



## **Comments on the Virginia Draft of the Every Student Succeeds Act (ESSA) Consolidated State Plan**

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Submitted to [ESSA@doe.virginia.gov](mailto:ESSA@doe.virginia.gov)

These comments pertain to the Virginia ESSA State Plan available at [http://www.doe.virginia.gov/federal\\_programs/esea/essa/proposed-essa-plan.pdf](http://www.doe.virginia.gov/federal_programs/esea/essa/proposed-essa-plan.pdf).

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

### **Overall Comment:**

Despite the importance of this plan, the Virginia DOE did not release the plan for public review until shortly before it underwent first review by the Virginia Board of Education at its meeting of June 22, 2017. Consequently, there have been few meaningful opportunities for public input since the draft's release. The final plan was submitted for VBOE approval on July 27, 2017.

Additionally, there is little evidence that VDOE sought to ensure that the interests of students with disabilities were represented in the stakeholder sessions and work group meetings.

### **Assessments**

Universal Design for Learning. ESSA requires assessments to be developed, to the extent practicable, using the principles of universal design for learning (UDL) (ESEA section 1111 (b)(2)(B) (xiii)) and also requires states to describe in their ESSA plans the steps taken to incorporate UDL, to the extent feasible, in alternate assessments. VDOE did not provide any information regarding UDL for assessment in their state plan. It is recommended that as VA moves forward with their implementation of ESSA that they provide information regarding UDL and assessments to the state plan with regard to alternate assessments, as is required by ESSA law.

Alternate Assessments. ESSA establishes 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 VDOE plan should list the strategies the state will employ to not exceed the 1% cap on alternate assessments. Also, VDOE 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 9)**

### Minimum N-Size (page 9)

VDOE will use an N-size of 30 for accountability purposes (e.g. assessment proficiency and graduation rate) and an N-size of 10 for reporting. VDOE does not address an N-size for calculating assessment participation so it is assumed that an N-size of 30 will be used for this purpose. VDOE should state clearly in its plan the N-size for calculating assessment participation.

The rationale for the continued use of an N-size of 30 for accountability – that a minimum *n* of 30 over 3 years mirrors the number of schools that would be excluded at the minimum *n* of 10 – as illustrated by the table on page 10 – is illogical and confusing. The purpose of an N-size is to include as many schools as practicable in accountability for subgroups on an annual basis. Therefore, comparing data on the percent of schools excluded annually using an N-size of 10 and over a 3-year span using an N-size of 30 is not a justification for the continued use of the unusually large N-size of 30. VDOE should provide data on the impact of various N-sizes (10-15-20-25-30) on an annual basis for the public to truly understand the impact on accountability for subgroups.

Additionally, the plan should provide similar data on the impact of various N-sizes on the graduation rate calculation. Since graduation rate is now an important part of school accountability under ESSA, it is critical for the public to understand how many high schools will be exempt from accountability based on the proposed N-size of 30 for each subgroup. For example, in order to be accountable for the students with disabilities subgroup, a high school would need to have roughly 230 students in the graduating class to meet the threshold of 30 students with disabilities, based

on the overall public school enrollment of 13% students with disabilities. Thus, only high schools with close to 1,000 students will likely be held accountable for the graduation rate of students with disabilities.

ESSA also requires that the state describe how it collaborated with teachers, principals, other school leaders, parents, and other stakeholders when determining such minimum number. The VDOE response to this – that “The minimum *n* was discussed with stakeholder groups on several occasions, including at meetings of the Virginia ESL Supervisors’ Association, the Committee of Practitioners, and the state Board of Education” provides little assurance that, in fact, parents of students with disabilities were consulted regarding N-size and provided with information similar to that discussed above.

### **Long-term goals (page 11)**

#### Academic Achievement

The plan states that “An index, expressed as a combined rate, which integrates proficiency on the state assessment, growth, and EL progress towards gaining proficiency in English, was used to identify baseline data and to calculate interim measures of progress.”

This approach is not permitted under ESSA. The long-term goals and interim measures of progress are to be based ONLY on the proficiency rates in Reading/Language Arts and Mathematics on state assessments. This is clearly stated at Sec 1111(c)(4)(A) and in the Consolidated Plan template used for plan submission.

The plan also fails to provide the baseline data for all students and each student subgroup used to establish the long-term goals and interim measures of progress in Appendix A. The final plan should include the baseline data and goals that are based solely on proficiency on Reading/Language Arts and Mathematics state assessments.

#### Graduation Rate

The plan fails to provide the baseline data for all students and each student subgroup used to establish the long-term goals and interim measures of progress for graduation in Appendix A. The final plan should include the baseline data.

The plan should also make clear how VDOE is calculating graduation rates for the English Learner, Economically Disadvantaged, and students with disabilities subgroups since students move in and out of these groups during their time in the cohort. For example, is VDOE counting any student who, at any time during the cohort, belonged to one of these subgroups or counting student’s subgroup status upon exiting, or some other methodology.

It is also important to point out that VA has increased the 4 year ACGR of students with disabilities by only 6 percentage points over 5 years – from 47% to 53%. See table below.

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

State	2010-2011	2011-12	2012-13	2013-14	2014-15
VA	47	49	51	53	53

Given this slow rate of improvement, it is difficult to understand how VA will increase the 4-year ACGR of students with disabilities by 28 percentage points over 7 years (2018-2019 through 2024-2025) as proposed. Such an increase will require a rate of improvement more than 5 times that achieved between 2010-2011 and 2014-2015.

VA 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. Given the exceedingly rigorous goals set up in the plan, downward adjustments based on actual performance is highly likely which renders the goals meaningless.

Lastly, it should be noted that VDOE has developed a State Systemic Improvement Plan (SSIP) as required by the Individuals with Disabilities Education Act (IDEA) and has prioritized increasing the statewide graduation rate for students with disabilities and closing the graduation gap as its State-identified Measurable Result (SiMR) of its SSIP. ESSA requires that the state plan coordinate with other programs, such those under the IDEA. The SSIP is the major initiative of the VDOE’s Special Education program improvement activities. As such, the SSIP and SiMR should be integrated with the state ESSA plan. (More information on alignment of ESSA and SSIP is available at <https://ncsi.wested.org/news-events/tool-checking-for-alignment-in-every-student-succeeds-act-plans-and-state-systemic-improvement-plans/>)

**Indicators (page 16)**

Academic Achievement:

Under ESSA, the academic achievement indicator measures the proficiency rate on state assessments of reading/language arts and mathematics only.

The U.S. Dept. of Education has advised states that they may include proficiency on Science assessments as a School Quality/Student Success indicator.

The VDOE plan fails to acknowledge the ESSA requirement for 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. The VDOE plan should explicitly indicate that this calculation rate requirement will be honored.

Other academic indicator:

VDOE plans to use value tables derived from SOL test data to calculate student growth is confusing and complex, and will likely hold little meaning for parents.

Graduation Rate:

VDOE should use the ESSA term for graduation rate: the Adjusted Cohort Graduation Rate (ACGR) rather than the term: Federal Graduation Indicator (FGI). This term appears nowhere in ESSA whereas the ACGR is defined for both 4-year and extended year cohorts.

ESSA permits states to develop a state-defined Alternate Diploma for students with the most significant cognitive disabilities who are assessed with the state's Alternate Assessments. The guidelines for the Alternate Diploma are provided in ESSA. Upon earning such a diploma, states are permitted to count such students in the ACGR. Should VA decide to develop an Alternate Diploma as permitted by ESSA, the state should do so with meaningful stakeholder involvement. Some considerations are covered in a technical assistance document at:

<http://nceo.umn.edu/docs/Presentations/StateDefinedAltDiplomas.pdf>

School Quality or Student Success Indicator (SQSS):

VDOE will use chronic absenteeism as the only indicator of school quality/student success. According to the information presented in Appendix A (page 73), students with disabilities and economically disadvantaged students experience the highest rate of absenteeism among VA's students.

In implementing policies around chronic absenteeism, VDOE must be cautious regarding students with disabilities who may experience absences due to health conditions and/or due to receipt of private therapies/tutoring, etc. VDOE should examine the specific causes of absences for students with disabilities, including suspension rates and ensure that neither students with disabilities nor the schools they attend are penalized for legitimate absences.

**Annual Meaningful Differentiation of Schools (page 20)**

The plan does not satisfy the basic requirement of ESSA regarding a system of annual meaningful differentiation. Such a system, under ESSA, must be based on all indicators in the statewide accountability system for all students and for each subgroup of students. Since VDOE has not provided an accountability system based

on all indicators required by ESSA (separately, these are academic achievement, another measure for elementary and middle schools, progress in achieving English language proficiency, high school graduation and an indicator of school quality/student success) the proposed plan cannot be used for the identification of schools in need of improvement as required under Sec 1111(c)(4)(D). VDOE must reformulate the statewide accountability system to comply with ESSA, including how the performance of student subgroups will be factored into differentiation.

### **Weighting of Indicators** (page 20)

The plan does not provide the required information regarding the weighting of indicators. ESSA clearly requires states to provide information on the weighting of EACH indicator in the statewide accountability system. Therefore, VDOE must breakout indicators of academic achievement, growth, and EL proficiency, graduation rate, and chronic absenteeism and provide the weight **each** will be given in the statewide accountability system.

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 21)

The plan states that “Virginia will consider alternative measures of accountability for schools with special populations that are granted alternative accreditation plans under the Standards of Accreditation Section 8VAC20-131-350 (as authorized by the Code of Virginia Section 22.1-253.13:3).” ESSA requires all public schools to be included in the statewide accountability system. Therefore, the VDOE plan should state explicitly how schools that serve special populations will be held accountable.

Preferably, schools with enrollment of students for specific reasons such as alternative schools should send all student data to the school the student would normally attend. The sending school should include student data in their reporting. This approach ensures that sending schools maintain accountability for such students.

### **Identification of Schools** (page 21)

#### Comprehensive Support and Improvement (CSI) (page 21)

Since the plan does not comply with ESSA requirements regarding long-term goals, indicators, weighting, and a system of meaningful differentiation, the plan also fails to comply with ESSA requirements regarding the identification of the lowest-performing five percent of all schools receiving Title I, Part A funds for comprehensive support and improvement.

With regard to the identification of high schools, there is no reason for the plan to state “After the lowest five percent of all Title I schools have been identified for comprehensive support and improvement, ...” The identification of high schools with an ACGR of 67% or less is a separate identification process not dependent upon completion of the identification of the state’s lowest performing 5% of Title I schools. The plan should also state that the identification is any school with an ACGR of 67% or less rather than less than 67%. It is commendable that VDOE will use the 4-year ACGR exclusively for identification for CSI. This ensures that high schools are focused on graduation the vast majority of students in 4 years.

Targeted Support and Improvement (page 21) (Any school with one or more consistently underperforming subgroups):

The VDOE plan provides these definitions for consistently underperforming subgroups:

Consistently Underperforming – for all indicators except FGI: Any school that, one or more years after being identified for additional targeted support and improvement, does not reduce the failure rate by ten percent from the previous year in the subgroup or subgroups for which the school was identified.

Consistently Underperforming – FGI: Any high school that, one or more years after being identified for additional targeted support and improvement due to not meeting the FGI, does not increase the FGI in the 4 year, 5 year, or 6 year rate in the subgroup or subgroups for which the school was identified.

These definitions do not comply with ESSA. The identification of schools for TSI due to one or more consistently underperforming subgroups is separate and distinct from the identification of schools with low-performing subgroups identified for additional TSI.

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 (page 23) (schools with a low-performing subgroup or subgroups):

Use of the “combined rate” to identify schools with one or more low-performing subgroups does not comply with ESSA.

**Annual Measurement of Achievement – (At least 95% Assessment Participation Rate Requirement) (page 24)**

The VDOE plan states that “Schools that do not meet the 95% participation rate will be required to develop a plan that includes strategies for meeting participation requirements. Schools that do not meet the participation rate for three or more years, or that do not demonstrate progress towards meeting the 95% participation rate, will be required to implement additional actions and interventions as appropriate.”

This does not adequately address how the state will factor the annual measurement of achievement into the statewide accountability system. It also does not address failure to assess 95% of one or more subgroups of students, which is a critical requirement of ESSA. Development of a plan does not provide any meaningful penalty for failing to assess at least 95% of all students and every student subgroup. Such a non-punitive approach to a school’s failure to meet this critical requirement is highly likely to lead to schools leaving out significant numbers of those students who historically under-perform on state assessments – the groups that ESSA is intended to assist.

Additionally, the VDOE plan fails to clearly recognize the ESSA requirement regarding proficiency calculation. This requirement, found at Sec. 1111(c)(4)(E)(ii), states:

“For the purpose of measuring, calculating, and reporting on the indicator described in subparagraph (B)(i), include in the denominator the greater of—

“(I) 95 percent of all such students, or 95 percent of all such students in the subgroup, as the case may be; or

“(II) the number of students participating in the assessments.

Simply put, this requirement means that once test participation falls below 95%, schools must count all non-tested students as non-proficient when calculating test proficiency (for all students and every student subgroup). The VDOE plan should explicitly state that VDOE will adhere to this requirement.

We reiterate here our earlier comment regarding N-size. The VDOE should clearly articulate the N-size that will be used for test participation. If the state will use an N-size of 30 for this purpose, it is likely that large numbers of schools will be exempt from failing the test participation requirement.

Furthermore, 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.

VDOE 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 2017, they still provide excellent guidance on many difficult ESSA implementation issues.

### **School Conditions** (page 29)

The plan fails to address how the state will reduce the use of aversive behavioral interventions that compromise student health and safety. This refers specifically to the use of restraint and seclusion in VA schools – a practice which disproportionately impacts students with disabilities. The VDOE should move swiftly to finalize the state regulations regarding the use of restraint and seclusion in VA’s public schools.

### **Children and Youth who are Neglected, Delinquent, or At-Risk** (page 37)

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>) **18%** of students served under Subpart 1 in VA in 2014-15 had IEPs and **22%** of students served under Subpart 2 had IEPs. The VDOE 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 IDEA’s Child Find requirements will be carried out.

### **Supporting Effective Instruction** (page 42)

The Virginia Tiered Systems of Supports (VTSS) should be enhanced with the implementation of Universal Design for Learning. Specifically, 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. For more information on UDL and ESSA state plans see <http://www.udlcci.org/policytwo-pagerdraft-2-3-17-update2/>.

### **Student Support and Academic Enrichment Grants** (page 54)

The VDOE plan should include UDL as one use of funds received under this section.

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