

DisabilityRights

ARKANSAS

Tom Masseau, Executive Director

June 30, 2017

Commissioner Johnny Key
Arkansas Department of Education
Four Capitol Mall
Little Rock, AR 72201

Re: ESSA State Plan Draft

Dear Commissioner Key:

On behalf of Disability Rights Arkansas, Inc. (DRA), I would like to thank you for the opportunity to comment on the proposed Every Student Succeeds Act (ESSA) State plan.

DRA is the federally authorized and funded nonprofit organization serving as the Protection and Advocacy System (P&A) for individuals with disabilities in Arkansas. DRA is authorized to advocate for and protect human, civil, and legal rights of all Arkansans with disabilities consistent with federal and state law. As the P&A for Arkansas, DRA does a significant amount of work in the area of education and has a vested interest in ensuring students with disabilities have access to an education.

DRA appreciates the work that went into crafting the draft plan and recognizes positive aspects throughout that show a desire to move Arkansas forward with supporting educational access to all students across the state. While there are positive aspects to the plan, many areas are vague on how the State intends to adhere to the requirements of ESSA. In addition, it is unclear throughout the document whether parents of students with disabilities were meaningfully consulted in drafting the plan and the many provisions that would impact their students. DRA recommends that the State be more specific throughout the entire plan on how it will be implementing ESSA

requirements. Below are a few specific areas of concern within the plan that impact students with disabilities.

Challenging State Academic Standards and Assessments

DRA recommends that the plan provide additional information on how Universal Design for Learning (UDL) will be utilized in development of assessments and to describe how UDL will be incorporated into alternate assessments. ESSA requires that all assessments under the Act be developed, as much as practicable, using the principles of Universal Design for Learning. Currently, there is no mention in the draft plan on how the state intends to ensure that assessments are developed using Universal Design for Learning or how it will be incorporated into alternative assessments as required by ESSA.

DRA also recommends that the plan include a definition of those students with the most significant cognitive disabilities who may be administered an alternate assessment and the steps that will be taken to ensure the 1% cap of students that can be assessed using an alternate assessment will not be exceeded. It is imperative that the plan include parameters to ensure that alternative assessments are not administered to students who should be included in the regular assessment process. Parents of students with disabilities and other stakeholders must be involved in that discussion.

Subgroups of Students

The plan proposes to use an N-size of 15 for accountability purposes but an N-size of 10 for reporting purposes. It is unclear why the plan proposes using a smaller N-size for reporting than for accountability. In addition, the Plan envisions aggregating two or more years, which has the effect of increasing the N-size and the potential for not including as many students in the statewide system of accountability. Furthermore, it is unclear, from the text of the plan, whether parents of students with disabilities meaningfully participated in the N-size discussion.

N-size must be as small as possible in order to balance the need to protect student privacy with the need to obtain the most information as possible on sub-group performance. While DRA appreciates that the plan would lower the N-size from previous years, we recommend that an N-size of 10 for both accountability and reporting be used, which would ensure inclusion of students with disabilities and other subgroups to the greatest extent possible while still maintaining confidentiality.

Establishment of Long-Term Goals

The plan proposes three long-term goals: (1) an achievement goal of 90 percent for all students in all student groups, (2) a 94 percent 4-year Adjusted Cohort Graduation Rate, and (3) a 97 percent 5-year Adjusted Cohort Graduation Rate. The plan sets these goals for the 12 year mark, with interim checkpoints every three years. DRA appreciates that the long-term goals apply to all students in all student groups and is hopeful that the State will commit to holding all of the goals and interim checkpoints steady and not to adjust downward if performance at a checkpoint is not what was initially envisioned. DRA is concerned that the goals for both 4-year and 5-year adjusted cohort graduation rates may not be as ambitious as they could be with data in the plan showing that many schools are already reaching the percentages set for the long-term goal. Therefore, DRA recommends the plan address that data and adjust these goals to ensure that a high standard is set.

Indicators

DRA is concerned that the plan to use weighted achievement through the explained points system may not allow parents and other stakeholders an opportunity to get a true sense of how students are performing. While the idea is to incentivize schools to move students from lower to higher levels by earning more points, the system of doing so could potentially inflate a school's performance by not clearly showing those students performing at a lower level.

It is unclear from the text of the plan how students in alternative settings would be included in the statewide accountability system. DRA is aware of students in settings, such as juvenile treatment centers, detention centers, mental health facilities, and alternative learning environments, who often are struggling to continue their education. This becomes particularly important as students transition out of these alternative settings and back into their local school districts. Therefore, DRA strongly recommends that the plan include steps to ensure that these students are supported, participate in assessments, and are included in a meaningful way in the statewide accountability system.

Additionally, it is not clear how the plan proposes to include students who might not be in attendance at a particular school for a full-academic year in these weighted calculations. For those students who may transfer districts or be in an alternative setting for part of the school year, the plan needs to be more specific on how these students will be included for statewide accountability.

Furthermore, this section does not address students taking alternative assessments or how these students will count in the graduation rate indicator. DRA recommends the

plan include details on how these students will be counted as well as ensuring that any alternate diploma utilized will be standards-based and aligned to the regular high school graduation requirements as required by ESSA.

Finally, while student growth is certainly important, the goal of ESSA is to support all students in meeting standards and graduating. Therefore, DRA recommends that more weight be placed on proficiency indicators than on growth indicators to align with the intent of ESSA for its statewide accountability system.

Identification of Schools

The plan does not provide enough details on the identification process, including identification as either comprehensive or targeted support schools. The plan should provide clear, detailed information in this area so that parents of students with disabilities and other stakeholders can understand the process and the implication of identification as either a comprehensive or targeted support school. In addition, DRA recommends the plan include the frequency with which schools will be identified for additional targeted support to ensure that students do not continue in low-performing schools without the support needed to improve.

Additional Statewide Categories of Schools

The plan seeks input on an Additional Comprehensive Support category. The plan poses two questions, whether to create a "watch" list for schools just above the 5% and whether to alert LEAs of schools that are positioned in the 5-10 percentiles in order for LEAs to provide preventative support. DRA recommends both. These additional categories would allow LEAs to be more aware of their school performance and provide them with additional time to work with their school to improve performance in a proactive way instead of waiting to fall into the comprehensive support category.

Annual Measurement of Achievement

Currently, the plan does not state with any specificity what additional action might be taken and does not limit the number of years that a school could fail to meet the 95% participation requirement without being penalized in some way other than being required to submit a plan to increase participation. Therefore, there is no clear incentive for a school to make certain it is including as many students as possible in its accountability process and, by default, encourages them to assess those students who typically do well in the assessment process. DRA recommends that the plan allow for an immediate penalty, such as not allowing a district to be rated as satisfactory, if not

meeting the 95% participation rate in order to incentivize districts to include all students in the assessments and not just those who might score well. Without a significant consequence, the accountability system can be skewed.

Exit Criteria for Comprehensive Support and Improvement Schools

DRA appreciates the proposed plan to keep schools identified as in need of comprehensive support for a minimum of three years in order to provide a sufficient amount of time to adequately respond to a school's needs. However, the plan does not provide clear exit criteria. DRA recommends that the plan include clear, objective exit criteria in order to set the expectations for improvement in a way that is understandable and consistent.

School Conditions

Students with disabilities are subjected to bullying, overuse of discipline practices, and aversive behavioral interventions at a much higher rate than their non-disabled peers. DRA recommends that the plan emphasize how these issues impact students with disabilities disproportionately and provide LEAs with specific strategies on how to address them for those students. The plan should make clear that Response to Intervention cannot be used as a means to delay or deny identification of a student with a disability to be served under the IDEA. While Positive Behavioral Interventions and Supports (PBIS) can have a tremendous impact on students, it should be made clear that it is not a substitute for identification and individualized planning for those students with disabilities who should be served under the IDEA.

The plan should also provide specific strategies to combat bullying. In addition, the plan should include specific strategies for districts to use in order to identify and support those students with disabilities who exhibit challenging behaviors through thorough development and implementation of evidence-based behavior intervention plans. The plan should also provide specific strategies for ensuring that students with disabilities will not be subjected to the overuse of discipline practices. These strategies should address the use of informally sending a child home as well as both in school and out of school suspensions and the use of alternative learning environments, all of which have a detrimental impact on the education of students with disabilities.

Furthermore, DRA strongly recommends that the plan set an enforceable educational standard on the use of restraint in schools. The plan should adopt the ADE Restraint Guidelines as binding authority and require all school districts to adhere to them. DRA also recommends that the plan require that school districts report on the

use of restraint and include measures for reducing and eliminating these dangerous aversive techniques in the school setting.

Transitions Between Correctional Facilities and Local Programs

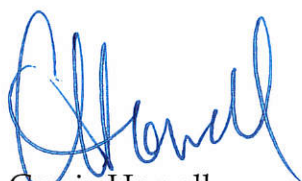
A large majority of students detained in juvenile correction and/or treatment facilities are students with disabilities. These students may or may not have been identified and provided services at their local school districts. In addition, these students often experience difficulty transitioning back into their local school district upon discharge, due to credits not transferring, lack of adequate transition planning, and other issues. DRA strongly recommends that the plan address these issues in a more specific way to include assurances that transition planning will occur for every student and to include specific strategies for facilities and districts to follow to ensure these students do not fall through the cracks when it comes to accountability and educational supports and success.

Improving Skills of Educators

DRA recommends that the plan include specific strategies for incorporating Universal Design for Learning and other inclusive best practices to better serve all students, including those students with disabilities throughout Arkansas. In addition, DRA recommends that the plan include strategies for providing information, assistance, and evidence based practices to administrators, general education teachers, and others to better understand the students with disabilities who they serve.

Thank you for the opportunity to comment on the State's draft ESSA plan. DRA hopes that the State will consider the above recommendations and amend the plan to address our concerns for students with disabilities.

Sincerely,



Cassie Howell
Staff Attorney

CC: Tom Masseau, Executive Director
Debra Poulin, Legal Director