



## MEMORANDUM

TO: **Chiefs, Deputies, Federal Liaisons, and Communications Directors**  
FROM: **CCSSO**  
DATE: **January 11, 2016**  
SUBJECT: **Testing and Opt-Out Provisions in ESSA**

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The following document describes the interaction of testing and opt-out provisions in the new Every Student Succeeds Act, which reauthorizes the Elementary and Secondary Education Act, replacing No Child Left Behind.

### Statutory Language

**ESSA Maintains Annual Testing Requirement** – Section 1111(b)(2)(B) of Title I of the Every Student Succeeds Act (ESSA) maintains the federal requirement that states administer statewide assessments in math and English language arts – annually in grades 3 through 8 and at least once in high school – and science – at least once in grades 3 through 5, 6 through 9, and 10 through 12.

**ESSA Maintains 95% Testing Participation Requirement** – While not specifically named as an indicator in the accountability system, Section 1111(c)(4)(E)(i) requires states to annually measure the achievement of not less than 95% of all students and subgroups of students in public schools using Title I State assessments. States are permitted to and must provide a clear and understandable explanation of how the 95% assessment requirement will factor into the accountability system.

**State and Local Laws re: Testing Participation** – Section 1111(b)(2)(K) of Title I states that nothing in the assessment section (which is different from the section that requires 95% participation) of Title I preempts state or local law with respect to a parental decision on assessment participation.

**States Determine How 95% Participation Factors into Accountability System** – Section 1111(c)(4)(E)(iii) requires that states “provide a clear and understandable explanation of how the State will factor the [95%] requirement ... into the statewide accountability system.”

### Analysis

The statutory provisions of the Every Student Succeeds Act (ESSA) maintain annual testing requirements and the 95% assessment participation requirement. However, unlike No Child Left Behind, ESSA leaves it up to states to determine how the 95% participation requirement will factor into state accountability systems and what consequences or interventions there will be for schools that fail to meet the 95% threshold. In addition, the provision clarifying that Federal law does not supercede state and local law, as described above, does not relieve states of the responsibility to require 95% testing participation. Nothing in federal law, therefore, expressly requires individual students to participate in state tests; ESSA does, however, make 95% participation a mandatory element of state accountability systems. What remains to be seen over the coming months is how the U.S. Department of Education will regulate on this matter; ultimately regulations and Department guidance on this issue could impact how states, school districts, and schools will implement its requirements.