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Accountability and the ESEA Reauthorization Deal: Your Cheat Sheet

By [Alyson Klein](#) on November 23, 2015 7:31 AM

UPDATED

The newest proposed version of the Elementary and Secondary Education Act—dubbed the Every Student Succeeds Act—is almost over the congressional finish line, with votes in both chambers of Congress imminent.

So how would accountability work under the ESSA, if approved? And how does it compare to No Child Left Behind Act, Classic Edition, and the Obama administration's waivers?

Your cheat sheet here. Top-line stuff on accountability first, then some early reaction. Scroll down further if you want the nitty-gritty details on accountability.

And scroll down even further if you want more details on other aspects of the deal (an update of past Politics K-12 cheat sheets, including some new information on which programs made it into the agreement and which are on the chopping block, thanks to this [helpful fact sheet from the Committee for Education Funding](#)).

The top-line stuff: The ESSA is in many ways a U-turn from the current, much-maligned version of the ESEA law, the No Child Left Behind Act.

- States would still have to test students in reading and math in grades 3 through 8 and once in high school, and break out the data for whole schools, plus different "subgroups" of students (English-learners, students in special education, racial minorities, those in poverty.)

But beyond that, states get wide discretion in setting goals, figuring out just what to hold schools and districts accountable for, and deciding how to intervene in low-performing schools. And while tests still have to be a part of state accountability systems, states must incorporate other factors that get at students' opportunity to learn, like school-climate and teacher engagement, or access to and success in advanced coursework.

And, in a big switch from the waivers, there would be no role for the feds whatsoever in teacher evaluation.

- States and districts will have to use locally-developed, evidence-based interventions though, in the bottom 5 percent of schools and in schools where less than two-thirds of students graduate. States must also flag for districts schools where subgroup students are chronically struggling. The School Improvement Grant program is gone, but there are resources in the bill states can use for turnarounds.

The deal goes further on accountability than either the House- or Senate-passed legislation. And, in a win for civil rights groups, **it appears there are no more so-called supersubgroups.** That's a statistical technique in the waivers that allowed states to combine different categories of students for accountability purposes.

There are definitely some "guardrails" as one of the bill's sponsors, Sen. Patty Murray, D-Wash., would say. (More on just what those are below.) But the education secretary's authority is also very limited, especially when it comes to interfering with state decisionmaking on testing, standards, school turnarounds, and more.

So there's some real ambiguity here. That will be something to watch going forward.

It's still unclear just how the accountability or "guardrails" provisions of the bill vs. limits on secretarial authority dynamic will play out in regulation and implementation. But it's possible lawyers and lobbyists may have walked away as big winners here. ([Even Democratic and Republican aides see certain aspects of the bill differently.](#))

Put another way, there are definitely provisions in this deal that state and district leaders and civil rights advocates can cite to show that states and schools will have to continue to ensure equity. But, it will be hard for the U.S. Department of Education to implement those provisions with a very heavy hand, without at least the threat of lawsuits.

So what happens from here will be largely up to states. ([More on the potential regulatory fights, and lawsuits, ahead in this story from Friday.](#))

"What can the secretary do and not do? I think that's where the lawsuits will be," said Chad Aldeman, an associate partner at Bellwether Education, who served in the U.S. Department of Education under President Barack Obama.

Early Reaction

Civil rights groups say they're waiting for real, live legislative language, not just a framework, before weighing in.

But, already, other accountability hawks are not happy campers.

"States are being given license to create systems that are significantly not based on student learning. That's a problem," said Sandy Kress, an original architect of the NCLB law. "This pretty much eliminates any kind of expectation for closing the achievement gap." ([Another take from Chad Aldeman at Bellwether Education Partner's blog Ahead of the Heard.](#))

But some state chiefs say there's no way that's happening. After all, it didn't under the NCLB waivers.

"I'm bothered when I hear people say that school chiefs won't hold schools accountable," said Brenda Cassellius, Minnesota's education chief. "That's not been evident with the waivers. ... We've supported our schools and we've held them accountable. I hope America can see that."

The nitty-gritty details on accountability, based on an analysis of a late-stage version of the framework:

Plans: States would still have to submit accountability plans to the education department. These new ESSA plans would start in the 2017-18 school year. And a state could get a hearing if the department turned down its plan.

Goals:

- No more expectation that states get all students to proficiency by the 2013-14 school year, as under [NCLB Classic](#). (That ship has sailed, anyway). And no more menu of goals, largely cooked up by the department, as under the [waivers](#).
- Instead, states can pick their own goals, both a big long-term goal, and smaller, interim goals. These goals must address: proficiency on tests, English-language proficiency, and graduation rates.
- Goals have to set an expectation that all groups that are furthest behind close gaps in achievement and graduation rates.

What kinds of schools will states have to focus on?

- States have to identify and intervene in the bottom 5 percent of performers, an idea borrowed from waivers. These schools have to be identified at least once every three years. (That's something many states already do under waivers. And some, like Massachusetts, do it every single year.)
- States have to identify and intervene in high schools where the graduation rate is 67 percent or less.
- States, with districts, have to identify schools where subgroup students are struggling.

What do these accountability systems have to consider? The list of "indicators" is a little different for elementary and middle schools vs. high schools.

- **Systems for Elementary and Middle Schools:**
- States need to incorporate a jumble of five indicators into their accountability systems.
- That includes three academic indicators: proficiency on state tests, English-language proficiency, plus some other academic factor that can be broken out by subgroup. (That could be growth on state tests, so that states would have a mix of both in their systems, as many already do under waivers.)
- States also have to somehow figure in participation rates on state tests (schools with less than 95 percent participation are supposed to have that factored in, somehow.)
- **And, in a big new twist, states must add at least one, fifth indicator of a very different kind into the mix.** Possibilities include: student engagement, educator engagement, access to and completion of advanced coursework, post-secondary readiness, school climate/safety, or whatever else the state thinks makes sense. Importantly, though, this indicator has to be disaggregated by subgroup. States are already experimenting with these kinds of indicators under the waivers, [especially a cadre of districts in California \(the CORE districts\)](#). Still, [this is new territory when it comes to accountability](#).
- **Systems for high schools:**
- Basically the same set of indicators, except that graduation rates have to be part of the mix.
- So to recap, that means for high schools: proficiency on tests, English-language proficiency, graduation rates, plus some other indicator that focuses a little more on whether students have the opportunity to learn, or are ready for post-secondary work. And also, test participation has to be incorporated in some way.

How much do each of these indicators have to count? It depends on who you ask. Everyone agrees that those academic indicators (tests, grad rates, English-language proficiency) have to weigh more, as a group, than that non-traditional indicator that gets at a students' opportunity to learn (school climate, etc.)

From there, Democratic and Republican aides have different takes. A Republican aide said the academic stuff just has to be at least 51 percent of the system, and the other factor, or factors, can be up to 49 percent. A Democratic aide said the regulations might turn out

differently, when all's said and done. (In this aide's view, the department could set a range for each individual indicator, ultimately giving the academic factors as a group significantly greater weight than the other factors.) More [here](#). It's also unclear whether the test participation indicator, which states can weigh however they want, will throw a monkey wrench into all of this. More [here](#).

How do interventions work?

- **For the bottom 5 percent of schools and for high schools with really high dropout rates:**
 - Districts work with teachers and school staff to come up with an evidence-based plan.
 - States monitor the turnaround effort.
 - If schools continue to founder for years (no more than four) the state is supposed to step in with its own plan. That means states could take over the school if they wanted, or fire the principal, or turn the school into a charter, just like they do under NCLB waivers now. (But, importantly, unlike under waivers, there aren't any musts—states get to decide what kind of action to take.)
 - Districts could also allow for public school choice out of seriously low-performing schools, but they have to give priority to the students who need it most.
- **For schools where subgroups students are struggling:**
 - These schools have to come up with an evidence-based plan to help the particular group of kids who are falling behind. For example, a school that's having trouble with students in special education could decide to try out a new curriculum with evidence to back it up and hire a very experienced coach to help train teachers on it.
 - Districts monitor these plans. If the school continues to fall short, the district steps in. The district decides just when that kind of action is necessary, though; there's no specified timeline in the deal.
 - Importantly, there's also a provision in the deal calling for a "comprehensive improvement plan." States and districts to take more-aggressive action in schools where subgroups are chronically underperforming, despite local interventions. Their performance has to look really bad though, as bad as the performance of students in the bottom 5 percent of schools over time.

What kind of resources are there for these interventions? The School Improvement Grant program, which is funded at around \$500 million currently, has been consolidated into the bigger Title I pot, which helps districts educate students in poverty. But states would be able to set aside up to 7 percent of all their Title I funds for school turnarounds, up from 4 percent in current law. (That would give states virtually the same amount of resources for school improvement as they get now, through SIG.) However, the bulk of those dollars would be sent out to districts for "innovation", which could include turnarounds. It would be up to states whether to send that money out by formula, to everyone, or competitively, as they do now with SIG dollars. (More in [this cheat sheet from AASA](#), the School Administrator's Association, which has been updated on this issue.) **Bottom line:** There are resources in the bill for school turnarounds. But some of the money could also be used for other purposes, if that's what districts and states want.

What about the tests? The testing schedule would be the same as under NCLB. But in a twist, a handful of states could apply to try out local tests, with the permission of the U.S. Department of Education. And importantly, these local tests aren't supposed to be used forever—the point is for districts to experiment with new forms of assessment (as [New Hampshire is doing with performance tasks](#)) that could eventually go statewide and be used by everyone. That way states don't get stuck with the same old assessment for years on end.

What's more, the framework allows for the use of local, nationally-recognized tests at the high school level, with state permission. So a district could, in theory, use the SAT or ACT as its high school test, instead of the traditional state exam.

Also, computer adaptive testing would be easier. More [here](#).

What about that supersubgroup thing mentioned higher up? Supersubgroups are a statistical technique used in the waivers that call for states to combine different groups of students (say, students in special education, English-language learners, and minorities) for accountability purposes. By my reading of the bill, it would seem that's a no-no. States now have to consider accountability for each subgroup separately. States liked the flexibility of supersubgroups. But former Rep. George Miller, D-Calif., and civil rights groups said they masked gaps. The deal appears to eliminate the use of supersubgroups.

What about the rest of the bill?

Scroll down for information on English-Language Learners, students in special education, school choice, teachers, and funding provisions.

English-Language Learners

Where does deal land when it comes to SIG when newly arrived English-language learners must be tested? ([Background on this issue here](#)). States would have two choices.

- **Option A)** Include English-language learners' test scores after they have been in the country a year, just like under current law.
- **Option B)** During the first year, test scores wouldn't count towards a school's rating, but ELs would need to take both of the

- **Option B)** During the first year, test scores would not count towards a school's rating, but ELLs would need to take both of the assessments, and publicly report the results. (That's a switch from current law. Right now, they only need to take math in the first year). In the second year, the state would have to incorporate ELLs' results for both reading and math, using some measure of growth. And in their third year in the country, the proficiency scores of newly arrived ELLs are treated just like any other students'. (Sound familiar? [It's very similar to the waiver Florida received.](#))

The compromise would shift accountability for English-language learners from Title III (the English-language acquisition section of the ESEA) to Title I (where everyone else's accountability is). The idea is to make accountability for those students a priority.

Students in Special Education

The legislation mirrors a [recent federal regulation](#) when it comes to assessments for students in special education, saying, essentially, that only 1 percent of students overall can be given alternative tests. (That's about 10 percent of students in special education.)

Opt-Outs

The bill largely sticks with the Senate language, which would allow states to create their own testing opt-out laws ([as Oregon has](#)). But it [would maintain the federal requirement for 95 percent participation](#) in tests. However, unlike under the NCLB law, in which schools with lower-than-95 percent participation rates were automatically seen as failures, local districts and states would get to decide what should happen in schools that miss targets. States would have to take low testing participation into consideration in their accountability systems. Just how to do that would be up to them.

For a deeper look at this particular topic, check out [this blog post on opt-outs in the ESEA reauthorization deal](#).

On Programs

There's more consolidation of federal education in the compromise [than there was in the Senate bill](#).

- The legislation creates a \$1.6 billion block grant that consolidates a bunch of programs, including some involving physical education, Advanced Placement, school counseling, and education technology. (Some of these programs haven't had federal funding in years.)
- Districts that get more than \$30,000 will have to spend at least 20 percent of their funding on at least one activity that helps students become well-rounded, and another 20 percent on at least one activity that helps kids be safe and healthy. And part of the money could be spent on technology. (But no more than 15 percent can go to technology infrastructure.)
- Some programs would live on as separate line items, including the 21st Century Community schools program, which pays for after-school programs and has a lot of support on both sides of the aisle in Congress.
- Other survivors: Promise Neighborhoods, and a full-service community schools program. And there's a standalone program for parent engagement. There are also reservations for Arts Education, gifted education, and Ready to Learn television.

Sen. Patty Murray, D-Wash. got the early-childhood investment she wanted—the bill enshrines an existing program "Preschool Development Grants" in law, and focuses it on program coordination, quality, and broadening access to early childhood education. But the program would be housed at the Department of Health and Human Services, not the Education Department as some Democrats had initially hoped. The Education Department would jointly administer the program, however. (The reason: HHS already has some early-education programs, like Head Start. Expanding the education department's portfolio was a big no-no for conservatives.)

That new research and innovation program that some folks were describing as sort of a next-generation "Investing in Innovation" program made it into the bill. (Sens. Orrin Hatch, R-Utah, and Michael Bennet, D-Colo., [are big fans](#), as is the administration.)

On School Choice

No Title I portability: That means that federal funds won't be able to follow the child to the school of their choice.

But the bill does include a pilot project allowing districts to try out a weighted student funding formula, which would also essentially function as a backpack of funds for kids. The program would allow 50 districts to combine state, local, and federal funds into a single pot that could follow a child to the school of their choice. It is said to be a more workable alternative to Title I portability, which looked more dramatic on paper, [but which few states would likely have taken advantage of because of its complexity](#), experts said. Importantly with this pilot, participation would be entirely up to district officials. And the language would give them a chance to better target funds to individual school needs.

Teachers

The headline here is that states would no longer have to do teacher evaluation through student outcomes, as they did under waivers. And NCLB's "highly qualified teacher" requirement would be officially a thing of the past.

There's also language allowing for continued spending on the Teacher Incentive Fund—now called the Teacher and School Leader Innovation Program—which doles out grants to districts that want to try out performance pay and other teacher quality improvement measures. And there are resources for helping train teachers on literacy and STEM. [Much more from Teacher Beat.](#)

Funding and Other Issues

No changes to the Title I funding formula [along the lines of what the Senate](#) passed that would steer a greater share of the funds to districts with high concentrations of students in poverty. But there were some changes to the Title II formula (which funds teacher quality) that would be a boon to rural states.

The agreement would keep in place maintenance of effort, [a wonky issue we wrote about recently](#), with some new flexibility added for states. (Quick tutorial: Maintenance of effort basically requires states to keep up their own spending at a particular level in order to tap federal funds.)

There was some chatter that the bill would also incorporate changes to the Family Educational Rights and Privacy Act. That's not part of the agreement.

The framework would only "authorize" ESEA for four more years, as opposed to the typical five. That gives lawmakers a chance to revisit the policy under the next president, should they choose to do so. And its overall authorization levels are largely consistent with the most recent budget deal.

Want more? Check out, below, extensive language with details on the Every Student Succeeds Act, the name of the ESEA agreement approved by conferees Thursday to replace No Child Left Behind Act:

One important caveat: We don't know if this is the language of the final deal that the House is slated to vote on in early December. But the language is clearly at a late draft stage if it isn't yet completed.

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