



## The ESEA Q&A

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This working document provides a summary of the key changes to the Elementary and Secondary Education Act (ESEA). The first page is an “at a glance” summary, the subsequent pages provide questions and answers. The analysis comes from the latest conference bill, the Every Student Succeeds Act (ESSA), which Congress published on November 30, 2015. The House passed the bill 359 to 64 last week, and the Senate passed it 85 to 12 today. We will continue to add analysis in the coming days and also respond to specific questions as we receive them. Please send those questions to [david@whiteboardadvisors.com](mailto:david@whiteboardadvisors.com).

### ESSA at a Glance

- **Assessments** are still required, but there are opportunities to develop creative approaches to assessment.
- Schools will be held **accountable** for (i) two kinds of academic achievement, (ii) English language proficiency, and (iii) “other” indicators of school quality or student success.
- The bill does not include anything about highly qualified teachers or teacher evaluation.
- **Interventions** exist for the lowest-performing 5% of all schools and all public high schools failing to graduate one-third or more of students. There is also a focus on schools with consistently under-performing subgroups.
- States may reserve up to 3% of their Title I allocations for “**Direct Student Services**,” which would help pay the costs associated with credit recovery courses, personalized learning activities such as high quality academic tutoring, or transportation for students in a choice program.
- There are more opportunities for **fiscal flexibility**, allowing Title I money to be used for many innovative initiatives.
- The bill does not make any material changes to **student data privacy** matters.
- The bill is favorable to for-profit organizations.

## Q&A:

**When will there be a new law?** The President signed the new law on December 10.

**What's the layout of the bill?** A simple mental blueprint is helpful. There are nine titles (or major sections), but the basic framework is made of three parts: the requirements for the state plans to the federal government, the requirements for the district plans to the states, and other programs that support or clarify the state and district implementation of these plans.

- **The required state plan** (which goes to the federal government) establishes the basic framework for state standards, academic assessments, the statewide accountability and reporting system, the approach to school improvement and support, and how the state will support evidence-based district program strategies and fiscal flexibility and transparency.
- **The required district plan** (which goes to the state) gets into the weeds of how districts will use the federal funds to ensure that all children receive a high-quality education and close student achievement gaps. Each district has to describe at least 13 aspects of its work. This includes, for example, how it will monitor student progress, implement effective parent and family engagement, coordinate its services with early childhood education programs, integrate career and technical education content, facilitate effective transitions from middle grades to high school and from high school to postsecondary education, and more. Many of the conditions are administrative in nature.
- **The other titles and programs support or clarify the work of the states and districts to carry out their plans.** Notably, the bill repeals 49 programs and creates a new \$1.7 billion dollar Student Support and Academic Enrichment Grant that is *almost* a block grant, except that it steers at least 20% of the formula funds (which go to a district, or a consortium of districts) towards well-rounded educational programs, at least 20% toward safety and health programs, and an undefined portion (up to 60%, one presumes) towards activities to support the effective use of technology, though no more than 15% can go toward technology infrastructure. Among the repealed programs are the Investing in Innovation (i3) Fund and the Innovative Approaches to Literacy (IAL) program. The conference bill does spare a few programs from consolidation, such

as 21<sup>st</sup> Century Learning Centers, Promise Neighborhoods grants, and the Preschool Development Grant. It also includes a Full Service Community School program.

**What is the law trying to achieve?** It’s notable that this bill does not focus on “college and career readiness,” as did some earlier reauthorization drafts. In fact, those words are not in the bill at all. Rather, this bill asks states and districts to take a holistic approach to student learning. For example, a district has to describe how it plans to implement a well-rounded program of instruction, how it will identify students who may be at risk of academic failure, and how it is improving the overall school conditions for student learning. This is a big departure from the current No Child Left Behind Act (NCLB). NCLB asked states and districts to focus their efforts on interventions for students in Title I schools that were failing or at risk of failing the state's academic achievement standards, as measured by annual assessments. This bill, in contrast, seeks to ensure that “all children receive a high-quality education and close student achievement gaps.” There is a broader concept of student learning at play here, and that means that there will be a broader meaning of what costs are allowable under the program. This will be an important issue.

**What about the Common Core standards?** Each state has to establish challenging academic standards (prior language about “high-quality” standards has been removed). It is up to the states to make the decision about which standards to use, and the federal government is prohibited from providing incentives for a specific set of standards.

**What are the basic assessment requirements?** For mathematics and language arts, states must administer an assessment in all grades 3-8, and at least once in grades 9-12. In the case of science, an assessment must be administered not less than one time in each of the three grade spans: 3-5, 6-9, and 10-12. At the state’s discretion, the assessments may be administered in a single summative assessment or through multiple state-wide interim assessments during the academic year.

**Can students opt out of the assessments?** That is not for the federal government to decide (a common response in this bill). The bill allows states to create their own rules on testing opt-out, and parents should know about their rights. Parents must receive an annual notification that they may request information regarding state and local policies on participation in assessments. Whatever happens with opt-out needs to

reconcile with the federal requirement for a 95% participation rate for all students, as well as for students in subgroups, in the annual state assessment(s). This requirement will be a weighted consideration in the accountability program of the state, but how it will play into the program remains left to the states to decide.

**Can states be creative with the assessments?** The Secretary is authorized to allow up to seven participating states and consortia that include not more than four states to pilot a three-year assessment and accountability demonstration program. Such a system may include competency-based assessments, instructionally embedded assessments, performance-based assessments that combine into an annual summative determination, and other mastery- or proficiency-based programs. States also retain the right to develop and administer computer adaptive assessments, so long as they meet minimum standards for quality consistency and student access.

**Can districts use their own assessments?** Districts can submit a nationally recognized high school academic assessment to the states for approval (this would be something like the ACT or SAT). The state can approve such an assessment so long as it meets certain conditions provided in the bill.

**What are the indicators that states need to use for school accountability?** Elementary and middle schools must, for all students and subgroups, annually measure: (1) two kinds of academic achievement, (i) proficiency and (ii) growth (or an equivalent when growth is not available); (2) English language proficiency; and (3) not less than one “other” indicator of school quality or student success. These other indicators may be student engagement, educator engagement, school climate, postsecondary readiness or something else that makes sense to the state. Here we may see some interesting ideas around “college and career readiness” sneak back into the picture, such as a readiness portfolio. High schools also have to include their four-year and extended graduation rates in the mix.

**When will this new indicator mix begin?** The new framework would go into effect in the 2017-2018 school year, making the 2016-2017 school year something of a trial run year.

**How are the indicators weighted?** The non-academic factors (the “other” above) cannot be afforded greater weight than the other factors. What that means will likely be left to the states to sort out. The Secretary of Education will certainly not have a say in the matter. The bill prohibits the Secretary from influencing the weight of any measure or having any meaningful say in state and local policies. Also, the state has to include all student and subgroup participation rates on the state assessments as a weighting factor. As noted above, how that will be done is also left to the states to sort out.

**What must states do with these indicators?** States need to develop their own statewide accountability system. The state must establish state-designed long-term goals that include measures of interim progress that keep track of the all-student category and each individual subgroup. This system has to meaningfully differentiate all public schools in the state on an annual basis.

**Are any categories of school differentiation required?** Beginning in 2017-2018, states have to identify the lowest-performing 5% of all schools, as well as all public high schools failing to graduate one-third or more of students (which is a graduation rate of 67% or less). This is the “comprehensive support and improvement” category of schools (CSI). This identification has to be done at least once every three years. This is a carry-over of the current waiver requirement to identify “priority schools.”

**What interventions does the law require for these CSI schools?** The state is required to notify each district that is identified by the state-designed system. The district is then required to develop and implement a comprehensive support and improvement plan. Such a plan would be locally designed and rooted in evidence-based interventions, among other considerations. It would also include a review of district and school level budgeting that may contribute to resource inequalities (note that this is a common theme in the bill that focuses on fiscal transparency and efficacy). Such a plan may include a public school choice option that provides all students enrolled in the school the option to transfer to another public school served by the district. Students with the greatest need (lowest-achieving) would get priority access to the choice program.

To support this work, each state must reserve 7% of its Title I allocation and distribute the funds through grants to eligible districts that demonstrate the greatest need and a strong commitment to improving student achievement and outcomes in these schools. The grants may be either competitive or by formula,

and for not more than 4 years. (Long live the School Improvement Grant.)

**What other differentiation is required by the law, besides the CSI schools?** States are required to notify districts of schools with consistently under-performing subgroups. These are the Targeted Support and Improvement schools (TSI). Each school receiving such notification is required to develop and implement a school-level targeted support and improvement plan, which focuses on improving student outcomes for that particular subgroup. This is a locally developed intervention plan that is evidence-based and monitored by the district.

**When can a school exit CSI or TSI?** The state establishes its own state-wide exit criteria. If there are no improvements in four years or less in CSI schools, then the state is authorized to ratchet up the intervention and use state-determined intervention strategies to make improvements.

**What about tutoring, course-choice, and support for advanced course work?** States may (they do not have to) reserve up to 3% of their Title I allocations for “Direct Student Services.” These are funds that the state can use to support districts that have been identified for CSI. The funding can be used to pay the costs associated with advanced course work, credit recovery, accelerated courses, AP or IB courses, personalized learning activities such as high-quality academic tutoring, or transportation for students who transfer from a school identified for support and improvement by the state to a better performing (non-identified) school. There are a lot of interesting policy opportunities packed into this state reservation.

**Will it be easier to combine federal, state, and local funding for innovative programs?** The bill makes big changes to the “supplement not supplant” rule (SNS). To comply with the new SNS requirement, districts would now have to demonstrate that “the methodology used to allocate state and local funds to each school ... ensures that [the] school receives all of the state and local funds it would otherwise receive if it were not receiving assistance under this part.” In other words, the method of distributing state and local funds must ensure that schools get their due of state and local funding. The bill goes on to say that compliance does not include a review of individual cost or services (as it does today). If the districts can meet this methodology test, then that is the end of it.

This may come across as dull and insignificant, but it is not. The change would make it easier for school leaders to use federal funds to help to procure innovative technologies that help to deliver a high-quality education to all children. No longer would a district have to worry about whether a particular program or service is considered core or supplemental. (That analysis may have made sense in the 70's, but it doesn't make sense in today's digital environment, for a long list of reasons.) As long as a district is distributing its state and local funds appropriately, then districts and schools can use federal funds to contribute to smart investments in academic programming that will reasonably serve the law's objectives (which, as noted, are broader and more holistic than those of its predecessor). This increased procurement flexibility is also supported by the bill's encouragement to use the schoolwide funding model, which is the long-standing authority that allows schools to blend federal, state, and local funds to improve the academic program of the entire school. Finally, the conference report documents the lawmakers' intentions: "The Conferees intend that a local educational agency may choose to use Title I money for many innovative initiatives to provide students a well-rounded education... or using funds to support efforts to expand and replicate successful practices...."

**How does the bill promote the blending of federal, state, and local funds?** The bill encourages the use of the Title I schoolwide fiscal model. This model allows districts to consolidate their federal, state, and local funds to upgrade the entire educational program of a school. To do this, at least 40% of the children need to come from low-income families, although the state can now easily waive that requirement. The district must also develop a "schoolwide plan" over a 1-year period, unless the state waives that requirement. This planning document lays out the district's strategy to support a well-rounded education program. The bill makes it clear that this approach can include early learning services and dual or concurrent enrollment programs, which would include tuition and fees for innovative delivery methods of such programs. This can be supported by the state's 7% reservation that may be used for "reducing barriers and providing operational flexibility for schools in the implementation of [CSI or TSI] activities."

**How does the bill treat for-profit providers of educational services?** The bill is favorable to for-profit organizations. It frequently includes references to services and supports provided by for-profit external providers with expertise in evidence-based strategies. These entities are commonly listed alongside nonprofit entities and educational service agencies in the bill.

**Does the bill address student privacy?** The conference bill includes neither revisions to FERPA nor new language impacting student privacy issues. It simply requires compliance with existing privacy laws.

**Does the bill retain Title I portability?** Title I “portability” is not part of the conference bill. However, it does include the pilot program that would allow up to 50 school districts to pool their state and local dollars with federal dollars, and to distribute those dollars according to a weighted student funding formula. The pilot may be expanded to all districts in the 2019-2020 academic year. Unlike the “portability” debate, the weighted distribution authority is with the school district and not the state. This is an important distinction.

**How does the bill change maintenance of effort?** The bill keeps maintenance of effort at 90% of the fiscal effort or aggregate expenditures for the second preceding fiscal year. It does include an exception for a precipitous decline in financial resources, a lesson learned from the Great Recession. (Comparability does not appear to be in the bill, but that is still under review.)

**What is the fate of the Preschool Development Grants?** The conference bill authorizes the Preschool Development Grants program. This competitive grant program will help to improve coordination, quality, and access for early childhood education and will be administered by the U.S. Department of Health and Human Services jointly with the Department of Education.

**How does the bill change transferability?** The conference bill removes the 50% limitation and replaces it with "all or any lesser amount" of Title II Part A, or Title IV Part A.

**What is the role of literacy education in the new bill?** The conference bill includes a new "Literacy Education for All, Results for the Nation" program. This program invests in improving state literacy instruction plans and distributes funding across the learning spectrum. The state has to provide not less than 15% for birth-Kindergarten grants, not less than 40% for K-5 grants, and not less than 40% for grades 6-12 grants. It does not prescribe what has to happen, but only that the programs must be "evidence-based" and ensure high-quality “comprehensive literacy instruction” (as defined in the bill) for

students most in need.

**How does the bill change Title III?** The conference bill does away with the current Title III AMAO structure. Instead, it would require states to measure progress toward language proficiency, and it clarifies the state responsibility to establish statewide entry and exit procedures. The accountability for English learners is embedded into the Title I monitoring of English proficiency.

The bill authorizes subgrants to eligible entities to improve the education of English learners by providing effective professional development, providing and implementing effective activities and strategies that enhance or supplement language instruction educational programs, providing community participation programs and family literacy services, and other activities. Yet, as with the prior Title III program, "Federal funds made available under this subpart shall be used so as to supplement the level of Federal, State and local funds, that in the absence of such availability, would have been expended for programs for English learners and immigrant children and youth." This will continue to present challenges for program administrators, and Congress is not signaling an increased investment in Title III to make the juice worth the squeeze.

**Does the ESSA provide additional focus on literacy?** Senator Murray (D-WA) included the Title II, Part B, subpart 2, "Literacy Education for All, Results for the Nation." These are competitive state grants for the development of effective strategies in reading and writing from early education through grade 12, and for district grants to carry out high quality "comprehensive literacy instruction" (which the bill defines) for students most in need. The criteria for "most in need" are established by poverty and literacy grade-level proficiency indicators. These grants run for a maximum of five years, but may be renewed for a 2-year period if the state "demonstrates to the satisfaction of the Secretary" that it has made adequate progress and that the two-year extension is necessary for the grant's objectives.

The state has to distribute the subgrants in three parts to implement comprehensive literacy instruction programs. Not less than 15% go to activities for children birth through Kindergarten, not less than 40% for Kindergarten through grade 5, and not less than 40% for grade 6 through 12. Applicants for birth through Kindergarten subgrants will have to explain how their work will be coordinated with K-12 literacy instruction, while K-12 applicants must include a plan for schools to identify children in need of literacy or other intervention support services. K-12 grants must also support activities that are provided

primarily during the school day, but can be supplemented with out-of-school or after-school instruction. The competitive grants run for a maximum of five years.

**How else does the bill fund effective and innovative reading programming?** The bill provides grants for “Innovative Approaches to Literacy” (section 2226). The Secretary may award competitive grants to LEAs, LEA consortia, or a non-profit to run literacy programs in low-income communities. These programs include: developing and enhancing effective school library programs (including PD for librarians and updated materials), early literacy services that encourage parents to read to children starting in infancy, and programs that provide high-quality books to children and adolescents from these communities. The grants are meant to go beyond the school walls. The early literacy services programs include pediatric literacy; medical providers trained in early language and literacy promotion can provide developmentally appropriate books and recommendations to parents.

As noted in the opening paragraph, this is a working document. We will update the document in the coming days and respond to questions as they come in. Those questions will be added to the document.