



Initial Implementation Guide

NSBA Implementation Guide

The passage of the Every Student Succeeds Act (ESSA) represents a significant rewrite of the Elementary and Secondary Education Act (ESEA) and provides a historic opportunity for school boards across the country to help shape how this law will impact their schools, teachers and students. Unlike its predecessor statute, the No Child Left Behind Act, ESSA reduces the specificity of Federal requirements while increasing the ability of States and school districts to define how schools and school districts are held accountable for student achievement.

With the passage of this law, the U.S. Department of Education (ED) and States both will embark on a significant amount of work to implement its provisions. Below is an overview of what is expected in this process, both from a timing and requirement perspective. It is important to note that while ESSA has passed Congress, ED will need to publish regulations, guidance and program applications that will shape requirements for States, school districts and schools under the law. This guide should be viewed as an initial look at implementation and will be further supplemented as additional information becomes available.

ESSA Implementation Timelines

ESSA has a number of dates which impact when different parts of the new law go into effect and when the Department must regulate. The key dates include:

- **Effective Date of Formula programs.** Requirements for programs such as Title I are presently expected to go into effect starting with the 2017-2018 school year. While the ESSA statute originally stipulated that requirements for formula programs would go into effect for next school year, the 2016 appropriations bill passed by Congress delayed the effective date until the 2017-2018 school year.
- **Effective Date for Competitive programs.** ESSA makes the changes to competitive grant programs effective starting with FY 2017 funding.
- **ESEA State Waivers.** ESEA waivers which States are presently operating under are null and void on August 1, 2016, including their requirements for State systems of teacher evaluation. The Department has yet to issue comprehensive guidance as to what happens post ESEA waivers and before States have their Title I plans in place.
- **Title I Accountability.** Several aspects of ESSA implementation timelines speak directly to Title I accountability requirements:
 - Current adequate yearly progress (AYP) requirements are effective through August 1, 2016.
 - 2017-2018 will be the school year for which new accountability system requirements take effect.

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- ***Schools and local educational agencies that have been identified for school improvement, corrective action, restructuring under prior law or as priority or focus schools under ESEA waivers must continue to implement any interventions required under those authorities either until their state has a new Title I plan approved, or the accountability provisions of ESSA go into effect.***

U.S. Department of Education Regulations

ED has already begun the process of implementing ESSA. On December 22, 2015, ED issued a notice seeking public input on how and on what provisions of the law the Department should regulate. NSBA provided public testimony to ED on the priorities of school boards through implementation of ESSA. We also submitted written comments.

In order to implement ESSA, the Department will issue regulations on various provisions, including those elements of the law ED believes need further clarity. The statute requires ED to finalize regulations within one year of the passage of ESSA (translating to mid-December 2016). Under a rulemaking process by ED, a proposed regulation (called a Notice of Proposed Rulemaking or NPRM) must be issued. An NPRM is a draft regulation that is open for public comment for a period of time (typically not less than 30 days, but at times as much as 60 or 90 days). After ED receives and reviews the comments the Department issues a final regulation that includes a discussion of comments received and the reasons the Department did or did not modify its regulation based on these comments. While many rulemakings can take years, ***we expect final regulations to be issued during the fall of 2016 to allow States and school districts time to implement their requirements for the 2017-2018 school year.***

In addition to the typical NPRM process, ESSA requires ED to conduct negotiated rulemaking on a subset of statutory requirements, including standards, assessments and supplement/not supplant requirements. The standards and assessments are those which States are required to adopt under Title I. Supplement/not supplant is a requirement that Federal dollars supplement and are not used in place of (supplanting) State funds. Under negotiated rulemaking, the Department of Education appoints individuals representing impacted constituencies to conduct several days of negotiations over regulatory language for these provisions. If all appointed parties, including ED, reach consensus on a regulatory package, the Department is required (absent technical changes) to move forward with that package as part of the NPRM they issue. If consensus is not reached, the law permits the Department to unilaterally move forward with regulations on these topics. Under ESSA, the lack of consensus also requires ED to give Congress time to review an NPRM before it is officially published.

U.S. Department of Education Guidance

In addition to regulation, ED is likely to issue guidance on various requirements and provisions that will shape the implementation of ESSA. In contrast to rulemaking, guidance is not subject to public comment, but often is viewed as binding by States and school districts. Guidance can take many forms, including dear colleague letters, and frequently asked questions documents. ED has already issued guidance to the States on some aspects of ESEA implementation, and is expected to continue to release guidance through this year.

State planning and Applications

In addition to regulations and possible guidance issued by ED, the Department will also have to finalize its application process for States and school districts for formula and other programs. Just like the regulations and guidance, applications are another opportunity for ED to shape the implementation of ESSA's programs. It is with the publishing of these State applications (and the State issuance of its local application packages for school districts) where ESSA implementation in States and school districts will move into high gear. Until the Department has published their regulations and issued their applications it is difficult to finalize any sort of plan for ESSA implementation at the State or local level.

As we covered in the General Provisions Summary, ESEA permits States and school districts to apply for ESEA's main formula programs through a consolidated application or single program by program applications. ESSA continues this authority. We expect these application packages to be issued by the Department just after or in conjunction with the publication of final ESSA regulations. It is important to note that while regulations, guidance and applications are all expected to be published and issued during the final months of the Obama Administration it is the next Administration that will actually approve these applications.

Opportunities for School Board Input

With ESSA's state level focus, school board efforts to engage on implementation are especially important. Below we lay out to major time periods with opportunities for engagement with states on shaping the impact of this new law.

Pre Regulation/Application Period. Prior to the issuance of any final regulation or application package from ED, many States have begun the process of reviewing and conducting initial discussions on implementation with various stakeholders. While the final regulations and application package will shape a lot of how this law will be implemented much can be accomplished now as States think through initial implementation efforts. ***There is no time like the present for engaging with your state department of Education officials on their plans for implementation of this law and how you can help shape it.***

Post Regulation/Application Period. As mentioned above, States will have the full scope of information they need to formally begin the implementation process of ESSA in earnest once final regulations and applications are published and issued by ED. At this point States are required to consult with various stakeholders (including school boards) on the applications and what they will require of school districts. States may approach this in different ways through public hearings or comment period. For example, States are required to make State plans publicly available for public comment for a period of not less than 30 days prior to submission to ED. As such, engaging your state officials during this period of time is critical to helping shape the law's implementation.

Summary of the Every Student Succeeds Act

Overall Bill Structure

The bill maintains the separately authorized large and medium formula grant programs in ESEA, including Title I (Improving Programs Operated by State and Local Education Agencies), Title II (Preparing, Training, and Recruiting High Quality Teachers and Leaders), Title III (English Language Learners and Immigrant Students), Title IV (several programs including Student Support and Academic Grant Enrichment Grants, 21st Century Grants, Family Engagement Programs and Charter School Programs), Title VI (Indian, Native Hawaiian, and Alaska Native Education) and Title VII (Impact Aid). In contrast to current law, many “small” ESEA programs are not separately authorized and instead would be funded through reservations of other programs/authorizations or their activities are funded through the Student Supports and Academic Achievement Grants authority.

Effective Date, Authorization Period and Authorization Levels – Changes to noncompetitive formula grant programs are effective 7/1/2017 . Changes to competitive programs are effective 10/1/2016. The accountability provisions in the bill are effective with the 2017-2018 school year, unless a State’s Title I plan is approved in advance of this school year. The authorization period for programs under the bill is FY2017 through FY2020 with specific funding levels authorized for each fiscal year.

Specific Programs

Below is a summary of the major provisions of certain programs in ESSA.

Title I

Standards and Assessments – The bill maintains requirements in Title I for standards and aligned assessments with assessments for these subjects required for the same grades and subjects as current law (Math and Reading/English Language Arts being assessed in grades 3 through 8 and once in high school and science being assessed once in elementary, middle and high school grade spans). The bill largely authorizes the “1% regulation” pertaining to assessments of students with significant cognitive disabilities and requires States to provide additional oversight over local educational agencies (LEAs) which exceed this 1% limitation. Additionally, as under current law, assessments of English language proficiency are required for English learners. The bill also permits locally-selected nationally recognized assessments in lieu of required high school State assessments if the local assessment has been approved by the State and provides comparable, valid and reliable data compared to the State assessments.

The bill requires LEAs to notify parents annually of the ability to receive any testing participation policy of the State or LEA. In addition, the bill maintains funds for assessment improvement, as well as allows funds for audits of State and local assessments. Lastly the bill establishes a 7 State Innovative Assessment demonstration program for States to use competency-based assessments.

Title I reservations (SIG and Direct Student Services) – The bill does not maintain a separately authorized School Improvement Grant (SIG) program. Instead the bill requires States to reserve 7% of Title I funds for SIG-like activities, with no specific models or improvement activities mandated. In addition, the bill permits States to reserve an additional 3% for direct student services. States provide grants to LEAs for direct student services that include covering the costs of enrollment in courses not otherwise available at a student’s school, credit recovery, Advanced Placement (including reimbursing low-income student test fees), tutoring services and transportation for public school choice.

Accountability – The bill replaces ESEA’s current adequate yearly progress system with a State-defined index system with certain federally-required components.

Goals - Under this system, States must establish “ambitious State-designed long term goals” with measurements of interim progress for:

- (1) Improved academic achievement on State assessments.
- (2) Graduation rates.
- (3) Progress in achieving English language proficiency for English learners.

State Index - The State-defined index must include the following indicators:

- (1) Academic Indicators
 - a. Academic achievement based on the annual assessments and on the State’s goals.
 - b. A measure of student growth or other statewide academic indicator for elementary and middle schools.
 - c. Graduation rates for high schools based on the State’s goals.
 - d. English proficiency based on the State’s goals.
- (2) Measure of School Quality and Student Success
 - a. At least one measure of school quality or student success (several examples are listed including student and educator engagement, access and completion of advanced coursework, postsecondary readiness, school climate and safety, and another State selected indicator).

Based on the performance of schools and subgroups in schools on the indicators described above, States are required to “meaningfully differentiate” public schools in the State. “Substantial weight” is required to be given the Academic Indicators (described above) and these 4 indicators must, in the aggregate be given “much greater weight” in the differentiation process than any Measures of School Quality or Student Success (described above). States systems are required to be designed to test 95% of all students and each subgroup of students. States determine how the participation rate factors into their accountability system.

Identification for Comprehensive Support and Improvement – At least once every 3 years, States must identify schools for “comprehensive support and improvement.” States are also required to set exit criteria for schools that are identified to exit such status. Schools that meet the following criteria are required to be identified:

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- (1) The 5% lowest performing in the State (as determined by the index and differentiation process).
 - (2) High schools that graduate less than two-thirds of their students.
 - (3) Schools for which a subgroup is consistently underperforming in the same manner as a school under the previous 2 categories for a State-determined number of years.

LEAs must develop comprehensive support and improvement plans for schools identified. Plans are required to include evidence-based interventions, identify resource inequities, be approved by the school, LEA and State Educational Agency (SEA), and be periodically monitored and reviewed by the SEA. LEAs may provide students with the option to transfer to another public school, including paying for transportation costs (up to 5% of their Title I allocation). After a state-determined period of years (not to exceed 4 years) States must take more rigorous state determined action if a school identified for comprehensive support and intervention has not met the exit criteria. Identification for comprehensive support and improvement will begin with the 2017-2018 academic year.

Notification of Targeted Support and Improvement – In addition to identification for comprehensive support and improvement, the State must annually notify LEAs with schools which have “consistently underperforming” subgroups. Schools which are notified must develop and implement a “targeted support and improvement plan.” These plans must include evidence-based interventions and be approved and monitored by the LEA. In addition, if the plan is not successfully implemented after a LEA determined number of years, additional action must take place. Schools for which plans are developed where subgroup performance would lead to identification for comprehensive support and improvement must also identify resource inequities to be addressed through plan implementation. As with other schools which are identified, notification for target support and improvement will begin with the 2017-2018 academic year.

Secretarial Prohibitions – The bill includes a number of prohibitions on the Secretary’s authority. Among other provisions, the bill will include language which specifically prohibits the Secretary from promulgating rules on the accountability system that is inconsistent or out of scope with statutory requirements, or adds new criteria through regulations that is inconsistent or out of scope. The Secretary is also not permitted to condition plan approval, revisions to a plan, or the approval of a waiver request by adding requirements that are inconsistent or out of scope with the statutory requirements. Additionally, the Secretary is specifically prohibited from prescribing:

- (1) Specific academic assessments or assessment items, including the Common Core.
- (2) In the accountability system: specific long term goals, indicators, weights of indicators, methodology, school support and improvement strategies, and exit criteria.
- (3) Any aspect or parameter of a teacher, principal or other school leader evaluation system. Indicators or specific measure of teacher, principal or other school leader effectiveness.

The Secretary is not permitted to issue non-regulatory guidance that provides a strictly limited or exhaustive list to illustrate successful implementation or purports to be legally binding.

Lastly, the Secretary is not permitted to define terms in the bill through regulation that are inconsistent or

out of scope with the statutory requirements or collect any data except from existing Federal State and local reporting requirements.

Report Cards – The bill largely keeps the current law structure of State and local report cards with changes to the specific items that must be reported. New reporting requirements or items include:

- (1) A description of the State’s accountability system, including information on its elements and system of differentiating schools.
- (2) Certain data collected through the Civil Rights Data Collection.
- (3) Expanded reporting on assessment and graduation rates by foster youth and homeless students.
- (4) The professional qualifications of teachers (the bill eliminates requirements for and reporting on highly qualified teachers).

Title I formula – The bill does not include the Title I formula changes of the Senate bill and largely keeps existing Title I formula provisions with technical changes and changes to allocations for the outlying areas.

Flexibility for Equitable Per-Pupil Funding – The bill includes a modified version of the Senate’s Weighted Student Funding Flexibility Pilot Program. Under the bill, up to 50 LEAs may enter into demonstration bills with the Secretary to consolidate Federal, State and local education funding for the purpose of allocating significant funds to the school level and substantially more funding for English learners and students from low-income families.

Title II

The bill maintains a separate Title II, Part A Teacher and School Leaders State formula grant that largely mirrors the structure of current law (Federal to State and State to local formula grants). The bill does not adopt the House provisions repealing the Teacher Quality Partnerships program under the Higher Education Act. The bill does change the Title II, Part A state grant formula to increase the poverty factor in this formula over a multiyear period. The bill permits the SEA to reserve 3% of their State grant for principal and other school leader support grants to LEAs.

The bill funds several activities under a National activities part. These activities are funded through reservations rather than separate authorizations of appropriations. These include:

1. Teacher and School Leader Incentive Program (currently referred to as the Teacher Incentive Fund)
2. Literacy Education For All, Results For the Nation (LEARN) – which includes an optional reservation for Effective School Library programs
3. American History and Civics Education
4. Programs of National Significance, which includes 4 sub reservations for the following:
 - a. Supporting Effective Educator Engagement.

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- b. School Leader Recruitment and Support.
 - c. Technical Assistance and National Evaluation.
 - d. STEM Master Teacher Corps (also enables funds to be used for grants to SEAs and nonprofit organizations for STEM professional development).

Title IV

Title IV of the bill contains the most significant restructuring of individual ESEA programs, chief of which is the Student Supports and Academic Achievement Grants authority. Below is a description of the major elements of this Title and how it impacts existing ESEA programs.

Student Supports and Academic Grants – the bill authorizes a State grant program for a wide range of activities and purposes. States receive formula grants and allocate 95% to LEAs and reserve 5% for State level activities. Among others, State level activities include:

- (1) Advanced Placement and International Baccalaureate test fee reimbursement as well as support for dual enrollment and early college high school programs (there is no separately authorized Advanced Placement program under the bill, unlike current law).
- (2) Geography, civics and well-rounded activities
- (3) Fostering safe, healthy and drug free environments.
- (4) Technology related activities.

LEAs receiving grants must do a needs assessment and are expected to fund activities in each of three categories:

- (1) Well-Rounded (at least 20% of funds), which include AP and IB test fee reimbursement, STEM, arts and computer science.
- (2) Healthy Students (at least 20% of funds).
- (3) Technology (at least one activity, and a limitation on the purchase of technology infrastructure).

21st Century Community Learning Centers – The bill authorizes the 21st Century Community Learning Centers program as a stand-alone program.

Family Engagement – The bill authorizes the Statewide Family Engagement Centers program (Parent Information and Resource Centers under current law).

National Reservations – Title IV includes a separately authorized part (referred to as Title IV, Part F in the notes) with multiple reservations for what are currently separately authorized programs under current law. These reservations include:

- (1) Gifted and Talented – the reserves funds for a “Jacob K. Javitz Gifted and Talented Students Education Program.”
- (2) Education Innovation and Research – the bill reserves funds for an Education Innovation and

Research authority (this is a new version of the current Investing in Innovation program - i3).

- (3) Ready to Learn Television – the bill reserves funds for grants for Ready to Learn Television activities.
- (4) Assistance for Arts Education – the bill reserves funds for Arts education activities.
- (5) Full Service Community Schools – the bill reserves funds for full service community schools’ activities.
- (6) Promise Neighborhoods – the bill reserves funds to make grants for activities funded under the Promise Neighborhoods program.

The bill does not separately authorize or reserve funds for the current Physical Education and Elementary and Secondary School Counseling programs.

Charter Schools – The bill maintains the Charter Schools Program as a stand-alone program under Title IV, Part C. Funds are authorized to support new charter school start-ups, the replication and expansion of high-quality charter models (which have previously been funded through appropriations) and to support facilities financing. The bill includes provisions to increase charter school accountability and prioritizes funding for charter models with diverse student bodies, schools identified for improvement, secondary school activities and efforts that focus on dropout recovery and academic reentry.

Preschool Development Grants – The bill separately authorizes a preschool development grants program that is funded through the Department of Health and Human Services (HHS), but is jointly administered by HHS and the Secretary of Education.

Governor Consultation – The bill requires SEAs to consult with their Governor on the development of certain plans under ESEA, including those required under Titles I and II. The Governor of a State is provided 30 days to sign off on these plans. If the Governor does not sign off during this time period, the SEA is permitted to submit the plan to the Secretary for approval.

Other Provisions

The bill reauthorizes the Title III, English Language Learners State grant program, Magnet Schools programs, Indian Education, Impact Aid and Title VII (Homeless Education) of the McKinney-Vento Act.