabilities in School Accountability Systems: An Update](https://ies.ed.gov/ncee/pubs/20134017/pdf/20134017.pdf) available at <https://ies.ed.gov/ncee/pubs/20134017/pdf/20134017.pdf>) found that only 55.7% of NY schools were held accountable for students with disabilities using an n size of 30. **Clearly that is an unacceptable exclusion rate.** Further, we know nothing about the impact of an N size of 30 on high schools for the graduation rate indicator. Studies show that an N size of 10 is appropriate and other states have N sizes under 20 (<http://all4ed.org/reports-factsheets/n-size> and <https://nces.ed.gov/pubs2011/2011603.pdf>).

Prior to the next draft of the plan NY should provide stakeholders with the N size analysis described above (see the Ohio Department of Education's N size

topic guide for examples of the data simulations for both assessment and graduation analysis at <https://education.ohio.gov/getattachment/Topics/Every-Student-Succeeds-Act-ESSA/Nsize-Topic-Discussion-Guide.pdf.aspx>. Without this information parents and other stakeholders cannot provide meaningful consultation on N size determination, a requirement that is specifically referenced in the plan template. Also, in light of the unusually high N size of 40 for assessment participation rate, NY should also provide an impact analysis with respect to determining whether schools have met the 95% participation rate requirement.

Long-term goals (page 21)

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.

NY intends to use 2015-16 for baseline data and 2021-22 as the end of the first long term goal period and then every year set a new long-term goal for the subsequent year (e.g. in 2017-18 school year a long-term goal will be set for 2022-23 and so on). The plan states that this methodology allows the long-term goals to be adjusted to reflect the rapidity with which schools and subgroups are making progress toward achieving the end goals. Unfortunately, this methodology allows the state to adjust the goals downward every year if subgroups are not making sufficient progress toward the current goal. **Constantly re-setting targets like this renders the long-term goal meaningless. NY should make a commitment not to reset goals and interim targets downward when/if actual performance falls short of the targets.**

As you will see below NY also uses very complex indices for its indicators, which will make it very difficult for any stakeholder who is not a psychometrician to fully understand the accountability system. Such complexity undermines the transparency that is supposed to be achieved under ESSA with state and local report cards and schools ratings systems.

Academic Achievement

NY's method for setting academic achievement goals for each subgroup is based on getting each subgroup 20% closer to a set score (200) on the assessment performance index over a five year period. NY's use of a score on the performance index as a goal instead of setting the goal based on the percent of students who are proficient on the assessment will make it difficult to determine proficiency, which is the focus of the academic achievement indicator under ESSA. This is especially true because NY's index gives extra credit for students who score "advanced." This raises

a serious concern about higher achieving students potentially obscuring the proficiency rate and impacting accountability for the historically underserved students who are the focus of ESSA accountability. In addition, a goal that aims for 20% progress toward a performance index score in a five-year period may never result in the disability subgroup reaching proficiency, especially if the goals are adjusted annually. **NY should set the same proficiency rate long-term goal for all subgroups without any adjustment downward.**

Graduation Rate

NY also uses a 20% gap closing methodology for graduation rate goals. **NY should set the same graduation rate long-term goals for all subgroups without any adjustment downward.**

NY plans to use 5-year and 6-year graduation rates, in addition to the 4-year graduation rate. **Extended graduation rate goals are permitted by ESSA, but take the emphasis off of on-time graduation.** Extended graduation rate goals are supposed to be more ambitious since students have a longer time to meet graduation requirements. **NY's extended graduation rates are slightly more ambitious than the 4-year rate, but still very low for certain subgroups, like students with disabilities.**

Indicators (page 29)

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: NY plans to use a Performance Index for the Academic Achievement indicator and give extra credit for students who receive an "advanced score" on the assessment.

"The Performance Index is based upon measures of proficiency on State assessments and gives schools "partial credit" for students who are partially proficient (Accountability Level 2), "full credit" for students who are proficient (Accountability Level 3), and "extra credit" for students who are

advanced (Accountability Level 4). The Performance Index will be a number between 0-250. In a school in which all of the students are proficient, the school would have an Index of 200. In a school in which half of the students were proficient and half of the students were partially proficient, the Index would be 150.” (page 30)

Also, NY includes Science in its Performance Index for elementary/middle schools and Science and Social Studies in its Performance Index for high schools which is inconsistent with the language in ESSA, which states that the Academic Achievement indicator is measured by proficiency rates on the annual assessments on English/language arts and math.

Including other subjects in the determination of performance in this indicator dilutes the importance of proficiency in math and reading for college and career readiness.

Calculating proficiency. 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. One of the two equations NY uses to calculate the Performance Index only counts assessed students in the denominator, which is in violation of the law.

Other academic indicator: NY is planning to use student growth for this indicator that applies to elementary schools and middle schools. To measure growth, NY plans to use student growth percentiles (SPG). SGP describes a student’s academic progress from one year to the next compared to other students with similar prior test scores (called academic peers), when the tests are actually designed for comparing students to performance standards in a specific subject area. **Use of SGPs is highly questionable as reported in the research brief, Why We Should Abandon Student Growth Percentiles, by the Center for Educational Assessment at the University of Massachusetts Amherst (https://www.umass.edu/remp/pdf/CEAResearchBrief-16-1_WhyWeShouldAbandonSGPs.pdf).** NY’s use of mean SGP within a group and adjusted growth scores that include predictor variables is even more questionable. **Growth towards the standard is a preferable measure for public reporting and as a metric in the state’s accountability system regarding student growth.**

NY is also planning to use a Progress Measure for computing how a subgroup performs in relation to the state’s long-term goals for the subgroup, the state’s Measure of Interim Progress and the school specific measure of interim progress for that subgroup. A confidence interval, a safe harbor rule, and a factor for accelerated progress will be used, which further complicate this measure. **NY’s Progress Measure is incomprehensible and therefore we cannot determine its validity for measuring subgroup growth.**

Graduation Rate: NY plans to use 5-year and 6-year adjusted cohort graduation rates (ACGR), in addition to the 4-year graduation rate. Extended graduation rates are permitted by ESSA, but take the emphasis off of on-time graduation.

NY plans to use a non-weighted Graduation Rate Index for the graduation indicator, giving equal weight to the graduation rates at 4-5-and 6 years. While the graduation goals for the 5 and 6 year extended cohorts are slightly higher than the 4-year ACGR, the graduation rate index should assign more weight to the 4-year ACGR than to the 5- and 6-year ACGRs. A non-weighted index does not achieve adequate emphasis on getting students graduated in 4 years – in other words, on time.

It is unclear how NY's plan to annually adjust long-term goals will impact the Graduation Rate Index proposed. It is also unclear how student subgroups are factored into the Graduation Rate Index. It appears that there is no impact of student subgroups.

School Quality or Student Success Indicator (SQSS): NY will use chronic absenteeism as an indicator of school quality or students success. This is a SQSS indicator used most often by states because of its strong correlation to lower student achievement, disengagement, and increased risk of dropping out. The NY plan says:

“The chronic absenteeism rate for a school is defined as the number of students who have been identified as chronically absent (excused and unexcused absences equaling 10% or more of enrolled school days) as a percentage of the total number of students enrolled during the school year (denominator). Chronically absent students will be identified as such based on the number of days that a student is enrolled... Suspensions will not be considered absences because suspended students must receive alternate instruction, as long as the student is of compulsory school age. Similarly, a student who is not present in school for an extended period of time for medical reasons would receive instruction at home and would not be reported as absent.”

It is important that students with extended medical absences are not included in the chronic absenteeism rate. We do not want students with disabilities who have health conditions to be stigmatized by negatively impacting this indicator.

High schools will also use a College, Career and Civics Readiness Index as a school quality or student success indicator. As with the other indices NY plans to use, this one has so many pieces to it that it is impossible to determine its validity or value as an indicator, especially as it relates to the disability subgroup. It is especially concerning that NY will remove students who take the alternate assessment from the computation of this index. Removal of students who take the state's alternate assessment is likely a violation of ESSA.

While SQSS indicators can differ by grade span, each must apply to all students in public schools and be disaggregated by student subgroups.

The Board of Regents is asking a workgroup to consider a long list of other indicators for future reporting or accountability purposes. **If any of these indicators are added after the final public comment period, NY should put the amended plan out for public comment and resubmit the plan (if it has already been submitted for ED approval). The addition of indicators, especially multiple indicators, has a significant impact on the accountability system and the impact current indicators will have on school ratings.**

Annual Meaningful Differentiation of Schools (page 46)

NY will differentiate all public schools in the State, including charter schools, into the following categories using each of the indicators for which a subgroup will be held accountable: Comprehensive Support and Improvement Schools, Targeted Support and Improvement Schools, Schools in Good Standing, and Recognition Schools. In order to determine the category into which a subgroup will be differentiated, NY assigns a Performance Level from 1-4 for each measure for which a subgroup in a school is held accountable.

Weighting of indicators (page 46)

The plan says that NY does not assign weight to indicators, but instead uses a series of decision rules to differentiate between schools. **This violates the requirements in ESSA regarding the weighting system for indicators and ignores the requirement in the application to describe the weight for each indicator. It also is another way NY undermines transparency.** How are stakeholders to determine if each of the academic indicators has substantial weight and whether in the aggregate they have much greater weight than the state defined school quality or student success (non academic indicators) as required by ESSA without a clear understanding of their influence on the accountability determinations. The plan states that the academic indicators have more weight than the non-academic, but the details are important. **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. The NY plan states that this is the case when their decision rules are applied to the indicators.**

Different Methodology for Certain Types of Schools (page 46)

The NY plan states that it is considering keeping the following arrangement: “schools with any configuration of Grades K through 12 that do not participate in the regular State assessment program are required to submit nationally normed (if available) achievement test data for English language arts and mathematics to the

Department.” Department staff reviews this data to determine the accountability status of the school. What schools would not participate in the regular State assessment program? **All schools should have students participating in the state assessment system, except a school for grades K-2. Schools serving special populations, such as alternative schools enrolling returning dropout, over-age, under-credited students should be administering the regular State assessments. Schools serving large number of students with disabilities for programmatic reasons should administer the regular State assessments and return the results of those students to the school they would otherwise attend, e.g. their neighborhood school. It would violate ESSA for NY to use an accountability mechanism that is not based on the state assessment system for any school other than a K-2 school.**

Identification of Schools (page 47)

Comprehensive Support and Improvement (page 47)

ESSA requires states to identify for Comprehensive Support and Improvement (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.
- Chronically Low-Performing Subgroup. Any Title I school identified for targeted support and improvement because of low performing subgroup(s) that did not improve over a state-determine number of years.

Lowest 5% of Title I Schools: The NY plan says it will identify the lowest 5% of schools, which would appear to mean all schools (the schools identified for CSI under ESSA must include the lowest 5%, of Title I schools). However, in another sentence it refers separately to non-Title I schools and says they will also be identified if they perform at a level that caused Title I schools to be identified.

Public high schools failing to graduate at least one-third of its students: The NY draft plan provides that schools that have a graduation rate below 67% for the four-year graduation rate cohort and do not have a graduation rate at or above 67% for the five- or six-year cohorts will be “preliminarily” identified for CSI based on graduation rate.

“All public schools beginning with 2017-18 school year accountability that have a graduation rate below 67% for the four-year graduation rate cohort and do not have a graduation rate at or above 67% for the five- or six-year cohorts will be preliminarily identified for CSI based on graduation rate.” (page 49)

We encourage states to focus only on the 4-year adjusted cohort graduation rate for CSI, rather than including extended rates, in order to keep the focus on on-time graduation. NY’s methodology would ignore schools that have a low 4-year graduation rate if the 5- or 6-year graduation rate is 67% or higher.

The methodologies set out in the NY plan only provide “preliminary” identification. Schools are permitted to appeal prior to a final determination. It is not clear what the grounds for a successful appeal would be.

Frequency of Identification: ESSA states that schools must be identified for CSI at least once every three years. **NY has decided to adhere to this minimum requirement whereas some other states are electing to identify schools more frequently.**

Targeted Support and Improvement (page 49)

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).

Consistently underperforming subgroups:

The NY draft plan’s description of schools with consistently underperforming subgroups indicates a lack of understanding of the statutory requirements.

The plan says NY will annually apply the same methodology that is used to identify schools for comprehensive support as the lowest-performing 5% of schools for the following subgroups: English language learners, low-income students, racial/ethnic groups, and students with disabilities. This is unacceptable for a number of reasons.

A school with even one consistently underperforming subgroup must be identified for TSI. **Also, the definition of consistently underperforming must apply in the same way for all schools.** The NY plan identifies schools with consistently underperforming subgroups for TSI immediately if they are also a Priority or Focus school, but makes other schools with an underperforming subgroup wait three years to be identified for TSI.

In addition, consistently underperforming subgroups are not supposed to perform as poorly as subgroups that are considered low-performing. There is a clear and intentional statutory difference. There should be no relationship between consistently underperforming subgroups and the criteria used for identifying the lowest 5% of schools. 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): Unlike consistently performing subgroups, low performing subgroups are identified based on whether a subgroup or subgroups are performing as poorly as the “all student” group in the lowest 5% of Title I schools. Schools are identified for TSI for either consistently underperforming subgroups or low-performing subgroups, The NY plan states that a school will get additional targeted support only if it has been receiving TSI for three consecutive years for the underperformance of the same subgroup of students. This ignores schools that are supposed to be identified for TSI due to low-performing subgroups.

Additional Statewide Categories of Schools: NY will require a needs assessment from any school that gets the lowest rating (Level 1) for any accountability measure for any subgroup to determine the additional supports the school needs to improve performance. The district will need to identify these supports in the plan it submits to the state and will have to increase oversight of the school if performance does not improve. This is a positive step towards preventing subgroup performance from deteriorating to a point that schools need TSI or CSI plans.

The importance of the minimum subgroup size becomes critical in the identification of TSI schools. Many NY schools would not be held accountable for the students with disabilities subgroup if the state uses an N size of 30. So, while the details laid out above are important, many schools will escape the possibility of TSI identification.

NY also plans to identify Target Districts based on the following criteria: there are one or more CSI or TSI schools in the district, or the district is performing at the level that would have caused a school to be identified as TSI or CSI. It is not clear what happens when districts are identified as Target Districts, so whether this is helpful will depend on the details.

Annual Measurement of Achievement –At least 95% Participation Rate Requirement (page 51)

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. 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).

NY has failed to assess at least 95 percent of its students with disabilities for the most recent years according to assessment participation data reported via

its Annual Performance Report. Student participation in state assessments is a key element of the Results Driven Accountability process designed to improve performance of students with disabilities. Low test participation has, in large part, been the reason that NY received a determination of “Needs Assistance” for its implementation of IDEA in both 2015 and 2016. (Source: OSEP.Grads360.org 2015 and 2016 Part B NY State Profiles)

NY’s draft plan provides that schools that persistently and substantially fail to meet the 95% participation requirement must conduct a participation rate self-assessment and develop a participation rate improvement plan. It goes on to say what the district must do if schools do not improve. **However the NY plan does not discuss how the failure of a school to meet the 95% participation rule will factor into the accountability system, which is a requirement in the law and a question asked in the application template. The state accountability system is the annual meaningful differentiation of schools as it relates to identifying schools for TSI or CSI. It is appropriate to develop school improvement plans for participation, but that step by itself does not factor the failure to meet the 95% participation requirement into the accountability system under ESSA. Also, the law does not say a school has to persistently and substantially fail to meet the requirement before there is an impact on accountability.**

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. NY 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.

NY does not clearly articulate its understanding of and intention to comply with ESSA’s requirement regarding the calculation of proficiency rates. When participation falls below 95% of all students eligible to be tested, the non-tested students must be counted as non-proficient in the proficiency calculations for ELA and math. This includes students who are Opted out of testing by their parents.

It will be helpful that there will be improvement plans to help schools increase assessment participation, but they should be in place after the first year in which the participation requirement is not met, instead of waiting for persistent and substantial failure to meet the requirement. **Parents of students in the subgroup or subgroups for whom the requirement was not met should be included in the plan development process.**

NY states in this section of its application that it intends to apply for the Innovative Assessment Demonstration Authority, which it hopes will improve assessment participation. It is essential that parents be included in this process.

Exit Criteria for CSI and TSI Schools (page 52)

We are pleased that the NY plan requires that a CSI school must for two consecutive years be above the levels that would cause it to be identified for CSI status before it can exit from this status. Alternatively, if a school is not on the new lists of schools that are created every third year, the school will be removed from identification.

The state is considering the same exit criteria for schools that are identified for TSI because of low-performing subgroups. The plan fails to provide exit criteria for schools identified for TSI because of consistently underperforming subgroups.

More Rigorous Interventions for CSI Schools that Fail to Meet the Exit Criteria (page 53)

If a school identified for CSI does not meet the exit criteria, and that school is re-identified as a CSI school on the new list of schools that is developed every three years, NY will place the re-identified CSI school into the New York Receivership Program. In addition, if a school that is currently identified as a Priority School does not meet the exit criteria and is identified as a CSI school on the initial ESSA Accountability Designation list, that school will also enter the Receivership program.

From pages 53-78 the NY plan outline all the steps that will be taken to address the needs of TSI and CSI schools. In all these pages disability is mentioned only twice. On page 58 there is a reference about past reviews of Priority and Focus schools including experts from regional technical assistance centers for students with disabilities, when available. On page 72 there is a statement that schools can be identified as having a poor learning environment does not maintain required programs and services or evidence of failure to appropriately refer for identification and/or provide required programs and services to students with disabilities. There should be much greater attention paid to these students, especially when the disability subgroup is the reason schools are identified for TSI. Notably there is no initiative related to inclusive education. There is also no mention of UDL implementation, even though that would benefit all students.

School Conditions (page 80)

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 NY plan does not recognize the disproportionate impact of these conditions on students with disabilities. In fact, it does not discuss strategies

to reduce aversive behavioral interventions at all. This section of the plan should be built up with strategies that reduce aversive behavioral interventions and specifically improve school conditions for students with disabilities, such as inclusive best practices. In addition a discussion of UDL should be added because it is aimed at accessible learning opportunities and reducing frustration that can lead to suspension and aversive behavioral intervention. This is just one of the many ways UDL can be used to improve CA's state plan so that it supports an fair, equitable and high quality education for all students. For more information on UDL and ESSA state plans see <http://www.udlcci.org/policytwo-pagerdraft-2-3-17-update2/>.

Children and Youth who are Neglected, Delinquent, or At-Risk (page 54)

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>) **14%** of students served under Subpart 1 in NY in 2013-14 had IEPs and **41%** of students served under Subpart 2 had IEPs. The NY 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 107)

From pages 107 through 125 the NY draft plan describes the ways effective instruction will be supported. However, students with disabilities are only mentioned a few times in passing. There are no specific initiatives discussed that would improve skills to teach students with disabilities, except for a teacher preparation requirement for three semester hours of study for teachers to develop the skills necessary to provide instruction that will promote the participation and progress of students with disabilities in the general education curriculum.

NY has significantly fewer students with disabilities spending 80% or more of their school day inside a regular education classroom than the nation, particularly for students with intellectual disabilities. Just 6% of NY's students with intellectual disabilities are in general education classroom 80% or more of their school day compared to 15% nationwide. The rate is equally troubling for students with autism – just 25% are in general classrooms 80% or more vs. 40% nationwide. This results in students being segregated from their non-disabled peers and limits their access to the general education curriculum.

To help address this, the plan should provide a commitment to critically important strategies such as promoting UDL implementation and significantly improving the capacity of educators to implement inclusive best practices. Three semester hours of study on promoting progress in the general

education curriculum will not close achievement gaps or provide meaningful inclusive opportunities.

Student Support and Academic Enrichment Grants (page 129)

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 NY draft plan discusses this program from page 129 through page 136. However, in all these pages there is only one reference to students with disabilities, which occurs in the paragraph below.

“Parent consultations are built into the program decision-making process for special education. The Department issued “Special Education in New York State for Children Ages 3–21 A Parent’s Guide” and “Information for Parents of Preschool Students with Disabilities Ages 3-5.” Department-funded Early Childhood Direction Centers provide information and referral services for children with disabilities ages birth through five, as well as professional development and technical assistance for families and preschool providers to improve results for preschool students with disabilities. The Pyramid Model framework includes a module for parents.”

Once again there is no mention of implementing UDL, even though it helps provide 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.

Coordination with Other Programs

ESSA requires that the state plans coordinate with other programs, such those under the Individuals with Disabilities Education Act. NY has a State Systemic Improvement Plan (SSIP) for students with disabilities. As part of its SSIP NY identified a State Identified Measureable Result (SiMR) to “Increase the percent of students with disabilities who score at proficiency levels 2 and above on the grades 3-8 ELA assessments (regular assessment with accommodations, regular assessment without accommodations and the New York State Alternate Assessment).” This draft ESSA plan does not mention the SSIP or SiMR. The next

draft should specifically address how the ESSA plan will support the implementation of the SSIP.

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