



## The Every Student Succeeds Act (ESSA) – S.1177

### Transition Timetable and Frequently Asked Questions: A Local School Board Primer

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Over the next two weeks, the U.S. House of Representatives, U.S. Senate, and the White House are expected to take final action to modernize and reauthorize the cornerstone legislation for public education in America – The Elementary and Secondary Education Act (ESEA) – last reauthorized more than a decade ago as No Child Left Behind (NCLB).

This document contains a brief, tailored overview of The Every Student Succeeds Act (ESSA) – the 114<sup>th</sup> Congress’s effort to update the antiquated NCLB – for school board members with key information (e.g., effective date of existing waiver terminations) about how Congress has overhauled the law in favor of restoring local governance and community leadership in public education. Please note that this document is not intended to be comprehensive; rather, this summary and analysis of selected provisions seeks to provide local school boards with a basic command of the new law’s impact on public education going forward.

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## Transition Timetable

The transition for the new law will occur over the next several years and cover Fiscal Years 2017-2020, essentially a four-year authorization. Some key implementation dates are:

- For the 2016 calendar year:
  - Existing State Plans will be in effect through the close of August 1, 2016.
    - New State Plans pursuant to ESSA will take effect beginning with the school year 2017-2018.
  - Existing waivers to states or LEA Consortia terminate on/after August 1, 2016.
  - Changes impacting non-competitive grant programs (and McKinney-Vento) will be effective July 1, 2016 (unless otherwise stated).
  - Changes impacting competitive grants (with regard to appropriations) will be effective October 1, 2016 (unless otherwise stated).
- Beginning School Year 2016:
  - LEAs must notify parents:
    - Of their right to request and receive information about the professional qualifications of their student's classroom teacher(s).
    - Regarding students participating in mandated assessments, and the right to opt out of those assessments.
- Beginning School Year 2017-2018:
  - State Plans must state what is required in the plan's sections on "statewide accountability system," and "school support and improvement activities."
  - State Plans must establish a state-determined methodology to identify one statewide category of schools for comprehensive support and improvement. (Continued at least once every three school years.)
  - State educational agency, based on the state's differentiation of schools for school year 2017-2018, must notify LEAs of any schools served by the LEA in which any subgroup of students, on its own, would lead to identification using the state's methodology.
- Beginning School Year 2019-2020:
  - The Secretary may extend three-year waiver of ESSA provisions granted to an LEA to allow flexibility to consolidate federal, state, and local funds to create single school funding system based on weighted per-pupil allocation for low-income/disadvantaged students.

## Frequently Asked Questions:

### **1. Who will approve State Plans under ESSA?**

Under the proposed ESSA, states will develop and submit plans for increasing the achievement of low-income students to the U.S. Department of Education in order to receive Title I grants. The SEA will take the lead in developing the State Plan, but is required to work "with timely and meaningful consultation" with the governor and other state policymakers, LEAs, representatives of teachers, principals, and other school staff, and parents. Each State Plan must be made available for public comment for at least 30 days prior to submission to the Secretary.

Once submitted, the plan will undergo a peer review by “multi-disciplinary teams” appointed by the Department and representing education stakeholders and researchers. Neither the Secretary nor Department political appointees may participate or attempt to influence the peer review process. The teams have 120 days to make their decision.

Should the plan fail to be approved initially, the Secretary will notify the State and provide all supporting material and the peer review team’s rationale for the decision. The Department will further offer the state technical assistance when making revisions. A hearing is also available unless the state declines.

## **2. Will ESSA change existing testing and accountability requirements?**

Yes. As under NCLB, states will develop or demonstrate they currently have “challenging academic standards” for all public school students in mathematics, reading or language arts, and science. However, ESSA further requires the state to “demonstrate” that the standards are aligned with entrance requirements to state post-secondary institutions and “relevant” state career and technical education standards. Achievement standards will still be developed with at least three levels. The standards will undergo a public review process before being adopted. They will not be required to be submitted to the Secretary.

The state will need to “demonstrate in consultation with LEAs” that it has implemented assessments that are of high-quality and are aligned to the state standards. Assessments will only be used for “valid and reliable purposes.”

Like NCLB, ESSA will retain annual testing for grades 3 through 8 in reading and mathematics, and once in grades 9-12. Science testing will still be assessed at least once during grade spans 3-5, 6-9 and 10-12. ESSA encourages the development of richer, performance-based assessments through the use of multiple measures, and “may include” portfolios and projects.

To address concerns about over-testing, the ESSA permits states to set targets for total time spent on testing. Further, states and school districts may use federal funds to audit their testing systems and eliminate redundant or unnecessary tests.

The accountability system will be designed and implemented by the state in consultation with LEAs and other stakeholders, but will contain certain elements. The biggest change is that AYP is out and will be replaced by state-defined long-term goals that are “ambitious” and include measures of interim progress. The goals and interim measures will continue to apply to all students and individual subgroups of students. At minimum, goals will be set for:

- improved academic achievement based on proficiency on assessments and may include measures of student growth;
- high school graduation based on the adjusted four-year cohort formula. States may also include goals for extended year adjusted cohort;
- another academic indicator for elementary and middle schools;

- increased English proficiency for ELLs; and
- at least one indicator that allows for “meaningful differentiation” among schools and is valid, reliable, and comparable across the state, such as student engagement, high-level course completion, school climate, etc.

The state will further design an index for weighting the indicators for accountability purposes. ESSA, however, requires the academic indicators in aggregate to receive “significant” weight.

Also gone are the NCLB-defined sanctions and prescribed interventions. Instead, the state will identify schools in need of “comprehensive support and improvement.” Criteria for identifying these schools will include performance in the bottom 5 percent of Title I schools that fail to graduate more than one third of its students and schools with consistently underperforming subgroups. Once identified, a school improvement plan will be developed by the LEA in collaboration with community stakeholders. The plan will be approved by the school, LEA, and SEA and will be monitored and reviewed.

**3. Are early childhood programs included in the new law?**

Yes. A Preschool Development grant program is authorized at \$250 million annually. The newly authorized program will be jointly administered by the departments of Health & Human Services and Education to help states align and coordinate early learning programs. The new program, along with other early learning programs, will be reviewed for effectiveness and duplication, and a report will be made to Congress within two years of enactment.

**4. Does ESSA address teacher training and professional development?**

Yes. Title II of the bill authorizes \$2.5 billion to prepare, train, and recruit high-quality teachers, principals, or other school leaders. An important change is that the hold harmless clause for Title II funds is being phased out by 2020. This means that over the next seven years, the formula for distribution of funds – currently based 65 percent on students in poverty and 35 percent on student population overall – will eventually be based 80 percent on students in poverty and 20 percent on the overall student population. Highly Qualified Teacher (HQT) requirements from NCLB are eliminated. There are no mandated teacher evaluation requirements; however, states and districts may use Title II funds to design and implement teacher and principal evaluation systems. States may also use funds for training and capacity-building for local education agencies, as well as a broad range of other activities, including differential pay systems for high-need subjects, induction, and mentoring programs.

**5. Will the federal government contribute more funds under the new law?**

Depends. Under ESSA, Congress authorizes greater investments in elementary and secondary education from Fiscal Years 2017-2020.

For Title I grants for disadvantaged students, the legislation would authorize the following investments:

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. 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 \$14.4 billion, even though the last authorized amount under NCLB for FY2007 is actually greater, at \$25 billion.

**6. Can Title I funds be used to pay for students who attend private schools?**

No. ESSA does not include new provisions for Title I portability that could have allowed students the option to transfer to private schools with Title I funds following. Under the legislation, and also part of the existing statute, school districts must “provide services to eligible children attending private elementary schools and secondary schools in accordance with section 1117, and timely and meaningful consultation with private school officials regarding such services.” This is noted in Title I, Section 1112, that lists provisions regarding LEA Plans. Section 1117 (redesignated as Section 1003 in the “Every Student Succeeds Act”) addresses “Participation of Children Enrolled in Private Schools.”

**7. Will the Title I formula change under the new law?**

No. Although hotly debated, the Title I funding formula will not change under ESSA. The Senate-passed bill for ESEA reauthorization (S. 1177) would have changed the formula, however, the House-Senate Conference Committee bill does not. There is a provision to allow a pilot project for up to 50 school districts to help address “equitable per pupil funding,” under Title I, Part E, Section 1501. This provision was added to support efforts to targeted funds to at-risk students, such as student characteristics of low-income and English learner status.

**8. Is Maintenance of Effort still required?**

Yes. Title VIII, Section 8019, addresses MOE and notes that a state’s fiscal effort per student, or aggregate expenditures, for free public education must be at least 90 percent of those from the preceding fiscal year.

**9. What does the new law say about local governance?**

A lot. Specifically, in a victory for school boards, ESSA contains specific legislative language NSBA crafted collaboratively with Senate Staff. Senators Fischer (R-NE), Tester (D-MT) and King (I-ME)—a tri-partisan group of Senators — sponsored the Local Governance provision and shepherded it through the legislative process. Sec. 8541 – Local Governance – pushes back against federal intrusion into school administration, including the development and expenditure of school budgets. The new law specifically addresses potential federal reach

through non-regulatory means and requires local stakeholder (e.g., school board) input at the federal level prior to issuing such guidance. Because ESSA returns to states and local districts more flexibility in key areas such as testing and accountability, local stakeholder input into the regulatory process over the coming months will be exceedingly important.

#### **10. What's next for School Boards and NSBA?**

Grassroots and NSBA advocacy does not end with the final passage and signing into law of ESSA. Quite the opposite – with new law comes new regulations. The present Administration will take the reins to promulgate new regulations to implement ESSA as quickly as possible. In this regard, the next Regulatory Agenda is expected in April 2016 so rulemaking will be fast and furious. Additionally, any rules not finalized and published by December 31, 2016, could be discarded by the incoming administration so we expect a feverish regulatory push in the next year or so. For some provisions of the new law, the Department of Education will use the Negotiated Rule making process, a process that can include direct school board representation while regulating under the new law. In fact, ESSA specifically identifies school boards as a local stakeholder for purposes of negotiated rule making. Finally, and perhaps most importantly going forward, the present and future Administrations will seek to use non-regulatory guidance to effect certain policy outcomes, thereby testing the Local Governance provision of the new law.