



July 27, 2017



Down Syndrome Connection of the Bay Area  
*Empower - Inspire - Support*

Governor Jerry Brown  
Lieutenant Governor Gavin Newsom

Dear Governor Brown and Lieutenant Governor Newsom,

First, we'd like to thank you! California is the sixth largest economy in the world, and we are proud that our state leads on many important national and international issues. You have led the way for justice, equality, and economic growth opportunity by being among the first governors to sign the Paris Accord Agreement, continuing negotiation with China, and vowing to protect DREAMers', LGBTQ, immigrants', and women's rights. We thank you for your leadership on these fronts!

Now we ask that you turn your attention to our state's ESSA (Every Student Succeeds Act) plan. The California Down Syndrome Advocacy Coalition (CDAC), a cooperation of parents, educators, and Down syndrome advocates and self-advocates statewide, has been actively following California's draft plan for ESSA implementation, and we are disappointed with certain aspects of the plan—most notably N size, which we'll speak more on in a moment.

CDAC members have children with Down syndrome in school districts from the northern reaches of our state to the southern tip. Our kids and others with intellectual disabilities are among the most vulnerable, underserved student populations. As such, we have a strong interest in ensuring that California's ESSA plan will be as strong as possible for *all* students—and that includes students with Down syndrome and other intellectual disabilities.

**“Meet, Not Exceed”**

Having read a recent article by John Fensterwald in EdSource (“State Board, Advocacy Groups Fundamentally Disagree Over Plan for Complying with Federal Education Law,” published on 7/17/17), we know that you are well aware of the issues in ESSA implementation that are concerning to parents. We share the concern mentioned in the article that the State Board of Education (SBE) plans to “meet, not exceed” federal ESSA standards because they view the ESSA plan is essentially an “application” for \$2 billion in federal funding, while California as a state provides \$80 billion. As also mentioned in the article, Barbara Murchison from SBE shared with us that the state plans to meet what the federal government is asking for, but not provide additional information. However, that leads to a lack of transparency, and transparency is at the very core of ESSA. As parents and advocates, we wonder: **Without transparency, how can the State Board of Education meet the federal standard of meaningful stakeholder engagement?** If we don't know the *real* plan, we cannot engage and provide input in a meaningful way.

We feel strongly that as a leader in so many areas, California should also strive to lead in its education standards. It starts with transparency and accountability, and it continues from there.

Another concern we have is that based on the state's draft ESSA implementation plan, it seems very little emphasis is placed on Universal Design for Learning (UDL). UDL is based on more than 1,000 studies from the learning and brain sciences, ranging from classroom implementation studies to studies investigating the impact specific stimuli have on learning. These studies have shown that UDL strongly improves instruction and inclusion in the classroom, which would be beneficial to *all* students—and particularly to students with disabilities. Yet for some reason, California's draft plan does not seem to place much emphasis on this. Other state plans have addressed UDL much more specifically—New Hampshire, for example, currently has a much stronger plan with regard to the use of UDL.

### **N Size**

Another major concern we have with California's draft ESSA implementation plan is its proposed N size. As you probably know, N size is the foundation for accountability. If a school has fewer than N students from a given subgroup in it, it does not have to provide data on that subgroup for accountability. Where this particularly concerns us is with the Down syndrome community. Right now, the California Department of Education (CDE) suggests that an appropriate N size for California's schools is 30. That means any school that does *not* have thirty students in a given subgroup (such as students with disabilities) will not be held accountable for the quality of those students' education.

I'm sure you can see how appalling that is. California has many schools where the number of students with disabilities doesn't even come close to thirty. Students in those schools will stand to fall through the cracks with no accountability for their education.

Of the seventeen state ESSA plans submitted as of the date of this letter, fourteen have lower N sizes than California for accountability and participation rates. As the sixth largest economy in the world, California can and should do better, too.

Many disability rights organizations and researchers recommend an N size of 10, which results in much, much greater accountability for students with disabilities and ultimately appropriately serves these students through our state's education system. The SBE has yet to provide detailed analysis to justify their N size of 30 for most subgroups. However, on a recent call with Cindy Kazanis, Barbara Murchison, and the National Down Syndrome Congress (NDSC), we spoke at length about N size.

NDSC brought up a study done by PACE at Stanford University, using the Core districts (nine districts across our state that represent nearly 1 million students and those disproportionately affected by poverty, as well as English language learners and students with disabilities). The study showed that by decreasing the N size from 30 to 20, accountability went from approximately 50 percent to nearly 80 percent for the disabled student subgroup. We are attaching this study for your reference.

SBE dismissed the study. Yet, they have not made transparent their data set or the tools, codes, and mechanisms they have used to justify an N size of 30 for most subgroups.

Ohio has made public a strong analysis that shows accountability measures at various N sizes across multiple subgroups. We ask that California do the same and provide key stakeholders meaningful engagement by being transparent with their data sets and justifications for an N size of 30. We have attached the Ohio study for your reference.

We recognize that reporting data can be a burden on school districts, particularly with regard to smaller schools. However, these are some of the schools that we *most* need to maintain rigorous oversight for, since these smaller schools can be where students in subgroups—such as students with disabilities—can be overlooked. We would like to see state funding made available to districts that would allow them to collect data on key subgroups in smaller schools, such as students with disabilities, so that help could be provided to these schools if needed. Without rigorous oversight and accurate data collection, there is simply no good way to ensure that these small schools and the students in them will be well served by our state’s education system.

### **Poor Stakeholder Engagement**

The SBE professes that transparency is important in their ESSA implementation process, yet it has been sorely lacking in many ways.

CDAC has requested numerous times to participate in the California Practitioners Advisory Group (CPAG), which is designed for SBE to receive feedback about the ESSA draft plan, and to date we have not been invited to participate.

In fact, there is not even a special education representative on the CPAG. At a recent Advisory Commission on Special Education (ACSE) presentation, Chairwoman Gina Plate asked Barbara Murchison, “Regarding CPAG, is there a special education representative on the CPAG?” Ms. Murchison responded, “To my knowledge, we do not have a representative at this time on special education.”

We find this disgraceful! It is important to note that California educates 11 percent of the students with disabilities in the country. This means California’s ESSA plan has national significance, and we don’t have a special education representative to provide stakeholder input on ESSA. Certainly, this is not a new issue. California has had issues in the past with students in special education falling behind in every measure, and often it has been in part because their voices and the voices of the community that support them are not heard. By not including any parents of students with disabilities on CPAG, nor any special education representatives, it seems one of our most vulnerable subgroups is once again being overlooked.

In addition to the points we’ve brought up in this letter, we encourage you to look at the page-by-page analysis NDSC and The Advocacy Institute conducted on the ESSA draft dated April 29, 2017. We’ve

attached the analysis for your review. Their analysis showed multiple areas where the plan falls short, even being out of compliance with the federal template.

### **What We Can Do**

Governor Brown and Lieutenant Governor Newsom, we have reached out to all the channels we can think of to remedy these problems in our state's ESSA plan. Many of our concerns have not been addressed. We hope you will understand our deep concern and outrage and will help us make California's ESSA plan much stronger than it currently stands to be. Education is key to the future, and we need to be a leader for *all* students, especially our most vulnerable.

This is more important now than ever, given that our current federal administration has different education priorities. The federal focus currently seems to be on school choice, which could actually create significant problems for students with disabilities in our education system. We'd like to see California stand by its own priorities: providing a quality education that best serves *all* students in our state, including vulnerable populations that may have been underserved in the past.

California has a chance to create excellent standards and policies regarding special education and could become a leader in this important area. ESSA provides the flexibility for states to make positive changes that will improve achievement opportunities for all students, and we hope that you and our legislators will act on that.

Perhaps we can take a cue from the recent Supreme Court ruling on *Enfield F. v. Douglas County School District*, where the court unanimously ruled that school districts should strive to provide *more* than the minimum required by federal law for students with disabilities. That case, as you know, hinged on IDEA, but the similarities are there: We're looking at a situation where California can do the *minimum* for students as far as ESSA is concerned, or we can do better. We can promote achievement for all students, particularly those who have historically been underserved.

To strengthen California's ESSA implementation plan, we respectfully request the following:

- That the SBE and CDE be held to a higher standard of transparency and accountability.
- That school districts be required to provide strong oversight over its student subgroups, and that funding be available so that smaller districts and schools have the ability to do so.
- That California implement much stronger use of UDL in its ESSA implementation, which will benefit all students in California's public schools.
- That SBE lower the N size to 10 for all subgroups or release a detailed study justifying their use of an N size of 30 for most subgroups (like the Ohio study).
- That a parent representative for students with disabilities be added to CPAG, preferably from our organization.
- That a special education expert be added to CPAG.

Thank you, Governor Brown and Lieutenant Governor Newsom. We know you've been paying attention to this important issue, and we hope you'll consider our thoughts on it. Our kids' future depends on it. California's future depends on it.

Sincerely,

Cindy Liu, education lead, California Down Syndrome Advocacy Coalition

Cathleen Small and Kelly Kulzer-Reyes, co-chairs, California Down Syndrome Advocacy Coalition

The ARC of California

Kern Down Syndrome Network

Down Syndrome Connection of the Bay Area

cc:

**Secretary of Education Betsy DeVos**

**California Department of Education** (Superintendent Torlakson, Cindy Kazanis, Kristen Wright, and Keric Ashley)

**Federal Senate HELP Committee** (Senator Lamar Alexander, Senator Patty Murray, Senator Michael Enzi, Senator Bernie Sanders, Senator Richard Burr, Senator Robert Casey, Senator Johnny Isakson, Senator Al Franken, Senator Rand Paul, Senator Michael Bennet, Senator Susan Collins, Senator Sheldon Whitehouse, Senator Bill Cassidy, Senator Tammy Baldwin, Senator Todd Young, Senator Christopher Murphy, Senator Orrin Hatch, Senator Elizabeth Warren, Senator Pat Roberts, Senator Tim Kaine, Senator Lisa Murkowski, Senator Maggie Hassan, Senator Tim Scott)

**Federal Education and Workforce Committee** (Rep. Virginia Foxx, Rep. Joe Wilson, Rep. Duncan Hunter, Rep. David Roe, Rep. Glenn Thompson, Rep. Tim Walberg, Rep. Brett Guthrie, Rep. Todd Rokita, Rep. Lou Barletta, Rep. Luke Messer, Rep. Bradley Byrne, Rep. David Brat, Rep. Glenn Grothman, Rep. Elise Stefanik, Rep. Rick Allen, Rep. Jason Lewis, Rep. Francis Rooney, Rep. Paul Mitchell, Rep. Tom Garrett, Jr., Rep. Lloyd Smucker, Rep. A. Drew Ferguson, Rep. Ron Estes, Rep. Karen Handel, Rep. Bobby Scott, Rep. Susan Davis, Rep. Raúl Grijalva, Rep. Joe Courtney, Rep. Marcia Fudge, Rep. Jared Polis, Rep. Gregorio Kilili Camacho Sablan, Rep. Frederica Wilson, Rep. Suzanne Bonamici, Rep. Mark Takano, Rep. Alma Adams, Rep. Mark DeSaulnier, Rep. Donald Norcross, Rep. Lisa Blunt Rochester, Rep. Raja Krishnamoorthi, Rep. Carol Shea-Porter, Rep. Adriano Espaillat)

**California Congressional Reps** (Rep. Doug LaMalfa, Rep. Jared Huffman, Rep. John Garamendi, Rep. Tom McClintock, Rep. Mike Thompson, Rep. Doris Matsui, Rep. Ami Bera, Rep. Paul Cook, Rep. Jerry McNerney, Rep. Jeff Denham, Rep. Mark DeSaulnier, Rep. Nancy Pelosi, Rep. Barbara Lee, Rep. Jackie Speier, Rep. Eric Swalwell, Rep. Jim Costa, Rep. Ro Khanna, Rep. Anna Eshoo, Rep. Zoe Lofgren, Rep. Jimmy Panetta, Rep. David Valadao, Rep. Devin Nunes, Rep. Kevin McCarthy, Rep. Salud Carbaja, Rep. Steve Knight, Rep. Julia Brownley, Rep. Judy Chu, Rep. Adam Schiff, Rep. Tony Cárdenas, Rep. Brad Sherman, Rep. Pete Aguilar, Rep. Grace Napolitano, Rep. Ted Liu, Rep. Norma Torres, Rep. Raul Ruiz, Rep. Karen Bass, Rep. Linda Sanchez, Rep. Ed Royce, Rep. Lucille Roybal-Allard, Rep. Mark Takano, Rep.

Ken Calvert, Rep. Maxine Waters, Rep. Nanette Barragán, Rep. Mimi Walters, Rep. Luis Correa, Rep. Alan Lowenthal, Rep. Dana Rohrabacher, Rep. Darrell Issa, Rep. Duncan Hunter, Rep. Juan Vargas, Rep. Scott Peters, Rep. Susan Davis)

**Senator Kamala Harris**

**Senator Dianne Feinstein**

**State Board of Education** (Nicolasa Sandoval, Michael Krist, Ilene Straus, Sue Burr, Bruce Holaday, Feliza Ortiz-Licon, Patricia Ann Rucker, Ting Sun, Karen Valdes, Trish Boyd Williams, Olivia Sison)

**Special Education Advisory Committee** (Sara Jocham, Keila Rodriguez, Christina Mills, Somer Harding, Mildred Browne, Gina Plate, Mariano Sanz, Kimberly Salomon, Steve Winlock, Havaughnia Hayes-White, Betty Karnette, Barbara Schulman, Michele Andrus, Lester Pincu, Gloria Perez-Stewart, Senator Ben Allen, Scott Kerby)

**Los Angeles Times** (Joy Resmovits)

**Mercury News** (Sharon Noguchi)

**East Bay Times**

**Silicon Valley Community Newspapers**

**EdSource** (John Fensterwald)

**Sacramento Bee** (Diana Lambert)

**San Francisco Chronicle** (Jill Tucker)

**Leadership Conference on Civil and Human Rights**

**Senior Policy Analyst, Directory of Education Policy** (Liz King)

**National Down Syndrome Congress** (Ricki Sabia)

**The Advocacy Institute** (Candace Cortelia)

**Los Angeles Learning Disability Association** (Judy McKinely)