



The New Federalism

**An Introductory Guide to the
Every Student Succeeds Act (ESSA)**

Title I – Education for the Disadvantaged

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Introduction

Title I is the largest K-12 Federally funded program representing over half of all the funding provided under the Elementary and Secondary Education Act (ESEA). The program provides formula grants to local educational agencies and high-poverty schools for the purpose of educating disadvantaged children. States receiving Title I funds must adopt academic standards and assessments in reading/English language arts, mathematics and science. Additionally, States are required to adopt systems of intervention and improvement for schools that are academically struggling, both on the whole, and for subgroups of students. The program received \$14.9 billion for fiscal year 2016.

Major changes or highlights made by ESSA related to Title I

Second only to programs that were consolidated under Title IV of the Every Student Succeeds Act (ESSA), Title I undergoes the most significant change of any ESEA program with the adoption of this new law. While key Title I requirements for standards and assessments remain, ESSA's most fundamental transformation is to ESEA's accountability requirements. Key changes or highlights made by ESSA to Title I include:

Direct Student Services. ESSA permits States to reserve up to 3% for activities referred to as "direct student services." These services are provided through grants to school districts which can be used for covering the costs of enrollment in courses not otherwise available at a student's school, credit recovery, Advanced Placement courses and exams, tutoring services and transportation connected with public school choice.

Elimination of School Improvement Grants and Increase in State Reservations. Under prior law, School Improvement Grants (SIG) were a separately authorized program which provided formula grants to states. States in turn would allocate funding to school districts to help turn around struggling schools. In addition, States were required to reserve 4% of their Title I allocation for school improvement activities. Under ESSA, the separate SIG program has been eliminated. In its place, States are required to increase their State reservation for school improvement activities to 7% of their Title I allocation. As with the SIG program, 95% of this 7% reservation must be allocated to school districts.

Alignment of Standards and Assessments to College expectations. While ESSA maintains requirements for States to adopt academic standards and assessments in reading/English language arts, mathematics and science, these standards and assessments are now required to be aligned with entrance requirements of public higher education in a State and State career and technical education standards. ESSA does not require the adoption of Common Core State Standards by states.

Locally Selected, Nationally Recognized Assessment Option. While regulations developed under the No Child Left Behind Act permitted States to use local assessments as a substitute for state assessments, the requirements for their inclusion made their adoption impractical and expensive for school boards to propose and state education departments to adopt. Under ESSA, nationally recognized assessments may be selected by a local school district to be used in lieu of the high school level Title I state assessment. The ESSA conference report (a narrative summary of how the conference committee resolved differences between House and Senate ESEA bills) lists out the SAT and ACT as examples (non-exhaustive) of such assessments. These local assessments still must be state approved for use in the assessment system, but their status as nationally recognized assessments will keep costs down and make it more practical for States to approve their use.

Eliminates Adequate Yearly Progress requirement in Favor of a State Determined Accountability System. Probably ESSA's biggest departure from prior law is the elimination of NCLB's adequate yearly progress (AYP) requirement in favor of an expanded system of measures used to identify struggling schools. Rather than create a new Federal timeline requiring 100% proficiency as NCLB did, ESSA requires States to develop their own goals and timelines for the achievement of these goals on academic achievement, high school graduation and the use of other measures to identify schools for supports and interventions.

Expansion of Measures included in State Accountability Systems. In contrast to NCLB's focus on assessment results, ESSA requires States to use more than just test scores and graduation rates to assess how a school is performing. ESSA requires 5 elements to be indicators in the accountability system. These indicators are: results from Title I state assessments, high school graduation rates, another academic indicator for elementary and secondary schools, English language proficiency for English learners, and a student success indicator. ESSA requires states to factor into their accountability systems whether 95% of student overall and each group of students has participated in Title I State assessments.

Elimination of Federally prescribed consequences for struggling schools, including mandates for Supplemental Services and Public School Choice. Another major departure for ESSA compared to NCLB is the new law's elimination of specific requirements when a school is identified as underperforming. Unlike NCLB, ESSA provides States, school districts and schools with the ability to determine how to help and assist schools when they are identified for school improvement. While there are requirements in certain targeted improvement and support schools to address equity issues, school districts determine how to address these issues.

Leadership Role for School Districts with Struggling Schools. Under ESSA, for schools that are identified as needing Targeted Intervention and Support, school districts are specifically required to approve and oversee a school's improvement plan.

Creates an Innovative Assessment Pilot. In a further departure from NCLB's one size fits all assessment requirements, ESSA establishes a demonstration pilot that would allow a select number of States to adopt different means of assessing student achievement, including competency-based approaches.

Requires Sharing of information with Parents on the Ability to Opt-Out of Assessments. While NCLB said little about the ability of parents to choose to not have their children participate in Title I State assessments, ESSA specifically requires school districts to share information with parents on their ability to opt their children out of these assessments. While a State’s assessment system is still required to assess 95% of all students, ESSA acknowledges that policies exist in some places for parents to make individual decisions for their children on assessment participation.

Adopts new requirements on enrollment, credit transfer, transportation and school of origin requirements for Foster Youth. NCLB adopted provisions for States and school districts to ensure the immediate enrollment, records and credit transfer, provision of transportation and the ability to remain in a school of origin for students who are homeless. ESSA adopts similar requirements on States and school districts for foster youth. Specifically, States are required to permit a foster child to remain in their school of origin; ensure relevant records are obtained from the foster child’s last school of origin; ensure immediate enrollment of a foster child, even if the records of such child aren’t immediately available; and appoint a point of contact to oversee these requirements and coordinate with child welfare agencies. School districts are specifically responsible for coordinating transportation for foster children who remain in their school of origin.

Places new Restrictions on the Secretary’s use of Regulation and Guidance. While ESEA has for many years prohibited ED from prescribing a particular curriculum, assessment, or instructional approach, ESSA seeks to further expand the prohibitions on the Secretary’s ability to shape policy through regulations and guidance. Some of these provisions include prohibitions on defining specific terms through regulation or guidance, assigning specific weights to different indicators in a State’s accountability system, requiring the use of certain indicators in a State’s accountability system or mandating a system of teacher evaluation. It is important to note that how these provisions will actually impact the ability of the Secretary to regulate and issue guidance on specific matters is subject to the interpretation of the Department of Education. The specific impact of these prohibitions is still to be determined.

Equitable Funding Demonstration. ESSA allows 50 school districts to enter into demonstration projects with the Secretary to consolidate Federal, State and local education funding for the purpose of allocating funding to the school level that results in substantially more funding for English learners and students from low-income families.

Summary of Title I as amended by ESSA

Under ESSA, Title I remains the corner stone of ESEA focused on assisting with the education of disadvantaged students. ESSA retains Title I’s specific requirements for States to adopt academic standards and aligned assessments and intervene in schools that are identified as underperforming. Maintained (largely in the same form) are Title I’s formulas that allocate funds to school districts and schools. Also maintained are the options to run a schoolwide program or targeted assistance approach in Title I schools. Lastly, Title I maintains the requirement for State, school district and school level report cards, with some NCLB aspects (such as reporting on highly qualified teachers) eliminated, and new ESSA focuses added.

While these main elements of Title I have been maintained, much is different related to the accountability provisions of Title I compared to NCLB. Below is a summary of Title I as it is amended by ESSA.

State Reservations and School Improvement Grants. Under NCLB, States were permitted to reserve up to 4% of funds for school improvement activities, with 95% of these funds being sent to school districts. As mentioned above, ESSA eliminates the separately funded SIG program, but increases the State reservation for school improvement to 7% of a State’s Title I allocation. As with the 4% reservation under NCLB, 95% of this greater reservation must be allocated to school districts. In addition to the reservation for school improvement, up to 3% of a State’s Title I allocation may be used for grants to school districts to provide “direct student services.” These services include covering the costs of enrollment in courses not otherwise available at a student’s school, credit recovery, Advanced Placement courses and exams, tutoring services and transportation connected with public school choice. For tutoring services, States must create a list of approved tutoring providers. School districts in States which chose to exercise this reservation must apply to the State for funding.

Standards and Assessments. ESSA maintains requirements in Title I for standards and aligned assessments with assessments for these subjects required for the same grades and subjects as under NCLB. Subjects and Assessments for these subjects are as follows:

Subject	Grade Tested
Reading/English language arts	Grades 3-8 and once in high school
Mathematics	Grades 3-8 and once in high school
Science	Once in grades 3-5, 6-9 and 10-12

The bill largely authorizes the current regulation pertaining to assessments of students with significant cognitive disabilities. This regulation permits States to assess children with these disabilities through an alternative assessment. No more than 1% of the total State’s student population can be tested via this assessment. In addition to statutorily authorizing this regulation, ESSA requires States to provide additional oversight over school districts, which exceed providing this assessment to more than 1% of their total population. ESSA also continues to require assessments of English language proficiency for English learners. ESSA does expand upon ESEA’s assessment options by allowing locally-selected nationally recognized assessments in lieu of required high school State assessments if the local assessment has been approved by the State and provide comparable results to Title I State assessments.

ESSA also requires school districts to notify parents annually of the ability to receive any testing participation policy of the State or school district. In addition, the bill maintains authorization of 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.

Accountability. As described, ESSA’s biggest changes come in the restricting of ESEA’s accountability requirements. Under ESSA, NCLB’s adequate yearly progress system is replaced with a State-defined index system with certain federally-required components. This system has several components:

Component	Description
Goals	<p>States must establish “ambitious State-designed long term goals” with interim progress measures for:</p> <ol style="list-style-type: none"> (1) Improved academic achievement on State assessments. (2) Graduation rates. (3) Progress in achieving English language proficiency for English learners.
State Determined Index	<p>Each State must establish a system that combines the performance of two sets of indicators and a factor for assessment participation:</p> <ol style="list-style-type: none"> (1) Academic Indicators <ol style="list-style-type: none"> 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 <ol style="list-style-type: none"> 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). (3) Assessment participation <ol style="list-style-type: none"> a. States continue to be required to assess 95% of students, but this is factored into the State system at the discretion of the State.

Component	Description
Meaningful Differentiation and Indicator Weights	<p>States are required to “meaningfully differentiate” public schools in the State based on the indicators described above. “Substantial weight” is required to be given to the academic indicators listed above and in the aggregate, these 4 indicators must be given “much greater weight” in the differentiation process, than the student success indicator.</p>
Comprehensive Support and Improvement	<p>ESSA requires two categories of identification of schools. The first category of school identification is called “Comprehensive Support and Improvement.” Every 3 years, States are required to identify schools under this categorization. School districts must identify plans for these schools, which must be approved by the SEA. If a school remains identified for comprehensive support and improvement after a period of time (not more than 4 years) more rigorous state determined action must take place with respect to the school. Schools identified under this categorization include:</p> <ol style="list-style-type: none"> <li data-bbox="857 966 1425 1081">(1) The 5% lowest performing in the State (as determined by the index and differentiation process). <li data-bbox="857 1102 1502 1176">(2) High schools that graduate less than two-thirds of their students. <li data-bbox="857 1197 1502 1354">(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.
Targeted Support and Improvement	<p>The second identification category in ESSA is called “Targeted Support and Improvement.” Under this categorization, the State must annually notify school districts with schools which have “consistently underperforming” subgroups. Schools which are notified must develop and implement a “targeted support and improvement plan.” These plans are approved and monitored by the school district (the State does not approve these plans in contrast to identification under comprehensive support and improvement.) 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.</p>

Secretarial Prohibitions. Title I as amended by ESSA includes language that seeks to prohibit the ability of the Department to regulate or issue non-regulatory guidance on certain matters, including those related to the accountability system States must develop. Among other provisions, ESSA asserts that the Secretary is prohibited from promulgating rules on the accountability system that are inconsistent or out of scope with statutory requirements, or adds new criteria through regulations that are inconsistent or out of scope. The new law also asserts that the Secretary is 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, ESSA's provisions assert that the Secretary is prohibited from prescribing:

- (1) Specific academic assessments or assessment items, including those associated with the Common Core State Standards.
- (2) In the accountability system: specific long term goals, indicators, weights of indicators, methodology, school support and improvement strategies, and exit criteria for schools.
- (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.

ESSA asserts that the Secretary cannot 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 regulations that are inconsistent or out of scope with the statutory requirements or collect any data except from existing Federal State and local reporting requirements.

As mentioned above, it is important to note that the Department will be the entity which interprets what the impact of these provisions are on their ability to regulate and issue non-regulatory guidance on different matters.

Report Cards. ESSA largely keeps NCLB's structure of State and local report cards with changes to the specific items that must be reported. Under NCLB and retained under ESSA is reporting on assessment results by school and subgroup in each school, graduation rates and the percentage of students not tested via Title I State assessments. New reporting under ESSA on State and local report cards includes:

- (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) Additional reporting requirements for students in foster care, homeless students, and students with parents in the military.
- (4) The professional qualifications of teachers (the bill eliminates requirements for and reporting on highly qualified teachers).

Title I formula. ESSA largely maintains, with technical changes, the four existing Title I formulas through which funding is allocated. If appropriation levels are unchanged and absent demographic changes, school districts should continue to receive funding in largely the same proportion as past years.

Flexibility for Equitable Per-Pupil Funding. ESSA allows up to 50 school districts to participate in a demonstration authority with the Secretary to consolidate Federal, State and local education funding for the purpose of allocating significantly more funding at the school level for English learners and students from

low-income families. The specifics of how this demonstration authority will operate will largely have to be defined by the Department in subsequent regulations, guidance and application documents.

Maintains authority to operate targeted assistance and schoolwide programs. Title I has two main school-level funding and operational structures. Under the target assistance approach, schools only use Title I funding to benefit students identified as needing additional educational assistance. Under the schoolwide approach, schools with greater than 40% of their students from low income families may use their Title I funding to assist all students in the school through comprehensive schoolwide activities and approaches. Under ESSA, these two approaches are largely unchanged, with the exception that schools below 40% poverty are permitted to seek the authority to operate a schoolwide program.

Private School Participation. Under Title I, school districts are required to set aside a proportional amount of funding for the purpose of educational assistance to low-income students in private schools in that school district. School districts are required to consult with private school officials on how these funds are expended. ESSA maintains these requirements.

Foster Youth. ESSA brings new requirements for States and school districts with respect to foster youth. Under ESSA, States are required to permit a foster child to remain in their school of origin; ensure relevant records are obtained from the foster child's last school or origin; ensure immediate enrollment of a foster child, even if the records of such child aren't immediately available, and appoint a point of contact to oversee these requirements and coordinate with child welfare agencies. School districts are specifically responsible for coordinating transportation for foster children who remain in their school of origin.

Why does this matter to school boards?

ESSA brings significant changes to the required elements of a State's accountability system, and how these requirements will impact schools, school personnel and the students which they serve. While the Federal law still requires schools to include certain indicators in their accountability system, their relative weights, how schools may be identified as underperforming through these indicators and what specific improvement actions must be taken are now largely State determinations (with some limitations) rather than Federally prescribed or required. With this overall change in focus, the significant impacts for school boards due to ESSA's modifications to Title I include the following:

State designed accountability systems. With the weighting of indicators, and the discretion pertaining to school identification and selection of school interventions largely left up to the States, State educational agencies will have a greater impact on how and if school districts and their schools are identified as underperforming. While ESSA defines which indicators must be utilized in State systems much of the rest of parameters and elements (with the expectation of identifying the lowest performing 5% and low graduation rate high schools) are left up to the State. This places the State, rather than the Federal government, as the driver behind the particulars of how an accountability system will impact the schools in a school district.

New elements of accountability. Under prior law, ESEA's accountability requirements were limited to assessment results, graduation rates and another indicator for elementary and middle schools. Under ESSA, sole reliance on two indicators (assessments and graduation/another indicator) has been eliminated. This translates into a more complex set of data points being used to determine school success. While this

will certainly change which schools are and are not identified as underperforming, this may or may not lead to greater or lower numbers of schools being identified in any certain school district based on the individual characteristics of schools and the students which they serve.

Less Federal specificity of which schools get identified. Under ESSA, States, with the exception of the lowest performing 5% of schools and low graduation rate high schools, have much greater discretion over which schools are identified as underperforming. While this eliminates the bright line of failure due to prior law's AYP requirements, it places States in a much more determinative role on these matters.

Specific school district role in approving targeted intervention plan. School districts are provided a specific role to oversee and approve targeted intervention and support plans, described in the chart on page 7, under the state's accountability system. Under this designation school districts are the only approving authority.

New local selection of nationally recognized assessment. Under ESSA, school districts are permitted to seek the State's approval to substitute a nationally recognized assessment selected by the school district in place of the Title I state assessments. Conference report language provides examples of what Congress intended here, specifically naming the ACT and SAT as possible nationally recognized assessments.

Coordination requirements for transportation for foster youth remaining in school of origin. Under ESSA, school districts are required to coordinate transportation for foster youth when these youth remain at their school of origin but no longer reside within the attendance boundaries of that school. While the school district is not required to pay for resulting transportation costs, they do have to attempt to coordinate the responsibility of these costs with the relevant child welfare agency.