



AASPS Annual Conference
June 12, 2017
Columbus, Ohio

Where Does ESSA Stand Under the New Administration?

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The Every Student Succeeds Act

The *Every Student Succeeds Act* (ESSA) sets forth rights and responsibilities for federal, state, and local educational agencies.

This presentation looks at federal actions that have taken place during the first four months of the new administration that may impact the implementation of selected provisions of ESSA, and NSBA's work surrounding education issues.

NSBA's Federal Advocacy Agenda

- Recent developments in the 115th Congress and the new Administration
- What is new in Washington?
- What can you do?



Every Student Succeeds Act (ESSA)

- NSBA's Delegate Assembly informed the development of Title VIII (Section 8541) of the law
- Upholds local governance and community ownership of public schools

“Rule of Construction— Nothing in this Act shall be construed to allow the Secretary to—

- (I) “exercise any governance or authority over school administration, including the development and expenditure of school budgets, unless authorized by [ESSA];
- (II) issue any regulation without first complying with the rulemaking requirements [under federal law]; or
- (III) issue any non-regulatory guidance without first, to the extent feasible, considering the input from stakeholders.”

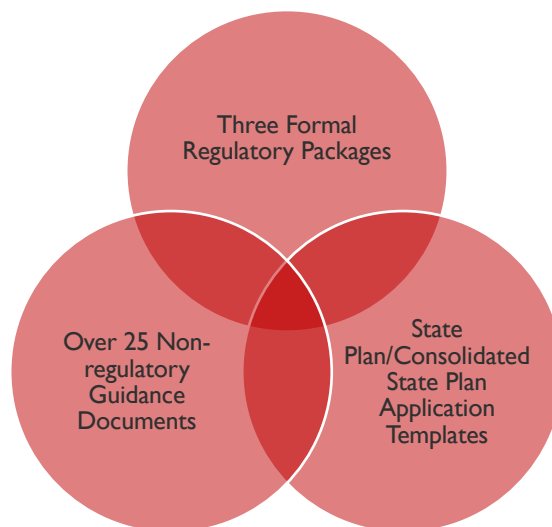
ESSA, Title VIII, Section 8541 (20 U.S.C. § 7921)

Every Student Succeeds Act (ESSA)

On Capitol Hill, House and Senate Education committees have convened hearings on the implementation of ESSA:

- Reaffirm congressional intent to restore local governance in education
- Emphasize Congress' oversight authority over ED's implementation of ESSA
- Ensure that the Secretary of ED develops policy and promulgates rules that align with statutory provisions of ESSA

ESSA Implementation



ESSA Formal Regulatory Packages

- Department of Education, Accountability and State Plans
 - Final rule published November 29, 2016
 - Effective date January 30, 2017
- Department of Education Academic Assessments
 - Final rule published on December 8, 2016
 - Effective January 9, 2017
- Improving the Academic Achievement of the Disadvantaged — Supplement Not Supplant
 - Public comment period concluded on November 7, 2016

ESSA Formal Regulatory Packages

White House mandates administrative regulatory delay:

- Temporarily postponed effective dates for 60 days
- Consider proposing for notice and comment a rule to delay the effective date beyond that 60-day period
- Consider further notice and comment [under limited circumstances]

Following the delay:

- No substantial questions = No further action
- Raises substantial questions of law or policy = Notify OMB and take appropriate action

ESSA Formal Regulatory Packages

- Department of Education, Accountability and State Plans
 - Final rule published November 29, 2016
 - **Effective date ~~January 30, 2017~~ March 21st**
- Department of Education Academic Assessments
 - Final rule published on December 8, 2016
 - Effective January 9, 2017
 - **Unaffected by Administrative Delay**
- ~~Improving the Academic Achievement of the Disadvantaged — Supplement Not Supplant~~
 - ~~Public comment period concluded on November 7, 2016~~

Congressional Review Act (5 U.S.C. Secs. 801-808)

Empowers Congress to disapprove certain rules issued by federal agencies through adoption of a joint resolution of disapproval

- Rule submitted to Congress
- Expedited procedure in Senate (“fast track”)
- 60 days to act
- “Major rules”: OMB determines that it will have economic effects of a certain level of significance.
- President must approve the resolution

Congressional Review Act

Any rule published after June 13, 2016 is subject to CRA action.

Two resolutions were passed to repeal Obama-era regulations:

- ESSA State Plan and Accountability
- ESSA Teacher Preparation Programs

President approved both resolutions.

ESSA Formal Regulatory Packages

Department of Education, Accountability and State Plans

- ~~Final rule published November 29, 2016~~
- ~~Effective date January 30, 2017.~~ = **DELAYED / REPEALED**

Department of Education Academic Assessments

- Final rule published on December 8, 2016
- Effective January 9, 2017 = **IN EFFECT**

Improving the Academic Achievement of the Disadvantaged — Supplement Not Supplant.

- ~~Public comment period concluded on November 7, 2016~~
= **WITHDRAWN (on last day of Obama Administration)**

ESSA Formal Regulatory Packages

- Despite the repeal of the State Plan regulations, ED kept the application deadlines.
- Mid-March – ED released a State Plan Template
- Late March – ED released State Plan Peer Review Criteria guidance
 - Does not focus on meaningful consultation with stakeholders or require reporting it.

https://www2.ed.gov/admins/lead/account/stateplan17/essas_tateplanpeerreviewcriteria.pdf

School Choice



“In general, we find that school choices work for some students sometimes, are worse for some students sometimes, and are usually no better than traditional public schools.”

— NSBA Center for Public Education

www.centerforpubliceducation.org

School Choice

NSBA's Center for Public Education report findings:

- ***Choice in itself may not produce better outcomes.*** While many schools of choice do an exemplary job, the results are not universally better than those produced by traditional public schools.
- ***Non-public school choice is not a panacea.*** Policymakers who are considering supporting parents who wish to choose private schools or homeschooling should be aware that very little is known about the overall efficacy of schooling outside of public schools.

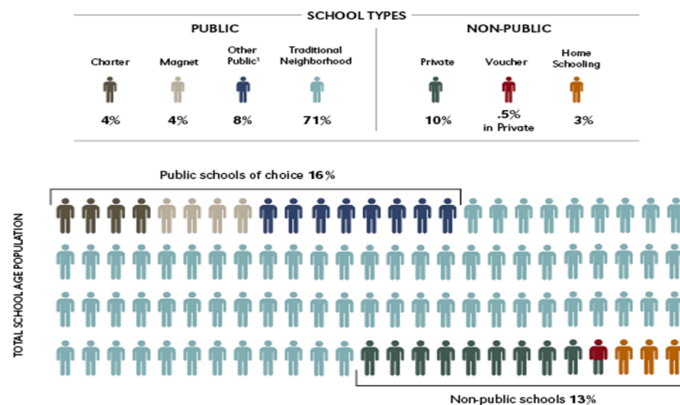
School Choice

- ***Expanding charter schools is not an overall reform strategy.*** Most charter schools are no better than their traditional public school counterparts. Merely having more of them will not raise performance. Rather, policymakers and educators should focus on learning from successful local public schools and districts about policies and practices that can help improve all schools.

School Choice

REALITY CHECK

After more than two decades of choice policies, enrollments in schools of choice are still relatively small. **87%** of all school-aged children are **in public schools**.



School Choice

- NSBA urges Congress to support the range of choices already offered by our nation's public school districts, which educate more than 50 million students.
- NSBA urges Congress and the Administration to encourage and advance a balanced dialogue on evidence-based choice options to help inform our nation's efforts to assure every child is prepared for college, careers, and citizenship.
- Advocate for measures that "level the playing field" so that all public schools that receive public funds will be held to the same standards and so that performance can be adequately and appropriately compared.
 - Accountability
 - Fiscal transparency

Career and Technical Education

NSBA urges Congress' strong support for swift passage of a bipartisan reauthorization of the Carl D. Perkins Career and Technical Education Act that includes provisions for a strong academic component and credentialing programs that will help our nation's school districts continue efforts to advance 21st Century skills and knowledge to meet the needs of both students and employers, and provide practical training through apprenticeships and other opportunities.

Career and Technical Education

Strengthening Career and Technical Education for the 21st Century Act - H.R. 5587

- Provides for ***increased transparency and accountability*** by streamlining performance measures and fostering alignment with ESSA.

ESSA (Secs. 1003A and 1111): "Each State shall demonstrate that the challenging State academic standards are aligned with entrance requirements for credit-bearing coursework in the system of public higher education in the State and relevant State career and technical education standards."

Career and Technical Education

- Would ensure a limited federal role, repealing the requirement that States must negotiate their targeted levels of performance with the Sec'y of ED and preventing funds from being withheld from states that do not meet certain performance targets.
- Modernizes and reforms CTE with a focus on Americans entering the workforce.
- Aligns CTE programs with current and future workforce demands.

Career and Technical Education

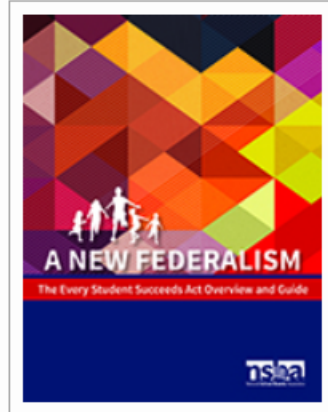
- Creates a formal definition of a CTE program of study, including sequencing of CTE programs.
- Importance on integrating academic standards with technical standards, addressing employability skills, and recognizing post-secondary credentials as crucial.

Career and Technical Education

- H.R. 5587 was passed by the House on September 13, 2016, by a vote of 405-5.
- On September 14, 2016, H.R. 5587 was referred to the Senate Health, Education, Labor & Pensions (HELP) Committee.
 - ❖ Senate HELP Committee was set to hold a markup of the bill on September 21, 2016.
 - ❖ Hearing was postponed, and has yet to be rescheduled.
 - ❖ ESSA-like Secretarial prohibitions
- Reauthorization is expected this year.

ESSA-Related Resources

NSBA's "A New Federalism:
The Every Student Succeeds Act Overview and Guide"
(April 2016)



Available at:

https://secure.nsba.org/pubs/item_info.cfm?who=pub&ID=791.

Resources (con't)

- FAQs on Accountability under Title I, Part A of ESSA
- Resource Guide on Accountability for English Learners under ESSA
- Non-Regulatory Guidance on High School Graduation Rates under ESSA
- Non-Regulatory Guidance, "Early Learning in the [ESSA]: Expanding Opportunities to Support our Youngest Learners"

Resources (con't)

- Resource Guide: “Building a Bright Future for All: Success in Early Learning Programs and Elementary School for Immigrant Families”
- Non-Regulatory Guidance on State and Local Report Cards under ESSA
- Guidance on Consolidated State Plans under ESSA

A Few Other Areas Worth Noting

E-Rate Program

- Provides almost \$4 billion annually in subsidies to schools and libraries for telecommunications services
- Governed by the Federal Communications Commission
- E-Rate Progress Report Retraction Order (Feb. 3, 2017): The “E-rate Modernization Progress Report” released by FCC staff on January 18, 2017 “will have no legal or other effect or meaning going forward.”

IDEA Reauthorization

- The IDEA helps districts educate over six million students with disabilities – 13% of students – ensuring access to a free and appropriate education in the least restrictive environment.
- Not reauthorized since 2004.

IDEA Reauthorization

Ideally, a reauthorized IDEA would:

- ***Reduce complexity of compliance*** and provide guidelines and flexibility to schools
- ***Implement plan to invest in IDEA at the level promised – 40%***. Special education cost estimates range from \$80 billion to \$110 billion per year. The federal contribution has been less than 20% with the states and local school districts assuming the balance of the funding burden.

IDEA Reauthorization

- ***Retain deference to the Individualized Education Plan (IEP) collaborative process*** and allow for full opportunity to discuss disagreements prior to unnecessary and expensive litigation.
- ***Retain the two-year limit*** for awards of compensatory services and create a shorter statute of limitations period for appeals to court in order to assure the speedy resolution of disputes.

IDEA Regulations Regarding Student Discipline

Last December, ED/OSERS issued a final rule on “significant disproportionality”.

This final rule establishes a standard methodology States must use to determine whether “significant disproportionality” based on race and ethnicity is occurring the student disciplinary arena.

“Significant Disproportionality” Rule

The final rule:

- Clarifies that States must address significant disproportionality in the incidence, duration, and type of disciplinary actions (including suspensions and expulsions) using the same statutory remedies required to address “significant disproportionality” in the identification/placement of students with disabilities

“Significant Disproportionality” Rule

- Clarify the requirements for review and revision of policies, practices, and procedures when “significant disproportionality” is found
- Require that LEAs identify and address factors contributing to “significant disproportionality” as part of comprehensive coordinated early intervening services, and allow these services for children from age 3 through grade 12, with **and without** disabilities.

Resources

- Guidance on Civil Rights of Students with Disabilities:
- Press Release: <https://www.ed.gov/news/press-releases/us-department-education-releases-guidance-civil-rights-students-disabilities>
- OCR Parent and Educator Resource Guide: <https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf>
- OCR DCL on Restraint and Seclusion: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201612-504-restraint-seclusion-ps.pdf>
- OCR Fact Sheet on Restraint and Seclusion: <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-restraint-seclusion-ps.pdf>

Resources (con't)

- OSERS/OCR DCL on Disabled Students in Charter Schools:
<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-faq-201612-504-charter-school.pdf>
- OSERS FAQs on Disabled Students in Charter Schools and the IDEA:
<https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/faq-idea-charter-school.pdf>
- OSERS/OCR Know Your Rights, Disabled Students in Charter Schools:
<https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-201612-504-charter-school.pdf>

School Infrastructure

Administration and Congress have announced proposals to invest in infrastructure, including our schools.

Administration: “Pursue an ‘America’s Infrastructure First’ policy that supports investments in transportation, clean water, a modern and reliable electricity grid, telecommunications, security infrastructure, and other pressing domestic infrastructure needs.”

School Infrastructure

Democratic proposal: \$75B to jumpstart public school modernization with funds distributed on a formula basis to public schools with the greatest and most urgent needs. “Funding will ensure that school construction and modernization projects can get underway quickly without placing an undue financial burden on local taxpayers.”

Medicaid Funding for Schools

- School districts receive \$4 billion annually in Medicaid funding
- Schools provide critical health services to students, including students with disabilities
 - Speech-language pathologists, audiologists, occupational therapists, school psychologists, school social workers and school nurses
- Almost half of Medicaid beneficiaries are children, would impact the Children’s Health Insurance Program (CHIP)

Medicaid Funding for Schools

- On March 6th, House Republicans released a plan to repeal and replace the Affordable Care Act (“Obama-care”)
- The bill ends Medicaid expansion authorized by the ACA
 - Starting in 2020, States would receive only the regular Medicaid matching rate, 57% of Medicaid costs, with States covering the other 43% of costs for new enrollees
- Recent proposals to convert Medicaid from a federal-state program to a block grant program
- States would decide how to administer block grant funds
- The bill converts Medicaid to a per capita cap
 - Caps federal funding on a per-beneficiary basis starting in 2020

The Power of Public Comment

- Rulemaking is inevitable. So, SEAs and LEAs should prepare now to make their positions known.
- The agencies need to hear from other than just the usual suspects.
- SEAs and LEAs can identify specific legal and implementation (*i.e.*, “on the ground”) concerns.
- No two school districts are the same, so SEAs and LEAs should get their voices heard, while federal action is still at the “proposed” stage.

NSBA's Work Continues

NSBA will continue to monitor for any new and additional statutes, regulations, and guidance that may be issued by the multiple agencies involved, so that we may continue to be of assistance to NSBA and COSA members and your school district clients as more rules are rolled out in the coming months and years.

Are there any questions?



howbehellshouldknow-wallyworld.blogspot

Thank you!

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National School Boards Association



Working with and through our State Associations, to
advocate for equity and excellence in public education
through school board leadership.

www.nsba.org