



August 1, 2016

Ms. Jessica McKinney
U.S. Department of Education
Room 3W107
400 Maryland Avenue, SW
Washington, DC 20202

RE: Docket ID ED-2016-OESE-0053

Dear Ms. McKinney:

The Association of Assistive Technology Act Programs (ATAP) is pleased to provide the following comments to the Department of Education regarding the proposed rule implementing programs under Title I of the Every Student Succeeds Act (ESSA). ATAP represents 54 of the state Assistive Technology Programs funded under the Assistive Technology (AT) Act of 2004. ATAP members have been and will continue to be actively involved in supporting students with disabilities utilize assistive technology to access and benefit from instruction and equitably participate in assessments as required by ESSA. For this particular section within Title I of ESSA pertaining to assessments, we have identified one major accessibility concern with the proposed rules.

Concern: No clear requirement for assessments to be accessible.

The shift to digital assessments provided great promise for increased access for students with disabilities. Unfortunately, the reality of digital assessment deployment has not delivered on that promise. Unless digital assessments are developed consistent with nationally recognized accessibility standards, like the Web Content Accessibility Guidelines (WCAG) 2.0, they will not be accessible and will not be compatible or interoperable with assistive technology (AT) devices that students with disabilities routinely use for instruction.

Our members have been dismayed to watch the shift to digital assessments increase (rather than decrease) access barriers and penalize students with disabilities by forcing them to learn new built-in access features (e.g. text-to-speech system, magnification technology, etc.) rather than using their own AT. This creates a situation in which the assessment is measuring a student's ability to learn the new access technology as much if not more than it is measuring their expertise on academic content. In addition, many students with disabilities require access features that simply cannot be built into assessments (e.g. voice recognition, complex alternative input devices like eye gaze, etc.). For these students when the assessment is not accessible and their own AT does not work they have no independent access to the assessment and are forced to use human supports or in some cases take hard copy "alternative format" assessments when other students are taking online digital assessments.

All of these situations are avoidable if assessments are developed consistent with a nationally accepted accessibility standard. If the assessment is digital, a nationally recognized accessibility standard could be the National Instructional Materials Accessibility Standard (NIMAS). Requiring assessments be developed consistent with a nationally recognized accessibility standard will enable students with disabilities to use the assistive technology that they regularly use to access instruction and the general education curriculum to demonstrate proficiency on assessments.

ATAP Recommendation: Change § 200.6(b)(1) as follows:

*(b) Appropriate accommodations. (1) A State's academic assessment system must **be developed consistent with nationally recognized accessibility standards and** provide, for each student with a disability under paragraph (a) of this section, the appropriate accommodations, such as interoperability with, and ability to use, assistive technology devices [~~consistent with nationally recognized accessibility standards~~], that are necessary to measure the academic achievement of the student consistent with paragraph (a)(2) of this section, as determined by--*

Rationale: Currently the way this proposed regulation is written, the reference to “consistent with nationally recognized accessibility standards” applies to assistive technology devices which is inappropriate and inaccurate. There are no accessibility standards for AT devices. Nationally recognized accessibility standards are applicable to the assessments (e.g. WCAG or NIMAS). Therefore the proposed rule needs to be revised so that the phrase “consistent with national recognized accessibility standards” applies to the assessment, *not* assistive technology. This change is required to ensure the rules are consistent with the requirement in the law for accessibility and interoperability with assistive technology.

ATAP appreciates the opportunity to provide these comments on behalf of our 54 State AT Program members who support AT use in schools across the country. Please feel free to contact Audrey Busch, ATAP Director of Policy and Advocacy at 202.344.5674 or audrey.busch@ataporg.org with any questions.

Sincerely,



Alan Knue
Chair, ATAP Board of Directors