



August 1, 2016

Ms. Meredith Miller
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2016-OESE-0032

Dear Ms. Miller:

On behalf of the 1 in 5 children with learning and attention issues and their families, which is approximately 15 million children ages 3-20 in our country, the National Center for Learning Disabilities (NCLD) appreciates the opportunity to respond to proposed Title I regulations regarding State accountability systems, State plans, and State and Local Educational Agency Report Cards within the Elementary and Secondary Education Act, now known as the Every Student Succeeds Act (ESSA).

As you know, *learning and attention issues* are brain-based difficulties that cover a wide range of challenges children may face in school, at home and in the community. Children with learning and attention issues may have trouble with reading, writing, math, organization, concentration, listening comprehension, social skills, motor skills or a combination of these. Often, these challenges are identified as learning disabilities, dyslexia, dysgraphia, dyscalculia, executive functioning, and Attention Deficit Disorder/Attention Deficit Hyperactivity Disorder, but the term also includes children who are struggling in these areas and have not been formally identified.

As a parent-founded and parent-led organization, NCLD's mission is to improve the lives of these 1 in 5 children by empowering parents, transforming schools and advocating for equal rights and opportunities. Research confirms that when provided the right services and supports, children with learning and attention issues can and do thrive in school and life.

In fact, whether they have an identified disability or not, most students with learning and attention issues spend the majority of their school day in the general education classroom, making the implementation of ESSA critical to their success. Over the last decade, outcomes for students with learning and attention issues have improved in many areas. In 2014, graduation rates for students with learning disabilities reached an all-time high. While we celebrate these gains, we recognize that pervasive challenges continue to exist in our educational system. Large achievement gaps exist for students with disabilities, general educators are rarely prepared to meet their needs, and too few enroll in and graduate from postsecondary education.

The Every Student Succeeds Act provides an opportunity to improve outcomes for the 1 in 5 children with learning and attention issues. The U.S. Department of Education has an important role in helping ensure that schools meet ESSA's purpose of "*providing all children with significant opportunity to receive a fair, equitable, and high-quality education, and to close achievement gaps.*"

With this in mind, NCLD respectfully offers the following feedback on the proposed regulations. NCLD's comments focus on two primary themes:

- (1) Supporting the creation and implementation of State accountability systems that include all students, focus on improving academic outcomes, and are transparent and easy for parents to understand; and
- (2) Promoting innovative approaches to teaching and learning that embody the principles of personalized learning.

In addition, we have provided general and specific recommendations, and conclude with specific responses to selected questions posed by the Department in the preamble of the proposed regulations, not addressed in other areas of the response.

NCLD'S GENERAL RECOMMENDATIONS

EMPHASIS ON STAKEHOLDER ENGAGEMENT

NCLD Recommendation: Retain all of the proposed provisions in the final ESSA regulations that require stakeholder engagement, including but not limited to provisions relating to State Report Cards, LEA Report Cards, State Plans, 95% participation rate, and Identification of Schools (including both schools receiving Comprehensive and Targeted Support and Improvement).

Additionally, the final regulations should align to Secretary King's Dear Colleague letter issued on June 23, 2016 which outlines specific recommendations to remove barriers and provide strategies for meaningful stakeholder engagement.

Lastly, the Department should expand the list of stakeholders in the final regulations to consistently specifically name Specialized Instructional Support Personnel to ensure all professionals in schools are engaged.

Rationale: NCLD strongly believes that developing partnerships between stakeholders, educators and policymakers will be critical to the successful implementation of ESSA. However, these partnerships cannot be formed unless all stakeholders are meaningfully engaged and included in the process.

NCLD appreciated Secretary King's Dear Colleague letter issued on June 23rd which provided concrete examples to enhance stakeholder participation, such as by holding meetings or hearings at varying times during the day, including after the work or school day or on the weekends and, if possible, offering child care, so that working parents, teachers, school leaders, and other professionals are best able to participate.

ENSURING PARTICIPATION OF STUDENTS WITH DISABILITIES IN ASSESSMENT & ACCOUNTABILITY SYSTEMS

NCLD Recommendation: Retain all of the 95% participation rate requirements outlined in the proposed regulations in the final ESSA regulations.

Rationale: NCLD strongly supports requirements referencing the 95% participation rate requirement in the proposed regulations because this inclusive policy resulted in families, educators, and policymakers receiving information about the academic achievement of students with disabilities for the first time.

Before the 95% participation rate policy was implemented, only one state – Kansas – tested 95% or more of their students with disabilities in the 2000-2001 school year, according to the National Center for Educational Outcomes. By 2005, after the 95% participation rate requirement was implemented, 46 states and the District of Columbia reformed their practices and included students with disabilities at this rate.

Improving outcomes for students with disabilities – including providing schools with the support needed to implement evidence based practices – starts by having actionable data.

NCLD'S SPECIFIC RECOMMENDATIONS

PROMOTING TRANSPARENCY ABOUT SCHOOL PERFORMANCE FOR FAMILIES, EDUCATORS AND POLICYMAKERS

NCLD Recommendation: Retain §200.18(b)(3) and (4) which describe the process for meaningful differentiation between schools that provides the public with both an overall summative school rating and information about how a school performed on each indicator within its accountability system, as measured for all students and each subgroup.

Rationale: NCLD believes the goal of a State accountability system should be rooted in transparency. Accountability systems should recognize the value of providing the public with both a summative rating as well as information about how all students and subgroups of students fared on individual indicators and also allow families, educators and policymakers to have a more complete understanding of how schools are serving students, where support is needed, and where students are thriving.

It is important that both the summative rating and the performance on individual indicators be presented to the public together, as they represent equally important analyses of school performance. Furthermore, it is important for the public to be informed of how summative ratings were derived, including how individual indicators were weighted, in a clear and easy-to-understand way. By being explicit and transparent about the methodology used to construct a summative rating, the public can gain a sense of how the school and school district are prioritizing indicators and focus areas and better understand what is valued in their school.

Most importantly, an accountability system must prompt swift action and meaningful improvement in schools where all students or any subgroup of students are underperforming. Furthermore, an accountability system should reinforce the importance of improving academic outcomes for all students and student subgroups.

Indeed, the ESSA statute was clear that certain indicators must be a more significant factor in the State accountability framework than others. In fact, the statute goes into great detail to describe the relationship between the indicators and how they should be 'weighted' in the accountability system. The proposed regulations operationalize the framework outlined in the statute by including summative ratings for schools and reinforcing the need to disaggregate subgroup performance on each of the indicators.

EMPHASIZING INDICATOR(S) OF SCHOOL QUALITY AND STUDENT SUCCESS ARE TO BE LINKED TO IMPROVING ACADEMIC ACHIEVEMENT

NCLD Recommendation: Retain §200.14(d) which states:

"(d) A State must demonstrate in its State plan that indicators of Academic Progress and School Quality or Student Success are supported by research that performance or progress on such measures is likely to increase student achievement or, for measures within indicators at the high school level, graduation rates."

Rationale: NCLD recognizes that the ESSA statute allows State accountability systems to include – along with several academic indicators – an indicator of school quality or student success. This additional indicator, when chosen carefully and implemented well, can provide actionable information to families, educators and policymakers that can help improve educational outcomes for all students, including students with disabilities.

To help ESSA meet its goal "to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps," it is important that this additional indicator be supported by research showing how the indicator is connected to improving academic achievement and graduation rates, and it must be able to withstand the significant – sometimes unintended – consequences of being included in an accountability system, rather than being used simply for reporting purposes.

ENSURING CONSISTENTLY UNDERPERFORMING SUBGROUPS PROMPT TIMELY ACTION TO IMPROVE ACHIEVEMENT

NCLD Recommendation: The final regulations must be written in a way that assures a State definition of "consistently underperforming subgroups" will: (1) appropriately identify student subgroups that are underachieving; and (2) spur timely action to implement evidence-based interventions to improve academic achievement of such subgroups.

Rationale: Over 6 million students with disabilities are being educated in schools across the country. In many instances, students with disabilities are underperforming in schools where students without disabilities are performing adequately. To address such situations, the final

regulations must reinforce the importance of providing targeted support and improvements to schools where any subgroup of students is underperforming, with the goal of supporting schools to improve student achievement.

NCLD Recommendation: Retain §200.19(c)(1) which states that a State's methodology for determining "consistently underperforming subgroups" must consider the school's performance over no more than two years.

Rationale: NCLD strongly supports a robust methodology for identifying "consistently underperforming subgroups." A State's methodology should reinforce the notion of timely recognition of student subgroups that are underachieving. Building an accountability system that promotes this timely recognition – such as over the course of two years, as noted in 200.19(c)(1) – should result in actions, support, and evidence-based practices to increase student achievement.

NCLD Recommendation: Revise §200.19(c)(3) by requiring those States that select (c)(3)(iii) and (c)(3)(iv) from the list of methodologies for defining 'a consistently underperforming subgroup of students' to also take into account (i) a subgroup of students that is not meeting the State's measurements of interim progress or is not on track to meet the State-designed long-term goals under §200.13.'

Rationale: This revision would ensure States do not rely solely on a relative comparison to define 'underperformance' for subgroups. The importance of getting the methodology right for 'consistently underperforming subgroups' cannot be overstated. Not only does it provide transparency, but it is the mechanism within ESSA that prompts targeted resources for schools to develop and implement a plan to improve achievement.

Specifically, NCLD believes, in determining whether student subgroups are underperforming, it is important for States to consider: (1) whether the subgroup is meeting the State defined long-term goals and interim progress measures; and (2) the performance of the subgroup in relation to higher performing groups of students.

By considering only how subgroups of students are performing relative to other students without also taking into account whether they are meeting/missing the State defined long-term goals and measures of interim progress, numerous unintended consequences can occur. These unintended consequences include providing perverse incentives for States in establishing truly ambitious long-term goals and interim progress measures. It could also result in creating a scenario where "underperformance" is only shown when achievement levels are extremely low. By using this relative comparison to define 'underperformance' there is a real possibility that student subgroups who are truly underperforming will not be identified simply due to poor methodology, not because they are thriving. The "masking" impact of such a methodology that relies solely on a comparison – rather than performance-based meeting/missing State-established long-term goals and interim progress measures – has the potential to reverse the decades of progress that have been made to increase transparency of student achievement and spur action when any subgroups of students are not achieving.

NCLD Recommendation: Modify §200.24(c)(4)(i) to allow LEAs to determine which schools – among those identified for comprehensive support and improvement and those identified for targeted support and improvement – will receive funding during circumstances of insufficient school improvement funds to award a grant of sufficient size to each LEA that submits an approvable application.

Rationale: NCLD recognizes the important role of investing in all schools that are identified for both comprehensive support and improvement as well as all schools identified for targeted support and improvement. Adequate investments are necessary to create, implement and monitor comprehensive and targeted improvement plans. During circumstances where States have insufficient funding to support all such schools, NCLD believes that the LEA should have the ability to decide how they fund comprehensive and targeted improvement schools.

ENSURING ALL STUDENTS ARE COUNTED IN ASSESSMENT, ACCOUNTABILITY, REPORTING SYSTEMS

NCLD Recommendation: Modify §200.17(a)(2)(iii) to read:

“(iii) Must not exceed ~~30~~ 10 students, unless the State provides a justification for doing so in its State plan under section 1111 of the Act consistent with paragraph (a)(3)(v) of this section;”

Equally important, the Department should retain the requirement that States must submit information regarding the number and percentage of all students and all student subgroups for whose results schools would not be held accountable in the accountability system.

Rationale: The cornerstone of ESSA is to ensure every student has the opportunity to receive a high quality education. To achieve this goal, students must actually be counted and recognized in order to be visible within the educational system. This transparency ensures that families, educators and policymakers know how all students and subgroups of students are faring and can spur action, interventions and supports to increase achievement.

At the crux of this transparency is ensuring States establish an appropriate “n-size”. By setting an upper limit n-size of 30, the proposed regulation will strongly suggest to States that 30 is an acceptable minimum group size when, in fact, there is little evidence to support this. Under the No Child Left Behind Act, many states set n-sizes higher than necessary to avoid the consequences of missing Adequate Yearly Progress. A report referenced by the Department in its proposed regulations specifically noted that “while raising the minimum n-size is an effective means of increasing the passing rates of schools, it does so at a considerable cost to special education students in terms of being excluded from the accountability system.” [Page 34553]

In order to ensure that, to the maximum extent practicable, each student subgroup is included in the accountability system, the Department should lower its proposed N-size from 30 to 10 students in the final regulations. Even at a level of 10, subgroups of students in many schools will not be counted and recognized, no matter how poorly they may be faring.

NCLD Recommendation: Retain §200.16(a)(2) related to subgroups of students which specifically requires that States measure performance on each indicator, differentiating schools for all students and for each subgroup, separately.

Rationale: In alignment with the statute, the regulation must prohibit States from measuring the performance of a super-group of students in place of individual student groups.

In recent years, as more and more States have been designing their own accountability systems, many have chosen to base their school ratings either solely on school-wide average performance or on schools' performance for students overall and for a super-group of students. As a result, in most States, school ratings tell parents and community members little about how schools are performing for individual groups of students. Schools that are doing fairly well on average, but are poorly serving, for example, students with disabilities, are allowed to ignore this underperformance.

HIGH SCHOOL GRADUATION RATE

NCLD Recommendation: Delete the following text within §200.34(c)(2), the definition of "regular high school diploma":

"(2) "Regular high school diploma" means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E) of the ESEA, as amended by the ESSA; and does not include a general equivalency diploma, certificate of completion, certificate of attendance, or any similar or lesser credential, such as a diploma based on meeting individualized education program (IEP) goals that are not fully aligned with the State's grade-level academic content standards."

Rationale: NCLD strongly urges the Department to delete the language indicated above because it causes the unintended consequence of allowing a 'regular high school diploma' to be defined to include a diploma that is based on meeting IEP goals that are fully aligned with the State's grade-level academic content standards.

Awarding a regular high school diploma based on whether a student has met his or her IEP goals – whether they are aligned to grade-level standards or not – is wholly inappropriate for the following reasons:

- IEPs are not designed to be qualifying documents for obtaining a regular high school diploma. Rather they are intended to be child-centered documents individually developed to provide information on specific goals, special education and related services, and needed accommodations.
- IEPs often do not include goals aligned to every standard that might be appropriate for graduation. Additionally, it is very likely a goal could be based on a standard, but still not reflect what the student would need to meet the graduation requirement.

- It would revert back to a time when the performance of students with disabilities was based solely on whether or not they met their IEP goals, which has resulted in a lowering of expectations and goals for students with disabilities.

NCLD Recommendation: Delete § 200.34(e)(4)(ii):

“(ii) Annually update the four-year adjusted cohort graduation rates, and, if adopted by the State, extended-year adjusted cohort graduation rates reported for a given year to include in the numerator any students with the most significant cognitive disabilities who obtain a State-defined alternate diploma within the time period for which the State ensures the availability of a free appropriate public education.”

Rationale: See recommendation and rationale immediately below.

NCLD Recommendation: Add subsection (f) to § 200.34 to require States and LEAs to disaggregate the number and percentage of students with disabilities reported in the four-year adjusted cohort graduation rate (ACGR) into two categories:

- Those students with disabilities earning a regular high school diploma at the conclusion of their fourth year, or during a summer session immediately following their fourth year; and
- Those students with the most significant cognitive disabilities earning a state-defined alternate diploma, as defined in Sec. 8002(23)(A)(ii)(I)(bb) of ESSA, within the time period for which the State ensures the availability of a free appropriate public education under section 612(a)(1) of the Individuals with Disabilities Education Act (20 U.S.C. 1412(a)(1)).

Rationale: The proposed regulations spell out a rather complex manner in which students with the most significant cognitive disabilities who are awarded the state’s alternate diploma are to be reported in the ACGR.

Together, these changes will have the effect of allowing students with the most significant cognitive disabilities awarded an alternate diploma that meets statutory criteria to be counted as a four-year graduate at the conclusion of the year in which the diploma is awarded (or during the summer session immediately following).

At §200.34(e)(4), States are directed to annually update the ACGR reported for a given year to include any students from the same cohort (i.e., started 9th grade together) who obtain the alternate diploma. Recognizing that most students taking the alternate assessment based on alternate achievement standards and who are eligible for a state’s alternate diploma will in all likelihood “age out” of services under the IDEA (generally at age 21), this provision would typically mean States would go back 3-4 years to make the appropriate data entry and, thus, “adjust” their four-year ACGR.

While it can be understood that, in theory, this reporting procedure results in students earning an alternate diploma upon exiting being counted as a four-year graduate in their appropriate cohort (i.e., the cohort in which they began 9th grade), the result is that States, districts and high schools will only get credit for such students retroactively. More importantly, decisions regarding high school graduation rates – including whether the school graduated at least 67%

percent of its students in four years, met or did not meet the state measurements of interim progress for graduation rates, and has a consistently underperforming subgroup – are made on the latest (i.e., most current) four-year ACGR data.

We believe the legislative intent of the provision allowing students awarded an alternate diploma to be counted as four-year graduates in the ACGR was to allow States, districts, and high schools to take credit in the most recent year – not 3-4 years later. This would mean that when a student was awarded his or her alternate diploma, the student would be counted in the four year ACGR data for that year, and not for the actual cohort year in which he or she was an original member (i.e., typically 3-4 years earlier.) While allowing such students to count in the most recent ACGR would result in a somewhat inaccurate reporting with regard to their precise “cohort,” we believe this would more accurately reflect legislative intent. Furthermore, it would provide an incentive for States to develop an alternate diploma that meets the statutory requirements and would also discourage schools from inappropriately ending IDEA services to students earlier than their rights under IDEA allow.

PROMOTING PERSONALIZED LEARNING SYSTEMS AS A SCHOOL IMPROVEMENT MODEL

NCLD Recommendation: Modify § 200.21(d)(3) explicitly clarify that Comprehensive Support and Improvement Plans may include and school improvement funding may be used to support the creation, expansion, or improvement of personalized learning environments, including expanded learning opportunities that provide academic tutoring, mentoring, apprenticeships, career exploration, and family supports for learning at home.

Rationale: Personalized learning is a practice that holds the promise of truly customizing education to meet every child’s learning needs. Creating learning environments where the needs of all students are met is more important now than ever, when more than 60% of students with disabilities (ages 6 through 21) spend 80% or more of their day in the general education classroom.¹ Personalized learning allows students with disabilities to be educated in a general education environment while also receiving many supports and tailored interventions that address their needs. Given the potential of personalized learning to transform the education for all students, including the most underserved students, elements of personalized learning should be incorporated into the framework established by ESSA, particularly within Comprehensive Support and Improvement Plans as an evidence-based strategy for improving student achievement.

NCLD Recommendation: Modify § 299.19(a); to specifically reference personalized learning strategies and expanded learning time strategies, which allow educators to meet students where they are and more effectively support their academic progress.

¹ United States Department of Education (2014). Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act, 2014. “Educational Environments for Students Ages 6 Through 21 Served Under IDEA, Part B,” Exhibit 27 (page 43). Available online at: <http://www2.ed.gov/about/reports/annual/osep/2014/parts-b-c/36th-idea-arc.pdf>

Rationale: Personalized learning is a school-wide approach to learning that begins with understanding each learner's interests, strengths, and challenges. By customizing the educational experience for each student, students can then pursue and achieve high standards in the way that works best for them. Personalized learning can serve as an effective framework to help educators provide specialized instruction tailored to students' unique strengths and challenges and foster an environment that is engaging for all students. As such, personalized learning and expanded learning time should be part of each State Plan, as they are strategies that can ensure all students meet State challenging academic standards in an environment that wholly supports student learning and provides access to well-rounded education and rigorous coursework for all students.

STATE & LEA REPORT CARD

NCLD Recommendation: Modify § 200.30 Annual State report card to include the following information related to the minimum subgroup size: *"The number and percentage of all students and students in each subgroup for whose results schools are not held accountable in the State accountability system for annual meaningful differentiation."*

Rationale: NCLD believes the final regulations should require annual State report cards to be transparent about information related to subgroups of students who were not included in the State accountability system for meaningful differentiation. By adding this information to the State report card, the public will have greater access to transparent information critical to understanding the how subgroups are included in accountability systems.

NCLD Recommendation: Modify § 200.31 Annual LEA report card to include the following information related to the minimum subgroup size:

- The number and percentage of all students and students in each subgroup for whose results schools in the LEA are not held accountable in the State accountability system for annual meaningful differentiation;
- The number and percentage of schools in the LEA not held accountable for one or more subgroup of students in the state accountability system.

Rationale: NCLD believes the final regulations should make clear that this information must be provided for all students and for each subgroup of students required under § 200.16 (a)(2).

ENGLISH LANGUAGE PROFICIENCY

NCLD Recommendation: Modify §200.13(c)(2)(ii) to add a new (F) "disability."

Rationale: A student's disability (as identified under the Individuals with Disabilities Education Act or Section 504) can have a significant impact on the student's ability to achieve proficiency in English and should therefore be one of the listed characteristics for consideration.

STATE PLANS

NCLD Recommendation: Modify §299.19(a)(1)(vi) to read: *“The accurate identification of English learners and children with disabilities, including the early identification of children with disabilities.”*

Rationale: NCLD recognizes the compelling body of research that has demonstrated the importance of identifying disabilities early in a child’s educational experience.

Often, there are early indicators of a child’s disability that go unrecognized in the early elementary school years that are only formally addressed in later elementary school or even middle or high school. By recognizing these challenges early and providing the necessary evidence-based services and supports, children can continue their education with a stronger foundation in the skills needed to be successful.

NCLD Recommendation: Add new §299.19(a)(1)(viii) to read: *“The implementation of Universal Design for Learning principles for the education of all students.”*

Rationale: Universal Design for Learning (UDL) is a set of principles for curriculum development that removes barriers and provides every student with the ability to learn and demonstrate their knowledge in a way that works best for them. UDL gives every student the opportunity to learn. As such, UDL is especially important for students with disabilities, who often need multiple methods of instruction and performance to show what they know or may need content presented in a different way than other students. UDL is a framework that is necessary to ensuring all students opportunity to meet challenging State academic standards and attain a regular high school diploma. By including UDL in a State’s Plan, it would not only help schools better meet the needs of all students but State plans would be aligned with other initiatives and provisions within ESSA that incorporate UDL.

NCLD Recommendation: Amend §299.18(a)(2) to read: *“The State’s System to ensure adequate preparation of new educators, particularly for low-income, ~~and~~ minority students, and students with disabilities.”*

Rationale: Students with disabilities rely on access to well-prepared educators who can understand and address their unique learning needs. According to the 2015-2016 Nationwide Listing of Teacher Shortage Areas by the Office of Postsecondary Education² within the U.S. Department of Education, nearly every state has a shortage of special education teachers. Furthermore, most general educators lack the professional preparation to adequately address the needs of students with disabilities, which is seriously concerning considering that most students with disabilities spend the majority of their school day in the general education classroom.

² U.S. Department of Education, “2015-2016 Nationwide Listing of Teacher Shortage Areas by the Office of Postsecondary Education.” Available at: <https://www2.ed.gov/about/offices/list/ope/pol/tsa.pdf>

NCLD Recommendation: Amend §299.18 (b)(iv) to read: *"Provide low-income, ~~and~~ minority students, and students with disabilities greater access to effective teachers, principals, and other school leaders..."*

Rationale: Students with disabilities are one of the lowest performing subgroups, despite the evidence-based strategies that exist to increase their academic achievement. It is critical that this student population have equal access to effective, experienced educators who can meet their needs. This starts with leadership from the State level and building a structure to support educators in gaining the knowledge and expertise to address the needs of students with learning and attention issues.

NCLD'S RESPONSES TO QUESTIONS POSED BY U.S. DEPARTMENT OF EDUCATION IN PROPOSED REGULATIONS

QUESTION 1: IDENTIFYING "CONSISTENTLY UNDERPERFORMING" SUBGROUPS OF STUDENTS

Please see NCLD's response above (beginning on page 4) related to "consistently underperforming subgroups."

QUESTION 2: ADDRESSING LOW ASSESSMENT PARTICIPATION RATES IN SCHOOLS

Please see NCLD's response above (beginning on page 3) to 95% participation rate.

QUESTION 4: COUNTING STUDENTS WITH DISABILITIES WHO HAVE EXITED FROM SPECIAL EDUCATION IN THE DISABILITY SUBGROUP

NCLD Recommendation: NCLD encourages the Department to count in the disability subgroup students with disabilities who have exited special education only for the school year in which they exit. For each subsequent school year that a student with a disability is not receiving special education, the student should be counted with all students, as well as within any other relevant subgroup (e.g., economically disadvantaged).

Rationale: NCLD believes that students no longer needing special education services should no longer be included in the disability subgroup, defined as students with disabilities receiving services under the Individuals with Disabilities Education Act. However, for reporting ease, NCLD supports the notion that students exiting special education in the middle of a school year may still be counted in the disability subgroup for the school year in which they exited.

**QUESTION 5: STANDARDIZED CRITERIA FOR STUDENTS WITH DISABILITIES
WITHIN THE ACGR**

NCLD Recommendation: The criteria for students who should be reported in the ACGR “students with disabilities” subgroup should be standardized. A two-fold criteria is recommended. Only students meeting both of the following criteria should be reported:

- The student was a student with a disability as defined in 602(3) of the Individuals with Disabilities Education Act at the time of being awarded a regular high school diploma and
- The student was a student with a disability as defined in 602(3) of the Individuals with Disabilities Education Act for the majority (i.e., more than 50 percent) of their time in the cohort.

Rationale: These two-fold criteria will ensure that the ACGR for the “students with disabilities” subgroup is representative of the achievement of students receiving services and supports under the IDEA and is comparable across States. It will also align, to some degree, with the data collection under Section 618 of the IDEA for exiting students, which is being used in the Department’s Results Driven Accountability Initiative. Lastly, it will guard against students being identified as a student with a disability for short periods of time (such as just prior to exiting) in order to inflate the ACGR for this subgroup.

In closing, NCLD appreciates the opportunity to provide feedback on critical areas of the ESSA proposed regulations that will impact the 1 in 5 children who have learning and attention issues and their families. NCLD looks forward to continuing to be a vocal advocate for students with learning and attention issues as the regulatory and implementation process unfolds.

We stand ready to work with the Department and States across the nation to ensure they are implementing measures that will help all students with disabilities achieve their full potential. If you should have any questions please contact me at ljones@ncl.org or (202) 628-2662.

Sincerely,



Lindsay E. Jones, Esq.
Vice President, Chief Policy & Advocacy Officer
National Center for Learning Disabilities