

Every Student Succeeds Act



Overview: As we convened for the 2015 AESA Legislative Advocacy Conference, both the House and Senate had voted on their chamber's respective proposal to reauthorize the Elementary and Secondary Education Act (ESEA). It was an effort eight years in the making. Following House and Senate passage, the bill moved into the conference process, and a compromise bill was signed into law on December 10, 2015, known as the Every Student Succeeds Act (ESSA). ESSA is a significant improvement over current law, taking the pendulum of federal overreach and prescription rampant under No Child Left Behind (NCLB), and swinging it firmly back to state and local control. The spirit and intent of ESSA are clear: state and local education agencies are to drive the decisions that ultimately craft ESSA implementation. There is a role for the federal government in K–12 education, but under ESSA, it is a role of strengthening and supporting our nation's schools rather than prescribing and dictating to schools. The role of the federal government shifted from “carrot and stick” under NCLB (emphasis on the “stick”) to “guardrail and safety net” under ESSA. State and local education leaders are emerging from a compliance-based mentality as it relates to federal accountability. ESSA is the first time in 15 years that state and local education agencies can demonstrate what they can do in the accountability arena absent federal overreach. With this expanded flexibility and authority comes great responsibility, and state and local education agencies must be diligent in ensuring their new systems are appropriately rigorous and inclusive.

Now seven months old, the ESSA implementation process is playing out and this includes the role of the U.S. Department of Education (USED) providing regulations, guidance and technical assistance. ESSA makes clear Congress' intent that states be solely responsible for the development, implementation of, and decisions regarding, all aspects of their State accountability systems. Section 1111(e) clearly states the Secretary may not add any requirements or criteria outside the scope of this Act, and further says the Secretary may not take any action that would “be in excess of statutory authority given to the Secretary.” This is an idea with broad bipartisan support, as the conference report itself writes, “While it is the intent of the Conferees to allow the Secretary to issue regulations and guidance to clarify the intent and implement the law, Conferees intend to prohibit any such regulation that would create new requirements inconsistent with or outside the scope of the law.”

To date, proposed regulations have been shared related to assessment and appropriations and USED has yet to release its draft regulations for the Title I ‘supplement, not supplant’ provisions. Check AASA's ESSA Resource Library, which is updated regularly with new information, and currently includes AASA's summary and analysis of the law, the various proposed regulations, and other related resources to support local education efforts in ESSA implementation (<http://www.aasa.org/AASAESSA.aspx>).

AESA talking points:

- When it comes to ESSA implementation, we strongly encourage USED to engage state and local stakeholders—including state agencies, school districts, administrators, school boards, school leaders, teachers, parents and the general community—before issuing guidance, regulations, best practices or technical assistance.
- It is important that Congress remain diligent in its oversight of ESSA implementation, to ensure that the spirit and intent of the overwhelmingly bipartisan law is not prematurely undermined by unnecessarily prescriptive regulations.
- When it comes to supporting successful implementation of ESSA, USED is uniquely positioned to provide deep and broad technical assistance. In a general sense, AESA strongly supports USED moving forward to act as a clearinghouse of proven practices, pulling together examples and case studies where approaches and programs are achieving their goals, whether addressing equity, improving student learning, or bolstering retention of effective teachers in high-needs schools.
- Specific Priorities within the Proposed Accountability Regulations:

- AESA is opposed to USED's effort to achieve statutory changes to the comparability provision through regulations for "supplement not supplant (SNS)." Congress was explicit in its decision to not modify comparability; Congressional Research Service (CRS) has issued a report questioning the legal standing of the Department's approach; and the statute explicitly prohibits a federal equalized spending requirement. AESA urges Congress to remain diligent in ensuring that SNS regulations do not serve as a vehicle for changes to comparability.
- AESA is opposed to USED's regulation (200.18) that requires the state plan to include one summative rating from at least three distinct rating categories for each school. The statute requires evaluation of local education agencies (LEAs) and schools on academic and non-academic factors, but stopped short of requiring each to be rated by a single indicator. This step away from reducing a school to a single letter or number score is important and provides flexibility and support for more nuanced state and district reporting, including the use of data dashboards. Reliance on a summative indicator mirrors current reporting requirements, blurs the nuance that comes from multiple and varied indicators, unnecessarily hinders the ability of state and local education agencies to consider new approaches and increases the likelihood of states just maintaining the status quo of the broken NCLB.
- AESA is opposed to the proposed regulation that would require all state education agencies (SEAs) to identify LEAs in need of support and/or improvement for the *start* of the 2017–18 school year (SY). This unnecessarily rushed timeline creates a scenario whereby a school in the first year of ESSA implementation will be labeled as needing support based on 2016–17 data, which is NCLB data. AESA is concerned that this proposal, like the summative indicator, increases the likelihood that states maintain the status quo or, at best, implement only minor or peripheral changes to their systems. AESA proposes that USED treat SY2017–18 in a manner consistent with how it treated SY2016–17 after ESEA waivers expired, and to freeze accountability ratings and labels.
- AESA strongly opposes USED's proposed regulation as it relates to the transportation of foster children. The USED proposal deems that when it comes to transporting children in foster care, if the child welfare agency and district cannot reach an agreement the LEA is fiscally liable to cover transportation costs. AESA agrees with the right of students in foster care to have transportation to their school of origin, but finds that USED's proposed regulation is an egregious overreach in direct conflict with the underlying statute. USED's proposal directly undermines the collaborative, carefully negotiated language in ESSA and reduces the responsibility of the child welfare agency to meaningfully engage in discussions with the LEA. AAESA reiterates that USED regulation in this area is unnecessary beyond simply underscoring that the LEA will provide transportation only in the three statutorily specified instances.