



Via email to: essa@tea.texas.gov

August 29, 2017

TO: The Texas Education Agency

RE: Comments on the Texas State Plan for Implementing the Every Student Succeeds Act
Amendments to the Elementary and Secondary Education Act of 1965

Thank you for the opportunity to comment on the Texas state plan for implementing the Every Student Succeeds Act (ESSA) amendments to the Elementary and Secondary Education Act (ESEA) of 1965.

Please feel free to contact us at the telephone numbers and email addresses provided below if you would like to discuss our comments further. We would welcome meeting with staff of the Texas Education Agency (TEA) to discuss or clarify our comments.

- Steven Aleman, Disability Rights Texas, 512-454-4816, saleman@disabilityrightstx.org
- Chris Masey, Coalition of Texans with Disabilities, 512-680-6314, cmasey@txdisabilities.org
- Linda Logan, Texas Council for Developmental Disabilities, 512-437-5430, linda.logan@tcdd.texas.gov

We are attaching the joint comments of the National Down Syndrome Congress (NDSC) and The Advocacy Institute (AI), with which we fully agree. We request that the NDSC/AI comments be considered as our own. In addition, many Texas advocacy organizations with which we often partner are also submitting comments. In particular, we are in accord with the theme of the comments by the Texans for Special Education Reform (TxSER) group.

Additionally, we make the following recommendations and observations:

1. TEA has derived this draft plan by simply stating the intersection between the agency's strategic plan and ESSA. Therefore, the directives, purpose, and goals of ESSA are minimized, and the opportunity that ESSA provides to make substantive positive changes in policy and practice to a variety of existing programs in Texas has been lost. In addition, new programs are needed to address ESSA goals, especially in marginalized subgroups, including students with disabilities. In describing current programs, it is no coincidence that many sections in the draft plan provide insufficient details on how the plan will provide a quality education for students or how potential new programs could meet ESSA goals and standards.
2. Based on the introductory narrative to the plan, TEA is planning to continue gathering stakeholder input on this draft for approximately six more months. We respectfully request to be included in any additional opportunities to discuss, better understand, and make further

recommendations on how ESSA will be implemented in Texas. In addition, TEA should make substantive efforts to involve parent groups, education advocacy groups, and other non-educator groups in this process.

3. TEA cites that extensive research and stakeholder engagement were used to create this draft plan. However, we feel that the manner of soliciting and citing stakeholder input for this draft is misleading and therefore inherently flawed. Much of the reported input was made in relation to the agency's strategic plan and not specifically targeted to ESSA. In fact, one of the reports cited was a strategic planning session from 2013 and was specifically designed for educators. Parent and advocate involvement was essentially nonexistent and should have been a greater part of this process.

Regarding TEA's online survey that specifically addressed ESSA and was sent out in December of 2016, we note that while 29,554 individuals responded, the survey was completely answered by fewer than 23,000 people (10,209 parents). Although the cited parental participation is statistically relevant in the context of numbers of total survey respondents, there are more than five million children in public school in Texas. Thus, in the context of total potential parent respondents, the parental response is not robust.

It is unfortunate that the online survey was limited to seven questions (two of which were demographic) with one question about subpopulations. In addition, the time to respond to the survey was limited and school districts did not alert parents via district or individual e-mail.

Parental input unsurprisingly represented only 35% of the total respondents.

Given that the input which TEA receives is often skewed toward districts and educators, TEA should specifically identify the stakeholders involved in developing the state plan and when they were involved. This is valuable because a stakeholder who is a parent of a student with a disability can bring an equally valid, but different, perspective. Likewise, listing the organizations that are considered "advocacy groups" by name will clarify whether the term includes individuals and groups that comprise students, parents, and family members, as well as advocates for their interests. Such specificity would be appreciated whenever TEA describes the process by which its plans, policies, and rules are developed with stakeholder involvement.

4. Dozens of education bills directly and indirectly affecting students with disabilities, their families, teachers, curricula, and services were passed during the regular and first special sessions of the 85th Texas Legislature. Bills included changes to the A-F rating of school districts, efforts to align STAAR testing with ESSA standards (the draft plan references the former testing structure and subject areas), and performance standards for higher education preparation. It would be helpful if the state plan clearly indicated how changes in state education policy arising from legislative changes affect it. If the legislative changes do not affect the plan, a statement to that effect would also be helpful.
5. A more thorough discussion of disparities and disproportionalities in Texas and how TEA intends to address them should be included. The recent identification of large numbers of students with disabilities excluded from special education services, and the passage of legislation prohibiting

arbitrary percentage caps in the future, suggests that this is an appropriate area for expanded discussion and planning.

6. ESSA guidelines address equity for all students in a variety of ways. Equity in services and supports is an extremely important issue to student with disabilities. Typically, students with disabilities face challenges similar to those affecting people of color and people living in poverty. In fact, when a child with a disability comes from a minority or impoverished background, inequities are compounded. While not expressly required in ESSA guidance for the state plan, we strongly feel that TEA could easily collect data pertaining to inequities for students with disabilities. And we strongly urge TEA to add students with disabilities to the recently released Equity Tool Kit to help school districts better allocate resources for all students. By leaving a substantial and historically marginalized subgroup out of a discussion on equity, TEA and districts continue to ignore and underserve students with disabilities. This is a disservice to them and will eventually reflect negatively on district accountability goals. Marginalized groups cannot be academically successful in the current system if they are not included in a discussion of equitable and adequate distribution of resources.
7. Federal officials and advocates for students with disabilities are concerned that many English language learners (ELLs) have been denied special education services inappropriately. The Houston Chronicle states, "Districts have used a range of tactics, from refusing to conduct eligibility evaluations in other languages or accept medical records from other countries to blaming language barriers for problems caused by disabilities ... Many districts have even held trainings to warn teachers that English learners are over-identified in special education, when statistics show the opposite is true."

ESSA says states must identify schools where subgroups of students (such as ELLs and students in special education) are "consistently underperforming" compared to their peers, and it requires Texas schools to improve their efforts to provide eligible ELLs with special education services in identified schools. Evidence suggests that legislative mandates alone will not eliminate the disproportionality experienced by ELLs who are eligible for special education services — linguistic and cultural issues also need to be addressed.

Students with disabilities who are also ELLs must receive both needed services. An appropriate language assessment and educational response must go beyond recognizing the needs of ELLs and must also assess the need for, and provide, special education services.

8. Concerning native language assessments, it is true that Spanish is the only language other than English that is present in more than 10% of the total student population. However, there are areas of Texas in which languages other than Spanish, e.g., Vietnamese, Chinese, and Korean, figure significantly and should be taken into account. In certain districts and schools, a language other than English or Spanish is used by considerably more than 10% of the students. For example, areas of Houston have substantial minority populations who are Asian and who speak a variety of languages. Vietnamese is so predominant in some areas of Houston that street signs are in both English and Vietnamese.

Valid and reliable native language assessments should not be limited to statewide minority populations. Ideally, the decision about when a native language assessment will be used should be made on an individual student basis. If that is not possible, decisions should be made on a per school or per district basis if the student population is an underperforming group that requires additional resources.

9. Concerning the statewide accountability system and school supports, please clarify the following:
 - Are student with disabilities who receive services under Section 504 or the Americans with Disabilities Act, but not under the Individuals with Disabilities Education Act (IDEA), included in the “special education” group? If not, where are their needs addressed in the plan?
 - How are “continuously enrolled” students defined?
 - Are students labelled “Mobile” the same as homeless students? Are they children from migrant farmworker families? Where is this subgroup captured in the state plan?
 - “Performance results for a small number of asylees/refugees in their first through fifth year of enrollment in U.S. schools are not included in accountability performance indicators.” Please explain.

It is not our purpose to painstakingly go through the plan identifying these types of questions for every issue discussed. They are included here to illustrate that these are the types of questions that the draft does not appear to anticipate and therefore does not answer. The plan would be more compelling and effective if efforts were made to make it accessible to individuals who are not TEA employees.

In addition, linking accountability to the ever-changing and controversial STAAR test may create a substantial barrier to explore student progress on a year-to-year basis. It is common knowledge that every two years the Texas Legislature has substantively changed STAAR testing procedures. It is extremely difficult to compare and contrast student success data between districts and it will be impossible to make any national comparisons. In addition, the subpopulation alternative assessment is available only in English. This means that Spanish-speaking students who have disabilities cannot access STAAR Alternate 2, potentially greatly skewing data.

10. Regarding minimum N-size, TEA states “Results for accountability purposes will be reported for any cell that meets accountability minimum size criteria (i.e., All Students—no minimum size criteria; if denominator is less than 10, data are aggregated across three years using uniform averaging; Student Groups—denominator greater than or equal to 25). For the All Students group, the minimum size criteria of 25 or more tests are not applied in order to ensure that campuses and districts with a very small number of students tested are still evaluated for accountability purposes.” Our observations are these:

- The N size for All Students and for Student Group(s) should be the same. This is required by ESSA effective July 1, 2017.

ESEA §1111(c)(3) MINIMUM NUMBER OF STUDENTS.—Each State shall describe—
(A) with respect to any provisions under this part that require disaggregation of information by each subgroup of students—

- (i) the minimum number of students that the State determines are necessary to be included to carry out such requirements and how that number is statistically sound, **which shall be the same State-determined number for all students and for each subgroup of students in the State;**
- (ii) how such minimum number of students was determined by the State, including how the State collaborated with teachers, principals, other school leaders, **parents, and other stakeholders** when determining such minimum number; and
- (iii) how the State ensures that such minimum number is sufficient to not reveal any personally identifiable information.

- The All Students group will always be larger than (or possibly equal to) any given Student Group. If TEA allows for an All Students group of less than 10 to be factored into accountability measures, please explain why a Student Group, which will be smaller (or possibly equal) to the All Students group, must have at least 25 participants. Note that *more than half* (54%) of the special education Student Groups have fewer than 25 participants, thus significantly affecting results and the conclusions that can be drawn.
- It is not necessary to have a participant pool of 25 to protect privacy rights. According to “Best Practices for Determining Subgroup Size in Accountability Systems While Protecting Personally Identifiable Student Information” (Institute of Sciences Congressionally Mandated Report, January 2017), there are eight steps necessary for consideration of setting the N-size. Among these steps are the following:
 - “...the statistical rigor that informed the selection of the minimum N-size should be documented and ***how this minimum number is statistically sound should be described.***”
 - “...the state should identify recommended privacy controls...However, since data in a state’s accountability system will most likely be reported for smaller subgroups of students, additional privacy controls known as **disclosure avoidance techniques** are presented [in the report]. The techniques presented include primary and complementary suppression, ranges, top and bottom coding, and rounding.”

It is recommended that TEA ensure that all eight steps are carefully followed so that Texas maximizes the volume and balance of data on which it will base decisions in the future. Adopting the proposed large N-size numbers for subpopulations would essentially eliminate reporting and accountability for many districts.

- Furthermore, the TEA online ESSA survey did not address important issues such as N-size for reporting and accountability. N-size was addressed for accountability in other reports with educators as the primary stakeholders, and as expected educators were supportive of large N-sizes of 30-50. It is unclear if N-size was discussed in relation to ESSA accountability and reporting.

11. We know that the sooner that a child has access to appropriate developmental and learning opportunities, the better the chance for growth and achievement. This is even truer for students with disabilities, especially developmental disabilities. Thus, we are disappointed that this draft state plan does not fully address early learning. TEA, for example, only mentions improving the percentage of migrant students who are educated in early childhood programs. Reaching and serving more infants, toddlers, and pre-K children with disabilities will establish a foundation for school success and result in the outcomes envisioned by ESSA. The TEA State Plan must step out of the box and include state agency partners, such as the Health and Human Services Commission, for a real plan to coordinate resources and increase the capacity of services like Early Childhood Intervention.
12. We would like to see TEA take advantage of the opportunity to create a more cohesive framework for oversight of and equity in public education in Texas. On a basic level, it seems that many of the questions posed in the federal template are unanswered. TEA may wish to compare its draft state plan to the peer review standards that are used to evaluate applications.¹ We urge you not to consider this draft as the final product for submission.

In conclusion, in its current form this draft appears to be more a loose collection of current program descriptions rather than a cohesive and coherent plan. As such, it has systemic flaws; lacks important information; has not been updated to reflect recent changes in state law; lacks uniformity with, and responsiveness to, ESSA guidelines; is devoid of vital parental and subpopulation input; and does not communicate a strategy by which ESSA could help guide Texas to better address major problems in its public education system.

We strongly believe that the six-month period for further stakeholder input can be used to address these issues in a meaningful and forward-looking way. The state plan will benefit from a better effort to address subpopulations, specifically align current programs with ESSA, and create new programs where programs do not exist or are deficient. If written to be understandable by people who are not education professionals, it will also serve as a useful public information tool.

Thank you for the opportunity to comment. We look forward to participating in further discussion of the issues addressed in the plan.

Attachment

¹ <https://www2.ed.gov/admins/lead/account/stateplan17/essastateplanpeerreviewcriteria.pdf>.