



Frequently Asked Questions Regarding Implementation of the Every Student Succeeds Act May 20, 2016

Below please find responses to questions frequently posed by States as they prepare to implement the Every Student Succeeds Act, the federal law that replaces No Child Left Behind. These responses are based upon our current understanding of the law, as of May 20, 2016, and our current best thinking on these issues.

Challenging Academic Standards

Q. Does ESSA make any significant changes from prior law related to state academic standards?

- A. ESSA essentially maintains prior law with respect to the requirement that each state adopt challenging state academic standards. Critically, it preserves states' authority and control over the content of state standards. States must demonstrate that their standards are aligned to "entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards," but the law expressly prohibits the Secretary from requiring states to add or delete specific elements to the standards.

ESSA maintains the requirement from NCLB that states have English proficiency (ELP) standards for the education of English learners and also adds a requirement that these standards address different levels of English proficiency; thus, some states may have to revise their ELP standards.

Assessments

Q. Does ESSA make any significant changes from prior law with respect to academic assessments?

- A. The specific requirements related to academic assessments are similar to prior law in many ways. For example, ESSA maintains the requirement that states administer an annual assessment of students in grades three through eight, and once in high school, in math and English/language arts, as well as science assessments given at least once in each grade span from grades 3-5, 6-9, and 10-12. The new law also maintains the requirement that the assessments align to the State's challenging academic standards. However, ESSA does make several meaningful changes to assessment requirements. Specifically, the ESSA statute now permits States to include assessments that measure student academic growth and assessments to be partially delivered in the form of portfolios, projects, or extended performance tasks. In addition, at the state's discretion, assessments may be administered through a single summative assessment or through multiple, statewide interim assessments during the course of the academic year, which result in a single, summative score that provides valid, reliable, and transparent information on student achievement or growth. In addition, as noted above, the law authorizes states to permit LEAs to implement locally selected high school assessments if certain criteria are met.

However, it is important to note that while Title I continues to require the assessment of English proficiency of EL students, these assessment results will now be used as part of the Title I accountability system, rather than as part of Title III (see below for further discussion).

Q. Under ESSA, are local educational agencies allowed to select their own high school assessments?

- A. ESSA includes a new provision that permits local educational agencies (LEAs) to administer locally selected, nationally recognized high school academic assessments, in lieu of state assessments. However, prior to their use, a state educational agency (SEA) must determine that such assessments meet the same technical criteria as the state-selected assessment and meet ED's peer review criteria, which includes things like alignment to the state's academic standards, provision of comparable, valid and reliable data on achievement, and provision of "unbiased, rational and consistent differentiation between schools within the state" for state accountability purposes. The provision also provides that once a specific assessment is approved by the state, any other district in that same state may use that assessment.

Q. Does ESSA allow States to implement adaptive assessments?

- A. States continue to have the option to implement adaptive assessments under the new law. Such assessments must meet all other criteria for state assessments except that not all students taking the computer-adaptive assessment must receive the same assessment items. Under the law, computer-adaptive assessments must measure academic proficiency based on the challenging state academic standards for the student's grade level, as well as growth toward such standards, and may measure the student's level of academic proficiency and growth using items above or below the student's grade level, including for use as part of a state's accountability system.

Q. Does ESSA maintain the ability for states to defer commencement, or suspend the administration of assessments in any year in which funding for State Assessment Grants falls below a specific level?

- A. Yes. The new trigger is \$369 million, which reflects funding made available for State Assessment Grants in FY16.

Q. Do states still need to submit assessment systems for peer review in the spring of 2016?

- A. Yes. In accordance with an orderly transition to the new law, ED has indicated that states should still submit their assessments for peer review based on the guidance that was released by ED in October 2015. The purpose of the peer review process remains to assist the Secretary in the review of state plans in order to determine if they meet the statutory requirements, including whether or not states demonstrate implementation of student academic assessments that meet the law's requirements. As was the case under NCLB, the Secretary may not use this, or any other process, to prescribe specific assessments or items to be used in state assessments.

Q. Does ESSA make changes related to the 1% cap on alternate assessments?

A. Yes. ESSA requires the State educational agency (SEA) to ensure that the total number of students assessed in each subject, using the alternate assessment for students with significant cognitive disabilities, does not exceed 1 percent of the total number of all students in the State who are assessed in such subject. Thus, there is a 1 percent (State-level) cap on the percentage of students who can be **assessed** using the alternate assessment. Previously, the 1 percent cap was on the percentage of scores from the alternate assessment that could be **counted** as proficient by the State.

The State Educational Agency (SEA) is prohibited from imposing a Local Educational Agency (LEA) cap on the administration of the alternate assessments. However, an LEA administering the alternate assessment to more than 1 percent of its students must submit information to the SEA justifying the need to exceed that number, and the SEA must provide appropriate oversight of LEAs exceeding 1 percent.

Forthcoming proposed ESSA regulations would require states to apply for waivers in instances where LEA-level administration of these alternate assessments would cause a state to exceed the 1% cap. In addition, proposed regulations would require states develop definitions for “students with the most significant cognitive disabilities.”

Q. Does the 1 percent cap on the percentage of students who can be assessed using the alternate assessment minimize the authority of the Individualized Education Program (IEP) team?

A. No. Under the Individuals with Disabilities Education Act (IDEA), the IEP team must determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards. (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb))

Q. What does ESSA say about providing parents with information concerning their child’s participation in alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards?

A. The State must ensure that, as part of the process for developing the IEP, parents are clearly informed **a)** that their child’s academic achievement will be measured based on such alternate standards; and, **b)** of how participation in such assessments may delay or otherwise affect the student’s completion of the requirements for a regular high school diploma. NOTE: The ESSA also makes clear that a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards is not precluded from attempting to complete the requirements for a regular high school diploma.

Q. Does ESSA allow an alternate diploma to be counted in the adjusted cohort graduation rate?

A. Yes, all students with the most significant cognitive disabilities in the cohort, assessed using the alternate assessment aligned to alternate academic achievement standards and awarded a State-defined alternate diploma, can be counted in a state’s adjusted cohort graduation rate, **if** the State-defined alternate diploma is **a)** standards-based; **b)**

aligned with the State requirements for the regular high school diploma; and, **c)** obtained within the time period for which the State ensures the availability of a free appropriate public education (FAPE).

Q. Is a student assessed using the alternate assessment aligned to alternate academic achievement standards and awarded a State-defined alternate diploma still entitled to a Free Appropriate Public Education (FAPE)?

A. Under the Individuals with Disabilities Education Act (IDEA), a free appropriate public education (FAPE) must be available to all eligible children residing in the State between the ages of 3 and 21. Generally, a student with a disability is eligible for FAPE **until** he or she reaches the age of 21 (*some states say “to” 21, some states say “through” 21, and a few states have established a different age at which eligibility ceases*) **or** achieves a “regular high school diploma”.

Under the ESSA statute, a “regular high school diploma” means the standard high school diploma awarded to the preponderance of students in a State that is fully aligned with the State’s academic content standards. The statute expressly clarifies that a regular high school diploma shall not be aligned to the alternate academic achievement standards and does not include a recognized equivalent diploma such as a GED or certificate of completion. Therefore, a student awarded an alternate diploma, but who is not yet 21 years of age (or whatever age the state has established for FAPE), would still be eligible for FAPE.

Accountability

Q. ESSA requires states, as part of their statewide system of accountability, to factor in specific, academically-focused indicators as well at least one indicator of “school quality or student success.” ESSA requires that states give “substantial weight” to academic indicators and that these indicators be given, in the aggregate, “much greater weight” in the differentiation process than any measures of school quality or student success. To what extent does the Secretary have the authority to determine how states define what constitutes “substantial” and “much greater” in this context?

A. Language under ESSA prohibits the Secretary from prescribing “the weight of any measure or indicator used to identify or meaningfully differentiate schools....” It is important to note, however, that ED has not yet publicly stated how it interprets the restraints placed on its regulatory authority under this or other ESSA provisions.

Q. Under ESEA Flexibility waivers, States were able to use combined (or “super”) subgroups and other subgroups (e.g., the lowest-scoring 25% of students) for accountability purposes. Under ESSA, may States continue to use these types of subgroups?

A. Under ESSA, Statewide accountability systems must use certain specific subgroups, including *economically disadvantaged students; students from major racial and ethnic groups; children with disabilities; and English learners*. However, the House-Senate Conference Report includes language stating that the intent of the law was not to

preclude states from “including additional elements or methods for identifying student and school performance, which may include using additional categories of students.” Such additional elements or methods “must not prevent the State from meeting the minimum requirements for meaningful differentiation, identification for improvement, and school support and interventions under this section, and the State must not use such additional elements or methods to reduce the number or percent- age, or change, the schools that would otherwise be subject to the requirements of the State’s accountability system...”

Q. Does ESSA allow States to apply different supports and interventions for small schools, as well as for certain high schools serving high-risk students? If so, how will these provisions be regulated by the Secretary?

A. Under ESSA, states may allow high schools that are identified for comprehensive support (due to low graduation rates) to have differentiated improvement activities that utilize evidence-based interventions. However, such schools must “predominantly” serve students who have previously dropped out of school or are who are significantly off track to accumulate the academic credits necessary to graduate.

In addition, the law allows LEAs to forgo implementation of improvement activities if a school otherwise required to carry out such activities has a total enrollment of less than 100 students.

Q. Under ESSA, what is the Secretary’s role with respect to supporting states in complying with the law through the approval of each state’s accountability system?

A. ESSA maintains language from No Child Left Behind (NCLB) with respect to providing the Secretary the authority to review and approve each state’s accountability system, in order to ensure compliance with the law. It also contains restrictions on what the Secretary can require as part of this review, however, such as requiring a state to add or delete specific elements to or from their standards or prescribing that states use specific long-term goals or interim measures of progress.

Q. Does ESSA require states to identify “reward” schools, similar to what states were required to do as part of NCLB Flexibility Waivers? If so, does the law set-aside funds for this purpose?

A. No. ESSA does not require states to identify “reward” schools or any other similar category.

Q. Does ESSA require states to develop an index system in order to differentiate among schools as part of its statewide system of accountability? If so, must it be an interval index (e.g., 0 - 100) or can it be ordinal (e.g., 'level 1', 'level 2', 'level 3', etc.)?

A. ESSA does not specifically require the adoption of an index for states establishing a system for accountability purposes. However, in order to meet the law’s requirements, each state’s accountability system will have to include a methodology for identifying the lowest 5 percent of Title I schools, which would require the relative ranking of schools, which could be accomplished through an index or similar structure.

Q. ESSA requires States to establish “ambitious State-designed long-term goals, which shall include measurements of interim progress toward meeting such goals...” How is this different from NCLB in terms of having a long-term goal and Annual Measurable Objectives (AMOs)?

A. Under NCLB, the “long-term” goal was defined (100% proficiency by 2014). ESSA requires a long-term goal and interim goals but the state has discretion in how those goals are set. The new law maintains the requirement that goals be disaggregated by subgroup and specifies that goals must be set for achievement and high school graduation rates, as well as progress in achieving English language proficiency where applicable. States have discretion in determining the length of the goals but the goal length must be the same for all students across the various groups. In addition, the goals must take into account the starting point for each student population and provide for more progress for those groups that are farther behind.

Q. If our exit criteria are tied to AMOs and we no longer have to have AMOs, this is a bit of a conundrum. We had named new priority/focus schools for flex. Will ED still need to approve the AMOs we proposed to use for exit in 2015?

A. In its December 18th Dear Colleague letter, ED noted that it would not require states to submit AMOs (for school years 2014–2015 or 2015–2016) for ED’s review and approval, nor will ED require states to report performance against AMOs for the 2014–2015 or 2015–2016 school years. The letter goes on to note, however, that all states and districts must continue to publish report cards, including report cards for the 2014–2015 school year (if those report cards have not yet been published), for the 2015–2016 school year, and beyond. Report cards must continue to include information that shows how a district’s student achievement on the state assessments compares to students and subgroups of students in the state as a whole. At the school level, the district must include information that shows how a school’s student achievement on the state assessments compares to students and subgroups of students in the district and in the state as a whole.

Q. What happens to prior reporting requirements created through regulation under old law?

A. ESSA maintains many of the same reporting requirements as NCLB. However, ED guidance, potentially including regulations, will have to be updated to address several changes, including the addition of new data elements and data that must be reported to ED through its EdFacts system.

Q. Do non-waiver states still have to identify a new group of schools for improvement in 2016-17?

A. On January 28th, ED released a Dear Colleague letter clarifying that schools in non-waiver states that were identified in school year 2015-16, must continue to implement the same interventions in the 2016-17 school year (with exceptions for providing supplemental educational services and public school choice and the related notice to parents). ED released a follow-up letter on February 5th that further clarifies that if a state chooses not to require LEAs to provide SES and public school choice in the 2016-17 school year, it must develop and implement a one-year transition plan for ensuring that

LEAs provide alternative supports for students eligible for SES in the schools with the greatest need. While the details of the plan will not be reviewed by ED, the state must submit certain assurances to ED about the transition as part of ED's orderly transition authority.

Q. Are all public schools in a state subject to carrying out improvement activities if they are identified under the state's system of differentiation, or are just those schools receiving Title I funding subject to these requirements?

A. When the new law is fully implemented, all Title I schools will be subject to having to carry out comprehensive support and improvement activities when identified. In addition, any high school, regardless if they receive Title I or not, identified due to having a low graduation rate, must carry out comprehensive support and improvement activities. Similarly, any school with an underperforming subgroup must plan and implement targeted supports for the relevant subgroup whether the school receives Title I funding or not.

Teachers and Leaders

Q. Are states required to continue to implement Highly Qualified Teacher (HQT) requirements given that ESSA discontinues it?

A. ED's January 28th Dear Colleague Letter clarifies that such provisions are not required to be implemented in the 2016-17 school year. States are, however, still required to report HQT data for the 2014-15 and 2015-16 school years.

Q. Does ESSA include any reporting requirements for the evaluation of teachers?

A. ESSA does not specifically require states to carry out or report on teacher evaluations. However, states and districts must include in their report cards the professional qualifications of teachers, including information (disaggregated by high- and low-poverty schools) on the number and percentage of inexperienced teachers, principals, and other school leaders; teachers teaching with emergency or provisional credentials; and teachers who are not teaching in the subject or field for which the teacher is certified or licensed. In addition, ESSA continues language similar to NCLB, which had fewer report card requirements in this area but required parents to be informed regarding the professional qualifications of their student's classroom teachers based upon the same information noted above.

States must also include as part of their plans information on how low-income and minority children are "not served at disproportionate rates by ineffective, out-of-field, or inexperienced teachers, and the measures the State educational agency will use to evaluate and publicly report the progress" in this area.

Note: the law clarifies that this language should not be "construed as requiring a State to develop or implement a teacher, principal, or other school leader evaluation system." Local plans must include how the district will address any cases of such disparities.

English Language Learners

Q. Under ESSA, what assessment is used to determine English Language Proficiency (ELP)?

- A. ESSA requires that states demonstrate their LEAs conduct annual assessments of ELP aligned with the states ELP standards. These could be state-developed assessments, assessments developed through multi-state consortia, or other assessments.

Q. Does Title III continue to include separate accountability provisions for English learners as under NCLB?

- A. No. The prior accountability provisions under Title III have been removed from that Title. The accountability system which states are required to develop under Title I now requires the inclusion of English proficiency of English learners as an indicator. In addition, states now need to include specific ELP goals and measures of interim progress as part of Title I. There is also a switch in the focus on district-level accountability to school-level accountability as part of the new law.

Timeline/Transition to ESSA

Q. Under ESSA, states are not required to have their new accountability systems in place until the 2017-18 school year. Does this mean *that the first report cards are based on the SY17-18 data (and therefore reported AFTER that school year) or based on the SY16-17 and reported FOR the SY17-18 school year?*

- A. ED's December 18th Dear Colleague Letter clarified that report cards will continue to be required for the 2015-16 school year and beyond (meaning that a report card will also be required in the transition year of 2016-17). As with current practice, annual report cards are based upon data from the prior school year.

Q. *What is the anticipated timeline for the submission of State Plans to ED (presumably through the consolidated application process)? The non-accountability provisions of ESSA kick in on 7/1/16 for formula grants, and states must submit a plan to access those formula funds, so when will that be due?*

- A. Most likely in the spring of 2017. The FY 2016 Omnibus appropriations bill clarified that FY 2016 formula grant funds will be awarded and administered in accordance with the provisions of NCLB. This means that ED formula grant allocations to states and LEAs, as well as state subgrants allocated by formula to LEAs under ESEA formula grant programs, will be made in FY 2016, for the 2016-2017 school year, in the same manner and using the same allocation formulas as for the 2015-2016 school year. In its January 28th Dear Colleague letter, ED provided additional guidance about certain exceptions to this rule (pertaining to funding for supports and interventions for priority and focus schools, for example).

The new law will kick in for FY17 funds, which are made available on July 1, 2017. As such, it is likely that states will submit plans prior to that date to be prepared for new allocations starting on July 1, 2017.