



March 13, 2017

Colorado Department of Education
Federal Programs Unit
1560 Broadway, Suite 1100
Denver, CO 80202-5149
Via Survey Upload Only

Angela Denning
Executive Director of Special Education
Colorado Department of Education
Exceptional Student Services
1560 Broadway, Suite 1100
Denver, CO 80202-5149
denning_a@cde.state.co.us
Via Email Only

Re: Comments on ESSA State Plan

Dear Ms. Denning and Federal Programs Unit,

This letter serves as Disability Law Colorado's comments on issues critical to students with disabilities as they are addressed in the ESSA State Plan draft. The page numbers referred to in this document reflect the page number noted on the bottom of the pages of the pdf version of the full ESSA State Plan (not the pdf page number). Citations are to 34 CFR Part 200.

1. Section 2 Consultation and Performance Management (page 10)

Consultation: There are no disability groups on the ESSA Hub committee or on other committees. The plan mentions advocacy and civil rights groups, but there is no mention of specific outreach to the disability community except "email blasts to groups representing historically underserved students such as English learners and students with disabilities."

Please consider including language in the regulations that invites groups consisting of professionals and parents who have specific knowledge relating to the needs of students with disabilities in school.

2. Section 3 Academic Assessments (page 38)

ESSA requires states to define “students with the most significant cognitive disabilities” for IEP team guidance on making decisions about which students will participate in the state’s alternate assessment aligned with alternate academic achievement standards. Also, ESSA sets a cap on the number of students who may participate in an alternate assessment in the state at 1% of all students in the assessed grades (combined).

The Colorado plan should clearly define students with the most significant cognitive disabilities and implement strategies that the State will use to not exceed the 1% cap on alternate assessments. In order to achieve this, the State should consult with specialists who work with children with disabilities, including those who specialize in teaching methods that focus on children with significant cognitive disabilities.

It is also 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.

3. Identification of Schools (page 62)

Comprehensive Support and Improvement (“CSI”)

ESSA requires schools to be identified for CSI if they are the lowest performing 5% of Title I schools, high schools that graduate 67% or fewer of their students (based on 4 year ACGR rate), and Title I schools that have been identified as having one or more low performing subgroup(s) for a state-determined number of years.

Colorado’s plan states “Colorado will annually identify all public schools with a four-year, plus the extended year, graduation rate below 67% for Comprehensive Support and Improvement, in alignment with the graduation rates used in the statewide accountability system. Colorado honors and recognizes high schools that continue to work with students that need additional time to graduate (for example, students with disabilities, dually enrolled students) as well as high schools that are based on a five-year plan, where students graduate with an associate’s degree. Therefore, Colorado will utilize the discretion afforded states to add the use of extended year graduation rates in the accountability system.”

This violates the ESSA requirement that only the 4-year ACGR is to be used to identify CSI schools.

Schools stay on the CSI list for three years, even if student performance improves. Exit from CSI can happen after 3 years if a school no longer meets identification criteria, otherwise there are more rigorous interventions.

These are strong exit requirements.

Targeted Support and Improvement (“TSI”)

ESSA requires schools to be identified for TSI if one or more subgroups are “consistently underperforming” (a term not defined in statute) or are low-performing (with performance at or below that of all students in the lowest performing 5 percent of Title I schools in the state).

Colorado’s plan says “Consistently underperforming is defined as earning the lowest rating on all specified indicators for a given student group based on aggregated three year performance, when the student group meets the minimum N for that indicator.”

We recommend “consistently” mean two years, not three. In addition, students should be considered underperforming before the subgroup earns the lowest rating on all indicators. In addition, Colorado should clarify what it means when it says the subgroup must meet the minimum N size for the indicator. As we stated earlier, Federal regulations state that the N size must be the same for all indicators. The chart on page 54 does not comply with this requirement.

Low-performing subgroups: three years data will be used for identification because of N size issue. Schools that continue to have low-performing subgroups will be identified for additional targeted support after 3 years. After 4 years of additional targeted support, the schools that still have low-performing subgroups will be identified for CSI (if they are Title I schools).

This is a long time for students in these subgroups to wait for their school to be identified for CSI, which comes with far more funding for support and improvement activities than TSI schools receive.

4. State Support and Improvement Resources and Technical Assistance (page 65)

Please add specific references to technical assistance and state support for students with disabilities in this section of the plan.

5. Educator equity (page 72)

In the interests of equity, Colorado should consider data collection for students with disabilities regarding out of field, inexperienced and ineffective teachers, even though this data is only required under ESSA for minority and low-income students.

6. Section 6 Supporting All Students (page 80)

The section on students with disabilities consists merely of a description of the Exceptional Student Services Unit (page 91).

Colorado should consider adding a discussion of plans for Universal Design Learning (“UDL”) implementation and efforts to increase inclusive opportunities in the Supporting All Students part of the plan.

On page 93, the plan discusses 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 even though they are over-represented in correctional facilities. Colorado should state specifically how it will ensure that students in such facilities are provided with special education and related services as needed, as well as how child find will be carried out.

On page 94, in the section where Colorado is supposed to say how it will reduce bullying, expulsions and aversive behavioral interventions all it says is: “Colorado will use funds to support a portion of an FTE to provide supports to LEAs regarding evidence-based practices to reduce incidents of bullying, overuse of discipline practices that remove students from the classroom and the use of aversive behavioral interventions that compromise student health and safety.”

This is an overly broad answer that does not specifically address students with disabilities who are disproportionately impacted by bullying, harassment, discipline practices and aversive behavioral interventions.

Please contact me with any questions regarding these comments, we appreciate the opportunity for this input.

Jennifer Levin, Esq.
Education Team Leader