













ESSA: Quick guides on top issues

The Every Student Succeeds Act (ESSA), signed into law in December 2015, is the latest reauthorization of one of the most influential pieces of federal education legislation, the Elementary and Secondary Education Act (ESEA). The law had not been reauthorized since 2001 when the No Child Left Behind Act (NCLB) was signed, and ESSA is the result of significant bipartisan effort to move beyond temporary waivers from NCLB's provisions. The new law maintains many of the same basic components as past iterations, such as state plans and report cards, but the bipartisan bill also responds to many of the common complaints about NCLB by offering states greater flexibility and control over education policy.

Many questions remain before states can fully take advantage of ESSA. This report addresses the areas of the law where Education Commission of the States has heard the most questions and concerns from education leaders and policymakers.

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ACRONYMS

CAT	Computer-Adaptive Assessment
EL	English Learner
ELA	English Language Arts
ESEA	Elementary and Secondary Education Act
ESSA	Every Student Succeeds Act
LEA	Local Education Association
NCLB	No Child Left Behind Act
PARCC	Partnership for Assessment of Readiness for College and Careers
SEA	State Education Agency
SIG	School Improvement Grant
SQSS	School Quality or Student Success
USED	U.S. Department of Education



Assessment Flexibility

For definitions of the acronyms used in this guide, [click here](#).

Key Changes from NCLB

While ESSA maintains many of the requirements of NCLB, the new law provides greater flexibility in the types of assessments states may use. ESSA explicitly authorizes states to use nationally recognized assessments in high school, computer-adaptive assessments at all grade levels and high school math assessments for advanced eighth graders. Proposed regulations on Title I assessments were recently released and are available for public comment at the USED website.

Nationally Recognized Assessments in High School

New provisions in ESSA authorize LEAs to administer a locally selected, nationally recognized assessment in lieu of the state-determined academic assessments required for math, ELA and science.

While the law does not define “nationally recognized,” proposed regulations describe it as “an assessment of high school students’ knowledge and skills that is administered in multiple states and is recognized by institutions of higher education in those or other states for the purposes of entrance or placement into credit-bearing courses in postsecondary education or training programs.”¹ The SAT and ACT are expressly mentioned in ESSA’s accompanying report, and experts have pointed to the SAT, ACT, PARCC and Smarter Balanced assessments as likely candidates.

Approval Requirements

If districts choose to select such an assessment, ESSA requires the state to review and approve the selection based on SEA-established technical criteria designed to ensure the assessment meets ESSA’s requirements. To receive approval from the SEA, a locally selected assessment must, at minimum:

- Align to and address the depth and breadth of state standards.
- Be equivalent in its content coverage, difficulty and quality to the state assessments.
- Provide comparable, valid and reliable academic achievement data, as compared to the state assessments, for all high school students and for each subgroup.
- Express achievement results in terms consistent with the state’s achievement standards.

1. Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act – Accountability and State Plans, 34 Fed. Reg. 200 and 299 (May 31, 2016). Federal Register: The Daily Journal of the United States.

- Meet ESSA's requirements for assessments, including technical criteria, except the requirement that all students in a state take the same assessment.
- Provide unbiased, rational and consistent differentiation between and among schools in the state.

Process of Selection and Approval

To facilitate assessment choices for LEAs that want to administer an assessment in lieu of the state-determined academic assessments, the SEA can either select an assessment or assessments for possible use by LEAs, or the LEA can submit an assessment for review by and approval of the SEA. Before approving an assessment, the SEA must submit evidence for federal peer review that demonstrates how the assessment meets the requirements listed above.

Once the SEA approves an assessment, that test may be used by any other LEA that requests to use it. While the state can decide whether to approve any nationally recognized assessment, the state must allow LEAs to use any that have already been approved by the state.

LEAs must notify the parents of high school students in the LEA of its request to use the replacement assessment. If an assessment is approved, the LEA is expected to notify parents at the beginning of each school year during which the assessment is in use.

Computer-Adaptive Assessments

Unlike NCLB, ESSA explicitly permits states to develop and administer CATs for math, ELA and/or science. This type of assessment adjusts the difficulty of questions during an exam based on a student's response and is distinct from computer-based assessments that replicate traditional tests on a computer. The law does not prohibit states or LEAs from using CATs for other tested subjects. States previously could only use CATs after approval granted through USED's peer review process and federal waivers.

All CATs must meet ESSA's assessment requirements with a few exceptions that account for their different structures. Although ESSA requires that the same test is administered to all students in each grade, this does not mean that all students taking the CAT must be administered the same assessment items. This allows the computer to adapt the difficulty of a test to a student without overstepping the law. The use of CATs under ESSA is also subject to certain requirements for students with the most significant cognitive disabilities and ELs. Draft regulations address these populations in greater detail.

The tests are expected to measure each student's academic proficiency for the student's grade level based on the state's standards and growth toward those standards. CATs may measure the student's proficiency and growth using items above or below the student's grade level, including use of results in determining school performance (accountability).



Assessment of Students Taking Advanced Mathematics in Middle School

States may exempt eighth grade math students from the statewide eighth grade math assessment if:

- The student takes an end-of-course assessment that the state typically administers in high school.
- The student's achievement on that end-of-course assessment is used to calculate proficiency on assessments and test participation for purposes of the state accountability system.
- In high school, the student takes a math assessment, as required under ESSA (one time in grades 9-12), that is:
 - More advanced than the eighth grade assessment.
 - Used to measure the student's academic achievement for purposes of the state accountability system's first indicator—proficiency on assessments.



Assessment Participation and Opt-Outs

For definitions of the acronyms used in this guide, [click here](#).

Under ESSA, as under NCLB, states are required to administer statewide tests in math, ELA and science. The same test for each grade and subject level must be administered to all students in that grade in the state. A limited number of exceptions may apply if, for instance, a state is participating in the Innovative Assessment and Accountability Demonstration Authority program.

ESSA requires that states annually test at least 95 percent of all public school students and at least 95 percent of all subgroups in math and ELA, and student participation on these tests must be incorporated as a factor in the state's accountability system. ESSA authorizes states to determine how to do this, but each state is required to provide a "clear and understandable explanation" for its decision.²

With the implementation of NCLB, opposition to the emerging emphasis on academic assessments began to build. As a result, an increasing number of parents chose to opt their children out of testing that they perceived as excessive. A new provision of ESSA, the Rule of Construction on Parent Rights, ensures that state and district laws may allow for parents to opt their children out of assessments.

If less than 95 percent of students participate in the tests, states are required to calculate student proficiency by dividing the number of students scoring proficiently by no less than 95 percent of total students. This design "effectively assigns [a] score of "0" to nonparticipants."³

In other words, in a state with 100 total students where 90 students score proficient out of a total of 93 test takers, the state's proficiency rate will be 95 percent (90/95) rather than the actual proficiency rate of students tested (90/93 = 97 percent). States with 95 percent or higher test participation rates may use their actual test participation rate as the denominator in this calculation.⁴

Proposed USED regulations would give states four actions that could be taken in response to low participation. Those four options are:

1. Assign a lower summative rating to the school.
2. Assign the lowest performance level on the state accountability system's academic achievement indicator.

² Every Student Succeeds Act, Public Law No. 114-95, Sec. 1005(c)(4)(E)(iii).

³ Robert Stonehill and David English, "Shifts in Assessment and Accountability Policy Under the Every Student Succeeds Act," at 2016 Texas Commission on Next Generation Assessments and Accountability, slide 34 (Austin: Texas Education Agency, 2016).

⁴ David English, telephone conversation, June 16, 2016.



3. Identify the school for targeted support and improvement.
4. Implement another equally rigorous state-determined action, described in the state plan, that will result in a similar outcome for the school and will lead to improvements in the participation rate.

Under these regulations, a school with low participation rates would also need to develop and implement an improvement plan addressing test participation. The USED has specifically requested public comment on other options for addressing low participation rates.

Proposed regulations would also “retain current regulatory requirements related to: 1) not allowing the systematic exclusion of students from required assessments; 2) counting as participants students with the most significant cognitive disabilities who take alternate assessments based on alternate academic achievement standards; and 3) counting as participants recently arrived ELs who take either the state’s English language proficiency assessment or the reading/language arts assessment.”⁵

⁵ Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act – Accountability and State Plans, 34 Fed. Reg. 200 and 299 (May 31, 2016). Federal Register: The Daily Journal of the United States. Sec. 200.15.



Innovative Assessment Pilot

For definitions of the acronyms used in this guide, [click here](#).

ESSA provides an opportunity for states to pilot an innovative assessment system. The Innovative Assessment and Accountability Demonstration Authority gives a limited number of states leeway in the design of their assessment system by providing a broad, open-ended list of possible innovative assessments. Pilot states could choose to use performance-based or competency-based assessments, portfolios or several interim tests rather than a single summative test, among other options that the law leaves open.

The tests selected are required to meet many of the same requirements as traditional assessments. For example, a state still needs to ensure that the innovative system tests the same grade levels and subjects required for traditional assessments and that the same innovative assessment is used in all pilot districts. If several interim tests are administered, scores must combine to produce an annual summative determination for each student.

Proposed USED regulations were recently released and are available for public comment. The awarding of pilot authority will likely not occur until the next administration. No specific funds will be provided by the USED for the pilot.

State Participation and Pilot Length

In the first three years, seven SEAs, including any participating in a consortium of up to four SEAs, may be authorized to participate. After the first three years' progress report is published, the U.S. Secretary of Education may authorize additional SEAs or consortia to participate.

States may choose to implement innovative assessments in a subset of districts before scaling up to statewide administration.

The initial pilot period (“demonstration period”) may last up to five years with a possible extension of up to two years.

Goal of the Innovative Assessment Pilot

ESSA asks states to establish long-term goals that need to include improved academic achievement for all students (and subgroups) as measured by proficiency on the required annual assessments. This pilot allows participating states greater flexibility in their selection of annual assessments.

SEAs should aim to transition to a high-quality innovative assessment system that is implemented statewide. The new system can be used as a replacement for federally-prescribed assessments and as



a measure of academic achievement in the state accountability system. During the transition from the previous system to the new system, states can use innovative assessment results instead of or in addition to the regular statewide assessment results for accountability purposes.

The Federal Role

The Secretary has five main functions in the implementation of the pilot program: 1) set the time and manner for the application process; 2) implement a peer review process to determine whether the state's proposed assessments meet the law's criteria and to inform SEA or consortia selection; 3) authorize SEAs or consortia to pilot an innovative assessment system and extend this authority for additional years; 4) respond to appeals when states are denied pilot authorization; and 5) withdraw authorization if a state fails to meet certain requirements.

Loss of Pilot Authority

The Secretary may withdraw pilot authorization from any state that cannot show that the innovative assessment system meets certain requirements described in the law. At the end of the demonstration period and two year extension, the state may request a delay of the withdrawal of authority to give the state time to implement the system statewide.

Innovative Assessment System Requirements

ESSA requires that innovative assessments meet many of the same requirements as traditional statewide math, ELA and science assessments, such as alignment to state standards and results that are valid, reliable and comparable to state assessment results. One key difference is that the innovative assessment system must be developed in collaboration with stakeholders.

State Application Requirements

In general, the application must describe the proposed innovative assessment system, the experience the state has in implementing components of it and the timeline proposed for implementation within the five-year period. Each participating state must also describe how the SEA will meet a number of key accountability, support, communication and reporting requirements.

A state's application needs to include whether it plans to pilot the innovative assessments in select LEAs or statewide. If the pilot will begin in select LEAs, the application needs to describe how it will scale up the system statewide. If the system will be administered initially in a subset of LEAs, additional information is required in the application.

Accountability Requirements for Pilot Districts

The law places a premium on comparability between pilot and non-pilot districts. All participating LEAs will be held accountable for meeting state expectations of student achievement, and the pilot assessments

are required to yield summative scores for all federally-prescribed grade levels and subjects. If necessary, pilot LEAs may administer traditional state assessments for accountability purposes during the pilot period, although doing so may risk already-existing public perception and criticism of over testing.

State Experiments

Experts have observed that “states and districts have experimented with alternatives to traditional standardized tests for decades, with mixed results.” They note that these experiments were challenged by “technical quality issues,” by not being “feasible or affordable on a large scale,” and by “political opposition from critics who considered them too subjective or not rigorous enough.”⁶

New Hampshire is well-known for its Performance Assessment for Competency (PACE) system, an innovative assessment currently piloted in eight self-selected districts. The pilot assessment system combines locally-developed assessments, a performance task for each grade level that districts collaboratively develop, the Smarter Balanced assessment in three grades, and the SAT in 11th grade. Beyond simply replacing traditional assessments with more innovative ones, the PACE system also involves greater stakeholder engagement, “intense and reciprocal support” from the state department of education, and a shift to a competency-based approach to instruction.

⁶ Robert Rothman and Scott F. Marion, “The Next Generation of State Assessment and Accountability,” *Kappan Magazine*, vol. 97, no. 8, (2016): 35, https://www.pdkmembers.org/members_online/publications/archive/pdf/PDK_97_8/34pdk_97_8.pdf (accessed June 23, 2016).



Indicators of School Quality or Student Success

For definitions of the acronyms used in this guide, [click here](#).

ESSA requires state accountability plans to include five indicators. These indicators are: 1) proficiency on assessments, which may include growth in proficiency in high school; 2) growth in proficiency in grades below high school or another academic indicator; 3) high school graduation rates; 4) progress of ELs toward proficiency; and 5) a fifth “other” indicator. The new law requires this indicator to be a valid, reliable and comparable measure of school quality or student success (SQSS)⁷ within each state’s accountability system.

The SQSS indicator is expected to allow for meaningful differentiation between schools and to be given less than “substantial weight” in accountability calculations. In the aggregate, the other four required indicators must be given “much greater weight” than the measure of SQSS.⁸

Measures of SQSS

States are allowed to choose their measure(s) of SQSS, although ESSA suggests possible measures:

- Student engagement (e.g., chronic absenteeism).
- Educator engagement.
- Student access to and completion of advanced coursework (e.g., high school students enrolled in calculus).
- Postsecondary readiness (e.g., college enrollment following high school graduation).
- School climate and safety (e.g., student survey).

Other possibilities not mentioned explicitly in the law might include:

- School inspections.
- Surveys - of students, teachers, parents.
- Parent/community involvement.
- Well-rounded curriculum.
- Access to arts and other programs.
- Student attendance rates.

⁷ NCLB gave states discretion to choose other academic indicators, as determined by the State for all public school students, measured separately for each group... such as achievement on additional State or locally administered assessments, decreases in grade-to-grade retention rates, attendance rates, and changes in the percentages of students completing gifted and talented, advanced placement, and college preparatory courses.” NCLB Public Law No. 107-110, Sec. 1111(2) (C)(vii).

⁸ Every Student Succeeds Act, Public Law No. 114-95, Sec. 1005(c)(4)(C)(ii)(I)-(II).



- Student retention rates (esp. for choice communities).
- Suspensions/expulsions.
- Safety/discipline infractions.
- National industry certifications/credentials attained.
- Ninth graders on track to graduate.
- Teacher absenteeism.
- Teacher turnover.
- Teacher certifications - percent highly qualified, percent provisionally certified, percent with advanced degrees.

ESSA Accountability Requirements

All accountability system indicators, including the measure of SQSS, must be:

- Measured annually for all students and for each subgroup.
- Able to provide meaningful differentiation between schools.⁹
- Where appropriate, based on the long-term goals in the state plan.
- Included in state and district report cards.

However, the measure of SQSS differs from the other indicators in that the law specifies that it must be given less weight than the other four in aggregate. States will also have the flexibility to use a different SQSS indicator for different grade spans; however, grade spans are determined by each state. This flexibility could allow states to tailor the measure to the appropriate age group, such as using student surveys only for older students.

According to a recent analysis, “42 states include in their accountability systems at least one early warning indicator, persistence indicator other than graduation rates, college- and career-ready indicator, or other indicator” that might fulfill ESSA’s SQSS requirement, although many use this indicator only at the high school level.¹⁰

Proposed regulations also clarify that the measure of SQSS must:

- Be a separate indicator from other indicators the state uses in its accountability system.
- Not be used to change the identity of schools that would otherwise be identified for comprehensive or targeted support and improvement, unless certain progress on another indicator has been made.
- Be “supported by research that performance or progress on such measures is likely to increase student academic achievement or, for measures within indicators at the high school level, graduation rates.”¹¹

⁹ Under the proposed regulations, allowing for meaningful differentiation means that a state cannot choose an indicator of SQSS that would lead to consistent results across schools—such as average daily attendance, which is often quite high even in the lowest-performing schools.

State Examples

Connecticut's Next Generation Accountability System

In 2012, the **Connecticut** legislature passed SB458, which required the department of education to develop a new method to classify schools into performance categories and identify districts in need of improvement. This new system uses 12 indicators to provide a holistic view of schools and districts.

In addition to assessment-based indicators (“performance index”), Connecticut also calculates its overall “accountability index” based on data related to:

- Chronic absenteeism.
- Preparation for postsecondary and career readiness based on coursework and exams.
- Postsecondary entrance rate for all students (college enrollment).
- Physical fitness.
- Arts access.

California's CORE Districts

California's CORE districts, an alliance of districts working together on several key education issues, received a federal waiver of ESEA accountability requirements in 2013. Like ESSA, this waiver provided the flexibility to create a new accountability system—the School Quality Improvement Index—that included measures of SQSS.

The index uses five social-emotional and culture-climate factors, each worth 8 percent of the total score: 1) chronic absenteeism; 2) culture-climate surveys; 3) the suspension/expulsion rate; 4) students' self-reported social emotional skills (grades 5-12); and 5) the EL reclassification rate. Academic indicators account for 60 percent of the total score.

The California State Board of Education recently approved five new indicators for the state's accountability system, including suspension rates by grade span.

¹⁰ Carmel Martin, Scott Sargrad, and Samantha Batel, Making the Grade: A 50-State Analysis of School Accountability Systems (Washington, D.C.: Center for American Progress, 2016), 31, <https://www.americanprogress.org/issues/education/report/2016/05/19/137444/making-the-grade/> (accessed June 23, 2016).

¹¹ Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act – Accountability and State Plans, 34 Fed. Reg. 200 and 299 (May 31, 2016). Federal Register: The Daily Journal of the United States. Sec. 200.14.



English Learners and Accountability

For definitions of the acronyms used in this guide, [click here](#).

Summary of New Provisions

ESSA contains multiple changes to NCLB that affect ELs, including changing terminology from “limited English proficient” to “English learner.” Of particular note are the changes to how states’ accountability systems incorporate ELs, specifically including students’ progress in English language proficiency and more fully integrating ELs’ academic progress. Three specific changes are highlighted below.

- **Assessing and reporting provisions for recently arrived ELs:** Adjusting how states assess recently arrived ELs during their first year and include assessment results in accountability systems.
- **Accountability goals and indicators:** Setting long-term goals and performance indicators for ELs.
- **Reporting progress of former ELs:** Reporting the progress of former ELs with the EL subgroup for up to four years (previously, it was two years).

Assessing and Reporting Provisions for Recently-Arrived ELs

For recently arrived ELs who have been enrolled in any U.S. school for less than one year, ESSA outlines two options for including these students’ assessment results in the accountability system.

Option 1: States’ school performance calculations may exclude the results from math, ELA and English language proficiency assessments taken by recently arrived ELs during their first year. States may also exempt these students from taking the ELA assessment entirely during that first year.

Option 2: This option – which is new under ESSA – allows states to phase in recently arrived ELs’ assessment results for accountability purposes over three years, as outlined below.

- **First year:** Recently arrived ELs take math, ELA and English language proficiency assessments, but the results are not used for any accountability purposes.
- **Second year:** ELs take all three assessments; states use the measure of the students’ growth on the assessments between the two years for accountability purposes.
- **Third year:** Beginning in year three, ELs’ academic results count toward school performance and are reported the same way as all other students.

The Migration Policy Institute suggests that states have a third option: make no adjustments for reporting EL assessment results and treat EL and non-EL students' assessment results the same way.¹²

Accountability Goals and Indicators

ESSA's accountability system requirements put a stronger emphasis on states' responsibilities for the progress of their EL students.

Goals and Progress Measurements

States are required to establish long-term goals around academic progress, including a goal to increase the percentage of the state's ELs achieving English proficiency – measured yearly by a proficiency assessment. States must also create interim progress measures of academic progress and high school graduation for (1) all students and (2) separately for each of four identified student subgroups, including ELs.¹³ EL performance must also be incorporated into accountability report cards.

Indicators

ESSA requires states to create indicators of school performance in several areas. Each state's system for rating school performance is based, in part, on these school performance indicators. One required indicator is ELs' progress toward achieving English language proficiency. Progress toward proficiency is defined by each state and measured by their chosen English language proficiency exam. ESSA requires states to give ELs a language proficiency exam each year to track progress toward the English language proficiency goal, although only results from certain grades are used for the English proficiency progress indicator.

Reporting the Progress of Former ELs

ESSA now allows states to include former EL students in the EL subgroup for up to four years after they are reclassified – meaning when it is determined that ELs no longer need English language development services.¹⁴ Under NCLB, states could only report the progress of former ELs in the EL subgroup for up to two years after reclassification.

Some researchers have noted that as schools and districts are successful in reclassifying ELs, “the more poorly their EL subgroup performance looks.”¹⁵ Tracking former ELs after they are reclassified helps schools monitor their long-term progress and ensure their needs are not overlooked in the general student population. Tracking ELs after they have been reclassified is also an important way to provide a more accurate reflection of the performance of a state's EL population, both current and former.

¹² Margie McHugh and Delia Pompa, “Taking Stock of ESSA's Potential Impact on Immigrant and English-Learner Students,” January 21, 2016 (Washington, D.C.: Migration Policy Institute), <http://www.migrationpolicy.org/sites/default/files/powerpoints/2015.1.21-EVENTPWRPNT-TakingStockofESSA-Final.pdf> (accessed June 16, 2016).

¹³ Student subgroups include: economically disadvantaged students; students from major racial and ethnic groups; students with disabilities; and English learners. Every Student Succeeds Act, Public Law No. 114-95, Sec. 1111(c)(2).

¹⁴ Micah Ann Wixom, ECS and National Experts Examine: State-level English language learner policies (Denver: Education Commission of the States, 2015), <http://www.ecs.org/clearinghouse/01/17/92/11792.pdf> (accessed June 16, 2013).

¹⁵ Megan Hopkins et al., “Fully Accounting for English Learner Performance: A Key Issue in ESEA Reauthorization,” *Educational Researcher*, vol. 42, no. 2 (2013), doi: 10.3102/0013189X12471426. Also see: Working Group on ELL Policy, Questions and Answers, January 14, 2011, <http://ellpolicy.org/wp-content/uploads/QA.pdf> (accessed June 16, 2016).



Supporting Low-Performing Schools

For definitions of the acronyms used in this guide, [click here](#).

Turning around America’s lowest performing schools– schools with student achievement levels that leave students at a grave disadvantage for future success – is at the heart of the equity issue the original ESEA of 1965 was created to alleviate.

Changes from NCLB

Under NCLB, passed in 2001, states were required to have a system in place to provide “scientifically based” technical assistance to schools identified for school improvement, corrective action or restructuring. For the neediest schools, NCLB outlined five options for intervention. Federal SIGs were commonly used to fiscally support school turnaround efforts; however, by 2015, a number of studies had found that the least intrusive interventions were most often pursued and had little to no impact on student achievement.

By 2017-18, states are required by ESSA to have plans in place for providing comprehensive support and improvement for their lowest performing schools; however, they are granted significant flexibility in how they do so. In fact, the U.S. Secretary of Education is explicitly prohibited from prescribing any specific strategies or activities a state or district may use.

Further, as a result of flexibility in accountability systems granted under ESSA, the USED estimates that schools identified as in need of comprehensive improvement will drop from as many as 50,000 under current regulations to closer to 4,000.

Funding School Improvement under ESSA

While SIGs have been eliminated under ESSA, the new law requires that states reserve up to 7 percent of Title I funds to support low-performing schools. Of the reserved funds, not less than 95 percent are to be allocated to make grants to LEAs on a formula or competitive basis. Statewide school districts, consortia of LEAs or an educational service agency serving low-performing schools are also eligible to receive funding. Grants are awarded for up to four years, which can include a planning year.

SEAs must give priority to LEAs that:

- Serve high numbers, or a high percentage, of elementary schools and secondary schools implementing comprehensive school improvement plans.
- Demonstrate the greatest need for such funds, as determined by the state.
- Demonstrate the strongest commitment to using funds to enable the lowest-performing schools to improve student achievement and student outcomes.

USED's proposed regulations ask that each school with an approved comprehensive school improvement plan receive at least \$500,000 and each school with an approved targeted improvement plan receive at least \$50,000 unless the state determines that a smaller amount is sufficient to fund the school's plan. If a state has insufficient funds, the regulations would require that states allot funding through formula or a competition.

Levels of Support

Schools can be identified as needing either a 1) comprehensive support and improvement plan or a 2) targeted support and improvement plan.

Comprehensive Support and Improvement Plan

Schools identified as in need of comprehensive support include:

- The lowest-performing 5 percent of all Title I schools in the state (based on summative school performance over no more than three years, per proposed regulations).
- All public schools that graduate less than two-thirds of their students. Per proposed regulations, schools can set a higher graduation rate requirement.
- All public schools with a subgroup(s) that is performing at a level equal to student performance at the lowest 5 percent of schools in the state and that do not show progress in student achievement and school success under a targeted support and improvement plan. These groups are referred to as “chronically low-performing subgroups” in the USED's proposed regulations. The proposed regulations require that schools be identified based on no more than two years of student performance data.¹⁶

Roles of the School, LEA and State

LEAs are expected to develop and implement, with stakeholder engagement, improvement plans for schools identified as needing comprehensive support. Plans must be based, in part, on a school-level needs assessment and include identification of any resource inequities. The school, LEA and state approve the plan. The state and LEA monitor the plan and determine the number of years (not to exceed four) a plan can be unsuccessful before taking action.

Beginning in 2017-18 and at least once every three years thereafter, schools must be identified for comprehensive support. Proposed regulations delay this requirement for schools with chronically low-performing subgroups until 2018-19.

¹⁶ Elementary and Secondary Education Act of 1965, As Amended by the Every Student Succeeds Act – Accountability and State Plans, 34 Fed. Reg. 200 and 299 (May 31, 2016). Federal Register: The Daily Journal of the United States.



Targeted Support and Improvement Plan

Schools identified as in need of targeted support have at least one subgroup of students consistently underperforming. If the subgroup(s) is performing at a level equal to student performance at the lowest 5 percent of schools in the state, the state must also identify and address any resource inequities (based on a review of LEA or school-level budgeting). Proposed regulations require schools with low-performing subgroups be identified at least once every three years.

Individual schools are expected to engage stakeholders in the development and implementation of improvement plans to support student outcomes in the identified subgroup(s). The LEA approves and monitors the plan and determines the number of years a plan can be unsuccessful before it takes action.

Beginning in 2017-18, the state is required to inform LEAs of any school that meets targeted support and improvement criteria. Proposed regulations would require that schools be identified annually, beginning with the 2018-19 school year.

Additional details relating to low-performing schools can be found in the USED's proposed regulations.



Teachers and School Leaders

For definitions of the acronyms used in this guide, [click here](#).

Student Access to Effective Teachers

Addressing Teacher Qualifications and Inequities

NCLB defined “highly qualified teachers” as teachers who have full state certification or licensure, a bachelor’s degree and demonstrate knowledge in the subject(s) they teach. The law required states to measure student access to highly qualified teachers, adopt goals to ensure all teachers are highly qualified and report on their progress.¹⁷

ESSA eliminates the “highly qualified teacher” provisions of NCLB and replaces them with a single requirement that Title I program teachers meet applicable state certification and licensure requirements. Under ESSA, states and districts must ensure that low-income and minority students are not served at disproportionate rates by inexperienced, ineffective or out-of-field teachers, and, as required under NCLB, states must evaluate and report on their progress in addressing inequities.¹⁸

In 2014, the USED announced that it would require all SEAs to develop plans to ensure “poor and minority children are not taught at higher rates than other children by inexperienced, unqualified or out-of-field teachers.” Educator equity profiles and plans for all states and Washington, D.C., can be accessed [here](#).

¹⁷ No Child Left Behind (NCLB) Act of 2001, Public Law No. 107-110, Sec. 9101(23); No Child Left Behind (NCLB) Act of 2001, Public Law No. 107-110, Sec. 1119 (2).

¹⁸ To accomplish this task, the Department of Education’s proposed regulations require states to “adopt a uniform statewide definition of the term ‘inexperienced’ and the phrase ‘not teaching in the subject or field for which the teacher is certified or licensed.’” The proposed regulations also define ‘high poverty school’ as a school in the top quartile of poverty in the state and ‘low poverty school’ as a school in the bottom quartile of poverty in the state.”

¹⁹ NCLB also required reporting on teacher qualifications including teachers with emergency or provisional credentials and teachers who were not “highly qualified.”

Reporting Teacher Qualifications and Inequities

ESSA requires that state and local accountability report cards include the professional qualifications of teachers in their jurisdiction, including the number and percentage of: 1) inexperienced teachers, principals and school leaders, 2) teachers with emergency or provisional credentials and 3) teachers who are teaching out of subject.¹⁹ States must disaggregate this data to show how high-poverty and low-poverty schools compare. Districts must make available to parents, upon their request, the professional qualifications of their child's teacher.

Funding

In addition to the funding flexibilities provided to states and districts in Title I, Title II-A provides formula grants to states and sub-grants to districts to attract, prepare, support and retain effective teachers and leaders to serve high-poverty, minority students.

For example, Title II state formula grants can be used to:

- Improve equitable access to effective teachers.
- Assist districts in recruiting and retaining teachers.
- Develop or assist districts in developing differential pay or other incentives to recruit and retain teachers, principals and other school leaders in low-income schools and districts.
- Assist districts in developing and implementing high-quality professional development programs.

Title II district sub-grants can be used to, among other things:

- Assist in recruiting, hiring and retaining teachers in low-income schools with high percentages of ineffective teachers and high percentages of low-achieving students.
- Improve intradistrict equity in the distribution of teachers.
- Provide induction and mentoring programs designed to increase the retention of effective teachers.
- Provide high-quality, personalized professional development.

States and districts can also apply for competitive grants for programs designed to improve teacher and school leader effectiveness, recruitment and retention in high-needs schools. (See Additional Opportunities section for more information.)



Teacher and School Leader Evaluations

Under their NCLB waivers, states were required to develop and implement teacher and school leader evaluation systems. ESSA removes this requirement, and instead, permits states and districts to develop and implement evaluation systems. Further, it prevents the U.S. Secretary of Education or any other officer of the federal government from prescribing specific characteristics or measures of effectiveness that states must use in their evaluation systems.²⁰ ESSA requires that states with evaluation systems make public the criteria used in the evaluations.

Funding

States may use Title II funding as well as competitive grant funds through the Teacher and School Leadership Incentive program to develop, implement and enhance their evaluation systems.

Additional Opportunities for Teachers and School Leaders

ESSA supports and funds a number of innovative strategies to prepare, train, recruit and retain teachers and school leaders in high-needs schools. Examples include:

- Teacher and school leader academies.
- Effective educator development grants to support nontraditional preparation programs and evidence-based professional development.
- School leader recruitment and support grants.
- STEM master teacher corps grants.

²⁰ To qualify for a NCLB waiver, states were required to develop teacher and principal evaluation systems that: 1.) were used to improve instruction, 2.) differentiated performance using at least three levels, 3.) used multiple measures including student growth for all students, 4.) evaluated teachers and principals on a regular basis, 5.) provided clear, timely, and useful feedback, and 6.) were used to inform personnel decisions. U.S. Department of Education, ESEA Flexibility, 2012, <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html> (accessed June 21, 2016).



Title I's Supplement-Not-Supplant Provision

For definitions of the acronyms used in this guide, [click here](#).

Title I consists of several programs, the largest of which is the grants to LEAs. In the 2015-16 school year, the program provided \$14.9 billion to approximately 56,000 schools across the country. It is the highest funded USED program and accounts for 39 percent of all of the USED's elementary and secondary school funding.

Defining Supplement-not-Supplant

Shortly after the passage of ESEA in 1965, policymakers raised concerns that state and local districts were misusing Title I funds earmarked for low-income students by using them to support the general operation of schools and simply supplanting state and local funding.²¹ In response, the federal government adopted three methods to assess whether Title I funding was being used to educate at-risk student populations:²²

- 1. Maintenance of effort:** A district generally may not reduce the amount of state and local money it spends for public education from one year to the next by more than 10 percent.
- 2. Comparability:** A district must show it uses state and local funds to provide services in Title I schools that, taken as a whole, are at least comparable to the services provided in schools that are not receiving Title I funds.
- 3. Supplement-not-supplant:** A state, district or school must show that all costs paid with Title I funds are in addition to (supplementing) what the agency would have otherwise provided with state and local funds.

In addition, states and districts were prevented from using Title I funds for programs that were already mandated by the state. For example, if a state required all schools to extend their learning time by an hour a day, a district could not use Title I funds to comply with this mandate.

²¹ John F. Jennings, "Title I: Its Legislative History and Its Promise," in Title I: Compensatory Education at the Crossroads. Ed. Geoffrey D. Borman et al. (New York: Routledge, 2001), 5, <https://books.google.com/books?id=sMmQAgAAQBAJ&dq=Title+I:+Its+Legislative+History+and+Its+Promise> (accessed May 29, 2016).

²² Melissa Junge and Sheara Krvaric, How the Supplement-Not-Supplant Requirement Can Work Against The Policy Goals of Title I (Washington, D.C.: Center for American Progress and American Enterprise Institute for Public Policy Research, March 2012), 5, https://www.aei.org/wp-content/uploads/2012/03/-how-the-supplementnotsupplant-requirement-can-work-against-the-policy-goals-of-title-i_111823556546.pdf (Accessed May 29, 2016).

Changes under ESSA

Under ESSA, states and districts are still required to use federal dollars to supplement spending on at-risk students. ESSA, however, offers greater flexibility to allow for innovation.

In previous iterations of ESEA (e.g. NCLB), most districts showed compliance with the supplement-not-supplant provision by identifying the particular programs or services that were funded by Title I. However, this often meant that once districts created stand-alone programs or services funded through Title I, then regardless of program success, districts did not eliminate or change them for fear of violating the provision. Some argued that this led schools and districts to quash innovation and stick with the status quo.

Under ESSA, districts are no longer required to identify individual costs or services supported under Title I. Instead, they are required to identify the methodology used to allocate state and local money to Title I schools and demonstrate that these schools receive all of the state and local money they would be entitled to, even if they were not Title I schools.

These changes provide states and districts with greater freedom when making use of Title I funds. However, concerns have been expressed over federal overreach on the recently proposed USED rules.

USED's Proposed Rules

Mounting evidence shows that students who attend schools in low-income neighborhoods tend to receive fewer total resources from their district than students who attend schools in wealthier neighborhoods in the same district. To address this evidence, USED's proposed rules require that in "...a district receiving Title I funds, each Title I school - generally the highest poverty schools in the district - [must] receive at least as much in state and local funding as the average non-Title I school in that district."²³ This would require all districts receiving Title I funds to prove that they are equally funding each of the schools in their district.

Districts would need to be in full compliance by the 2019-20 school year. Some of the concerns about federal overreach stem from the fact that a common cause of funding disparities among districts' individual schools is teacher pay. Senior teachers, who get paid more due to salary schedules, tend to gravitate toward schools in wealthier neighborhoods within the district. Critics argue that this would cause a mass exodus of senior teachers from the district because a reassignment of these often-highly-qualified teachers to low-income, low-achieving schools would be necessary to meet the new requirements.

²³ United States Department of Education, Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Negotiated Rulemaking Committee "Issue Paper: Supplement Not Supplant." Updated for Session Three, April 18-19, 2016.



Title IV – 21st Century Schools

For definitions of the acronyms used in this guide, [click here](#).

Title IV of ESSA is officially known as “21st Century Schools.”

Over the years, including its inclusion in NCLB and other previous authorizations of ESEA, Title IV has encompassed many different types of programs. Title IV has been home to federal programs dealing with drug-free schools, school safety, charter and magnet schools, gifted and talented programs, arts education and afterschool/summer school programs. ESSA creates a few new programs under Title IV and eliminates and consolidates others.

New Programs

Title IV-A: Student Support and Academic Enrichment

ESSA officially eliminates the Drug-Free Schools program—which had not been funded since 2007—and replaces it in Title IV-A with the Student Support and Academic Enrichment Grant Program (SSAEG). Funding for this program is distributed to LEAs based on the Title I formula. The SSAEG program is broken into three different subsections:

- Well-rounded educational opportunities.
- Safe and healthy students.
- Effective use of technology.

LEAs are required to spend at least 20 percent of their funding in each of the first two subsections and then must provide at least some funding for the third. This means that the SSAEG program is a type of block grant that provides districts with a lot of flexibility on how they spend these federal dollars. If ESSA is fully funded, total funding for this program in 2017 would be \$1.6 billion.

Title IV-E: Family Engagement in Education Programs

This new program would provide grants to states of at least \$500,000 to help in the creation of statewide family engagement centers. To receive a grant, a state agency would need to demonstrate that they are providing some funding to run this program in addition to the federal grant. Total funding for this program in 2017 is currently pegged at \$10 million, which would allow for a maximum of 20 states to receive grants in its first year.

Consolidated Programs

Under the old ESEA, Title IV-F contained seven different programs. They were:

- Education innovation and research.
- Promise neighborhoods.
- Full-service community schools.
- School safety national activities.
- Arts in education.
- Ready-to-learn programing.
- Javits gifted and talented education.

ESSA has consolidated all of these smaller programs into one larger program named “National Activities.” The new National Activities program has four subsections: 1) education innovation and research; 2) community support for schools; 3) school safety and 4) academic enrichment.

The Community Support for School Success program consolidates the old promise neighborhoods and full-service community school programs, while Academic Enrichment incorporates the arts in education, ready to learn programs and Javits gifted and talented programs. Spending on these programs will be reduced from approximately \$343 million in 2016 to \$200.7 million in 2017. This represents a \$142.3 million (41.5 percent) reduction in funding. However, states and districts have some new flexibility on how these funds are expended.

Remaining Unchanged

Three programs under Title IV will remain relatively unchanged under ESSA: 21st Century Community Learning Centers, charter school grants and magnet school assistance. However, ESSA would reduce funding for each of these three programs. The 21st Century Learning Centers program would see a reduction of 14.3 percent, while funding for charter and magnet schools would decrease by 19 percent and 5.2 percent respectively – see Table I for a complete breakdown.

Funding for Title IV

In 2016, Title IV programs received more than \$1.9 billion in federal funding. Under ESSA, funding for Title IV programs could potentially increase in 2017 by \$1.3 billion (66 percent) to \$3.2 billion. However, it should be noted that the funding amounts contained within ESSA are really just recommendations or goals. The actual amount of funding that Congress provides to Title IV will be decided within the federal education budget – hopefully coming in late 2016. This means that actual funding for Title IV could be more, or less, than the amount within ESSA. In fact, President Barack Obama has only requested \$2.4 billion in funding for Title IV programs in his 2017 budget. While that would be a \$500 million increase over 2016 spending, it would be approximately \$1.3 billion less than the amounts recommended in ESSA.

TABLE I: Title IV Funding Under ESEA and ESSA*(Dollars in Thousands)*

Title	Name	Under ESEA 2016	Proposed Under ESSA 2017	Dollars	Percentage
IV-A	Student Support & Academic Enrichment	\$0	\$1,650,000	\$1,650,000	100.0%
IV-B	21st Century Community Learning Centers	\$1,166,673	\$1,000,000	-\$166,673	-14.3%
IV-C	Expanding Opportunity Through Quality Charter School	\$333,172	\$270,000	-\$63,172	-19.0%
IV-D	Magnet Schools Assistance	\$96,647	\$91,647	-\$5,000	-5.2%
IV-E	Family Engagement in Education Programs	\$0	\$10,000	\$10,000	100.0%
IV-F-1	Education Innovation & Research	\$120,000	\$70,467	-\$49,533	-41.3%
IV-F-2	Community Support for Schools	\$0	\$70,467	\$70,467	100.0%
IV-F-2 (4624)	Promise Neighborhoods	\$73,254	\$0	-\$73,254	-100.0%
IV-F-2 (4625)	Full-Service Community Schools	\$10,000	\$0	-\$10,000	-100.0%
IV-F-3 (4631)	National Activities for School Safety	\$75,000	\$5,000	-\$70,000	-93.3%
IV-F-4	Academic enrichment	\$0	\$54,807	\$54,807	100.0%
IV-F-4 (4642)	Assistance for Arts in Education	\$27,000	\$0	-\$27,000	-100.0%
IV-F-4 (4643)	Ready-to-Learn Programming	\$25,741	\$0	-\$25,741	-100.0%
IV-F-4 (4644)	Supporting High-Ability Learners and Learning (Javits program)	\$12,000	\$0	-\$12,000	-100.0%
Total Title IV		\$1,939,487	\$3,222,388	\$1,282,901	66.1%

New or consolidated programs introduced under ESSA are highlighted in green.



State Plans

For definitions of the acronyms used in this guide, [click here](#).

As under NCLB, SEAs must file a state plan with the USED to receive a Title I grant under ESSA. State plans serve as the state's application for federal funds and can be submitted for individual programs or as a consolidated plan.

The new law maintains many of the same state plan components as those found in NCLB, such as assessment, accountability and equal access to quality teachers. Proposed USED regulations include additional details, such as specific timelines for submission and periodic review of state plans. The proposed deadlines for initial submission are March 6 and July 5, 2017, and the proposed review period is every four years.

Key State Plan Questions

Who develops the plan?

The plan is developed by the SEA in consultation with the governor, members of the state legislature and state board of education, LEAs, representatives of Indian tribes in the state, teachers, principals, charter school leaders, specialized instructional support personnel, paraprofessionals, administrators, other staff and parents. Consultation with these groups must be timely and meaningful.

Who reviews the plan?

The plan must be peer-reviewed by the USED. If the plan is not approved because of failure to meet requirements, the U.S. Secretary of Education must give the state an opportunity to revise and resubmit its plan. The plan must also be made publicly available for comment for at least 30 days.

ESSA states that the Secretary may not condition approval of a state plan on a number of decisions expressly left up to the state, including the state: 1) adding or deleting certain elements of the state's standards; 2) adopting specific long-term goals or measurements of interim progress; 3) using specific assessments or assessment items; 4) adopting specific accountability indicators; and many others.

How long should the state plan last?

The plan should continue for as long as the state continues to receive the Title I grant. The SEA should periodically review and revise the plan as necessary to reflect changes in strategies and programs.

Key Changes from NCLB

While many of the requirements for state plan content remain the same, ESSA amends these requirements in many ways. The following are a few key changes to state plans under ESSA.

Academic Standards

- States are no longer required to submit their state academic standards to the USED. ESSA clearly states that the Secretary cannot mandate, direct, control, coerce or exercise any direction or supervision over any of the standards adopted or implemented by the state.
- The state must demonstrate that the academic standards are aligned with entrance requirements for the state system of public higher education and state career and technical education standards.

Academic Assessments

State plans must now provide assurance that the SEA has appropriate procedures and safeguards in place to ensure the validity of the assessment process.

Student Support

- State plans under ESSA must describe how the state or SEA will support LEAs receiving Title I funds to:
 - Improve school conditions for student learning, including through reducing 1) incidences of bullying and harassment; 2) the overuse of discipline practices that remove students from the classroom; and 3) the use of aversive behavioral interventions that compromise student health and safety.
 - Meet the needs of students at all levels of schooling (particularly students in the middle grades and high school), including how the state will work with LEAs to provide effective transitions of students to middle grades and high school to decrease the risk of students dropping out.
- More generally, how the state will support LEAs to:
 - Identify, enroll and ensure the attendance and school stability of homeless children and youths.

Foster Children

The state plan must now include a description of how the SEA will take steps to ensure collaboration with the state agency responsible for administering parts of state plans relating to children in foster care.

Teachers, Principals and School Staff

- The state must provide assurance in its state plan that it will publicize any methods or criteria it uses to measure teacher, principal or other school leader effectiveness for purposes of ensuring equal access to quality school staff.



- While states are no longer required to ensure that core subject teachers are highly qualified, state plans must provide assurance that all teachers and paraprofessionals working in a Title I program will meet applicable state certification and licensure requirements.

Collaboration and Public Information

- Under NCLB, states were required to provide assurance that SEAs would notify LEAs and the public of the state standards and assessments. Under ESSA, states must notify stakeholders about the state accountability system as well. ESSA specifies groups of stakeholders beyond LEAs and the public who must be notified: Indian tribes and tribal organizations, schools, teachers and parents.
- State plans must now provide assurance that LEAs will, to the extent feasible, work in consultation with outside intermediary organizations (such as educational service agencies²⁴), or individuals, that have practical expertise in the development or use of evidence-based strategies and programs to improve teaching, learning and schools as the LEAs are developing and implementing Title I programs.
- State plans must also provide assurance that the SEA will provide accountability data in state report cards in an easily accessible and user-friendly manner that can be cross-tabulated by major subgroups.

²⁴ According to the Association of Educational Service Agencies, these organizations are “public entities created by state statute, to provide educational support programs and services to local schools and school districts within a given geographic area.”



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