



## The Every Student Succeeds Act

**THIS DOCUMENT IS A PRELIMINARY ANALYSIS OF ESSA – IT IS A WORK IN PROGRESS AND WILL BE REVISED AND UPDATED PERIODICALLY**

On December 10, 2015 President Obama signed into law the Every Student Succeeds Act (ESSA), which replaces the No Child Left Behind Act (NCLB).

This document is intended to be a quick reference guide for the Protection and Advocacy Network. The guide will outline areas within ESSA that may be of particular interest to the P&As, contrast it with NCLB and detail why the provision is relevant. There is language bolded throughout the document which may be of particular interest to the P&As.

NDRN strongly encourages the P&A Network to be an active part of the conversation surrounding ESSA at the state level. This law is in many ways a compromise law and affords state and local increased flexibility over NCLB. The importance of the expertise of individual P&As in the crafting of state plans and fidelity of implementation of ESSA at the state and local level cannot be overstated.

ESSA is comprised of nine titles:

- **Title I** – Improving Basic Programs Operated by State and Local Educational Agencies
- **Title II** – Preparing, Training, and Recruiting High-Quality Teachers, Principals, or Other School Leaders
- **Title III** – Language Instruction For English Language Learners and Immigrant Students
- **Title IV** – 21<sup>st</sup> Century Schools
- **Title V** – State Innovation and Local Flexibility
- **Title VI** Indian, Native Hawaiian, and Alaskan Native Education

- **Title VII – Impact Aid**
- **Title III – General Provisions**
- **Title IX – Education for the Homeless and Other Laws**

To access ESSA, go to: <https://www.congress.gov/114/bills/s1177/BILLS-114s1177enr.pdf>

In general:

- Ed will not require that states submit AMOs for 2014-2015 & 2015-2016 school years.
- Ed will not require states to report performance against AMOs for 2014-2015 & 2015-2016 school years.
- States will be required to publish report for 2014-2015 & 2015-2016 school years and beyond
- ESEA flexibility waivers remain in effect through August 1, 2016. Ed expects states to therefore Ed expects states currently approved for flexibility waivers to implement them through the 2015-2016 school year.
- Principles in ESEA flexibility waivers regarding educator evaluation and support systems continue to be implemented through August 1, 2016.

For additional information, go to: [www.ed.gov/essa](http://www.ed.gov/essa). For questions, submit through [essa.questions@ed.gov](mailto:essa.questions@ed.gov).

## **Title I - Statement of Purpose**

“to provide all children significant opportunity to receive a fair, equitable, and high quality education, and to close educational achievement gaps”

### **Limits on Secretarial Authority:**

Although this section is not in the beginning of the State Plans, it does affect the Secretaries ability to regulate ESSA. Therefore, when considering the major provisions of ESSA and the role of the P&A in the monitoring and implementation of ESSA, the following will be important to keep in mind.

#### *Section 1111*

*As a condition of the state plan or any waiver, the Secretary may not –*

- require a state to add new requirements;
- require a state to add or delete specific elements to the standards;
- prescribe goals of progress or measurements of interim progress that are set by States under the accountability system;
- prescribe specific assessments or items to be used in assessments;
- prescribe indicators that states must use;
- prescribe the weight of measures or indicators;
- prescribe the specific methodology states must use to differentiate or identify schools;
- prescribe school improvement strategies or exit criteria;
- prescribe min. N-sizes;
- prescribe any teacher or principal evaluation system;
- prescribe any measures of teacher or principal effectiveness;
- prescribe the way in which the State factors the 95% requirement into their accountability system

*The Secretary is also not empowered to:*

- issue new non-regulatory guidance that seeks to provide explanation of the requirements under the law’s accountability section (see below);
- provide a strictly limited or exhaustive list for implementation purposes;
- purports to be legally binding or requires new data collection beyond data from existing Federal, State and local reporting.
- define a term that is inconsistent with or outside the scope of Title I, Part A.

## **State Plans:**

### **Filing for Grants:**

- What ESSA says: (Section 1111(a))

The states are required to submit to the Secretary state plans which have been developed by the state in meaningful consultation with the Governor, members of the State legislature and State board of education, LEAS (including those located in rural areas), representatives of Indian tribes located in the state,

teachers, principals, other school leaders, charter school leaders, specialized instructional support personnel, paraprofessionals, administrators, other staff and parents

- What NCLB said:  
Similar requirements although ESSA added charter schools and parents to the consultation list
- How this is relevant to the P&As:  
The state plan (once approved by the Secretary) will dictate the education of all students in that state. The consultation aspect would be an important way for the P&A Agency to be a part of the conversation if possible. Note: although the P&As are not explicitly mentioned in the consultation list, the P&As are designated by the Governor and therefore it would be advisable that the P&A mention the specific priorities for the state plan to the Governor. Additionally, the P&A may consider sharing priorities for the state plan with other entities in the state who may have a seat at the table, for example: the PTI, state director of special education, state superintendent...

### Peer Review of State Plans

- What ESSA says: (Section 1111(a)(A))  
The Secretary shall establish a peer review process and peer review teams and appoint such teams to review state plans. The peer review teams shall consist of a variety of individuals including **members of the community** as well as researchers who are familiar with how to meet the needs of disadvantaged students, children with disabilities, and English Language Learners, the needs of low performing schools, and other educational needs of students. Note: peer review teams will not be state specific.
- What NCLB said:  
Same parameters although did not mention students with disabilities specifically
- Why this is relevant to the work of P&As:  
Given the monitoring and oversight expertise of the P&As, involvement in this process will be critical especially as there is new language and provisions around students with disabilities and discipline (discussed in detail throughout this document)

### Purpose of Peer Review

- What ESSA says: (Section 111(a)(B))  
To maximize collaboration with each state and to provide transparent, timely and objective feedback to states designed to strengthen the technical and overall quality of the plans.
- What NCLB said:  
Provision new to ESSA
- Why this is relevant to the P&As:  
The purpose of peer review as written explicitly mentions that the purpose is to maximize collaboration with each state. This section reinforces the importance for the P&As to be a part of this process.

## Challenging State Standards

- What ESSA says: (Section 1111(b))  
Each State shall develop challenging State academic content standards which are aligned with entrance requirements for credit bearing coursework in the system of public higher education in the state and relevant State and career technical education standards. States are not required to submit standards to the Secretary.
- What NCLB said:  
Each state shall demonstrate the state has challenging academic standards. The same academic standards shall apply to all schools and all students. The standards specified what the student was expected to know and be able to do, contained rigorous content, encouraged advanced teaching and were aligned with the states content standards.
- Why this is relevant to the work of the P&As:  
This is important to know in order to better understand the framework of ESSA

## Alternate Academic Achievement Standards (AAS) for Students with the Most Significant Cognitive Disabilities

- What ESSA says: Section 1111(b)(1)(E)  
States may adopt alternate academic achievement standards for students with the most significant cognitive disabilities provided that the standards are:
  - I. Aligned with challenging state standards**
  - II. Promote access to the general curriculum consistent with IDEA**
  - III. Reflect professional judgment as to the highest possible standard achievable by the student**
  - IV. Are designated in the student's IEP**
  - V. Are aligned to ensure that a student who meets the alternate academic achievement standard is on track to pursue postsecondary education or employment**
- What NCLB says:  
No mention of the AAS in NCLB, the Department issued regulations in 2003 around the AAS. The regulations stated that a state may adopt create and adopt alternate achievement standard
- Why this is relevant to the work of the P&A  
The scope, intent and limits around the AAS are much more clearly defined within ESSA.

## Academic Assessments

- What ESSA says: (Section 1111(2))  
Each state shall implement a set of high quality student academic assessments in mathematics, reading or language arts and science and any other subject if the state so chooses.

- I. Math and language arts shall be administered in each of grades 3-8 and at once in grades 9-12.
  - II. Science shall be administered not less than one time in grades 3-5, once in grades 6-9, and once in grades 10-12.
  - III. The same assessment (with the exception of the AA-AAS) shall be used to assess the achievement of public elementary, middle and secondary students
  - IV. Assessments will be aligned with the challenging state standards
  - V. Assessments may include may include measures of student growth (projects, portfolios, extended performance tasks)
- What NCLB said:  
Each state must develop assessments in math, language arts and science which are the primary method for determining AYP. Assessments must be administered not less than once in grade 3-5, grades 6-9 and grades 10-12
  - Why this is relevant to the work of the P&As:  
This is important to know to understand the framework of ESSA

### Appropriate Accommodations

- What ESSA says: (Section 1111(2)(B)(II))  
Assessments will involve **appropriate accommodations such as interoperability with and the ability to use assistive technology** for students with disabilities (as defined in IDEA) necessary to measure the academic achievement of such children relative to the challenging state standards or the alternate academic achievement standards
- What NCLB said:  
While ESSA breaks out accommodations, NCLB stated that the will provide for the reasonable adaptations and accommodations for students with disabilities (as defined by IDEA) including students with the most significant cognitive necessary to measure the academic achievement of such students relative to the state academic content and the state student achievement standards
- Why this is relevant to the work of the P&As:  
The ESSA language around assistive technology is extremely important for students with disabilities who use AT. This may be an area around which P&As receive questions/concerns

### Alternate Assessments Aligned with Alternate Academic Achievement Standards (AA-AAS)

- What ESSA says: (Section 1111(2)(D))  
A state may provide for AA-AAS for students with the most significant cognitive disabilities if the state:
  - I. Ensures that for each subject, the total number of students assessed in such subject using the AA-AAS **does not exceed 1% of the total number of all students who are assessed** in the state in that subject.

- II. Ensures that the parents are fully informed as part of the IEP process that:
  - a. Their child’s academic progress will be measured on alternate standards
  - b. How participation in in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma
- III. Promotes, consistent with IDEA, the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum
- IV. Taken steps in the state plan to incorporate universal design for learning in the alternate assessment
- V. Does not preclude a student who takes the AA-AAS from attempting to obtain a high school diploma
- What NCLB said:  
The 2003 regulations to NCLB allowed for the AA-AAS. However, the 2003 regulations were different in a few very important aspects. The 2003 regs stated that the 1% cap applied to the number of proficient and advanced scores that could be included for AYP determinations. ESSA, on the other hand, explicitly states that state cannot assess more than 1% of students using the AA- AAS.
- Why this is important for the P&As:  
The change in ESSA is very important for parents to understand as the decision of which assessment a student will take happens during the IEP process.

### Locally –Selected Assessments

- What ESSA says: (Section 1111(2)(H))  
A local education agency shall be allowed to administer a locally selected assessment in lieu of the state designed academic assessment if the local education agency selects a nationally recognized high school assessment (ex. SAT or ACT) that has been approved by the state
- What NCLB said:  
New language in ESSA
- Why this I important for the P&As  
The P&A should be aware of this provision specifically as how it may relate to accommodations and the new language around the interoperability of accommodations.

### Adaptive Assessments

- What ESSA says: (Section 1111(2)(J))  
States retain the right to administer computer adaptive assessments provided that the adaptive assessment shall measure, at a minimum, each student’s academic performance based on that states challenging academic standards. The assessment may measure a student’s level of proficiency or academic growth using items below or above student’s grade level

- What NCLB said:  
Language new to ESSA
- Why this is important to the work of the P&A:  
This will likely be an issue that the P&As will work on, however may be relevant in the context of AA-AAS

## Statewide Accountability System

### Subgroups:

- What ESSA says: (Section 1111(c))  
Each state plan shall describe a statewide accountability system which includes subgroups of all students:
  - A. Economically disadvantaged students;
  - B. Students from a major racial and ethnic groups;
  - C. **Children with disabilities;** and
  - D. English learners
- What NCLB said:  
Same subgroups (subgroups were established under NCLB)
- Why this is important to the works of the P&As:  
Important to understanding the framework of ESSA

### N Size:

- What ESSA says (Section 1111(c)(3))  
Establishes a **minimum number of students that the state determines are necessary per subgroup** (the same number for all subgroups) that is necessary to ensure that the number is sufficient to no reveal personally identifiable information
- What NCLB said:  
shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information.
- Why this is important to the work of the P&As:  
Under NCLB states could determine their N size. This will not change under ESSA. We saw some states choose large N sizes under NCLB, which led to approximately nearly 2 million students being excluded from the accountability system. Under ESSA, states will again be allowed to determine their N size. We feel that this is an important issue for P&As to provide recommendations and be aware of during state plan consultation and the peer review process.

### Long Term Goals:

- What ESSA says: Section 1111(c)(4)(A))

States must set state designed long-term goals, which shall include measurements of interim progress towards meeting such goals

- What NCLB said:  
A federally set goal was made for 100% of students to reach proficiency by 2014
- Why this is important to the P&As  
Important for understanding the framework of ESSA

#### Indicators:

- What ESSA says: (Section 1111(c)(4)(B))  
States must annually measure, for all students and separately for each subgroup of students, the following indicators:
  - A. Elementary and Middle Schools:
    - I. Test scores
    - II. A measure of student growth or other academic indicator that allows for meaningful differentiation among groups of student
    - III. English language proficiency
    - IV. **At least one indicator of school quality or success that allows for meaningful differentiation among groups of students**
  - B. High Schools:
    - I. Test scores (in addition may use student growth based on annual assessments)
    - II. Four year graduation rate (may use extended-year graduation rate)
    - III. English language proficiency
    - IV. **At least one indicator of school quality or success that allows for meaningful differentiation among groups of students**
- What NCLB said:
  - A. Elementary and Middle Schools:
    - I. Test scores
    - II. One indicator selected by the state
  - B. High Schools
    - I. Test Scores
    - II. Graduation Rate
- Why this is important to the P&As:  
The indicators are important for the P&As to understand specifically because of the flexible nature of indicator IV for both A and B under ESSA. It is important for this indicator to be a useful and meaningful indicator of school quality. The P&As will have an important opportunity to influence the state decision on indicator IV in both the consultation and peer review processes.

#### Annual Meaningful Differentiation:

- What ESSA Says: (Section 1111(c)(4)(C))  
States will establish a system of **meaningfully differentiation** for all public schools in the state. The system will be based on the indicators for all students and for all subgroups. The system will afford **substantial weight to each indicator and indicators I-III (as described above) in the aggregate will be afforded much greater weight than indicator IV.**
- What NCLB said:  
Totally new accountability system – not comparable to NCLB
- Why this is relevant to the work of the P&As:  
Although ESSA gives more weight to the academic indicators, the key words “substantial” and “much greater” are not defined. Annual meaningful differentiation will be key to the annual meaningful differentiation. This will be an important place for the P&As to give feedback on either or both the consultation process or peer review of the state plans.

### Annual Measure of Achievement

- What ESSA Says (Section 1111(c)(4)(E))  
Annually measure the achievement of not less than 95% of all students and 95% in each subgroup of students.
- What NCLB said:  
Same provision
- Why this is relevant to the work of the P&As  
This is a **key safeguard** for the meaningful inclusion of all sub-groups, including students with disabilities in the accountability system.

### Intervention and Support for Struggling Schools:

#### Comprehensive Support and Improvement

- What ESSA says: (Section 1111(d)(1))  
States must identify these schools every three years beginning with the 2017-2018 school year
  - I. Comprehensive Support – LEAS, for schools described below, must implement comprehensive, locally determined, evidence based interventions:
    - A. Lowest performing 5% of all title I schools
    - B. High schools failing to graduate one third or more of their students
    - C. Schools with a subgroup performing at a level of the lowest performing 5% of all title I schools based on the state accountability system
- What NCLB Said:  
New language
- Why this is relevant to the work of the P&As

Important for understanding the intervention framework

### **Targeted Support and Improvement**

- What ESSA says: (Section 1111(d)(2)(A))  
States must identify these schools annually
  - I. Targeted Support – Schools described below, must implement locally determined, evidence based interventions:
    - A. Consistently low performing subgroup(s)
    - B. Schools with a subgroup performing as low as the bottom 5% of all title I schools, must also identify resource inequities and address these through the improvement plan
- What NCLB says:  
Language new to ESSA
- Why this is important to the P&As:  
Important to understanding the intervention framework

### **Comprehensive Support and Improvement Intervention Plan**

- What ESSA Says: (Section 1111(d)(1))  
Schools identified for comprehensive support and intervention must notify the LEA. The LEA will develop (in partnership with various stakeholders) a plan that:
  - I. is informed by all the indicators
  - II. is based on a school-level assessment
  - III. reviews resource inequities
  - IV. is approved by the school, LEA and SEA
  - V. Upon approval and implementation is monitored and periodically reviewed by the SEA.
- What NCLB said:  
New language
- Why this is relevant to the work of the P&As  
The development of the comprehensive support and improvement intervention would be an important place for P&A involvement

### **Targeted Support and Intervention Support Plan**

- What ESSA Says: (Section 1111(d)(2)(B))  
Each school receiving notification must (in partnership with stakeholders) develop a school level plan to improve student outcomes based on the indicators
  - I. Is informed by all the indicators
  - II. includes evidence based interventions
  - III. is approved by the LEA
  - IV. Is monitored by the LEA
  - V. results in additional action following unsuccessful implementation after a number of years **determined by the LEA**
- What NCLB said

New language

- Why this is relevant to the work of the P&As

This section could be highly relevant to students with disabilities. If students with disabilities are a consistently low performing subgroup in a school which is not in the comprehensive support and improvement category, then both the chosen intervention, as well as the potential for additional action are both determined by the LEA with no additional intervention from the state.

## Timeline for Interventions

- What ESSA says: (Section 1111(d)(2)(D))

1. Comprehensive Support Schools – schools receiving this support who do not meet state set criteria to exit comprehensive intervention status within a state set time period (not to exceed four years), must implement more rigorous state interventions which may include school level interventions.
2. A school that is implementing a targeted intervention for subgroups of students who are presuming as low as the bottom 5% of title I schools which does not reach exit criteria in a state determined amount of time, will then be identified for comprehensive support.

- What NCLB said:

New Language

- Why this is relevant to the work of the P&As  
Important for understanding the framework

## Local Educational Agency Plans

### Parent Right to Know:

- What ESSA says: (Section 1112(e))

At the beginning of the school year each LEA will notify parents that the parents may request and the agency will provide, in a timely manner, information regarding the professional qualifications of the classroom teacher.

- What NCLB said:

Very similar language to ESSA

- Why this is important to the P&As:

This is an important provision to be aware of in case the issue ever arises.

## Here are the aspects of the ESSA that will most impact P&A school climate related work.

### Indicator

- What ESSA says: ( Section 1111(c))
- The statewide accountability system must include an indicator of school quality or student success that is valid, reliable, comparable, state-wide, and allows for meaningful differentiation in school performance. This may include a measure of “ school climate and safety.” This indicator is not weighted as heavily as the other four.
- *How this is different from NCLB:*  
Such an indicator was not required.
- *How this is relevant to the work of the P&As:*  
P&As can advocate at the state level for the creation of a meaningful measure that will allow for the collection and analysis that is related to documented systemic problems in the state.

### LEA Plan Provisions

#### What ESSA says: (Section 1111(c))

- SEA must notify LEAs of schools identified for comprehensive support and improvement. For each school identified, LEAs must develop and implement a comprehensive support and improvement plan that includes evidence base interventions. This must be informed by all indicators in the statewide accountability system, including Indicator 5 above
- *How this is different from NCLB:*

The LEA accountability system is very different than it was under NCLB.

- *How this is relevant to the work of the P&As:*

It is important for P&As to work in coalition with others in the state to help ensure that the measures selected are meaningful and utilized to create change at the local level.

### State Plan Provisions

- What ESSA says: (Section 1111(g))

“(g) OTHER PLAN PROVISIONS.—

(1) DESCRIPTIONS.—Each State plan shall describe—

(B) how the State will provide assistance to local educational agencies and individual elementary schools choosing to use funds under this part to support early childhood education programs;

(C) how low-income and minority children enrolled in schools assisted under this part are not served at disproportionate rates by **ineffective, out-of-field, and inexperienced teachers**, and the measures the State educational agency will use to evaluate and **publicly report the progress** of the State educational agency with respect to such description; however, nothing in this subparagraph shall be construed as requiring a State to develop or implement a teacher, principal, or other school leader evaluation system;

(D) how the State educational agency will support local educational agencies receiving assistance under this part to **improve school conditions** for student learning, including through reducing—

(i) incidences of **bullying and harassment**;

(ii) the overuse of **discipline practices** that remove students from the classroom; and

(iii) the use of **aversive behavioral interventions** that compromise student health and safety;

(E) how the State will support local educational agencies receiving assistance under this part in meeting 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 such local educational agencies to provide effective transitions to middle grades and high school in order to decrease student risk of **dropping out.** “

Report Language: “It is the Conferees’ intent that States describe how the unique needs of students are met, particularly those students in the middle grades and high schools. The Conferees intend that States will work with local educational agencies receiving assistance under this part to assist in identifying students who are at-risk of dropping out using indicators such as attendance and student engagement data, to ensure effective student transitions from middle to high school, including by aligning curriculum and student supports, and to assist in effective transitions from high school to postsecondary education through strategies such as partnerships between local educational agencies and institutions of higher education. Such strategies to improve transitions may include integration of rigorous academics, career and technical education, and work-based learning. In order to accomplish these priorities, the Conferees intend that States will provide professional development to teachers, principals, other school leaders, and other school personnel to ensure that the academic and developmental needs of middle and high school students are met.”

(F) the steps a State educational agency will take to ensure collaboration with the State agency responsible for administering the State plans under parts B and E of title IV of the Social Security Act (42 U.S.C. 621 et seq. and 670 et seq.) to ensure the educational stability of children **in foster care**, including assurances that—

*(i) any such child enrolls or remains in such child’s school of origin, unless a determination is made that it is not in such child’s best interest to attend the*

*school of origin, which decision shall be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;*

*(ii) when a determination is made that it is not in such child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment;*

*(iii) the enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records; and*

*(iv) the State educational agency will designate an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the State agency responsibilities required under this subparagraph, and such point of contact shall not be the State's Coordinator for Education of Homeless Children*

*and Youths under section 722(d)(3) of the McKinney-Vento Homeless Assistance Act;*

(G) how the State educational agency will provide support to local educational agencies in the identification, enrollment, attendance, and school stability of **homeless children and youths**; and

(H) such other factors the State educational agency determines appropriate to provide students an opportunity to achieve the knowledge and skills described in the challenging State academic standards.

Report Language: "It is the Conferees' intent that each State describes how it will support local educational agencies and schools by providing resources and guidance, professional development, and technical assistance to reduce techniques, strategies, interventions, and policies that compromise the health and safety of students, such as **seclusion and restraint.**"

- How this is different from NCLB :

These provisions were not included in NCLB.

- How this is relevant to the work of the P&As:

It is important for P&As to know about these state plan provisions so they know to look for them in the draft state plan as it is developed, and to advocate for their inclusion if they are omitted, as they address core P&A concepts such as protection from abuse. In addition, the foster care and homelessness provisions will be helpful in advocating for education protections for youth who are members of these populations. Also, Section 1111(h) the state report card must include important CRDC data such as school based arrests and referrals to law enforcement.

## **Youth Entering and Returning from the Juvenile Justice System (Section 1020)**

- What ESSA says: (Section 1401 Et Seq.)

State plans under Title I, Part D—Neglected And Delinquent Children must examine youth transitions to and from correctional facilities and locally operated programs, including the attainment of a regular high school diploma and timely re-enrollment in public school.

- How this is different from NCLB:
- NCLB included provisions only involving the transitions back into locally operated programs. ESSA covers transitions both to and from these settings.
- How this is relevant to the work of the P&As:  
P&As represent a great many youth during their transition in and out of the juvenile justice system, and encounters situations in which a school district refuses to enroll a student and/or educational programs that result in a GED rather than a regular high school diploma.