

Virginia Coalition for Students With Disabilities

Comments on Virginia ESEA Flexibility Waiver Application

February 16, 2012

The **Virginia Coalition for Students with Disabilities (VCSWD)** reviewed the ESEA Flexibility Waiver Application prepared by the Virginia Department of Education for submission to the U.S. Department of Education. We submit the following comments for your consideration before any further action is taken on the ESEA Flexibility Waiver Application. We are concerned that the changes proposed in this application will have unintended negative consequences on accountability for education to students with disabilities.

Throughout this document, we reference the VDOE ESEA Flexibility Waiver Application by page number (in parentheses). Our recommendations for changes to the application are in bold font.

BACKGROUND.

According to the draft Request for the ESEA Flexibility submitted to the Virginia Board of Education (VBOE) on January 12, 2011, the VDOE will submit its request for final review at the VBOE meeting on Feb. 23, 2012. If approved, Virginia's proposed revisions to ESEA implementation would take effect beginning with the accountability results for the 2012-2013 school year, based on assessments administered in the 2011-2012 school year. (page 40)

At this time, *approximately 145,000 students, 6-21 years of age* in Virginia have a disability.

ISSUES RELATING TO VIRGINIA'S STUDENTS WITH DISABILITIES

1. INADEQUATE STAKEHOLDER INPUT

The U.S. Department of Education requires a state to describe how the State Education Agency (SEA) "meaningfully engaged and solicited input from other diverse communities, such as students, parents, community-based organizations, civil rights organizations, organizations representing students with disabilities and English Learners, business organizations and Indian tribes."

The minutes of the December 2011 SEAC quote Assistant Superintendent Doug Cox as follows:

"The Virginia Department of Education is considering applying for a waiver for Title One. It is uncertain whether No Child Left Behind will be amended with regard to teacher accountability in the near future, so Secretary Duncan indicated that he would entertain waivers. ...Mr. Cox stated that there will be public comment after first draft. The Board has already invited some groups to provide overall input. He does not expect a lot of change for students with disabilities and encourages anyone to make public comment."

[Retrieved from: http://www.doe.virginia.gov/boe/committees_advisory/special_ed/meetings/2011/dec_2011/minutes.pdf]

According to the Request, VDOE did not solicit feedback from any stakeholders or organizations which advocate for students with disabilities, such as: Centers for Independent Living, the Virginia Learning Disabilities Association, the International Dyslexia Association, the ARC of Virginia, the Virginia Autism Society, CHADD, PEATC, the Virginia Board for People with Disabilities, Virginia Office of Protection and Advocacy (VOPA), Virginia State Special Education Advisory Committee (VA SSEAC), School Division SEACs. This oversight was pointed out to VDOE by Emily Dreyfus of Justice 4 All in an e-mail to VDOE dated November 16, 2011 (page 132).

The only written comment included in the draft Request is the invited comment on behalf of Virginia Council of Administrators in Special Education (VCASE) (page 124). This input should not be considered as representative of parents or organizations that represent students with disabilities.

Virginia DOE as yet has not meaningfully engaged with or solicited input on its request from stakeholders or organizations representing students with disabilities. Other states have set up online surveys to facilitate feedback from parents or other stakeholders advocating for students with disabilities.

The VCSWD recommends that VDOE aggressively solicit stakeholder input prior to approval of this application by the State Board of Education.

2. SUB-GROUP ACCOUNTABILITY

VCSWD has a number of concerns about the changes to student subgroup accountability proposed in the Waiver application. The proposed changes are certain to have negative impact for students with disabilities in the areas of academic planning and supports, test participation outcomes, and graduation rates.

Virginia currently identifies a total of 7 student subgroups:

- economically disadvantaged students;
- **students with disabilities;**
- English language learners; and
- racial/ethnic groups representing five percent or more of the student population. The 4 racial ethnic subgroups meeting the criteria for separate identification are: Asian students; black students; Hispanic students; and white students (page 41).

The Waiver Application proposes to combine student subgroups “where duplication of students is common so that schools with smaller populations of low-performing subgroups can be so identified and receive appropriate support.” (page 10) The proposed Proficiency Gap Groups or PGGs (page 34) are:

- **Gap group 1:** students with disabilities, limited English proficient (LEP) students, and economically disadvantaged students (unduplicated)
- **Gap group 2:** Black students, not of Hispanic origin, not already included in gap group 1
- **Gap group 3:** Hispanic students, of one or more races, not already included in gap group 1

Virginia proposes using the PGG data to determine **Focus schools** (page 41) and to measure performance as part of the accountability system (page 40).

We find the proposed PGGs to be problematic in concept and likely to have negative impact on accountability for academic performance, test participation and graduation rates for students with disabilities. PPG #1 is problematic because it combines three very diverse student groups who have different learning needs. Moreover, as VDOE data indicate (see Attachment 8 table below), students with disabilities scored at least 12 points below the other two groups in both reading and math. Assuming similar outcomes for this academic year, aggregating outcomes from students with disabilities with the other two subgroups (ED and LEP) will lead to an inflation of academic progress for the former and a decrease in outcomes for the latter two subgroups. The disparate academic issues for students with disabilities potentially will be lost.

Attachment 8 – Copy of the Average Statewide Proficiency Based on Assessments Administered in the 2010-2011 School Year in Reading/Language Arts and Mathematics for the “All Students” Group and All Subgroups (if applicable)

2010-2011 Statewide Average		
Subgroup	Reading	Mathematics
All Students	88	87
Economically Disadvantaged	80	78
Students with Disabilities	67	66
Limited English Proficient	79	82
Asian*	NA	NA
Black	80	77
Hispanic	84	83
White	92	90

* As described in Virginia’s Consolidate State Accountability Workbook, results for the Asian subgroup will be available beginning with assessments administered in the 2011-2012 school year.

Inclusion of the LEP group with the other two in the proposed PPG#1 additionally is troubling since this group has several distinct characteristics, such as Title III AMAOs as well as exemption from testing for newly arrived students. (Virginia also proposed to expand this exemption at page 43).

The planned aggregation of PGGs apparently contradicts the value of disaggregating students with disabilities seen by VDOE. State Assistant Superintendent H. Douglas Cox recently noted, as reported in the December 2011 State SEAC minutes:

“In the language for this wavier, VA DOE will continue to disaggregate special education so students with disabilities will not get lost in the bigger picture and special education teachers will have separate accountability. That was the strongest, most important thing NCLB brought to the table.” (p. 3)

Of concern is that adoption of the PGGs would result in weakened accountability for the education of students with disabilities in some schools and districts.

Virginia’s rationale (page 41) for the composition of each PGG is stated as follows:

“The use of proficiency gap groups for accountability purposes will allow the state to target supports and interventions related to subgroup performance on Virginia’s historically underperforming groups of students. The Consolidated State Performance Report (CSPR) data show that the reading and mathematics performance of students with disabilities, English language learners, and economically disadvantaged students are the lowest in comparison to the statewide average performance of —all students in both subjects. Furthermore, grouping the three subgroups together mitigates the effect of the minimum group size concealing the results of these traditionally lowest-performing groups, allowing more schools to be identified for supports and interventions for the subgroups that need the most assistance. Hence, no change in Virginia’s approved n-size is being proposed. “

An intent seems to be expansion of the number of schools that receive supports, which is laudable. However, it is unclear what the impact of use of the proposed PGGs will be on school and district accountability as well as a school’s/district’s ability to develop interventions designed to target the needs of specific students as defined by individual subgroup data.

The application seems unclear about the way in which the Standards of Accreditation (SOA) - which will be used as VA’s overarching school accountability system – considers the performance of student subgroups, including students with disabilities (see pages 35-36, 39). While the ‘key features’ described on page 39 include “incorporates subgroup performance in accountability reporting to ensure schools continue to focus on closing the proficiency gap”, exactly how this is accomplished remains unclear. Again, if the proposed PGGs are used, then variation between the subgroups in PPG #1 will be lost.

Under Virginia’s current Standards of Accreditation system, there is a clear discrepancy between the numbers of schools with accreditation vs. the number of schools not achieving AYP (see page 11): 1768 schools (96%) are fully accredited while only 697 (38%) made AYP.

TEST PARTICIPATION. While Virginia proposes to continue to “annually disaggregate and report performance data for all seven subgroups” (page 41), the application does NOT propose to do so for test participation. Rather, Virginia proposes to base ESEA’s participation

requirement (95% of each subgroup) on the proposed PGGs. This approach is unacceptable for many reasons. Subgroup participation is critical, particularly for students with disabilities. Only by reporting on participation at the subgroup level will the Commonwealth be able to identify schools that are in violation of the participation requirement.

GRADUATION. Virginia's request does not provide information regarding the use of subgroups in graduation rate. Current ESEA regulations – which are not being waived as part of this Flexibility program – require states to set graduation targets by subgroup. As with proficiency determinations, Virginia proposes to use PGGs to determine if a high school is making progress in closing achievement gaps.

VCSWD recommends that the ESEA Waiver Application explicitly: a.) limit use of proposed PGG for determination of Focus Schools for small schools; and require schools to track academic outcomes, including test participation and graduation rates, for students with disabilities, limited English proficient students and economically disadvantaged students.

3. CURRENT 'N' SIZE

According to the application, Virginia does not intend to change its current subgroup “n” size, claiming that the new “proficiency gap groups” (PGG) approach will provide adequate identification of schools with low-performing subgroups. However, no evidence of this assertion is provided in its request.

Virginia's current “n” size is the greater of 50 students or 1 percent, with a cap of 200 students (amended in 2005). This “n” is one of the largest of any state. It should NOT be assumed that the PGG approach will include all Title I schools. Currently, Virginia's ‘n’ size excludes a significant percentage of schools from an AYP determination for the students with disabilities (SWD) subgroup.

VCSWD recommend that an analysis be done to identify the impact of the current “n” vs. a lower number, specifically: the number and percentage of schools and districts that are exempt from AYP for the SWD subgroup and a projection of the number and percentage of schools and districts that would be included via the PGG approach.

VCSWD also recommends that Virginia reduce its current ‘n’ size to reflect “n” size in keeping with other states. An ‘n’ size of 20 is recommended. An N of 20 protects student confidentiality while providing accountability through more accurate indicators of school performance that does not occur when using larger N numbers. We again encourage data analysis, to provide valuable information on the impact of “n” size.

4. ALTERNATE ASSESSMENTS

According to data for the 2009-2010 school year (available at www.IDEAdata.org) Virginia assessed **30.42%** of students with IEPs via alternate assessments, the Virginia Grade Level Alternative (VGLA) and Virginia Alternate Assessment Program (VAAP), in READING and **25.58%** in MATH. More specifically, 22% of students with IEPs were assessed via the VGLA in reading

and 18% in Math (see details below). Virginia is one of only 3 states offering an alternate assessment on grade-level achievement standards.

	READING:	MATH:
VGLA:	22%	18%
VAAP:	8%	8%

VA plans to phase out the VGLA and to begin administration of the Virginia Modified Achievement Standards Test (VMAST) (see below and see: http://www.doe.virginia.gov/administrators/superintendents_memos/2011/219-11.shtml). However, these tests are **not** the same. The VGLA measures grade-level content standards in an alternative format (evidence-based). As such, use of scores for AYP are not limited under the ESEA. In contrast, the VMAST does not measure a student's performance on the same achievement standards as their non-disabled classmates and, under current ESEA, use of scores for accountability is limited to prevent overuse.

Known also as an alternate assessment on modified academic achievement standards or AA-MAS, the **Virginia Modified Achievement Standards Test (VMAST)** for mathematics assessments in grades 3-8 and Algebra I will be implemented in 2011-2012. VMAST reading assessments in grades 3-8 and in high school will be introduced the following year (2012-2013). A timetable has not been established yet for phasing out use of the VGLA for writing, history and science. (See: http://www.doe.virginia.gov/testing/alternative_assessments/vmast_va_mod_achievement_stds_test/index.shtml) The only mention of the VMAST within the VA Request is on pages 32-34.

Potential overuse. States that have been administering an AA-MAS for several years (e.g., CA, TX, KS, OK) are dramatically overusing this alternate assessment. For example, 54% of Oklahoma's students with disabilities (SWDs) received alternate assessments, while 50% of Texas SWDs did and 36% of California's SWDs did. . These excesses are occurring under the current NCLB AYP accountability system which caps the proficient scores on an AA-MAS that can be used toward AYP at 2% of all students in grades assessed, or roughly 20% of students with IEPs in grades assessed.

Virginia's implementation of an AA-MAS (5 years after such an AA was authorized by ESEA regulations) is a matter of concern for several reasons. First, if ESEA Flexibility Request is granted, Virginia's new accountability system may not suppress the assignment of students with disabilities to this assessment as under the current AYP. At this time, there is no apparent limitation on AA-MAS use set forth in the proposed Waiver application. Second, SWDs who receive the AA-MAS assessment may well be taken off course for a regular diploma; some very early in their school career. Third, use of the AA-MAS may put Virginia's educational system at a disadvantage over time. Virginia is not participating in the Race To The Top (RTTT) grant. Assessment consortia currently are developing new assessments aligned to the Common Core

State Standards (CCSS). The RTTT consortia must design assessments that can be used to assess all students, including students with disabilities, except for those with the most significant cognitive disabilities. Thus, the 41 states and the District of Columbia participating in and planning to adopt the RTTT assessmentsⁱⁱ will NOT be able to continue administration of an AA-MAS. In contrast, Virginia is likely to be one of the few states that would be administering the AA-MAS.

VCSWD recommends that VDOE identify steps for controlling use of the VMAST to ensure that SWDs are not inappropriately assigned to this assessment; and identify plans to appropriately move SWDs who have been assessed via the VGLA to the general assessment with accommodations as appropriate.

In summary, like VDOE, the VCSWD desires a statewide school system which is effective and accountable, able to prepare students of all abilities for engagement in employment and community participation. VCSWD believes that revisions to the current draft application as recommended would significantly improve school accountability, academic supports, and student achievement. We look to the Virginia Board of Education to provide consistent leadership in maintaining standards that promote and support progress in education for all students.

ⁱ http://www.publiceducation.org/nclb_main/Reports.asp

Commission Staff Research Report: Children with Disabilities and LEP Students: Their impact on the AYP determinations of schools

ⁱⁱ <http://www.ed.gov/news/media-advisories/us-department-education-host-second-series-public-meetings-race-top-assessment>