

How the Every Student Succeeds Act Changes No Child Left Behind



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Last week, both chambers of Congress came together in a rare conference committee to consider long-awaited bipartisan legislation to reauthorize the *Elementary and Secondary Education Act*, a.k.a. *No Child Left Behind* (NCLB). The conference report, known as the *Every Student Succeeds Act* (ESSA), makes significant changes to NCLB, updating many of the provisions that caused unintended negative effects or have outlived their usefulness, while maintaining key components that have been responsible for many of the improvements in student achievement over the past decade and a half. As the House and Senate move forward with final passage of the bill, this memo highlights five major policy areas in it and explains how those policies diverge from current law.

Statewide Testing Requirements

Under NCLB: Since the 2001 passage of NCLB, states have been required to administer a statewide assessment in both math and English language arts to every child annually in grades 3 through 8 and once in high school, as well as a

science assessment once per grade span (elementary, middle, and high school). In addition to administering these annual tests, states also had to report on performance overall, as well as performance among particular subgroups of students, including students of color, low-income students, English language learners (ELLs), and students with disabilities. Subsequent regulations (not the language of the law itself) allowed for limited local pilots which would permit a district to try out a new test intended to later be used statewide. To do so, they were required to prove to the Department of Education that the data they would get from the test would be comparable, including “the content coverage, difficulty, and quality” of the test, the “reliability and validity” of the data, and the ability to make “unbiased, rational, and consistent determinations for annual progress” based on the data.¹ Under those regulations, the Department of Education has recently approved one such program, permitting four New Hampshire school districts to pilot a competency-based assessment model, which the state will adopt statewide if the pilot is successful.

Under ESSA: The conference committee’s language maintains the same testing schedule and reporting requirements for statewide annual testing, but it gives states the option to give a single summative test, as they do now, or break up the assessment into smaller components that could be given throughout the school year to provide more frequent information on student achievement and growth. The ESSA also provides local education agencies (LEAs) the ability to use a nationally-recognized high school academic assessment (like the SAT) in lieu of a state-developed assessment, so long as the test can provide comparable data and the state signs off. Notably, the ESSA also encourages the sort of innovative assessment system being piloted in New Hampshire by adding a new section in Title I that permits a handful of states to experiment with their own locally-designed competency-based and performance-based assessments. Solidifying the flexibility that exists now under regulations, the new bill would still require a state to prove to

the Department of Education that the data they get will be comparable to the statewide tests, including the data collected on subgroups of students. A pilot must be approved by a peer review process wherein experts will determine the validity, reliability, and consistency of the tests with nationally recognized professional and technical standards. And in order for a pilot to be approved, a state must also show how they will scale up their innovative system statewide if it works. Lastly, the bill also provides states with funding to audit their own assessment systems in order to ensure that unnecessary, duplicative exams are not being layered on top of federally-mandated annual assessments, and it permits states to set a target limit on the aggregate amount of time states spend administering assessments in each grade level.

The Upshot: The ESSA balances the importance of annual testing and the data it yields with the desire of states to pilot innovative assessments that can capture multiple measures of student performance and growth. Under the new law, states would still be required to administer the statewide annual tests which are critical for tracking the progress of all children—something that would not be possible if tests were reduced to once per “grade span”—but they could break up those tests and administer parts throughout the school year, providing important feedback to teachers and parents as the year progresses, rather than at the end of the year when the results are less useful for instructional purposes. Since we know that many districts are currently layering on additional tests earlier in the year to check in on progress, this flexibility—along with additional money available to states to examine their testing schedules—could actually allow them to eliminate some of those extra assessments, as well as reducing the anxiety of taking a big end-of-year exam. In this way, the conference bill keeps critical measures of academic performance and growth in place while giving local stakeholders and communities more flexibility to improve how they assess their students.

Academic Standards

Under NCLB: NCLB set out to ensure that all children received a high-quality education by requiring states to adopt a single, statewide test that was aligned to challenging academic standards and was incorporated into their accountability systems. The standards had to specify what children were expected to know and be able to do, contain coherent and rigorous content, and encourage the teaching of advanced skills. Each state had to submit a plan to the Department of Education for approval in order to demonstrate that their standards met those criteria. Later, under the waiver system, the Secretary of Education incentivized states to adopt college and career ready academic standards, such as the Common Core State Standards. However, it should be noted that the Secretary has never mandated that states implement a specific set of academic standards.

Under ESSA: The bipartisan compromise would continue to require states to adopt challenging academic standards for math, reading, and science, but it would roll back the federal government's ability to prescribe or even incentivize certain state academic standards. In fact, the bill affirmatively prohibits any federal official, including the Secretary of Education, from mandating or incentivizing states to adopt or maintain any particular set of standards, including the Common Core, which the bill language explicitly names. The Department of Education is also prohibited from directly or indirectly endorsing or sanctioning any curriculum or set of aligned standards. This is a departure from the previous iteration of the law and the waiver system, which gave the federal government more leeway to approve or reject a state plan based on their academic standards and the degree to which their assessments were aligned to those standards. Under the conference committee's bill, although the Department of Education could reject a state's plan if it presents "substantial evidence" that "clearly demonstrates" the plan does not meet the criteria laid out in the bill, the Secretary would only have 90 days to do so, and he or she could not tell a state how to fix their plan in particular or condition approval on using a specific set of standards.

The Upshot: This piece of the compromise rolls back the ability of the federal government to incentivize states to develop more challenging and cohesive state academic standards—presumably as part of a negotiation to preserve other critical federal guardrails. Some might lament the Secretary’s inability to endorse standards that encourage consistency across state lines. But for the many states already in the midst of implementing the Common Core and assessments aligned to those standards, it’s hard to imagine that they will throw out all that work and return to their old ineffectual systems. On the other hand, the bill leaves little room for intervention if even a few states do use this leeway to water down their standards in an effort to inflate their students’ progress—a problem that occurred before NCLB’s robust accountability provisions were in place.

Accountability Systems

Under NCLB: Under the 2001 NCLB law, the federal government created a system that held all states accountable on two measures—the number of students who tested “proficient” in math and reading each year (with the ultimate goal of achieving 100% proficiency by 2014) and student performance on at least one other academic indicator, such as graduation rates. Schools and districts were required to make Adequate Yearly Progress (AYP) for each of these targets for both the overall student population *as well as* for individual subgroup populations of high-needs students, including African American, Asian American, Latino, White, and Native American students, as well as low-income students, English language learners (ELLs), and students with disabilities.² However, due to the inflexible and unrealistic nature of these goals, and the fact that NCLB has now been on the books years beyond when it was supposed to be reauthorized, the Department of Education has given waivers to states to avoid the harsh consequences of the law. Under those waivers, states have been given the option to expand their own accountability goals to include additional targets, such as the rates at which their achievement gaps are closing, the percentage of teachers that

are highly qualified, or even more subjective measures like “school climate” or “parental/community involvement.”³ The waivers have also allowed states to lump some of their subgroups—like their 25% lowest-income students, students with special needs, and ELLs, for example—together into more broadly labeled categories such as “disadvantaged students.”⁴ These “super subgroups” enabled states to release more data about how their high-needs students were doing, since they now had larger sample sizes of students and could more easily avoid concerns about violating student privacy, but it also obscured performance of specific subsets within that larger group.

Under ESSA: The conference committee’s bill would dramatically change NCLB’s provisions in order to more closely mirror the flexibility provided under the current waiver system, particularly the ability to use multiple factors (not just test scores) as part of a state’s goals. Most notably, the bill removes almost all traces of the federal government from this process by placing sole responsibility for the development of accountability systems into the hands of the states themselves. In particular, states would be responsible for setting their own long-term and short-term goals for improvement, which would require them to collect data on multiple factors for all students and for subgroups of students. However, the federal law would provide guardrails for these accountability systems. Under the legislation that came out of the conference committee, accountability systems must measure elementary and middle schools by academic achievement on statewide assessments, at least one other measure of academic readiness (which could include growth on the statewide tests), English language proficiency for all English language learners, and at least one other valid measure of school quality or success, such as school climate and safety, student engagement, or educator engagement. High schools would need to be measured by these same indicators, except that their four-year adjusted cohort high school graduation rate must be used as their additional academic readiness factor. Notably, under the new language,

academic indicators and graduation rates must be given “much greater weight” than their non-academic counterparts—an important safeguard to ensure that states cannot game their systems to artificially inflate the academic success of certain students and subgroups simply by counting nonacademic factors like attendance. In addition, states must also monitor participation rates on state exams as part of their accountability systems to ensure that schools are meeting a 95% participation rate. And importantly, ESSA maintains the requirement from NCLB that states must measure progress on each target for all students *and* for each individual subgroup of students, and it prohibits the use of “super subgroups” as allowed under waivers.

The Upshot: The bill rightfully places states at the helm of being able to set their own accountability goals. It also takes a step forward in providing states with the flexibility to measure schools and districts on indicators other than just test scores, including the ability to measure student growth over time rather than just proficiency at a particular moment. However, other than a 90-day approval window in which the Department of Education must show “substantial evidence” that a state plan fails to meet the bill's requirements, the federal government has little say in developing or monitoring state-developed accountability systems. While the language as reported out of conference provides some important guardrails, states would now be left with much more responsibility to make sure that they are holding schools accountable and intervening when those schools fail any group of students.

Low-Performing Schools

Under NCLB: A hallmark of the NCLB era was prescriptive and detailed federal requirements around how states must deal with schools that failed to meet their annual goals year after year. Under the School Improvement Grant (SIG) program, states were required to designate any schools that missed their AYP for two years in a row as “in need of improvement” and then implement a series of targeted interventions. After

five years of failing to make AYP, schools were required to implement one of four predetermined turnaround models: hire a new principal and replace half of the staff; convert into a charter school; implement a mandatory set of new strategies, like increasing the school day or lengthening professional development; or close the school down altogether.⁵ Under the waiver system, however, the federal government loosened many of these requirements, as it realized that virtually no school would be able to meet the 100% proficiency goals originally outlined in the law by the year 2014. Instead, the Department of Education required states receiving a waiver to identify their 5% lowest-performing schools as “priority schools” to receive one of the federal government’s turnaround strategies, although there was somewhat more flexibility around choosing those strategies than under NCLB. In addition, under waivers, states were required to label another 10% of their schools with big achievement gaps as “focus schools” to receive targeted help.

Under ESSA: The language reported out by the conference committee requires that a state must identify and intervene in the bottom 5% of its schools, and those schools must be identified at least once every three years. It also requires states and districts to intervene in any high school that fails to graduate more than 67% of its students. States must also notify Local Education Agencies (LEAs) of any schools where subgroup student populations are consistently underperforming (although the language does not specify what it means to be “consistently underperforming”), and those schools must take action to address the problems. In another big change, any turnaround strategy for the lowest 5% of schools or schools with low graduation rates would be driven by districts, with states being allowed to monitor and intervene if the district strategy fails to succeed after a “state-determined” number of years (no longer than four). In cases where subgroups are underperforming, schools will be responsible for implementing interventions before the district or state can intervene. In an effort to prevent any federal interference in this process, the bill strictly prohibits

the Secretary of Education from prescribing or mandating any specific steps school districts and states must take to improve these schools. And even though states will continue to be allowed to use up to 7% of their federal funding for school improvement efforts, the federal government cannot step in even if both the local and state turnaround strategies fail year after year.

The Upshot: While NCLB's original turnaround models required states to make dramatic changes in their worst-performing schools, these prescriptive guidelines may have also prevented schools from trying more innovative strategies that might have been best tailored to meet the needs of their students. This bill brings some of that control back into local hands and gives it to those who know their communities and students best. However, by reducing the role of the federal government, the legislation also places significant trust in states and districts to implement the tough strategies often needed to turn around persistently low-performing schools, especially since doing so is nearly always politically unpopular. With a more limited role, the federal government will now need to make sure that states and local districts are given the support they need to carry out this responsibility.

Teacher Equity

Under NCLB: NCLB mandated that all teachers must be highly qualified, with the goal of addressing the teacher equity problem, wherein the least qualified teachers were disproportionately instructing the most disadvantaged students. For teachers already in the classroom, this meant being fully certified by their state and not holding their credentials on an emergency or temporary basis. In addition to these requirements, a new teacher was required to hold a bachelor's degree and demonstrate subject-matter competency through rigorous subject knowledge and teaching skills exams given by the state. NCLB also required each state plan to include the steps they would take to ensure that low income students and students of color were not

taught at higher rates than their wealthier peers by inexperienced, unqualified, or out of field teachers—a problem often referred to as the inequitable distribution of teachers. And it provided grants to states to develop recruitment and retention strategies, such as developing reciprocity agreements between states for the certification and licensing of teachers. NCLB did not go so far as to require teacher evaluation systems, but under the waiver system the Department of Education did require states to develop and implement such systems in order to receive flexibility from the law.

Under ESSA: The new bill would eliminate the highly qualified teacher provision, providing states more flexibility to determine who should be teaching in their classrooms. The bill also authorizes (but does not require) states to use funding to implement teacher and leader evaluation systems, reform teacher and school leader certification systems, improve equitable access to effective teachers and leaders for all students, and develop mechanisms for effectively recruiting and retaining teachers—actions that would all undoubtedly bolster teacher quality. In addition, states would be required to continue to disclose the steps they’re taking to evaluate and publicly report on the inequitable distribution of teachers and the qualifications of their teachers and school leaders, spelled out by high- and low- income schools and schools with high and low concentrations of students of color.⁶ Lastly, the bill does enshrine into law Teacher and School Leader Incentive Fund Grants (formerly known as “TIF”), with the goal of expanding performance-based compensation systems and human capital management systems for both teachers and principals.

The Upshot: The teacher equity provisions of the conference report provide states with a great deal of flexibility in deciding how to improve the quality of their teachers and school leaders. Even though the highly qualified teacher provision has been nixed, states and districts would still be required to provide data on the qualifications of their teachers and school leaders and report on the extent to which

low-income students and students of color are disproportionately served by ineffective or inexperienced teachers. That indicates a renewed effort to highlight and monitor the inequitable distribution of teachers. Overall, the compromise legislation would give states who want to improve their teacher quality a great deal of room to do so, but it would also put less pressure than the current waiver system on states who don't want to make teacher quality a priority.

Conclusion

Many education advocates have called the *Every Student Succeeds Act* a step in the right direction towards updating *No Child Left Behind*. It attempts to find a tricky balance by providing states with much more flexibility while maintaining some critical federal guardrails. To be sure, the conference report is not perfect, as there are concerns about the limitations on the federal government's ability to step in when states are not upholding their end of the bargain. But ultimately, this legislation represents a true bipartisan effort that should be applauded. If Members of Congress on both sides of the aisle approach the final vote with the same spirit that led to this compromise, there is a strong possibility we could see a new law passed by the end of this year. And if there's one thing that everyone can agree on, it's that the time to update *No Child Left Behind* has come.

TOPICS

K-12 40

END NOTES

1. 34 CFR 200.3, "Designing State Academic Assessment Systems," 2002. Accessed April 8, 2015. Available at: <https://www.law.cornell.edu/cfr/text/34/200.3>.

- 2.** Wayne Riddle and Nancy Kober, "Accountability Issues to Watch under NCLB Waivers," Report, Center for Education Policy, October 2, 2012. Accessed April 8, 2015. Available at: <http://www.cep-dc.org/displayDocument.cfm?DocumentID=411>.
- 3.** "State School Accountability Report Card Database," Education Commission of the States. Accessed April 8, 2015. Available at: http://www.ecs.org/html/educationissues/accountability/stacc_intro.asp.
- 4.** Wayne Riddle and Nancy Kober, "Accountability Issues to Watch under NCLB Waivers," Report, Center for Education Policy, October 2, 2012. Accessed April 8, 2015. Available at: <http://www.cep-dc.org/displayDocument.cfm?DocumentID=411>.
- 5.** "Turnaround Schools," Education Week. Accessed April 8, 2015. Available at: <http://www.edweek.org/ew/collections/turnaround-schools/>.
- 6.** Lauren Camera, "Senate Education Leaders Unveil Bipartisan Compromise to Rewrite ESEA," Education Week, April 7, 2015. Accessed April 8, 2015. Available at: http://blogs.edweek.org/edweek/campaign-k-12/2015/04/senate_education_leaders_unvei.html.