



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

February 10, 2015

The Honorable John Kline  
Chairman, House Education and Workforce Committee  
Washington, DC 20515

Dear Chairman Kline:

We write on behalf of the Education Task Force of the Consortium for Citizens with Disabilities (CCD) to oppose the Student Success Act of 2015 amending the Elementary and Secondary Education Act (ESEA). The Student Success Act does not fully support students with disabilities and in fact, it creates incentives for schools and districts to take students with disabilities, unchecked, off track from having equitable access to and achieving a regular high school diploma.

Currently, under ESEA, students with disabilities, who make up 13 percent of public school enrollment, have been given the opportunity to make progress in many areas. Since parents, teachers, and school leaders have had access to knowledge about how students with disabilities fare academically compared to their grade-level peers, students with disabilities have experienced:

- improved access to the general education curriculum;
- reduced dropout rates;
- increased high school graduation rates in many states; and,
- increased inclusion in general education classrooms throughout the country.

However, despite some progress for students with disabilities, significant achievement gaps persist. A strong ESEA is necessary for students with disabilities to climb the ladder of success to career and college readiness. Only 10 percent of jobs in 2018 are expected to be open to high-school dropouts.<sup>1</sup>

CCD urges Congress to develop legislation that continues to provide meaningful access to rigorous standards for all students and fully includes students with disabilities in our education system. We are pleased that the Student Success Act contains some key provisions that consider the interests of students with disabilities:

- 1) annual assessments in grades 3-8 and once in high school for reading and math;
- 2) disaggregation of data by student categories in current law;
- 3) the 95% student participation rate for all students as well as for student subgroups in annual assessments;

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<sup>1</sup> A. Carnevale, N. Smith, J. Strohl, Help Wanted: Projections of Jobs and Education Requirements Through 2018 at Exec. Summ. 2 (Georgetown Univ. Ctr. on Educ. & the Workforce 2010).

- 4) the use of universal design for learning principles in assessment design as defined in the Higher Education Act of 1965;
- 5) the “parent right to know” provision, requiring that parents be informed that they may request information regarding qualifications of the student’s classroom teacher; and
- 6) provisions on charter schools (Title III) which were supported by CCD in the last Congress.

However, we are particularly concerned with several provisions in the Student Success Act and offer recommendations on how to better serve students with disabilities in a reauthorized ESEA:

- 1) Limit the Alternate Assessment based on Alternate Achievement Standards to 1% of students assessed;
- 2) Ensure that parents are involved in the decision that their child will take an alternate assessment and are informed about any effects that taking the alternate assessment may have on their child’s academic preparation to earn a regular diploma;
- 3) Remove the phrase "to the extent practicable" when talking about students who take an alternate assessment being included in the general education curriculum;
- 4) Use the term “*provide* access to and ensure progress in the general education curriculum for the grade in which the student is enrolled” instead of “*promote* access to the general education curriculum;”
- 5) Require SEAs and LEAs to report results for all subgroups with the only exception being if an “n” size in a cell falls below 10;
- 6) Ensure that students in every state who take the Alternate Assessment based on Alternate Achievement Standards are not precluded from attempting to complete the requirements for a regular diploma;
- 7) Require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets;
- 8) Remove the exception to the definition of regular high school diploma that allows students taking the alternate assessment on alternate achievement standards to be counted as graduates with a regular diploma, even if a student does not actually earn a regular high school diploma;
- 9) Require SEAs and LEAs to intervene when schools or districts identify achievement gaps between students with disabilities and the general population of students;
- 10) Ensure that students with disabilities must be kept on track to graduate high school and have access to the general curriculum;
- 11) Provide support to states and school districts to ensure that teachers have the skills and knowledge necessary to instruct diverse learners;
- 12) Prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety;
- 13) Create grant programs that provide SEAs and LEAs with support to implement school-wide positive behavioral interventions and supports;
- 14) Maintain funding for competitive grant programs support and address the social/emotional, physical and mental health needs of students;
- 15) Eliminate the authorization of “preparation academies” which create separate and lower standards for the preparation of new teachers and leaders; and
- 16) Prohibit the elimination of maintenance of effort provisions.

## **Our rationale for these recommendations is as follows:**

### **ASSESSMENT SYSTEM**

***Alternate Assessments:*** The Alternate Assessment based on Alternate Achievement Standards (AA-AAS) for students with the most significant cognitive disabilities must include a limitation on the number of IDEA-eligible students who can be assigned to this assessment in order to avoid misuse. The number of students who can participate in state assessment systems via an AA-AAS should be no more than one percent of all students assessed. Incidence data reflects that less than one percent of all students have the most significant cognitive disabilities (which correspond to roughly 10% of students with disabilities). Without this limitation, we fear that schools may inappropriately assign students to the alternate assessment. Data show assignment to an AA-AAS may lead to reduced access to the general curriculum and limit a student's access to earn a regular diploma. Many children with intellectual, cognitive, and other disabilities can make grade level achievement with regular assessments, particularly with appropriate accommodations, universal design for learning, and full accessibility.

In addition, parents should be involved in the IEP team decision that their child will be taking an alternate assessment and should be informed of any effect that the alternate assessment may have on their child's academic preparation to earn a regular diploma.

Also, the Student Success Act uses the phrase "to the extent practicable" when talking about students who take an alternate assessment being included in the general education curriculum. This phrase must be eliminated for consistency with the Individuals with Disabilities Education Act (IDEA) as well as to support current case law.<sup>2</sup> Similarly, the Student Success Act uses the term "...promote access to the general curriculum" for students with the most significant cognitive disabilities. CCD urges you to change the term to "provide access to and ensure progress in the general education curriculum for the grade in which the student is enrolled" to ensure complete and consistent alignment with the IDEA and the Individualized Education Program (IEP) requirements.

### **ACCOUNTABILITY SYSTEMS**

***Exceptions to disaggregation of data:*** The bill allows an exception to the disaggregation of student data where "the number of students in a category is insufficient to yield statistically reliable information." This provision has historically been misused by many States which have set a wide variety of "n" sizes (e.g. California's "n" size of 100) as determinants of statistical reliability to avoid reporting school and school district assessment outcomes for students with disabilities. Thus, language regarding disaggregation should be amended to ensure that a substantial percentage of schools and districts within a State are held accountable for all students. The provision should be changed to allow an exception only where "the number of students in a category falls below ten." The National Center for Education Statistics (NCES) recommends that schools and districts use a

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<sup>2</sup> Oberti (3rd Cir.); Rachel H. (9th Cir.), KaD. (9<sup>th</sup> Cir.).

minimum of 10 students for the reporting subgroup size limitation.<sup>3</sup> Whenever possible, results should report the actual numbers of students in the category except where such data would reveal personally identifiable information about an individual student. A subgroup size of 10 students would accomplish this. (See Appendix A for information on the percentage of students with disabilities enrolled in schools held accountable.)

***Addressing Achievement Gaps:*** CCD urges that SEAs and LEAs be required to intervene when schools or districts determine, using the disaggregated data, that there is, or continues to be, a gap between the achievement of students with disabilities and the general populations of students. The transparency of data must be used to trigger additional resources and interventions when achievement gaps occur.

## **GRADUATION**

***Targets and Disaggregation:*** All students – including those with disabilities – must leave high school prepared to succeed in postsecondary education and/or in the workplace. All students with disabilities should be on the path to receive a regular diploma and the vast majority of them should be expected to graduate. No students with disabilities should be denied the opportunity to pursue this achievement. Earnings for an adult with a high school diploma are \$9,000 greater on average than a dropout; earnings for a person with a bachelor's or associates' degree, even higher.<sup>4</sup>

The Student Success Act does not include any requirement that states and districts set graduation goals and/or targets for all students and every category of students, nor does it place any emphasis on graduation in state accountability planning and reporting on use of Title I funds. ESEA must require states to set high school graduation rate goals and annual targets for all students and student categories and require support to be provided if one or more categories do not meet annual targets. If these targets are not set, it is feared that schools will push out low performing students to bolster their school's perceived academic performance.

***Counting students with the most significant cognitive disabilities as graduates:*** The Student Success Act allows States to count students taking the alternate assessment as graduates with a regular high school diploma. States must be required to provide students who take the AA-AAAS with the opportunity to try to meet the requirements for a regular high school diploma in order to improve their opportunities to live independently and be gainfully employed in adulthood.

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<sup>3</sup> National Center for Education Statistics (2010). Statistical Methods for Protecting Personally Identifiable Information in Aggregate Reporting. *SLDS Technical Brief Guidance for Statewide Longitudinal Data Systems (SLDS)*, December 2010, Brief 3.

<sup>4</sup> A. Carnevale, S. Rose, and B. Cheah, *The College Payoff: Education, Occupations, and Lifetime Earnings* at 3 (Georgetown University Center on Education and the Workforce 2011).

## **EDUCATORS**

***Skills and Knowledge:*** Requirements in Title II should ensure that all general and special education teachers have the skills and knowledge necessary to ensure that all general and special education teachers have the skills and knowledge necessary for teaching grade-level content. States must be provided these resources and required to ensure that qualified teachers are available in every school. The Student Success Act also does not provide for the equitable distribution of teachers in high-need schools, which can lead to a disparate impact on low-income students with disabilities. ESEA should provide support to states and school districts to ensure that teachers are profession-ready before becoming the teacher of record, including that they hold a bachelor's degree and demonstrate in-depth content knowledge in their area of licensure; fulfill the requirements of a state-approved preparation program that includes clinical experiences that use models of accomplished practice and instructors with K-12 experience; complete a comprehensive residency program in partnership between a teacher preparation program and a local school district that engages teacher residents in a series of school-based experiences and teaching enrichment opportunities under the guidance of accomplished educators; and demonstrate proficiency through a valid and reliable classroom-based performance assessment. The authorization of "preparation academies" would undermine this standard and should be eliminated.

## **STUDENT HEALTH AND SAFETY**

***Use of restraint and seclusion:*** ESEA should prohibit the use of restraint and seclusion in non-emergencies that do not threaten physical safety, prohibit the use of aversive behavioral interventions that compromise health and safety, and protect all students from physical and mental abuse. An ESEA reauthorization must include supports for SEAs and LEAs to require the use of evidence-based, positive and preventative strategies to promote a positive school culture and climate and keep all students, including students with the most complex and intensive behavioral needs, and school personnel safe. This is also important since research has shown that when schools have a positive school climate and meet the social, emotional and behavioral needs of students, academic achievement improves.

***Social/emotional and mental health:*** Addressing students' social/emotional, physical and mental health needs is critical to ensuring they are prepared to learn. Unfortunately, the Student Success Act consolidates a number of competitive grant programs providing targeted funding to school districts for services and supports that address the whole child, such as the Elementary and Secondary School Counseling Program, 21<sup>st</sup> Century Community Learning Centers, and the Carol White Physical Education. The block grant approach will require school districts to make difficult choices among an array of critical services, resulting in fewer students receiving the supports they need to succeed.

## **FUNDING**

***Maintenance of effort:*** CCD strongly opposes the elimination of the "maintenance of effort" provision. This provision, a cornerstone of ESEA since passage in 1965, requires districts that receive Title I funding to maintain approximately the same spending levels on education from year to year.

Title I funding is designed to help low income and disadvantaged students, including students with disabilities. Without the maintenance of effort provision, states and local school districts will be free to slash education budgets while remaining eligible to receive annual Title I federal funds, thus weakening the power of federal investments to raise achievement for disadvantaged children.

We hope you will give further consideration to the important provisions that we know will help ensure that students with disabilities are held to high standards and have excellent teachers in settings where they are most likely to succeed. We know you share our goal to see that every student has the opportunity to achieve to high standards and be prepared for post-secondary education and careers.

Sincerely,

The Advocacy Institute  
American Association on Health and Disability  
American Congress of Community Supports and Employment Services  
American Foundation for the Blind  
Association for University Centers on Disability  
Autism National Committee  
Autistic Self Advocacy Network  
Bazelon Center for Mental Health Law  
Brain Injury Association of America  
Council for Learning Disabilities  
Council of Parent Attorneys and Advocates  
Disability Rights Education & Defense Fund  
Easter Seals  
Higher Education Consortium for Teacher Education  
Institute for Educational Leadership  
National Alliance on Mental Illness  
National Association of School Psychologists  
National Association of State Head Injury Administrators  
National Center for Learning Disabilities  
National Disability Rights Network  
National Down Syndrome Congress  
National Down Syndrome Society  
Teacher Education Division, Council for Exceptional Children  
The Arc of the United States  
Tourette Syndrome Association

cc: The Honorable Robert (Bobby) Scott, Ranking Member  
The Honorable Cathy McMorris Rodgers, Chair, House Republican Conference  
Members of the House Education and Workforce Committee

The Consortium for Citizens with Disabilities is a coalition of national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families. CCD has worked to achieve federal legislation and regulations that assure that the 54 million children and adults with disabilities are fully integrated into the mainstream of society. For additional information, please contact:

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**APPENDIX A**

SOURCE: The Inclusion of Students with Disabilities in School Accountability Systems - An Update, October 2013, US Dept. of Education

