

Every Student Succeeds Act: Summary of Key Provisions

Myrna R. Mandlawitz, Esq., CASE Legislative Consultant

I. State Academic Standards [Sec. 1111(b)(1)]

- State assures adoption of academic content and achievement standards in math, reading or language arts, and science, and other subjects at the state's discretion.
- Standards must include not less than 3 levels of achievement.
- Same standards must apply to all public schools and public school students with same "knowledge, skills, and levels of achievement" expected of all students.
- State must demonstrate standards are aligned with entrance requirements for public higher education institutions and relevant career and technical education standards.
- States may adopt **alternate achievement standards** [**Note:** same language previously in NCLB regulations].
 - States prohibited from developing or implementing any other alternate or modified standards that don't meet the requirements for "alternate academic achievement standards" (Sec. 1111(b)(1)(E)).
- States also have to adopt English language proficiency standards addressing English learners' different proficiency levels and aligned with state academic standards.
- States may revise current standards consistent with changes in the law to meet these requirements.

II. Academic Assessments [Sec. 1111(b)(2)]

- Assessments in math and reading or language arts must be administered annually in grades 3-8 and at least once in grades 9-12; science tests not less than once during grades 3-5, 6-9, and 10-12.
- States must provide for "appropriate accommodations" (NCLB: "reasonable accommodations"), such as "interoperability with, and ability to use, assistive technology," including for students with disabilities receiving services under other Acts (e.g., Sec. 504?).
- State may choose to use a single summative assessment or "multiple statewide interim assessments" through the year that result in a single summative score providing information of student achievement or growth.
- Assessments must be developed, to the extent practicable, using principles of UDL.
- States may adopt **alternate assessments** aligned with alternate standards.
 - The IEP team, as defined in the IDEA, determines when a child with a significant cognitive disability will participate in an alternate assessment aligned with alternate academic achievement standards. The total number of students in each grade assessed using alternate tests may not exceed 1 percent of the total number of *all students in the State* (NCLB: total number of students in the grade) assessed in that subject,
 - Parents must be clearly informed, "as part of the process for developing the IEP" that achievement will be measured based on alternate standards and "how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma."
 - State must describe in the state plan steps taken to incorporate UDL in alternate assessments.
 - Students with significant cognitive disabilities are not precluded by taking alternate assessments based on alternate standards from trying to complete the requirements for a regular high school diploma.
 - States may not impose a cap on LEAs on the percentage of students administered an alternate assessment; LEAs exceeding the state cap must submit information to the state justifying the need to exceed the cap.

- LEAs may administer locally-selected assessments instead of the state-designed tests if the LEA picks a nationally-recognized high school academic assessment approved for use by the state.
 - States must develop technical criteria to determine if local assessments meets the law's assessment requirements.
 - State must approve use of particular assessment, an approval would apply automatically to other LEAs requesting use of the same test.
 - Parental notification is required for use of these tests.
- States may develop and administer **computer adaptive assessments**, as long as they meet all the assessment requirements.
 - Not all students must be administered the same test items.
 - Tests must measure proficiency based on state standards for student's grade level and growth toward standards.
 - May measure level of academic growth and proficiency using items above or below student's grade level, including for use as part of the state accountability system.
 - Computer adaptive tests may be used for students with significant cognitive disabilities, do not have to meet Bullets 2 and 3 above, and must assess academic achievement to measure whether students are performing at grade level.
- States may set a target limit on the aggregate amount of time spent on administering assessments for each grade, expressed as a percent of annual instructional hours.
- NOTE: There is also a pilot program for up to 7 states to carry out innovative assessments, such as competency-based, cumulative year-end, and performance-based assessments.
- NOTE: ESSA does not preempt state or local law regarding parental decisions on assessment participation. LEAs must, upon parental request, provide information on state or local policies, procedures and parents' rights on student participation for mandated assessments.

III. State Accountability System [Sec. 1111(c)] – This replaces the NCLB accountability system, including adequate yearly progress, "100% proficiency," and consequences for school failure.

- State describes, for any provision requiring disaggregation by the 4 subgroups*, the minimum number of students necessary to carry out the requirement and how that number is statistically sound; minimum number must be the same for all students and for each subgroup.
 - *Note: The 4 subgroups are defined as they were in NCLB to include: Economically disadvantaged, major racial and ethnic groups, children with disabilities, and English learners
- State establishes long-term goals, which include measurements of interim progress, for all students and for each subgroup.
 - For at a minimum, improved academic achievement measured on annual assessments and high school graduation rates, including,
 - 4-year adjusted cohort rate
 - at state's discretion, extended-year adjusted cohort rate, except that the state must set a more rigorous long-term goal for this rate as compared to the goal for the 4-year adjusted cohort rate.
 - Term set for these goals must be the same for all students and for each subgroup.
 - For subgroups behind on academic achievement and graduation rate, state must take into account improvement necessary on these measures to make significant progress in closing statewide proficiency and graduation gaps.
 - For English learners, goals are established for increases in percentage of students making progress toward English proficiency as defined by the state and within state-determined timeline.

- Students must be measured annually on the following indicators:
 - For all public schools in the state, based on the long-term goals, academic achievement
 - measured by proficiency on annual assessments;
 - at state's discretion, for public high schools, students growth, as measured on annual assessments.

[NOTE: States must measure achievement on annual assessments of not less than 95 percent of all students and 95 percent of all students in each subgroup and must explain how this will be factored into the academic achievement indicator; however, the "95%" is not an indicator on its own.]
 - For elementary and middle schools,
 - a measure of student growth, if determined appropriate by the state; or,
 - another valid and reliable academic indicator allowing for "meaningful differentiation in school performance."
 - For high schools, based on long-term goals,
 - Four-year adjusted cohort graduation rate; and,
 - At state's discretion, extended-year adjusted cohort graduation rate. [NOTE: This is defined in Title VIII, Sec. 8101 "Definitions."]
 - Progress in achieving English language proficiency in each of grades 3-8 and the same high school grade in which state assesses for math/English language arts.
 - Not less than one indicator of school quality or student success that allows for meaningful differentiation in school performance, is valid, reliable, and comparable and statewide (same indicator or indicators used for each grade span).
 - Examples include: Student engagement, educator engagement, access to and completion of advanced coursework, postsecondary readiness, and school climate and safety.
- States must establish a system to annually meaningfully differentiate all public schools.
 - Must be based on indicators for all students and for each subgroup.
 - Substantial weight is given to the first 4 indicators above and, in the aggregate, much greater weight is given to the first 4 than to the state-determined indicator(s) of school quality and student success.
 - System must differentiate any school where a subgroup is underperforming.
 - Based on this system, state establishes a methodology to identify
 - Beginning with school year 2017-18 and at least once every three year after, one statewide category of schools for comprehensive support and improvement, to include
 - Not less than the lowest 5 percent of all Title I schools;
 - High schools not graduating one third or more of students; and,
 - Schools where a subgroup is consistently underperforming in the same manner as a school under the lowest 5% category for a state-determined number of years.

IV. Fiscal Requirements

- Supplement, not supplant (Sec. 1118):
 - The general statement remains that SEAs and LEAs must use federal funds only to supplement funds that, in the absence of federal funds, would be made available from State and local sources, and not to supplant these funds.
 - The law adds:
 - To demonstrate compliance with the general statement, LEAs must demonstrate their methodology to allocate State and local funds to schools

- receiving Title I funds ensures schools receive all of the State and local funds they would otherwise receive if not receiving Title I funds.
- LEAs are not required to identify that "an individual cost or service" supported these funds is supplemental, or provide services using a particular instructional method or in a particular setting to show compliance with the general "supplement, not supplant" requirement.
 - The Secretary of Education cannot prescribe the methodology an LEA uses.
 - LEAs must meet the "compliance" requirement not later than 2 years after ESSA was enacted, and may show compliance with the general provision before the end of the 2-year period using the pre-ESSA method.
- Maintenance of Effort (Sec. 1125A)
 - The general language remains that a state maintains its effort if the state's fiscal effort per student or aggregate state expenditures for the preceding fiscal year was not less than 90 percent of effort or aggregate expenditures for the second preceding fiscal year.
 - The Secretary will reduce funding for any fiscal year in the exact proportion by which the state fails to meet MOE by falling below 90 percent of both fiscal effort per student and aggregate expenditures (using the measure most favorable to the state), *if the state has also failed to meet this requirement (using the most favorable measure to the state) for 1 or more of the 5 immediately preceding fiscal years* (new language italicized).
 - The Secretary may waive the MOE requirements based on
 - Exceptional or uncontrollable circumstances, such as natural disaster or *change in the organizational structure of the state* (new language); or,
 - A precipitous decline in the state's financial resources.

Title II

This Title of the Act includes teacher, principal, and school leader training and professional development. New to this Title is the "Literacy Education for All, Results for the Nation" (LEARN) program, a comprehensive birth through Grade 12 literacy program focused on improving student achievement in reading and writing, targeted particularly to LEAs serving a high percentage of high-need schools with higher numbers or percentages of children reading or writing below grade level.. All sections of the program address students with disabilities.

Title IV

Most of the small competitive grant programs, such as the Carol White Physical Education Program, the Elementary and Secondary School Counseling Program, and STEM education programs were eliminated. Some of the activities under those programs are now contained in the "Student Support and Academic Enrichment Grants." These formula grants have three components: (a) access to a well-rounded education; (b) improving school conditions for learning (safe and healthy environment); and (c) using technology to improve academic achievement and digital literacy.

- Formula grants are allocated to states in the same proportion as the Title I formula grants, including a small state minimum, awarded with submission of a state plan. Ninety-five percent of state grants must be allocated to LEAs.
- LEAs receiving at least \$30,000 must conduct a comprehensive needs assessment once every 3 years to determine areas in need of improvement in each of the three components, with grant funds targeted to schools with the highest need.

- LEAs must use not less than 20 percent of grant funds to support activities for well-rounded education, not less than 20 percent for safe and healthy environment, and a "portion of funds" for technology.
- Activities to support well-rounded education may include:
 - college and career guidance and counseling programs
 - music and arts activities that promote student engagement, problem solving, and conflict resolution
 - STEM programming
 - Accelerated learning programs
 - Developing and strengthening history, civics, economics, geography, or government education
 - Foreign language instruction
 - Environmental education.
- Activities to support safe and healthy students may include:
 - Drug and violence prevention
 - School-based mental health services
 - Programs supporting a healthy, active lifestyle (e.g., nutrition, physical education, preventing bullying/harassment, mentoring and school counseling, dropout and reentry programs)
 - Training for school personnel on suicide prevention, trauma-informed classroom management, crisis management and conflict resolution, bullying and harassment prevention, and substance abuse and violence prevention
 - Child sexual abuse awareness and prevention
 - Design of programs to prevent exclusionary discipline policies
 - Implementing schoolwide PBIS.
- Activities to support effective use of technology may include:
 - Professional development
 - Building technological capacity and infrastructure
 - Using effective or innovative strategies for delivery of specialized or advanced courses technology, including digital learning and assistive technologies
 - Blended learning projects
 - Providing students in rural, remote and underserved areas with resources to access digital learning experiences.

This title also includes the 21st Century Community Learning Centers program, and the charter schools and magnet schools programs. A new family engagement program has also been added, providing grants to statewide organizations to establish family engagement centers that will carry out parent education and family engagement in education programs and training and technical assistance to states, LEAs, schools, and organizations supporting family-school partnerships.

Title IX, Sec. 9214(d) – Use of the Term "Highly Qualified" in Other Laws, IDEA: With the elimination of HQT from ESSA, they have also amended the IDEA to reflect the change.

- The definition of HQT in Sec. 602 is eliminated.
- In Sec. 612(a)(14) – Personnel Qualifications – references to HQT are replaced with language indicating the individual has obtained full state certification as a special education teacher, including through alternate routes to certification, or have passed the state special education teacher licensing exam, hold a license to teach special education, have at least a bachelor's degree, and not have had certification or licensure waived on an emergency, temporary, or provisional basis. Teachers in charter schools must meet state public state charter school requirements.

References to Multi-Tier System of Support

The term is defined as "a comprehensive continuum of evidence-based, systemic practices to support a rapid response to students' needs, with regular observation to facilitate data-based instructional decisionmaking" (Title IX, Sec. 8002(33)).

The term appears three times in the law, with 2 additional references to a "schoolwide tiered model" focused on behavior (e.g., PBIS). Following are the references to both terms in the law:

- "Schoolwide tiered model"
 - Schoolwide Programs, Sec. 1114(7): Schoolwide program plans must include a description of how needs of at risk children will be met, which may include "implementation of a schoolwide tiered model to prevent and address problem behavior, and early intervening services, coordinated with similar activities and services" under the IDEA.
 - Targeted Assistance Schools, Sec. 1115(b)(2)(B)(ii): Targeted assistance programs must serve eligible children using methods and instructional strategies to strengthen the academic program, which may include "a schoolwide tiered model to prevent and address problem behavior, and early intervening services, coordinated with similar activities and services" under the IDEA.
- "Multi-tier System of Supports"
 - Subgrants to LEA, Title II, Sec. 2103(b)(3)(F): LEAs may use Title II funds for professional development to increase teachers' ability to effectively teach children with disabilities and English learners, which may include the use of multi-tier systems of supports and positive behavioral intervention and supports.
 - Subpart 2, Title II, Sec. 2224(e)(4): "Providing for a multi-tier system of supports for literacy services" is an allowable use of funds under the LEARN comprehensive literacy grants.
 - Title IX, Sec. 8002(42): In the definition of "professional development," among the possible activities are those designed give teachers of children with disabilities or developmental delays and other teachers and instructional staff knowledge and skills to instruct and provide academic supports to those children, including PBIS, MTSS, and use of accommodations.

Effective Dates – The Secretary is given authority to take necessary steps for an "orderly transition" from NCLB to ESSA.

- Competitive programs: Oct. 1, 2016
- Formula grant programs: July 1, 2016
- Accountability requirements: School year 2017-18
- Current waivers expire on Aug. 1, 2016.