

Issue Brief

Every Student Succeeds Act (ESSA) and Accessibility

Congress reauthorized the Elementary and Secondary Education Act (ESEA) on December 10, 2015 and renamed the law, the Every Student Succeeds Act (ESSA). A provision included in the law requires that states' general assessments include appropriate accommodations, such as interoperability with and the ability to use assistive technology for students with disabilities. While the law included language to highlight the importance of providing full accessibility for students with disabilities, the law, nor the regulations provide clarity on how states should ensure such accessibility. Therefore, moving forward, it will be important for test developers, assistive technology vendors, and state education agencies to agree on clear and consistent accessibility standards so students can utilize the assistive technology (AT) they rely on every day for instruction when taking assessments.

BACKGROUND:

The Department of Education issued two sets of regulations on the Every Student Succeeds Act (ESSA) one related to state accountability systems and the other related to state assessment systems. Multiple stakeholders requested that the final regulations include language to ensure that assessments and web sites used to convey required information to parents and the public conform to a set of nationally accepted accessibility standards (e.g. WCAG 2.0) for digital content, the final regulations did not do so. In the rules for state accountability systems and State Plans, the Department included the following in the final comment section which provides some regulatory guidance for State Education Agencies (SEAs) and Local Education Agencies (LEAs) about utilizing WCAG 2.0 to ensure accessibility of digital information.

"Although the Department does not currently require States and LEAs to use specific Web site accessibility standards, under the ESEA, as amended by the ESSA, and Federal civil rights laws and regulations, States and LEAs must ensure that information provided through electronic and information technology, such as on Web sites, is accessible to individuals with disabilities. In OCR's enforcement experience, where a State or LEA provides required information through Web sites, it may be difficult to ensure compliance with accessibility requirements without adherence to modern standards such as the WCAG 2.0 Level AA standard, which includes criteria that provide comprehensive Web accessibility to individuals with disabilities—including those with visual, auditory, physical, speech, cognitive, developmental, learning, and neurological disabilities. Accordingly, we strongly encourage States and LEAs that disseminate information via Web sites to consider that standard as they take steps to ensure that their Web sites comply with requirements of these regulations and with Federal civil rights laws. WCAG 2.0 has been designed to be technology neutral to provide Web developers more flexibility to address accessibility of current as well as future Web technologies; in addition, Level AA conformance is widely used, indicating that it is generally feasible for Web developers to implement. The developers of WCAG 2.0 have made an array of technical resources available on the W3C Web site at no cost to assist entities in implementing the standard."

In addition the final rules retained negotiated regulatory language pertaining to state assessments and AT being "consistent with nationally recognized accessibility standards" as follows: § 200.6 (b) *Appropriate accommodations for students with disabilities.*

(1) A State's academic assessment system must 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 . . . "

The syntax of this rule is confusing about to what "consistent with nationally recognized accessibility standards" applies. While many commenters requested that the rule be revised to make it clear the phrase applies to the assessments rather than the AT, no changes were made. However, in the comments discussion the Department did provide the following clarification which indicates that they interpret the phrase "consistent with nationally recognized accessibility standards" to apply both to the assessment itself and the AT.

"Optimal use of nationally recognized accessibility standards applies equally to assessment development and to assistive technology devices. (emphasis added.) When a State identifies the technical and data standards with which its assessment system is compatible, this creates the conditions for successful, continuous integration with assistive technology devices if such devices are also consistent with the nationally recognized accessibility standards a State uses. Since both assessment development and assistive technology device development are continuous processes, clarity and common understanding are keys to integration. Data standards are a useful method of communication between States or assessment developers and assistive technology device-makers (and those who use such devices). The change most commenters requested would apply the expectation for interoperability in a manner distinct from the statute, where it is an example and not a requirement, and would place full responsibility for consistency with nationally recognized standards on States in developing the assessment system, without recognizing the importance of also expecting that assistive technology devices be compatible with common data standards. Accordingly, the Department disagrees with those commenters that such a change is needed or is appropriate."

IMPLICATIONS FOR STATE AT PROGRAMS:

With the change in Department of Education administration in early 2017, the accountability rules (including the comment language referencing WCAG 2.0) were rescinded by Congress under the Congressional Review Act provisions. Even without this commentary in rules, Section 504 and the ADA continue to require digital and web accessibility and many SEAs and LEAs have a heightened awareness of web accessibility requirements due to recent OCR investigations. OCR consistently cites WCAG 2.0 conformance as the accepted standard for digital accessibility. State AT Programs can offer technical assistance to both SEAs and LEAs on web and assessment accessibility especially in states where OCR complaints have been filed or other interest has been generated.

The ESSA statute and rule language on assessment accessibility and interoperability with AT provides another opportunity for State AT Programs to offer technical assistance to SEA's and LEAs. As more and more states develop their own variations of online assessments, opportunities to improve accessibility will occur. Unfortunately, nothing in ESSA or the rules that remain in effect ameliorate the restrictive policies many assessments have adopted that deny use of particular AT (e.g. text-to-speech, calculators, word prediction, etc.) because of a determination that the access feature "invalidates the test construct". That access barrier will need to be addressed in future policy changes.

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