



## MEMORANDUM

**To:** U.S. Department of Education  
**From:** Alliance for Excellent Education  
**Date:** January 25, 2018  
**Re:** Support for Historically Underserved Students in ESSA

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The Alliance for Excellent Education (All4Ed) appreciates the time and attention the U.S. Department of Education (ED) has spent reviewing state plans and working with states to ensure they comply with the equity-focused requirements of the Every Student Succeeds Act (ESSA). Following up on conversations between All4Ed and ED staff on the importance of supporting historically underserved students through ESSA implementation, the purpose of this memo is to elaborate on areas where All4Ed is concerned that ED is approving state policies that violate ESSA.

1. **ESSA requires states to use different statutory standards in identifying schools for targeted support and improvement (TSI) from those used to identify schools for additional targeted support and improvement (ATSI).**

All4Ed is concerned that ED has approved several ESSA state plans that violate ESSA's requirements regarding the identification of schools for TSI and ATSI. To comply with ESSA, states must have separate definitions for TSI and ATSI.

Section 1111(c)(4)(C)(iii) of the Elementary and Secondary Education Act (ESEA), as amended by ESSA, requires states to identify schools for TSI as those with one or more consistently underperforming student subgroup, as determined by the state. By contrast, section 1111(d)(2)(C) requires the state to identify schools for "additional targeted support" (ATSI schools) if the school has one or more student subgroup, which on its own is performing at or below the lowest-performing 5 percent of the state's Title I schools.

ATSI schools are a subset of TSI schools that receive additional supports if they meet the latter standard. To avoid possible inaction over several years while states consider consistent underperformance of student subgroups, ESSA includes a "special rule" in section 1111(d)(2)(D) requiring states to identify ATSI schools for SY 2017–18. ED, pursuant to its authority to facilitate an orderly transition to ESSA under section 4 of Public Law 114-95, moved this requirement from SY 2017–18 to SY 2018–19 ("Dear Colleague" letter of April 10, 2017, from Monique M. Chism, acting assistant secretary for elementary and secondary education, <https://www2.ed.gov/policy/elsec/leg/essa/dcltr410207.pdf>).

All4Ed understands that several states identify schools for TSI solely based on the standard that applies to ATSI schools; namely, whether there is one or more subgroup of students performing at or below the state's lowest-performing 5 percent of Title I schools. This is inconsistent with ESSA and could improperly result in a limitation of the number of schools

and possibly skew the proportion of student subgroups that will receive support under TSI provisions in the law. The U.S. Congress did not intend to mandate that low of a level of subgroup achievement in order for students to receive targeted support and improvement.

Although ESSA, in section 1111(c)(4)(C)(iii) of ESEA, provides for states to identify TSI schools, states are legally bound to do so by applying the statutory standard, i.e., whether the schools have one or more consistently underperforming student subgroup. This standard applies to all TSI schools, regardless of whether they also are identified for ATSI based on the severity of underperformance of any subgroup in relationship to the lowest-performing 5 percent of Title I schools in the state. Although states have wide discretion in defining “consistent underperformance,” it would be unlawful for states to limit TSI schools only to those that meet the separate statutory standard for additional targeted support. Many schools may warrant TSI identification based on consistent underperformance of one or more student subgroup(s), although the underperformance of any one subgroup may not place them in the lowest-performing 5 percent of the state’s Title I schools.

A further demonstration of congressional intent is that ESSA treats TSI and ATSI schools differently. Specifically, pursuant to section 1111(d)(3)(A)(i), Title I–receiving ATSI schools are identified for comprehensive support and improvement (CSI) if such schools fail to meet state-set exit criteria within a state-set number of years. This is distinct from TSI schools, which, pursuant to section 1111(d)(2)(B)(v), must implement “additional action” if they do not improve within a timeframe established by local educational agencies.

Therefore, All4Ed urges that ED only approve state plans that have separate definitions for TSI and ATSI.

## **2. Inclusion of student subgroup performance in the overall system for differentiating schools.**

All4Ed is also concerned that ED has approved state plans that violate ESSA’s policies regarding the inclusion of student subgroup performance in state systems of annual meaningful differentiation. To comply with ESSA, states must incorporate student subgroup performance in (1) school ratings and (2) identifying schools for CSI. Inclusion of subgroup performance in TSI determinations is required but insufficient to meet ESSA’s requirements.

### *Student subgroup performance in school ratings*

All4Ed is concerned that ED has approved several state plans that do not incorporate subgroup performance into indicators and ratings as required under ESSA. Whether or not a state is required to prepare and publish a rating of each school, if it does so to comply with ESSA requirements to differentiate schools, it must comply with ESSA requirements to use subgroup performance. Those requirements to include subgroup performance apply to the differentiation of all public schools in the state, and many states expressly describe such a system to demonstrate compliance with multiple statutory requirements regarding

differentiation of all public schools in the state, as included in section 1111(c)(4)(C). This is reinforced by annual state report card provisions in ESSA that require the state to include in its annual report a description of the state's accountability system, including the system to differentiate all public schools in the state and the methodology by which the state differentiates all such schools (section 1111(h)(1)(C)).

Having established that state rating systems used for compliance with ESSA must comply with ESSA's requirements, All4Ed's concern lies in the fact that ESSA clearly requires that states' system of annually and meaningfully differentiating all public schools in the state (which often includes or takes the form of a rating system) be based on all indicators in the state's accountability system for all students and for each subgroup of students (section 1111(c)(4)(C)(i)).

Moreover, section 1111(c)(4)(A) requires states to establish ambitious state-designed long-term goals for all students and "separately for each subgroup of students." Section 1111(c)(4)(B) requires states to annually measure prescribed indicators for all students and "separately for each subgroup of students." The law incorporates these requirements into the system of annual meaningful differentiation by specifically stating that the system of annual meaningful differentiation "be based on all indicators in the State's accountability system under subparagraph (B), for all students and for each subgroup of students, consistent with the requirements of such subparagraph" (section 1111(c)(4)(C)). These provisions clearly sought to ensure that student subgroup performance is included in state ratings/system of annual meaningful differentiation.

In addition, the law does not limit the purpose of these requirements to the designation of TSI or ATSI schools. The requirement for differentiation of schools with a consistently underperforming student subgroup is part of the broader system of differentiation. This is demonstrated by the fact that clause (iii) regarding consistently underperforming subgroups is one of three requirements within subparagraph 1111(c)(4)(C) describing the required system of annual meaningful differentiation. Therefore, it is clear that the requirement for the inclusion of student subgroup performance in the system of annual meaningful differentiation applies to the *whole system* of meaningful differentiation, not just schools identified for TSI or ATSI.

Therefore, All4Ed urges that:

(1) state plans should not be approved if they do not incorporate student subgroup performance in each indicator as required under ESSA, and

(2) since the system of meaningful differentiation must be based on all indicators (which must include student subgroup performance) and be based on goals (which must be based on student subgroup performance), state plans that utilize a rating system as a part of their system of meaningful differentiation should not be approved if they do not incorporate student subgroup performance.

*Student subgroup performance in CSI schools*

ESSA specifically requires that CSI and TSI schools be identified based on the system of annual meaningful differentiation described in section 1111(c)(4)(C), which requires differentiation to be based on all indicators in the state's accountability system for all students *and for each subgroup of students*. Several states do not identify CSI schools based on student subgroup performance in the lowest-performing 5 percent of Title I schools in the state. This clearly violates the law, which does not limit the consideration of student subgroup underperformance to the identification of TSI schools and ATSI schools.

Therefore, All4Ed urges that ED only approve state plans that incorporate student subgroup performance in the identification of CSI schools.

As the review and approval process of state plans continues, All4ED urges ED to ensure states comply with these ESSA requirements to ensure historically underserved students receive the support they were intended to receive under the law.

Thank you for considering these recommendations. Please contact Phillip Lovell, Vice President for Policy Development and Government Relations ([plovell@all4ed.org](mailto:plovell@all4ed.org); 202-828-0828), to discuss these issues further and/or answer questions you may have.