

**Major Provisions *of* Every Student Succeeds Act (ESSA)  
Related *to the* Education *of* English Learners**

## Introduction

The purpose of this document is to describe the major provisions of the recently enacted Every Student Succeeds Act (ESSA) as they affect the education of English learners (ELs), focusing in particular on issues that state educational agencies (SEAs) should be aware of as they begin implementation of the new statute. The Council of Chief State School Officers (CCSSO) commissioned the Penn Hill Group to develop this resource that should be beneficial to states as they begin implementation of ESSA. We begin first with an overview of the new Act and then provide a detailed analysis of the provisions most relevant to services for ELs.

## Overview of the Every Student Succeeds Act

On December 10, 2015, President Obama signed into law ESSA, the most recent reauthorization of the Elementary and Secondary Education Act (ESEA). The reauthorized ESEA will replace the version of the law that was reauthorized by the No Child Left Behind Act of 2001 (NCLB) and includes major revisions to the previous statute. Enactment of the new amendments came some seven years after the scheduled expiration of NCLB and followed lengthy and contentious debates about the appropriate federal role in K–12 education; the proper balance between state and local control over education decision-making versus the need for strong and consistent national requirements for the education of at-risk populations; and whether the Act should provide categorical assistance focused on particular national needs and priorities or flexible block grants to states that could be used to meet individual state and local needs.

Major provisions of the new law include:

- ESSA continues the NCLB requirement that states have in place academic content and achievement standards in reading or language arts and in mathematics and science. These must be the same standards for all students in the state and, unlike under NCLB, must align with the entrance requirements for credit-bearing coursework in the state’s system of public higher education and with applicable state career and technical education standards.
- ESSA also continues the requirement that states administer assessments aligned with their standards. For mathematics and reading or language arts assessments, this must be done in grades 3–8 and once in high school. For science assessments, this must be done once in each of the three grade spans (3–5, 6–9, and 10–12).
- States must also have in place English language proficiency (ELP) standards (derived from the domains of speaking, listening, reading, and writing) for English learners that are aligned with their academic standards.

- States must provide for an annual assessment of English language proficiency, aligned with their English language proficiency standards, for all ELs.
- In place of NCLB’s “adequate yearly progress” provisions, each state must implement a state-designed accountability system that includes long-term goals and annual indicators for all students, including student subgroups. These indicators must specifically include indicators of students’ academic proficiency as measured through state assessments, rates of high school graduation, one or more academic indicators applicable to elementary and middle schools, ELs’ progress in attaining proficiency in English, and at least one school quality or student success indicator. Two major changes to Title I from NCLB are the required inclusion of an English proficiency indicator and the requirement to include at least one school quality or student success indicator. States will annually differentiate the progress of their schools using an accountability index or other mechanism that gives “substantial weight” to all indicators in the state’s accountability system but “much greater weight,” in the aggregate, to the assessment, high school graduation, elementary and middle school, and EL proficiency indicators.
- Using its system for differentiating school progress, each state will identify at least 5 percent of its Title I schools as in need of “comprehensive support and improvement” and additional schools that have low-performing student subgroups as in need of “targeted support and improvement.” States and their local educational agencies (LEAs) will then work with these schools to improve outcomes for the school in general or for selected subgroups, as indicated based on the needs identified through their accountability systems. States will have significant new flexibility, compared to the NCLB requirements, in identifying schools as in need of improvement and in determining what actions to take with regard to low-performing schools.
- In place of the School Improvement Grants program and the separate Title I set-aside for school improvement, states will draw on a single 7 percent set-aside of their Title I allocations for making subgrants to LEAs for activities to improve low-performing schools. States and LEAs will have significant new flexibility in using these funds; there will no longer be a single, federally defined list of actions or school turnaround models from which states and LEAs must draw.
- In place of the NCLB provisions on public school choice and supplemental educational services, states will be able to reserve up to 3 percent of their Title I funds to make grants to LEAs for “Direct Student Services,” such as academic tutoring, provision of advanced courses, credit-recovery programs, academic acceleration programs, and paying for transportation costs associated with public school choice.
- Under Title III, ESSA deletes the accountability-related provisions of NCLB (because accountability for progress of ELs in gaining English language proficiency and making academic progress is now incorporated into Title I) but requires states to have standardized statewide entrance and exit procedures for identifying ELs.

- ESSA creates a new “Student Support and Academic Enrichment” state block grant. States will receive formula allocations and in turn will subgrant 95 percent of the funds to LEAs by formula. Each LEA will have considerable flexibility in spending these funds but must use at least 20 percent of its subgrant for activities to support well-rounded educational opportunities, at least 20 percent for activities to support safe and healthy students, and some portion for activities to support the effective use of technology.
- ESSA places new limitations on the authority of the Secretary of Education to regulate ESEA provisions. Most notably, the new law specifically prohibits federal prescription of the goals and measures of school progress that states include in their accountability systems, the weights states give to various indicators, the improvement strategies that states adopt for their low-performing schools, and the components of teacher and school leader evaluation systems.

As for timing, the Fiscal Year 2016 appropriations act clarified that the ESSA provisions affecting formula grants will not take effect until the 2017–2018 school year. The formula funds (for Titles I, II, and III, etc.) that states will receive in July 2016 and use mainly in 2016–2017 will be carried out under No Child Left Behind. However, ESSA also terminates states’ Education Flexibility Waivers on August 1, 2016; it is not yet clear which rules states will need to follow during the upcoming transition year. ESSA provides the Secretary of Education with the authority to “take such steps as are necessary for the orderly transition” from NCLB to ESSA, so the U.S. Department of Education (ED) will likely issue guidance on the transition in the coming months.

## Specific Provisions Most Relevant to the Education of English Learners

The following is a more detailed discussion of the ESSA provisions that are likely to have the most impact on English learners. We have flagged issues and questions that SEA personnel might want to focus on as they commence implementation of the new law and, as appropriate, might want to pose to ED as it works with states on that implementation. It is important to note that there is a major shift in the new law: the accountability for English language proficiency has moved from Title III to Title I. This shift alone will give SEAs a lot to consider as they make the transition.

### English Language Proficiency Standards

As discussed briefly above, states must demonstrate in their Title I plans that they have adopted ELP standards derived from the four recognized domains of speaking, listening, reading, and writing; that address the different proficiency levels of ELs; and that are aligned with the state's academic standards. This is largely a restatement of similar language that was in Title III of the previous law, although the earlier language did not require that the English proficiency standards address the different English proficiency levels of English learners. (That is, they could previously establish a single definition of "proficiency" rather than defining multiple proficiency levels.)

ESSA specifies that states may not be required to submit their standards (including their English proficiency standards) to ED for review and prohibits the Secretary from exercising any direction or control over a state's standards.

#### ***Issues and Questions for States—***

- In states that have recently adopted new academic standards (such as the Common Core), SEAs may want to review their ELP standards to ensure that they align with the new standards.
- Because the Secretary of Education is prohibited from requiring states to submit their standards for review, we assume that it will be entirely up to the states to determine if their ELP standards and academic content standards are aligned, but SEAs might ask the Department to clarify this point.
- If a state's ELP standards do not address multiple proficiency levels, the state will need to revise its standards so that they do.
- SEAs might want to request that ED clarify the timeline for ensuring that a state's English proficiency standards meet the requirements of the new law. New state Title I plans will likely be due in the spring of 2017. Will that also be the deadline for completing revisions of the standards?

## Academic Content Assessments for English Learners

ESSA continues the NCLB requirement that states' reading or language arts, math, and science assessments provide for the inclusion of ELs, who must be assessed in a valid and reliable manner and provided appropriate accommodations (including, to the extent practicable, assessments in the language and form most likely to yield accurate information on what those students know and can do in the content area assessed) until they have attained English proficiency as measured through the English proficiency assessments administered in the state.

ESSA also continues the NCLB provisions requiring that states assess, using tests administered in English, the reading or language arts proficiency of any student who has attended school in the United States (not including Puerto Rico) for at least three consecutive years, except that an LEA may extend the period in which a student may be assessed in another language if it determines that doing so would yield more accurate and reliable information and the student has not yet attained a sufficient level of English proficiency to be tested in English.

Separately, the new law permits states to exclude, from one administration of *reading or language arts assessments (but not math), recently arrived English learners*, who are defined as ELs who have been enrolled in US schools for less than 12 months. This language was not in NCLB but is consistent with regulations ED issued on implementation of the statute. Alternatively, a state may assess and report on the performance of a recently arrived EL student in both reading or language arts and math for each year of his or her enrollment in a school. If a state adopts this option, it must: (1) for a student's first year of enrollment in the school, exclude his or her assessment results from the school's accountability determinations; (2) for the student's second year of enrollment, include a measure of his or her academic growth in those determinations; and (3) for the student's third year and each succeeding year, include a measure of his or her proficiency in those determinations.

### ***Issue for States—***

- An SEA will need to decide which allowable option to adopt for the assessment of recently arrived ELs in the content areas. Note that if a state elects to adopt the second option described above, it must include in its accountability system a student growth measure, which is not otherwise required.

## Assessments of English Language Proficiency

Under Title I, ESSA requires the state to ensure that its LEAs provide for an annual assessment of the English proficiency of all ELs in their schools. These assessments must align with the state's English proficiency standards. NCLB had similar language but did not require alignment of the assessments with state English proficiency standards.

### ***Issues and Questions for States—***

- SEAs will need to ensure that the English proficiency assessments used in their states align with their English proficiency standards.
- Some states may have to revise their English proficiency assessments in response to the new requirements. If they do, will ED specify a deadline for implementing assessments that are fully aligned with English proficiency standards?
- Will ED's peer review of states' assessment systems include review of their English language proficiency assessments? If so, what documentation will SEAs be required to provide? What will be the timing? More specifically, will review of ELP assessments be part of the assessment peer review that the Department is planning to conduct in April and June of 2016? *(Note that review of ELP assessments was not discussed in the September 2015 guidance from ED for this peer review because the guidance predates and is not aligned to the new law that was enacted in December 2015.)*
- If there will be an ED peer review, will it include a determination of whether a state's ELP assessments align with its ELP standards?

## Inclusion of English Learners in State Accountability Systems

ESSA requires that states establish (for “all students” and for each student subgroup) ambitious state-determined long-term goals, measurements of interim progress, and performance indicators. The law defines subgroups as economically disadvantaged students, students from major ethnic and racial groups, children with disabilities, and ELs. This definition is a continuation of the subgroup language in NCLB.

Specifically with regard to the EL subgroup, the law provides that *for not more than four years* after a student ceases to be identified as an EL, a state may include the results of the student’s assessments within the results for the EL subgroup for the purposes of the state accountability system. This is an expansion of what the Title I regulations permitted under NCLB; they allowed states to include (with the EL subgroup) the assessment scores of formerly EL students *for up to two AYP determination cycles*.

### ***Issue for States—***

- SEAs will need to decide whether and how to make use of the added flexibility on the inclusion of formerly EL students within the EL subgroup. Note that this added flexibility appears not only to allow both two additional years but also to cover all annual indicators (not just assessment scores).

## English Proficiency Goals and Annual Indicators

ESSA requires that a state's accountability system include long-term goals and interim measures of progress for increases in the percentage of ELs who make progress in achieving English proficiency, as defined by the state and as measured by the state's ELP assessments, within a state-determined timeline. In addition, the state's system of performance indicators must include an indicator of the extent to which all ELs in the state are making progress in achieving English language proficiency. Progress towards proficiency would be as defined by the state and as measured by the state's ELP assessments, within a state-determined timeline, as determined in each of grades 3–8 and in the high school grade in which the state administers assessments in reading or language arts and math. The high school ELP assessment data for a student must be measured against the student's results for the previous year.

NCLB did not require inclusion of an English language proficiency indicator as part of AYP. Instead, Title III had its own accountability system under which states held LEAs accountable for reaching three "annual measurable achievement objectives" (AMAOs), one of which was achieving annual increases in the number or percentage of EL students making progress in learning English.

### ***Issues and Questions for States—***

- The Title III AMAO under prior law called for states to measure annual increases in the number or percentage of EL students "learning English." ESSA calls for an indicator of EL students "making progress in achieving English language proficiency." Under the new Title I state accountability system, from an individual state's perspective, are these the same thing, or should the state revise its previous AMAO to meet the terms of the new statute and its use under Title I? Will ED regulate or provide guidance on this issue?
- States will need to determine how long to set their long-term goals and determine what is meant by an "interim measure of progress?" Will ED establish any parameters?
- Does "making progress in achieving English language proficiency" include a measure of the extent to which students are actually gaining full proficiency, or does the language just call for measurements of students' progress toward that goal? Similarly, should a state's indicator of progress establish an expectation for how quickly an EL student achieves English proficiency? Will ED regulate or provide guidance on these issues?
- AMAOs under NCLB applied only to LEAs receiving Title III funds. The new language covers the education of all ELs in the state. This change may require an adjustment of state data collection, reporting, and accountability systems.
- The new law generally requires that states' performance indicators be annual indicators, but it appears to exempt from that requirement the indicator on ELs' progress in achieving English proficiency. Will ED regulate on this issue, such as by requiring that all the indicators be annual indicators? If not, should a state implement the English proficiency indicator on a less-than-annual basis?
- The requirement for the progress of a high school EL student in achieving proficiency to be measured by comparing the student's assessment scores from one year to the next appears to call for the establishment of some type of growth model for ELP.
- SEAs might want to consider whether a state's goals, interim measures, and indicators for English language proficiency should be tied in any way to a student's progress in reading or language arts and math.
- The new inclusion of a performance indicator on ELP under Title I, and the deletion of accountability requirements under Title III (as discussed below), may well have implications for how SEAs should organize their staffs who deal with Title I and Title III issues.

## Weighting of Performance Indicators

ESSA requires that state accountability systems include indicators of:

- Student proficiency on state assessments and, at state option, student academic growth as demonstrated on those assessments;
- For schools that are not high schools, student growth or another valid and reliable academic indicator;
- For high schools, the four-year adjusted cohort graduation rate and, at state option, an extended-year adjusted cohort graduation rate;
- As described above, the progress of EL students in achieving English language proficiency (as measured using the state’s ELP assessments); and
- At least one indicator of “school quality or student success” that allows for meaningful differentiation in school performance and is a valid, reliable, comparable and statewide indicator. Examples listed in the statute include measures of student engagement, educator engagement, student access to and completion of advanced coursework, postsecondary readiness, and school climate and safety.

With the exception of the indicator on EL progress in achieving English proficiency, all of the indicators must be measured separately for all students in a school and for each student subgroup. The law further specifies that a state’s system for measuring school performance must give “substantial weight” to each indicator and also that the indicators listed in (1) through (4) above must have “much greater weight” than the school quality or student success indicators described in (5).

### ***Issues and Questions for States—***

- Compared to other indicators, the indicator on ELs’ progress in attaining English language proficiency could receive quite a lot of, or very little, weight in a state’s accountability index, or anything in between. This will quite likely be predominantly up to the state because of the law’s limitation on the authority of the Secretary to regulate on weights.
- Similarly, the law requires that state systems account separately for the performance of all subgroups but does not specify the “n size” for inclusion of subgroups or whether states can weight or treat different subgroups differently. States have addressed this issue in various ways under the ESEA Flexibility Waiver agreements and will have to consider how to address them in the new ESSA plans.
- SEAs will want to consider how to ensure that their indicators for ELP align well with their indicators for reading or language arts and math achievement (and, at state option, growth) as those academic content indicators apply to EL students. In other words, what is the proper weight for progress in English proficiency, and what is the proper weight for progress in the two content areas in considering the overall progress of an EL student?
- Will ED regulate on the terms “substantial weight” and “much greater weight”? Will ED regulate on subgroup accountability?

## Standardized Statewide Entrance and Exit Requirements

Under Title III, ESSA adds a new requirement that states establish and implement, after consultation with LEAs representing the geographic diversity of the state, standardized English learner entrance and exit procedures, which must include a requirement that all students who might be ELs are assessed for that status within 30 days of enrollment in a school within the state. SEAs may use the 5 percent of Title III funds that is set-aside for state-level activities to support this endeavor.

### ***Issues and Questions for States—***

- The new language on standardized statewide entrance and exit *procedures* could be read as requiring that a state have uniform entrance and exit *criteria*, but this is not clear. Will ED regulate on this issue?
- In states that do not currently have uniform, statewide procedures for identifying students as English learners and then for exiting students from that status once they have achieved a certain level of English proficiency (or whose procedures do not require assessment within 30 days of enrollment), creating these procedures will likely be a major endeavor. SEAs may need technical assistance and/or may want to work with other states that have deeper experience in this area to decide how to implement this provision.
- ESSA requires each state to describe how it will develop and implement standardized procedures, but it does not give them a deadline for completing the process. Will ED regulate on this issue?
- The law requires that students who are potentially ELs be assessed for their English proficiency within 30 days of enrollment but does not provide a deadline for providing services to students who are identified as EL. States should consider how to ensure that placement quickly follows identification.

## Other Amendments to Title III

As under NCLB, Title III under ESSA authorizes a program of formula grants to states to support the education of English learner and immigrant students, with a small portion retained at the federal level for national activities. The main changes to Title III, as discussed above, are: (1) that it no longer includes language on accountability for the progress of ELs because this responsibility has been subsumed within the Title I accountability requirements; and (2) the new requirement for development of statewide entrance and exit criteria and procedures. Other revisions to Title III include:

- Authorizing SEAs to use the 5 percent state set-aside to provide recognition and financial rewards to LEAs that have significantly improved the achievement and progress of ELs;
- Reducing the portion of the state set-aside that SEAs may use for administrative costs from 60 percent to 50 percent of the 5 percent set-aside;
- Authorizing the Secretary of Education to use Census Bureau data or state counts of the number of students assessed for English proficiency, *or a combination of those two sources*, to compute states' Title III allocations. NCLB required the use of either Census or state data and did not permit the two data sets to be blended. Note that ESSA does not have a "hold-harmless" provision;
- Requiring SEAs to describe, in their Title III plans, how LEAs receiving subgrants will be given the flexibility to teach ELs using a high-quality, effective instructional curriculum and in the manner the LEA determines to be most effective;
- Requiring that the state plan describes the steps that the SEA will take to assist an LEA if the LEA's strategies for educating ELs are not effective; and
- Replacing the requirement for Title III local evaluations with a requirement that each subgrantee report to the SEA (every second year) on the programs and activities it has carried out with its Title III funds and on the number and percentage of ELs who are: making progress in achieving English proficiency (disaggregated for students with disabilities); attaining English proficiency; exiting language instruction programs for ELs; meeting state academic standards (for each of the four years after they exit EL status, and disaggregated for students with disabilities); and not achieving English proficiency after five years of their initial classification as EL. Note that the language on disaggregation of data on EL students with disabilities is similar to language in Title I requiring states to make public data on achievement, graduation rates, academic indicators, and assessment rates in a manner that permits cross-tabulation by, at a minimum, race and ethnicity, gender, EL status, and disability status.

### ***Issues and Questions for States—***

- SEAs should consider whether they want to use any of the state set-aside for recognition and rewards.
- Reduction in the percentage of formula grant funds that may be used for state administration may necessitate changes in SEA staffing. In addition, there is more EL focus in Title I. Therefore, SEAs might consider how to increase capacity in their Title I staff for addressing the new EL policies and/or increasing coordination and collaboration between their Title I and Title III staff.
- If ED decides to use blended data in making Title III allocations, this could have a major impact on states' relative shares of the funding.
- The new reporting requirements, including the requirement for disaggregated data on EL students with disabilities and the related Title I data requirements, will likely require changes to states' data systems. SEAs might want to work with one another on designing new systems. Will ED provide any technical assistance?
- Disaggregation of data on EL students with disabilities could support state efforts to rethink their strategies for serving those students. The 2015 ED-DOJ letter on services to ELs provides guidance on this issue.

## English Learner Definition

Within its general provisions (the provisions that cover all programs under the Act, unless otherwise specified), ESSA defines an “English learner” as an individual who, among other things, has difficulties in speaking, reading, writing, or understanding the English language that may be sufficient to deny the individual the ability to *meet challenging state academic standards*. The NCLB definition of “limited English proficient” referred to an individual with difficulties in speaking, reading, writing, or understanding that may be sufficient to deny him or her the ability to *meet the state’s proficient level of achievement on state assessments* but was otherwise substantively identical.

### ***Issue for States—***

- While the new definition is almost identical to the old one, SEAs will want to determine whether the reference to meeting state standards (rather than testing at the proficient level) will necessitate any changes in their programs for ELs.





One Massachusetts Avenue, NW, Suite 700  
Washington, DC 20001-1431  
voice: 202.336.7000 | fax: 202.408.8072