

## REAUTHORIZATION OF THE ELEMENTARY AND SECONDARY EDUCATION ACT

As the first session of the 114<sup>th</sup> Congress comes to a close, reauthorization of the *Elementary and Secondary Education Act* (ESEA) is among a growing list of priorities to be addressed. As of July, both the House and Senate have passed their respective versions of a bill to modernize ESEA, which has been due for reauthorization for more than seven years. The next step in the process is a House-Senate Conference Committee that would reconcile differences between the House bill, the *Student Success Act* (H.R. 5), and the Senate bill, the *Every Child Achieves Act* (S. 1177).

While both bills seek to address the unintended consequences of the *No Child Left Behind Act* (NCLB), such as aggressive benchmarks and progressive sanctions, differences exist between the two. A new provision regarding school choice is included in H.R. 5 – Section 1128, “Title I Funds Follow the Low-Income Child State Option.” Under this section for Title I portability, the House-passed bill would give states the option of allowing Title I money to follow low-income students to the traditional public or charter school of the parent’s choice. Conversely, the Senate-passed bill does not include this provision.

Another difference that a House-Senate ESEA conference committee would consider is maintenance of effort (MOE), which requires that a school district’s education expenditures be at least 90 percent of the prior year amounts (of state and local expenditures at the district level for responsibilities including instruction, administration, attendance, health services, and transportation). H.R. 5 would eliminate MOE, while S. 1177 would retain MOE requirements under the ESEA Title I program.

Further, a Title I funding formula change is included in S. 1177 that was introduced by Senator Richard Burr (R-NC) and co-sponsored by Senator Michael Bennet (D-CO). H.R. 5 does not include a change in the Title I formula. The proposed change in S. 1177 would consolidate the four types of Title I grants into one. The new funding formula, titled state “equity grants,” would be distributed based upon concentrations of poverty, rather than state average per-pupil expenditures as a factor. With the proposed formula change, some states would lose funding. However, the provision includes a “hold harmless clause” for states that would lose funding, meaning the new formula would not apply to any of the existing funds and would not be applied until overall Title I funding reaches an annual level of \$17 billion. Currently, Title I is funded at approximately \$14.5 billion. States that would be impacted include Connecticut, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia and Wisconsin.

### LOCAL GOVERNANCE

Provisions supported by NSBA that affirm local school board governance are included in both the House and Senate bills. [Sec. 6531](#) in H.R. 5 denotes the authority and flexibility that states and local

school districts need to facilitate local innovation & student achievement, without placing undue burdens on districts that would adversely impact effective governance.

Under the Senate bill, Amendment #2079 (now [Sec. 9115B](#)) introduced by Senator Deb Fischer (R-NE), Senator Angus King (I-ME) and Senator Jon Tester (D-MT) was agreed to by a voice vote on the Senate floor for inclusion in S. 1177. This provision would clarify the appropriate federal role in education and ensure that local school boards have a stronger voice in the regulatory and guidance processes of the U.S. Department of Education.

While states and districts await reauthorization, most are complying with the law through state-designed conditional waivers provided by the U.S. Department of Education that provide some flexibility. However, such temporary waiver approvals were accompanied by additional federal requirements under the auspices of the U.S. Secretary of Education, such as accountability, and implementation of federally defined statewide teacher and principal evaluation mandates. This patchwork of waivers and their mandates does not replace the formal reauthorization needed through Congress.

## **NSBA POSITION**

NSBA advocates for a comprehensive, strategic reauthorization of ESEA that provides school districts the flexibility and resources they need to respond to the educational challenges in their local communities. In this regard, NSBA seeks to:

- Include provisions in the final ESEA reauthorization that affirm the authority and flexibility that states and local school districts need to facilitate local innovation & student achievement, without placing undue burdens on districts that would adversely impact effective governance. (Currently, this provision is included in H.R. 5 as Sec. 6531.)
- Address Maintenance of Effort (MOE) concerns that affect several school districts and states.
- Ensure a modernized version of ESEA is fully supported by federal investments in Title I, which is the cornerstone of ESEA and has been woefully underfunded for decades.
- Prevent the siphoning off of limited federal investments in public education by opposing vouchers and any school choice provisions for private entities.
- Eliminate sanctions that erode local mechanisms for student success and impose unintended consequences on schools that are trying to improve and advance reform.

## **SELECTED TALKING POINTS**

- Local school board members, like members of Congress, are elected officials—both are accountable to local constituencies.
- NSBA urges Congress to include specific language in a final bill out of Conference Committee (e.g., NSBA's language, Sec. 6531 in H.R. 5 or Sec. 9115B in S. 1177) that affirms local school board governance and authority over school districts, 2) ensures that the Secretary of Education first consult with local stakeholders before issuing any regulations or non-regulatory guidance, and 3) allows any local educational agencies (LEAs) the right to object to administrative requirements, especially those that place additional burdens or costs on the LEA.
- Congress should not create and fund new programs without fully funding Title I, the cornerstone of ESEA.

- A modernized ESEA should support the use of multiple measures (e.g., growth models) of academic achievement that reflect a well-rounded education necessary for success in the 21<sup>st</sup> Century.
- A modernized ESEA should reward the use of innovative education programs aimed at providing all students the opportunity to reach their full potential.
- Congress must ensure that equity in education for all children exists in a modern ESEA.
- The imposition of ineffective and costly sanctions should never interfere with necessary, strategic, and local interventions targeting the most in need.

## **BACKGROUND**

Congress last authorized ESEA in 2002 with the *No Child Left Behind Act* (NCLB) – the most comprehensive federal law addressing K–12 public education in America. Originally enacted in 1965, ESEA established federal policy and authorized federal funding to assist states and local school districts in efforts to improve the academic performance of all students enrolled in public schools regardless of economic status, race, ethnicity, proficiency in English or disability. In the last Congress, The *Student Success Act*, H.R. 5, was reported by the Education and the Workforce Committee on June 19, 2013, and passed the House a month later on July 19<sup>th</sup>.

The *Strengthening America's Schools Act*, S 1094, was reported by the Senate Health, Education, Labor and Pensions (HELP) Committee on June 11, 2013, but never came to the Senate floor for a vote. NSBA ultimately did not support the Senate bill. The primary concerns with this bill were the expanded federal role it promoted, mandated school improvement models, and a new definition of Title I comparability.

The U.S. Department of Education has granted formal, individual waivers to selected states from certain requirements of the law such as highly qualified teacher provisions, adequate yearly progress (AYP) determinations, and school improvement. While such waivers have been welcomed by some states, NSBA believes strongly that waivers should not be viewed as a substitute for a new law.

**October 2015**