

THE EVERY STUDENT SUCCEEDS ACT

The Every Student Succeeds Act (ESSA) was enacted on Dec. 10, 2015, as the long-awaited reauthorization of the Elementary and Secondary Education Act (Public Law 114-95). As states prepare to transition from the current ESEA Flexibility Waiver system administered by the U.S. Department of Education (“Department”) to alleviate the unintended consequences of the former No Child Left Behind Act, the focal point is now the process utilized by the Department to implement the new law. Beginning with the 2017-18 school year, new state plans for statewide accountability and school support and improvement are to become effective under ESSA. Key transition guidance has been provided by the Department and can be accessed [here](#).

ESSA Implementation: NSBA has been actively involved in all aspects of the Department’s implementation efforts.

- NSBA filed public comments in response to the Department’s Request for Information (RFI) (Docket ID ED-2015-OESE-0130), issued on Dec. 22, 2015, regarding Title I programs for disadvantaged students under ESSA.
- NSBA participated in the Department’s first public input meeting about ESSA on Jan. 11, and submitted formal comments in response to the RFI that underscore school districts and school boards being in the best position to represent the concerns and priorities of their local communities, with respect to this landmark recalibration of the federal role in public education.
- On Feb. 4, the U.S. Department of Education published a Federal Register notice seeking nominations for a negotiated rulemaking (neg-reg) panel to assist with the development of regulations under Title I of ESSA relating to assessments and supplement, not supplant requirements. The negotiated rulemaking committee met eight times through March and April. NSBA staff attended all three rounds of negotiated rulemaking committee meetings and coordinated with negotiators to advocate for the interests of local school board members. The committee did reach a consensus on assessment regulations, but did not reach a consensus on supplement, not supplant requirements.
- NSBA submitted a response to the Department’s recent inquiry for requested public input on issues for which the Department should consider for the issuance of non-regulatory guidance. On May 25, NSBA responded to that inquiry, stressing the need for local school board members to be engaged in the process of any development of non-regulatory guidance.

The following sections provide a synopsis of the general ESSA framework and outline proposed regulations.

General ESSA Framework:

Local Governance: A provision championed by NSBA to affirm local school board governance is included in ESSA (Section 8541) that denotes the authority and flexibility that states and local school districts need to facilitate local innovation and student achievement, without placing undue burdens on districts that would adversely impact effective governance. Introduced by Senators Deb Fischer (R-NE), Angus King (I-ME), and Jon Tester (D-MT), the provision clarifies the appropriate federal role in education. It ensures that local school boards have a stronger voice in the regulatory and guidance processes of the U.S. Department of Education.

Greater Authority to States and School Districts: ESSA eliminates several requirements of the previous law and provides more discretion to states and school districts regarding the development of state plans and accountability systems. Under Title I, the law allows new state-defined index systems with certain required components for long-term goals. These new accountability systems are to include measurements for improved academic achievement on state assessments, graduation rates, and progress in achieving English language proficiency for English learners. Also, state systems are to include a measure of school quality or student success, such as student and educator engagement, access and completion of advanced coursework, postsecondary readiness, and school climate and safety.

ESSA also eliminates the requirement that states develop annual measurable achievement objectives for English language proficiency and replaces it with such proficiency assessments as a required indicator for school performance under Title I. Also, for English Language Acquisition, states are to establish standardized English Learner entrance and exit criteria.

ESSA prohibits the U.S. Department of Education from coercing states to adopt any specific state academic standards, including Common Core standards. It facilitates states developing their own challenging academic content and achievement standards in math, reading/language arts, and science that are aligned with entrance requirements for respective state institutions of higher education and state career and technical education standards.

Opting Out of Assessments: ESSA defers to states and school districts about policies to opt-out of tests, pursuant to Section 1112 (e)(2) on Testing Transparency, but does maintain the minimum requirement that states assess at least 95 percent of students. Additionally, school districts must notify parents at the beginning of the year that they *may request* information regarding state or local policies on student participation in any assessments, which shall include a policy, procedure, or parental right to opt the child out of such assessment, where applicable.

School Improvement: ESSA eliminates the Title I School Improvement Grant (SIG) program and requires states to set aside 7 percent of their respective Title I allocations for school improvement efforts that are to be designed and managed by states and districts.

States are required to identify schools for “comprehensive support and improvement” every three years, and establish exit criteria for schools that are identified to exit such status. Such schools would be the

lowest performing 5 percent of schools in a state; high schools that graduate less than two-thirds of their students; and schools in which a subgroup is consistently underperforming in the same manner as a school under the previous two categories for a state-determined number of years. The comprehensive plans are to include evidence-based interventions, identify resource inequities, and undergo approval by the school, school district, and state educational agency (SEA).

Funding: Overall, ESSA authorizes greater investments in elementary and secondary education from FY2017-20. For example, the law authorizes the following investments in Title I grants for disadvantaged students:

FY2017 - \$15,012,317,605

FY2018 - \$15,457,459,042

FY2019 - \$15,897,371,442

FY2020 - \$16,182,344,591

However, authorizations for appropriations do not guarantee the actual appropriated amount. Authorizations are subject to the annual appropriations process, in which the final amount allocated each fiscal year may not reflect the amount authorized. The House and Senate Appropriations Committees are responsible for legislating investments in education and other programs. (For example, Title I grants for disadvantaged students are currently funded at an appropriated amount of roughly \$15 billion, even though a previously authorized amount under NCLB for FY2007 is actually greater, at \$25 billion.)

To explore concerns regarding equitable distribution of funding to disadvantaged students, ESSA authorizes a pilot program for up to 50 school districts to enter into demonstration agreements with the U.S. Department of Education to consolidate federal, state, and local education funding for the purpose of maximizing resources for English learners and students from low-income families.

Under Title III, which authorizes English Language Acquisition programs, ESSA allows states to use their state share of Title III funds for bonuses to districts with large gains in EL proficiency and academic achievement.

Effective Teachers and Leaders: ESSA changes the Title II, Part A state grant formula over four years to target more resources to children in poverty. Greater emphasis is placed on support for principals and other school leaders, such as an optional 3 percent state set-aside for systemic, infrastructure improvements that can be targeted to smaller districts.

ESSA also eliminates “highly qualified teacher” requirements and requires teachers working in Title I programs to meet applicable state certification and licensure standards. In other areas of Title II, the law continues the Teacher and Leader Incentive Fund (TIF) for teacher and principal compensation systems.

21st Century Schools: ESSA includes a new flexible “Student Support and Academic Enrichment” grant program that can be used for multiple purposes under Title IV of the law. Allowable uses of grant funds include education technology, safe schools programs, STEM (science, technology, engineering

and math) programs, and expanded library service hours. District(s) must submit an application and needs assessment to qualify for funds.

Assessment Regulations: Negotiated Rulemaking Update

As noted, the negotiated rulemaking committee did reach a consensus on the assessment regulations the Department will promulgate to implement provisions of Title I. As such, the Department is bound to the agreement with negotiators and will proceed with the formal rulemaking process to formalize the committee's draft regulatory language. The Department [issued a Notice of Proposed Rulemaking](#) in the Federal Register, and the public has an opportunity to comment on the proposed regulations.

The committee agreed on the requirements for seven specific issues involving assessments: 1) Computer Adaptive Assessments; 2) Exception for advanced mathematics in the eighth grade; 3) Use of locally selected nationally recognized high school assessments; 4) Inclusion of students with disabilities in assessment systems; 5) State administration of alternate assessments for students with the most significant cognitive disabilities; 6) Inclusion of English learners (ELs) in assessment systems; and 7) Inclusion of English learners in English language proficiency assessments. (Access materials [here](#).)

Supplement, Not Supplant Regulations: Negotiated Rulemaking Update

The negotiated rulemaking committee did not reach consensus or approve the regulations submitted by the Department relating to supplement, not supplant provisions of Title 1. The Department's proposal required a district to determine "the methodology it will use to allocate State and local funds to its schools, such as a methodology that allocates funding through a weighted funding system, provided the methodology results in the *LEA spending an amount of State and local funds per pupil in each Title 1 school that is equal to or greater than the average amount spent per pupil in non-Title 1 schools. . .*" The requirement to demonstrate "equal to or greater than" spending applied to "districtwide costs or services," and the committee, sharply divided on the threshold requirement, could not reach consensus. (Access materials [here](#).)

Failure to reach consensus allows the Department to proceed in issuing regulations to govern supplement, not supplant, and the Department is not bound to the draft regulations discussed by negotiators. The Department may proceed with the formal rulemaking process, but is required to notify Congress of the proposed regulations. Congress may provide comments on the proposed regulations and will likely engage in oversight of the Department's regulations.

Recommendations and Next Steps: ESSA provides school districts and states with a modernized framework for state plans, accountability mechanisms, and local innovation. Likewise, NSBA urges the U.S. Department of Education to:

- Encourage state and local school district collaboration for state-based goals and timelines around student achievement, high school graduation rates, and measures for supports and interventions;
- Solicit input from states and local school districts regarding accountability systems and provide explicit non-binding guidance and best practices that can help states and school districts identify, set, and use a variety of student success indicators; and

- Provide guidance on a variety of models that would help school districts and states determine and develop their own targeted improvements for struggling schools and support tools that may help schools address equity issues.

NSBA PRIORITY: Throughout the regulatory and non-regulatory implementation process for ESSA, NSBA urges Congress and the administration to ensure that ESSA is implemented pursuant to the intent of the law for a balanced local-state-federal partnership that strengthens the position of local school boards to prepare all students for success in the 21st century global economy. NSBA continues to advocate for our nation's local school boards through multiple regulatory opportunities, including public hearings, recommendations regarding proposed rulemakings and guidance, and any negotiated rulemaking process.

NSBA Office of Advocacy

For additional information, please contact the Office of Federal Advocacy and Public Policy at the National School Boards Association, at 703-838-6722.

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