

IMPLEMENTATION OF THE EVERY STUDENT SUCCEEDS ACT (ESSA)

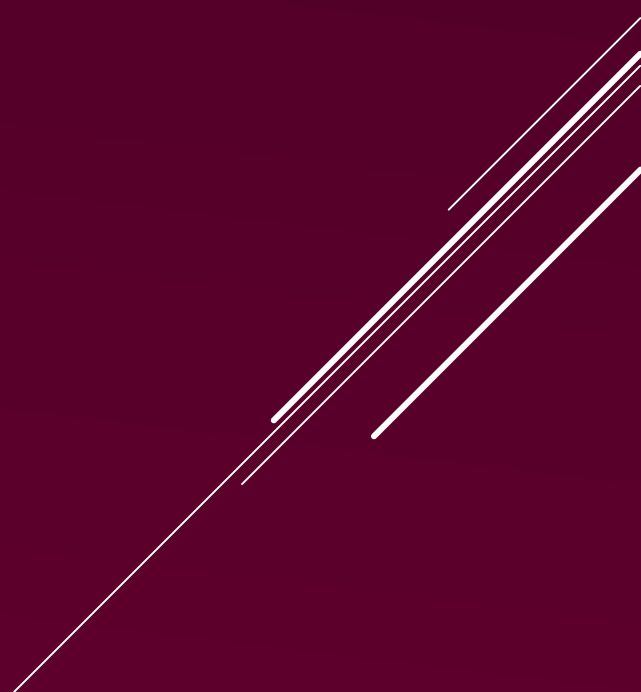
Key Regulatory and Guidance Activity by the
U.S. Department of Education





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KEY ELEMENTS OF ESSA



Accountability and School Improvement

- Requires states identify lowest-performing schools, but grants new flexibility for states to design accountability systems and determine school improvement strategies.



Standards and Assessments

- Requires states to set challenging academic standards and continues annual testing in math and reading or English language arts, along with grade span testing in science. Authorizes new Innovative Assessment and Accountability Demonstration Authority.



English Learners

- Shifts accountability for English Learner (EL) students from Title III to Title I. Requires states to establish standards for English Language Proficiency (ELP) and administer annual ELP assessments to EL students.

KEY ELEMENTS OF ESSA (CONT.)



Title II

- Provides funding for activities to support teachers and school leaders. Eliminates Highly Qualified Teacher requirements and provides additional resources for school leadership.



Student Support and Academic Enrichment Grants

- New block grant program that authorizes funding to support a wide-range of state-determined activities. Requires funding for 1) well-rounded education for students, 2) safe and healthy students, and 3) effective use of technology.



Secretarial Prohibitions

- ESSA contains many provisions limiting the Secretary's authority to regulate states, including prohibitions against requiring particular school improvement strategies, assessments, or teacher evaluation strategies.

KEY REGULATIONS AND GUIDANCE RELEASED BY ED

To date, the U.S. Department of Education (ED) has released several notices of proposed rulemaking (NPRMs) and several sets of guidance related to ESSA. These can be accessed on ED's website, [here](#).

Key NPRMs:

- Accountability and State Plans (*note: currently at OMB for review*)
- Academic Assessments
- Innovative Assessment and Accountability Demonstration Authority
- Supplement, Not Supplant

Key Guidance:

- Title II, Part A – Support Educators
- Title III – English Learners
- Evidence
- Homeless and Foster Care Students



KEY DATES

- **October 1, 2016:** Effective date for competitive programs under ESSA, unless otherwise provided for in the statute
- **October/November, 2016:** Release of final regulations on accountability and state plans (**projected**)
- **November 8, 2016:** General Election
- **December 9, 2016:** Current Continuing Resolution (CR) expires
- **January 20, 2017:** Presidential Inauguration
- **March 2017:** Initial window for States to submit plans for SY17-18 (projected)
- **July 2017:** Second window for States to submit plans for SY17-18 (projected)
- **July 1, 2017:** Effective date for noncompetitive programs (i.e. formula programs) under ESSA
- **August 2017:** New state plans (that are approved) take effect at the start of the 17-18 school year. Under the accountability and state plans NPRM, states must identify struggling schools under new accountability systems prior to SY17-18, based data available in SY16-17.

ACCOUNTABILITY AND STATE PLAN NPRM

- Released May 31, 2016. Public comment period closed August 1, 2016. Full text [here](#).
- The proposed regulation would make several significant clarifications and augmentations to the statutory language, including:
 - Provide options for consequences from which states must choose **for schools that fail to assess 95 percent of their students**. These consequences include an option for a state-determined consequence;
 - Require state accountability systems to include at least **three levels of performance for each indicator** and result in a school receiving a **single summative rating**, from among at least **three distinct rating categories**;
 - **Require States to begin identifying schools for improvement in 2017-2018** (i.e., using data available in 2016-2017), except that schools identified for Targeted Support and Improvement based on the performance of chronically low-performing subgroups would not need to be identified until 2018-2019;
 - Describes **five components** for consolidated State plans
 - Includes **new requirements and parameters for the School Quality or Student Success indicator**, including how it can be used to identify schools for improvement

ACADEMIC ASSESSMENTS NPRM

- Released July 11, 2016. Public comment period closed September 9, 2016. Full text [here](#).
- This proposed regulation reflects the language agreed to by the negotiated rulemaking committee, which was convened earlier in 2016.
- Key provisions in the proposed regulation include:
 - Requirements for states that choose to assess 8th-grade student through an **end-of-course math assessment** that is normally administered to high school students in lieu of the regular statewide 8th-grade math assessments;
 - A definition of the term “**nationally recognized high school assessment**”;
 - Requirements for states seeking a **waiver from the 1 percent cap on alternate assessments** for students with the most significant cognitive disabilities;
 - Requirements for states regarding **the inclusion of English Learners in assessments** and the production of assessments in other languages other than English.

INNOVATIVE ASSESSMENT AND ACCOUNTABILITY DEMONSTRATION AUTHORITY NPRM

- Released July 11, 2016. Public comment period closed September 9, 2016. Full text [here](#).
- The proposed regulations would:
 - Allow districts to roll out a new assessment over multiple years in multiple districts, as long as the state ensures they are on-track for statewide implementation in all schools and districts by the end of its demonstration period (including extension period);
 - Allow a state the ability to propose an innovative assessment in all required grades and subjects, or a subset of them (e.g., a middle school science assessment)– so long as the state continues to use its existing statewide test in all grades and subjects in which it is not developing an innovative one;
 - Require that an innovative assessment system generate results that are valid, reliable, and comparable to the results produced by the State's regular Title I assessments, providing 4 options for determining comparability; and
 - Require demonstrated stakeholder support for the innovative assessment and funds to be used to provide professional development to teachers on how to use and administer the assessment.
 - Allow a state, at the conclusion of the demonstration authority (or after a two-year extension), to use its innovative assessment system for Title I accountability and reporting purposes, if the SEA has scaled up the system to statewide use and has demonstrated that its system is of “high quality,” as determined through an ED peer-review process

SUPPLEMENT, NOT SUPPLANT

- Released September 6, 2016. Public comment period closes November 7, 2016. Full text [here](#).
- The proposed regulation presents four options for LEAs to annually demonstrate compliance with the SNS requirement in the statute:
 - Distributing State and local funds based on the characteristics of students;
 - Distributing State and local funds based on the average costs of personnel and nonpersonnel resources;
 - Distributing State and local funds based on an SEA-established compliance test
 - Distributing State and local funds using another methodology that results in each Title I school receiving, per pupil, at least 95 percent of the average per-pupil funding received by non-Title I schools.
- Under the proposed regulation, each LEA would be required to either demonstrate to its SEA that it has a methodology for meeting the SNS requirements that it will use no later than SY2018-2019, or provide to its SEA a plan for meeting the requirements no later than SY2019-2020.
- In this NPRM, ED estimates that 90 percent of LEAs are presently in compliance with the fourth option described above. Therefore, some 1,500 LEAs currently would not be able to demonstrate compliance and, as a result, would have to either redistribute a total of \$800 million in State and local funds or provide a total of \$2.2 billion in additional state and local funds to Title I schools.

GUIDANCE RELEASED TO DATE

- Title II, Part A – Support Educators
 - This guidance provides strategies for states to consider as they plan how to use their Title II, Part A funds. The guidance focuses on ensuring equitable distribution of teachers, strategies to more effectively attract, select, place, support, evaluate, and retain excellent educators; focuses on the importance of school leaders, clarifies that funds can be used for teacher and school leader academies; and describes which uses of funds must be evidence-based (class-size reduction).
- Title III – English Learners
 - The guidance addresses how Title III funds may be used to provide services that improve the English proficiency and academic achievement of ELs, including through language instruction educational programs (LIEPs), aligning English proficiency and State academic standards, and activities to improve the skills and knowledge of teachers who serve ELs.
- Evidence
 - The guidance describes key steps for using evidence as a part of a larger decision-making process and recommendations on how to identify the 4 levels of evidence defined in ESSA for various interventions.
- Homeless Students
 - The revised guidance for the McKinney-Vento program discusses ensuring educational stability of children. It suggests that States and State child welfare agencies work together to develop uniform State guidelines for developing transportation procedures for foster care students at the local level. This could help guide local interagency interactions/development of local transportation procedures, including by establishing dispute resolution procedures, since States help to contribute to educational stability of children.



CONGRESSIONAL ACTION

- The Senate Health, Education, Labor, and Pensions (HELP) Committee has held 5 oversight hearings on the Accountability/State plan and Supplement, not Supplant proposed regulations (the negotiated rulemaking proposal).
- Senator Alexander (R-TN) has said he plans to hold at least one more, likely on the Supplement, not Supplant regulations.
- Senator Alexander and Representative Kline (R-MN) also submitted extensive comments on the Accountability regulations. Key concerns include:
 - Timeline for identification of new schools for improvement in the beginning of the 2017-2018 school year;
 - Prescriptions around State standards; and,
 - Prescriptions around dictating State options for complying with 95% assessment participation rate, identification of consistently underperforming schools for subgroups, and how to weigh indicators
- Senator Murray (D-WA) and Representative Scott (D-VA) also submitted comments. Key thoughts include:
 - Urging ED to maintain proposed regulations regarding the single summative rating, indicator quality, subgroup accountability, and 95 percent assessment participation threshold, among others; and,
 - Expressing concern over the upper limit for n-size proposed in the regulation, the timeline for implementation, and the makeup of the academic achievement indicator in state accountability systems, among others.
- The House Education & Workforce Committee has held 2 oversight hearings on Accountability/State plan and Supplement, not Supplant proposed regulations.
- Both Alexander and Kline alluded to stopping both sets of regulations from becoming final if changes are not made through the appropriations process or through a Congressional Review Act.



ED AND CONGRESS

- Members of Congress have raised significant concerns with some of the proposals put forward by ED. Perhaps most notably:
- Regarding the Accountability and State Plan NPRM:
 - Sens. Lamar Alexander and Patty Murray, Chairman and Ranking Member of the Senate Health Education, Labor and Pensions (HELP) Committee, “called on the Education Department to allow states to implement their new accountability systems in 2017-18, and begin to identify new schools for improvement in 2018-19 as the new law fixing No Child Left Behind intended.”
 - Sen. Alexander raised concerns that regulations proposed ED would continue the prominent Federal role in education, contrary to the intent of the statute. Specifically, he expressed concern about regulations pertaining to a single summative rating and the approval of state standards.
 - Sen. Murray supported ED efforts to regulate around Federal “guardrails” to ensure accountability. However, she also raised concerns about allowing states to compare the performance of individual subgroups to the average performance of all the students in the state and ensuring continued stakeholder engagement during the implementation process.



ED AND CONGRESS (CONT.)

- Regarding the Supplement, Not Supplant NPRM:
 - Sen. Alexander has repeatedly raised serious objections to ED's proposed regulations. On August 31, Sen. Alexander said, "The rule would regulate the way states and school districts spend nearly all state and local tax dollars on schools in order to receive federal Title I dollars.' [He] said that the rule is unlawful and predicted that it would 'upend state and local education funding and collective bargaining agreements in many states. If anything resembling it becomes final, I will do everything within my power to overturn it."
 - Rep. John Kline (R-MN), Chairman of the House Education and the Workforce Committee, called the proposed rule a "multibillion-dollar regulatory tax" that would "unleash havoc on schools and their students at a time when education leaders should be focused on helping children succeed in the classroom."
 - Sen. Murray and Rep. Bobby Scott (D-VA), Ranking Member of the House Education and the Workforce Committee, released a joint statement applauding "Secretary King for working with stakeholders to put forth this proposed regulation..." They continued, "with this proposal, the Department has fulfilled its responsibility to set clear expectations for compliance with statutory requirements through regulation. In addition, we believe this proposal honors Congressional intent to empower local leaders with greater latitude in the expenditure of Title I funds to support high-need students."

HOT BUTTON ISSUES TO WATCH

- Will ED address any concerns raised by Congressional members or stakeholder groups on either the proposed Accountability or Supplement, Not Supplant regulations?
 - Addressing the single summative rating requirements for schools;
 - Timeline for identification of new schools for improvement;
 - Ability to use student growth and proficiency for the Academic Achievement Indicator;
 - Lowering upper limit on n-size;
 - Addressing concerns re: SNS regulations violating prohibitions in ESSA.
- If changes are not made to the proposed regulations, will Congress pursue a Congressional Review Act on them or block them in appropriations?
- How will Hillary Clinton or Donald Trump deal with enforcing any final regulations before either one takes office?

IMPACT OF THE ELECTION

The result of the 2016 election has the potential to substantially impact the implementation of ESSA.

While neither major-party candidate for President has discussed their plans regarding ESSA, both have outlined specific priorities for K-12 education, and would be in position to alter the implementation process and/or change policies, regulations, or guidance established during the current Administration.

For example, a new Administration is likely to have significant influence over:

- State plan approval process;
- New regulations and guidance and how to enforce previously issued regulations and guidance;
- Applications for various programs under the new law; and,
- Funding for programs under ESSA (through the appropriations process).



QUESTIONS?

