

Every Student Succeeds Act (ESSA)

(S. 1177 – Public Law 114-95)

Overview and Analysis

Introduction

On December 10, 2015, President Obama signed the **Every Student Succeeds Act (ESSA)** which repeals the No Child Left Behind Act (NCLB) and establishes a new direction for elementary and secondary education.

Both the Senate and House passed the final bill with large, bipartisan majorities: Senate: 85-12, House: 359-64.

The U.S. Department of Education (ED) will begin implementing the law in 2016, but states will not be required to fully implement core accountability and other requirements until the 2017-18 school year.

Among its major provisions, the ESSA establishes college and career readiness expectations by requiring that state education standards be aligned with the entrance requirements set by each state's public higher education system and with the state's career and technical education standards. The new law also sets important new requirements intended to strengthen instruction, assessment, and student supports, so that students graduate from high school with essential skills, in addition to mastering rigorous content. Student data disaggregation and reporting, and achievement gap closures are also continued as priorities under the new law, including through requirements for school support and improvement.

One of the most significant changes restricts the overarching federal role in public education and gives states and school districts greater responsibility on critical policy elements such as setting annual targets for student academic performance as well as deciding how to identify, support and intervene in struggling schools. The new law continues existing formula programs focused on educator and leader professional development, English learners, and establishes a new competitive preschool program, while consolidating and eliminating many other NCLB initiatives.

Title I - Standards, Assessment, Accountability, and School Improvement

Each state must file a State Plan with the Secretary of Education for peer review and approval. The State Plan must include specified assurances and satisfy requirements regarding the state's adoption of challenging academic content standards and its statewide accountability system, including school support and improvement activities.

State Standards

Each state must provide an assurance that it has: (1) adopted challenging academic content standards and aligned academic achievement standards in mathematics, reading or language arts, and science; and (2) established not less than three levels of achievement to be used by the state, local educational agencies (LEAs) and schools.

States may also establish standards in other subjects, as well as alternate academic achievement standards for students with the most significant cognitive disabilities.

Assessment

Although the most significant element of ESSA's assessment requirement is the preservation of the annual testing requirement (reading or language arts and mathematics – grades 3 through 8, and once in high school; science at least once in each of three grade spans), there are some important changes and new requirements worth noting:

- **System Requirements:** ESSA establishes 13 requirements for state assessment systems, including concepts previously required by NCLB (e.g., assessments must be the same for all students and administered to all students, aligned with challenging state academic standards). Under the new law, state assessment systems must also:
 - Involve multiple, up-to-date measures, including those that assess higher-order thinking skills and understanding;
 - Enable disaggregation of results, including by English proficiency status, migrant status; and
 - Assess, for reading or language arts, any student who has attended school in the U.S. for 3 or more consecutive years.
- **Newly Arrived English Learners:** States have an option with regard to assessing recently arrived English learners. For any English learner enrolled in a U.S. school for less than 12 months, the state may:
 - 1) Exclude the student from one administration of the reading or language arts assessment, as well as the results of that student's assessment results on the reading or language arts, mathematics, and English language proficiency assessments from use in the accountability system; or

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- 2) Assess and report on the performance of the student on reading or language arts, and mathematics assessment, exclude the student's first year results on those assessments from accountability, include a measure of student growth on those assessments in the second year, and include proficiency on those assessments in accountability during the student's third and subsequent years in the school.
- **Alternate Assessments:** A state may provide for alternate assessments aligned with alternate academic achievement standards, but must ensure that for each subject, the total number of students assessed does not exceed 1 percent of students assessed statewide in that subject, and meets other established requirements. A state is prohibited from establishing an LEA-level cap on the administration of alternate assessments. Further, it is the responsibility of the IEP team to determine when a child with significant cognitive disabilities can participate in alternate assessments.
 - **Locally-Selected Assessments:** LEAs are not prohibited from administering locally-selected assessments in lieu of state-designed assessments of reading or language arts, mathematics (grades 9-12) and science (grades 10-12). However, if the LEA selects a nationally-recognized assessment, it must first be approved by the state.
 - **Adaptive Assessments:** States retain the right to develop and administer computer adaptive assessments as part of the state's system. Such assessments must measure proficiency and growth toward standards for each student's grade level.
 - **Opt-Out:** The Act does not preempt state or local law regarding the rights of a parent to opt a student out of state assessments.
 - **Time Devoted to Testing:** States may set a target limit on the aggregate amount of time devoted to the administration of assessments.
 - **Innovative Assessment Pilot:** The Secretary may grant up to seven states the authority to develop and use innovative assessments such as competency-based assessments.
 - **State Audits of Assessment Systems:** States and LEAs may receive funds to audit assessment systems and eliminate unnecessary assessments. LEAs must publish information on all assessments that are required and the amount of time devoted to the administration of assessments.

Accountability

Assessments aligned to state academic content standards are but one area of focus in a re-tooled approach to school (and LEA) accountability and improvement. Statewide accountability systems must be based on state academic standards for reading or language arts and mathematics and designed to improve student academic achievement and school success.

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ESSA provides a more expansive list of areas in which states must establish long-term goals and indicators for inclusion in annual accountability determinations. Two of the most significant shifts from prior law are:

- 1) The lack of federal prescription regarding the establishment of long-term goals and interim targets (there are no Annual Measurable Objectives [AMOs]); and
- 2) Much greater state and local discretion in determining and assigning weight to accountability indicators (Adequate Yearly Progress [AYP] is gone).

In fact, an expansive section titled Prohibitions (summarized below) takes steps to ensure states and LEAs have primary responsibility for defining and administering much of the state's accountability system.

- **Long-Term Goals:** States must establish long-term goals and include measurements of interim progress for: (1) proficiency on annual academic assessments; and (2) high school graduation rate (at least 4-year cohort rate).
- **Indicators:** States must annually measure, based on long-term goals:
 - Academic achievement – specifically, proficiency on annual assessments (and growth for high schools, at the state's discretion);
 - A measure of student growth or another valid and reliable statewide academic indicator for elementary schools and non-high school secondary schools;
 - The four-year adjusted cohort graduation rate, for high schools, plus an extended-year grad rate at the state's discretion;
 - Progress in achieving English language proficiency; and
 - Not less than one indicator of school quality or student success, such as student engagement, postsecondary readiness, or school climate and safety.

Each indicator, with the exception of English language proficiency, must measure the progress of all students and each subgroup.

- **Weighting of Indicators and Annual Differentiation:** States must have a system for differentiating school performance on an annual basis using all of the indicators in the state system of accountability. The indicators of annual assessment proficiency, the other academic indicators used for elementary and non-high school secondary schools, grad rate, and English language proficiency are required to each be afforded "substantial weight" and, in the aggregate, "much greater weight" than is given to the other indicator(s) of school quality or student success. The state's annual differentiation must include the identification of any school in which any subgroup is consistently underperforming, as determined by the state, based on all indicators.

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- **Identification of Schools for Comprehensive Support and Improvement:** Each state must utilize a state-determined methodology, based on annual differentiation, to identify a “statewide category of schools for comprehensive support and improvement.” The first identification must take place in the 2017-18 school year and at least once every three subsequent school years. The schools placed in the Comprehensive Support and Improvement category must include:
 - The lowest-performing 5 percent of Title I schools;
 - All high schools failing to graduate one third or more of their students; and
 - Any school in which any subgroup of students, considered on its own, would lead to identification among the lowest-performing 5 percent of schools using the state’s methodology and that does not meet established criteria within the number of years set by the state.
- **Assessment of 95 Percent:** States must annually measure the achievement of not less than 95 percent of all students and students in each subgroup, and must provide an explanation of how this requirement will be factored into the statewide accountability system.
- **Accountability for Charter Schools.** States must apply ESSA’s accountability system requirements to charter schools in accordance with the state’s charter school law.

School Support and Improvement Activities

ESSA requires identification of two categories of schools for support and improvement: “Comprehensive Support and Improvement” and “Targeted Support and Improvement.”

- **Comprehensive Support and Improvement:** Each state must notify an LEA of any schools identified for Comprehensive Support and Improvement. The LEA then must, with some exceptions, oversee the local development and implementation of a comprehensive support and improvement plan that is informed by all accountability indicators, includes evidence-based interventions, is based on a school-level needs assessment, identified resource inequities and is approved by the school, LEA, and state educational agency. The LEA may provide all students enrolled in the school with the option to transfer to another public school.
- **Targeted Support and Improvement:** Each state must notify an LEA of any schools that have a subgroup of students consistently underperforming and ensure that the LEA notifies the school of the identification for Targeted Support and Improvement. Such schools must develop and implement a Targeted Support and Improvement plan for each subgroup of students that was the subject of notification. The plan must be informed by all indicators, include evidence-based interventions, and be approved by the LEA. If the performance of a subgroup that

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led to notification would also lead to identification among the lowest 5 percent of schools in the state, the plan must also identify resource inequities to be addressed.

- **Continued Support for School and LEA Improvement:** Each state must establish statewide exit criteria for Comprehensive Support and Improvement schools and Targeted Support and Improvement schools with a subgroup that would lead to identification in the bottom 5 percent. Comprehensive Support and Improvement schools that do not satisfy exit criteria within a number of years set by the state, but not to exceed four years, must be subject to more rigorous state-determined action. Targeted Support and Improvement schools that do not meet exit criteria in the time frame established by the state shall be identified for Comprehensive Support and Improvement.

Prohibitions

With regard to state standards and systems for assessments, accountability, and school support and improvement activities, ESSA establishes strong parameters or limits on the actions the Secretary may take. For example, Sec. 1111(e) provides that nothing in the Act is to be construed to authorize or permit the Secretary to act in specified areas, including adding new requirements that are inconsistent with or outside the scope of Title 1 (through any rule or regulation); condition approval of any state plan to prescribe numeric long-term goals or measurements of interim progress; require specific assessments or accountability system indicators; prescribe the weight of any measure or indicator used to differentiate schools; and more.

Title II – Teachers, Principals, and Other School Leaders

The new Title II framework provides professional development resources to states and school districts to support teachers, principals, and other educators. The program includes support focused on high quality entrance services for new teachers, evidence-based professional development opportunities, supporting early learning to elementary school transitions, and resources for recruiting new teachers into the profession. Notably, Title II funding may also be used to build educator and leader capacity to effectively use student data, while also protecting students' privacy. States have the option of using educator evaluation systems and, if desired, may utilize federal funds to support such systems.

- **Purpose:** The purpose of Title II is to provide grants to State Education Agencies (SEAs) to “increase student achievement consistent with the challenging state academic standards; improve the quality and effectiveness of teachers, principals, and other school leaders; increase the number of teachers, principals, and other school leaders who are effective in improving student academic achievement in schools; and provide low-income and minority students greater access to effective teachers, principals, and other school leaders.”

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- **Teacher Evaluations:** The new Title II eliminates federal regulatory mandates requiring teacher evaluations and NCLB's Highly Qualified Teacher (HQT) requirements. However, federal funds awarded under Title II may be used by states to develop, improve, or provide assistance to LEAs to support the design and implementation of teacher, principal, or other school leader evaluation and support systems.
- **State Use of Funds:** Each state must allot no less than 95 percent to make sub grants to LEAs. States may use up to 5 percent for state level activities (up to 1 percent for state administration, and up to an additional 3 percent may be used to provide targeted supports to principals or other school leaders).
- **State Level Activities:** Permissible state activities include: reforming teacher certification, licensing, or tenure systems; developing leader evaluation and support systems; improving equitable access to effective teachers; recruiting and retaining effective teachers, principals, and school leaders; administration and monitoring of the programs carried out under Title II, among many others.
- **Prohibition:** The Secretary may not mandate any of the following:
 - Materials, curriculum, instruction programs, academic standards, or assessments,
 - Teacher, principal, or other school leader evaluations,
 - Specific definitions of teacher, principal, or other school leader effectiveness, and
 - Teacher, principal, or other school leader professional standards, certification, or licensing.

Title III – English Learners

One of the most extensive revisions regarding English learners in the ESSA is a shift in accountability requirements: these requirements are now addressed in Title I, rather than Title III. Most of the other provisions of this Title reflect few changes from NCLB.

- **State Education Agency (SEA) Formula Grants for English Learners:** Program requirements include: state development of statewide entrance and exit procedures for English learner programs to ensure that English learners are reclassified upon achieving English proficiency; teacher and principal preparation, technical assistance; and effective professional development activities, all related to the education of English learners.
- **National Professional Development Project:** Title III provides funding to higher education institutions or entities that provide for professional development activities that will improve classroom instruction for English learners and help educators working with English learners to meet high professional standards.

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Education Technology

The ESSA features provisions focused on supporting and promoting technology use for improving academic achievement, academic growth, and digital literacy. For example, the new law authorizes the Institute of Education Sciences, the research arm of the U.S. Department of Education, to study students' home broadband access behaviors and needs. The new law also authorizes support for professional development opportunities designed to enhance educators and school leaders' capacities to use technology to support teaching and learning, while also strengthening technology infrastructure and program delivery.

The ESSA authorizes additional support – beyond Title II - for education technology focused professional development and infrastructure acquisition. Unlike current law (the Enhancing Education through Technology program), the ESSA does not authorize a freestanding education technology program.

Instead, the new law creates a new block grant, distributed by formula through states to districts, called the Student Support and Academic Enrichment Grants (SSAEG) program, which focuses on three core areas:

- Providing all students with access to a well-rounded education (Sec. 4107);
- Improving school conditions for learning (Sec. 4108); and
- Improving the use of technology in order to improve the academic achievement, academic growth, and digital literacy of all students (Sec. 4109).

Student Data Privacy

The ESSA includes provisions that seek to ensure that student data and personally identifiable information are given adequate protection. These privacy protections largely mirror NCLB's privacy protections. However, the new law does add a non-binding "Sense of Congress on Protecting Student Privacy" (Sec. 8545), which specifies Congress' position that it is vitally important to protect student privacy and personally identifiable information may not be shared with anyone outside of school officials, without prior notice to parents.

In addition, new Section 8545 requires the Secretary to secure an assurance from any entity or grantee receiving funds under this Act that they understand the importance of student privacy protection, and they are aware of the responsibilities required under the Family Educational Rights and Privacy Act (FERPA). The Secretary is also charged with a review of all regulations addressing student privacy, including those within the ESSA, to ensure that students' personally identifiable information is protected. Other notable privacy provisions include:

- **Title I:** Section 1111 on State Plans requires that information is collected and disseminated in a manner that protects the privacy of individuals consistent with FERPA. Student privacy must also be protected in assessments, report cards,

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states' disaggregation of information for statewide accountability purposes, and any federally funded program evaluations.

- **Title II:** Title II grants may be used to train teachers on the appropriate use of student data and student privacy laws from states and FERPA. Further, grant funds may be used to provide professional development opportunities to teachers on how to use data to improve student achievement, but ensure that individual student privacy is protected in the use of such data.
- **21st Century Schools:** Title IV includes student data privacy protections specifically applicable to 21st Century Community Learning center grantees and charter schools.
- **Homeless Youth:** Title IX requires that information on the living situation of a homeless child or youth be treated as part of the student's education record, with all required privacy protections.

Small and Rural Schools & LEAs

ESSA includes a focus on ensuring that students in rural schools and areas are receiving equal opportunities in their education, compared to students in more urban and suburban areas, including a new framework in the Rural Education Achievement Program that is intended to provide greater flexibility in the use of federal funding for rural LEAs. Some of the provisions specific to rural schools and LEAs are summarized below.

- **Rural Education Achievement Program:** The Rural Education Achievement Program (REAP) remains as a stand-alone program within the ESSA under Title V (Part B - Rural Education Initiative). However, a new framework is intended to update and improve support to rural schools, provide more flexible use of funding, and require the Secretary to determine whether the Department is addressing the "unique needs and characteristics of rural schools and rural local educational agencies."
- **Title I:** Rural LEAs and schools are mentioned briefly throughout Title I, mainly in regards to SEAs consulting with rural educational agencies when making educational decisions.
- **Teacher and School Leader Incentive Fund:** When awarding grants and subgrants to states and eligible entities under ESSA, the Secretary and SEAs must distribute funds in such a way that eligible entities will receive these grants in geographically diverse areas, including urban, suburban, and rural areas.
- **Preschool Development Grants:** ESSA also includes provisions for ensuring that children in rural areas have equal access to educational opportunities, programs, and services through federally funded grants, particularly low-income and disadvantaged children in rural areas.

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- **Technology and Innovation:** The Secretary is required to ensure that no less than 25 percent of the funds awarded to LEAs through grants for education innovation and research (Sec. 4611) go to rural LEAs. Title IV also provides for technology and related resources for students in rural schools in some important ways.
- **Promise Neighborhoods and Full-Service Community Schools:** Both of these Title IV grant programs have a reservation for rural areas. From the amounts available for these grants, the Secretary is required to use no less than 15 percent of such amounts to award grants to eligible entities that propose to carry out the activities in rural areas.
- **Outreach and Technical Assistance for Rural Local Educational Agencies:** As with NCLB, Title VIII includes a requirement that the Secretary engage in and reach out to rural LEAs regarding opportunities that may be available to apply for competitive grant programs under this Act, and to provide any requested technical assistance, if needed.

Funding, Including Program Consolidation & Maintenance of Effort

The Act's authorization covers fiscal years 2017 through 2020 (rather than the traditional five year authorization), creating an opportunity for the next president to change the Act. Authorization levels for Title I and Title II remain relatively unchanged. Two significant shifts in Title I's funding provisions include changes in school improvement grants and the inclusion of a weighted student formula pilot program.

- **School Improvement Grants:** School improvement grants are now consolidated into Title I. The funds previously available will now flow through the regular Title I formula. States must set aside 7 percent, which will include the 4 percent set aside for school improvement under Title I plus the state's SIG amount. States must then move at least 95 percent of that 7 percent to make grants to LEAs on a formula or competitive basis to serve schools implementing comprehensive support and improvement activities.
- **Weighted Student Formula (Pilot Program):** A pilot program is created in Title I, which will apply to 50 LEAs - this program allows an LEA to aggregate its state, local, and federal dollars to design their own formulas based on weighted per-pupil allocations for low-income and otherwise disadvantaged students. This program will allow districts greater authority over where the funding is actually going in their schools.
- **Maintenance of Effort:** ESSA includes maintenance of effort and supplement not supplant requirements; however it does provide additional flexibility for states and school districts. SEAs and LEAs must continue to invest at least 90 percent of what they did the year before in order to receive federal dollars.

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High Quality Early Learning

ESSA encourages alignment of early learning programs with elementary school by making early childhood programs eligible investments across the Act, including in Title I and Title II. Notably, the new law also authorizes a new preschool development grants program designed to help states better use existing federal, state, and local early learning resources to improve quality, and to increase access to high quality programs. The purposes of the new preschool development program, authorized at \$250 million, include:

- Assist states to develop, update, or implement a strategic plan.
- Encourage partnerships among Head Start providers, state and local governments, Indian tribes and tribal organizations, private entities (including faith- and community-based entities), and local educational agencies to improve coordination, program quality, and delivery of services; and
- Maximize parental choice among a mixed delivery system of early childhood education program providers.

Conclusion: Next Steps

With the legislative process concluded, the U.S. Department of Education is reviewing ESSA in order to determine its next steps with regard to regulatory and process changes within the Department.

On December 18, 2015, Acting Assistant Secretary Ann Whalen sent a “[dear colleague](#)” letter to states outlining the process of transition to the ESSA. In the letter, Ms. Whalen writes, “in the coming months, ED will provide ongoing guidance to support schools, districts and States in the transition to the ESSA. This letter begins this process and provides guidance regarding certain activities for which we know you are working toward imminent deadlines and that are affected by this reauthorization.”

States currently operating under an ED waiver will have those waivers terminated on August 31, 2016. All states will be required to fully implement core accountability and other requirements but not until the 2017-18 school year. At the state level, the California Department of Education and the State Board of Education are also in the process of reviewing the text of the legislation in order to determine what statutory and regulatory changes will need to be made at the state level, in addition to how the implementation of ESSA will affect the LCFF/LCAP process currently underway.

Resources:

Foresight Law + Policy, ESSA Initial Overview and Analysis, December 11, 2015

S. 1177, P.L. 114-95 - [Bill Text](#)

House Education and the Workforce Committee [ESEA Conference Report Summary](#)