

THE EVERY STUDENT SUCCEEDS ACT

The Old, the New, and the Decision Points for
State Education Agencies

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HOW DID WE GET HERE?

No Child Left Behind: Then and Now

- NCLB Passed in 2001
- Then:
 - Bipartisan support for passage
 - “Ninety-nine percent pure” (Margaret Spellings)
- Now:
 - “[T]he worst piece of education legislation ever passed by Congress” (Diane Ravitch)
 - “[A] slow-motion train wreck” (Arne Duncan)



Why the Eroding Support?



- Not enough money
- Too many regulations
- Burdensome reporting/administrative requirements
- Increased focus on test preparation: "teaching to the test"
- Unreasonable goals: 100% proficiency by 2014
- Top-down, one-size-fits-all model

Starting off

- Hearings and drafts in early 2015
- Paused in spring and early summer
- House passed legislation (H.R. 5, the Student Success Act) on July 8th with vote of 218 – 213
- Senate passed legislation (S. 1177, the Every Child Achieves Act) passed Senate July 16th with vote of 81-17
- Pause in debate over August recess...and September...and October

Conference

- Committee staff worked out differences between individual provisions over September/October, agreement announced in mid-November
- Moved very quickly: House appointed conferees on 11/17, Senate appointed conferees morning of 11/18, conference started afternoon of 11/18
- Message from leadership: this is a compromise
 - Senate Committee Chairman Lamar Alexander: "I'll take 80% of what I want and save the other 20% for another day."
- Conferees passed "framework" with a vote of 39-1

Final Passage

- Some last-minute jitters
 - Democrats were concerned about accountability
 - Republicans said it did not do enough to roll back federal role in education
- But passed with wide margin in both House (359-64) and Senate (85-12)



Every Student Succeeds Act (ESSA)

Signed by President Obama on December 10th, 2015



ESSA OVERVIEW

Basic Structure

- Looks very similar to No Child Left Behind
 - States choose standards and assessments, work towards goals
 - Student achievement is reported out by subgroup
 - States hold schools and districts accountable for subgroup performance
 - Funding flows from ED to States to districts to schools
 - Maintains major formula grant funding streams (and many competitive programs too)

Key Differences:

- **(NEW)** States now in the driver's seat
 - Much more authority to make decisions, choose standards and assessments, goals, and means of accountability
 - States also responsible for enforcing many requirements
 - (though subject to ED regulation)
- **(NEW)** The “big acronyms” have been eliminated
 - No more AYP, HQT, or SES
- **(NEW)** Limitations on Secretarial authority
 - Especially around State plans and waivers (very specific and repeated throughout the law)
- **(NEW)** Consolidates/eliminates a number of smaller grant programs

Timeline for Implementation

- ESEA waivers terminate August 1, 2016
- New law effective for competitive grants (at federal level) on October 1, 2016
- New law effective for non-competitive formula grants (at federal level) on July 1, 2016 per ESSA

BUT:

Omnibus appropriations bill passed December 18th says: "SEC. 312. Notwithstanding section 5(b) of the Every Student Succeeds Act, funds provided in this Act for non-competitive formula grant programs authorized by the ESEA for use during academic year 2016–2017 shall be administered in accordance with the ESEA as in effect on the day before the date of enactment of the Every Student Succeeds Act."

- So....NCLB in effect for another year (2016-17)!

Timeline for Implementation (cont.)

- Changes to Impact Aid effective in FY 2017
- All other changes effective upon enactment (December 10th, 2015)
- Program transition:
 - Programs not substantively similar to something else in this bill will continue to receive funds until September 30, 2016
 - Programs no longer authorized but substantively similar to programs in the bill may finish out multi-year grants in accordance with grant terms
 - Programs still authorized as in previous law may use funds awarded prior to enactment under those terms, then transition to new requirements

Timeline for Implementation (cont.)

January 28, 2016 Dear Colleague Letter:

- The Secretary takes steps to assure orderly transition
- 2016 formula allocations and programs remain NCLB
- Exceptions: Flex waiver states:
 - No need to comply where focus and gap interventions adversely affected:
 - 95% SIG to SI schools
 - SW 40% requirement
 - Restrictions in transferability
 - Rural schools restrictions
 - Rank and serve

Timeline for Implementation (cont.)

January 28, 2016 Dear Colleague Letter (cont.):

- Exceptions: Non waiver states
 - SES and choice voluntary – suggest one year transition plan
- Freeze EL accountability
- HQT and related requirements where not 100% HQT is suspended
- Distribution equity remains

Timeline for Implementation (cont.)

- State accountability systems effective until August 1, 2016 (but continue to support priority/focus schools and those in improvement)
- New State accountability systems (and related interventions) take effect in school year 2017-18 per law
 - Proposed regulations:
 - State plans to be reviewed in two windows (March and July 2017)
 - Comprehensive interventions to start in 2017-18 based on 2016-17 data (except for persistently underperforming schools)

Definition Changes (Title VIII)

- **(NEW)** Eliminates definitions related to HQTs
- **(NEW)** “core academic subjects” → “well-rounded education”
 - English, reading or language arts, writing
 - **science, technology, engineering, mathematics,**
 - **computer science,**
 - foreign languages,
 - civics and government,
 - economics,
 - arts, music
 - history, geography,
 - **career and technical education,**
 - health, physical education, and
 - others as designated by State/LEA

Teacher and Paraprofessional Qualifications

Sec. 1111(g)(2)(j)

(NEW) State Assurances

- The SEA will ensure that all teachers and paraprofessionals working in a program supported with funds under this part meet applicable State certification and licensure requirements, including any requirements for certification obtained through alternative routes to certification;
- The State has professional standards for paraprofessionals working in a program supported with funds under this part, including qualifications that were in place on the day before the date of enactment of the Every Student Succeeds Act; and
 - Does this mean NCLB standards apply to paraprofessionals? Maybe.

Program Eliminations

- Sec. 1003(g) School Improvement Grants
- Reading First, Early Reading first
- Even Start
- Improving Literacy through School Libraries
- Close Up Fellowships
- Advanced Placement
- School Dropout Prevention
- Math and Science Partnerships
- Ed-Tech
- Safe and Drug-Free Schools

Program Eliminations (cont.)

- Reading is Fundamental
- Ready to Teach
- Elementary and Secondary School Counseling
- Carol M. White Physical Education
- Smaller Learning Communities
- Star Schools
- Combating Domestic Violence
- Exchanges with Historic Whaling and Trading Partners

NOTES: (1) this is a **partial** list

(2) many programs eliminated as separate funding streams are allowable uses of funds under other grants (e.g. DSS, Title IV)

TITLE I, PART A

Funding

- Title I funding formula remains the same
- Keeps 1% cap on State administrative funds
- **(NEW)** Pilot Program re: Title I funding formula
 - 3-year demonstration agreements with up to 50 LEAs
 - LEAs apply directly to ED for a pilot program
 - Pilot districts may consolidate certain federal funds (Titles I, II, III, Part A of IV, and Part C of V), State, and local funds to create weighted per-pupil funding systems
 - LEA must demonstrate annually that no high-poverty school received less funding on a per-pupil basis for low-income students, ELs
 - May renew for an additional 3 years at discretion of the Secretary
- If successful, can expand to any LEA in 2019-20

Funding (cont.)

- **(NEW)** State-level Set-Asides
 - **Mandatory** 7% set-aside for School Improvement interventions and technical assistance (1003)
 - 95% of that amount subgranted to LEAs for comprehensive support and improvement (formula or competitive to LEAs)
 - May provide directly with approval of the LEA
 - Subgrants for no more than 4 years
 - Provide “operational flexibility – can mean lifting SW 40 % restriction
 - Non supplant – receive all funds otherwise
 - No more specification of the 4 models
 - **Optional** 3% set-aside for Direct Student Services
 - 1% of that 3% for State Administration (1003A(a)(2))
 - Remainder subgranted to LEAs, with priority to LEAs with high percentage of schools identified for comprehensive or targeted support
 - To provide funds to schools identified under ESSA

Funding (cont.)

(NEW) Direct Student Services: LEA Use of Funds (1003A)(c)(3)

- 1% for outreach and communications to parents
- 2% for administration
- Allowable expenditures may include:
 - Academic/CTE coursework aligned to academic and industry standards
 - Credit recovery;
 - Post-secondary instruction and examination costs, including Advance Placement and International Baccalaureate test fees;
 - Transportation of LEAs implementing school choice if not reserved for comprehensive support; and
 - High Quality Academic Tutoring
 - Must compile list of providers
 - Ensure options, accountability

Standards and Assessments

- States must:
 - Adopt challenging academic standards
 - Secretary may not require standards to be submitted for approval
 - Implement aligned assessments
 - ED has indicated it will continue with peer review of assessments
 - Assessments must occur in:
 - Grades 3-8 and once in high school for math and English
 - At grade-span intervals for science
 - Disaggregate data by NCLB subgroups for purposes of accountability
 - May allow locally-selected assessments for high schools

Standards and Assessments

- (assessments, cont.)
 - 1% limitation on alternate assessments tied to alternate standards
 - Only at the State level, LEA can be “encouraged” but not required to meet
 - LEA exceeding must “justify” to SEA, but how to enforce? Conflict with IDEA?
 - Requires 95% participation in assessments overall and by subgroup
 - **(NEW)** States in charge of enforcing requirement among LEAs
 - Proposed regulations suggest lowering school’s summative rating, identifying for targeted improvement, or other action.

Accountability (NEW)

- States must develop an accountability system that rates schools based on metrics including:
 - Academic achievement
 - For K-8, growth or other indicator
 - For high schools, graduation rates
 - Progress in achieving English language proficiency
 - At least one “valid, reliable, comparable, and Statewide” indicator of school quality
 - Other factors as determined by the State
- **Most weight** must be given to academic indicators
- Proposed Regulations:
 - Single, summative rating
 - School quality indicators may not get a school out of intervention

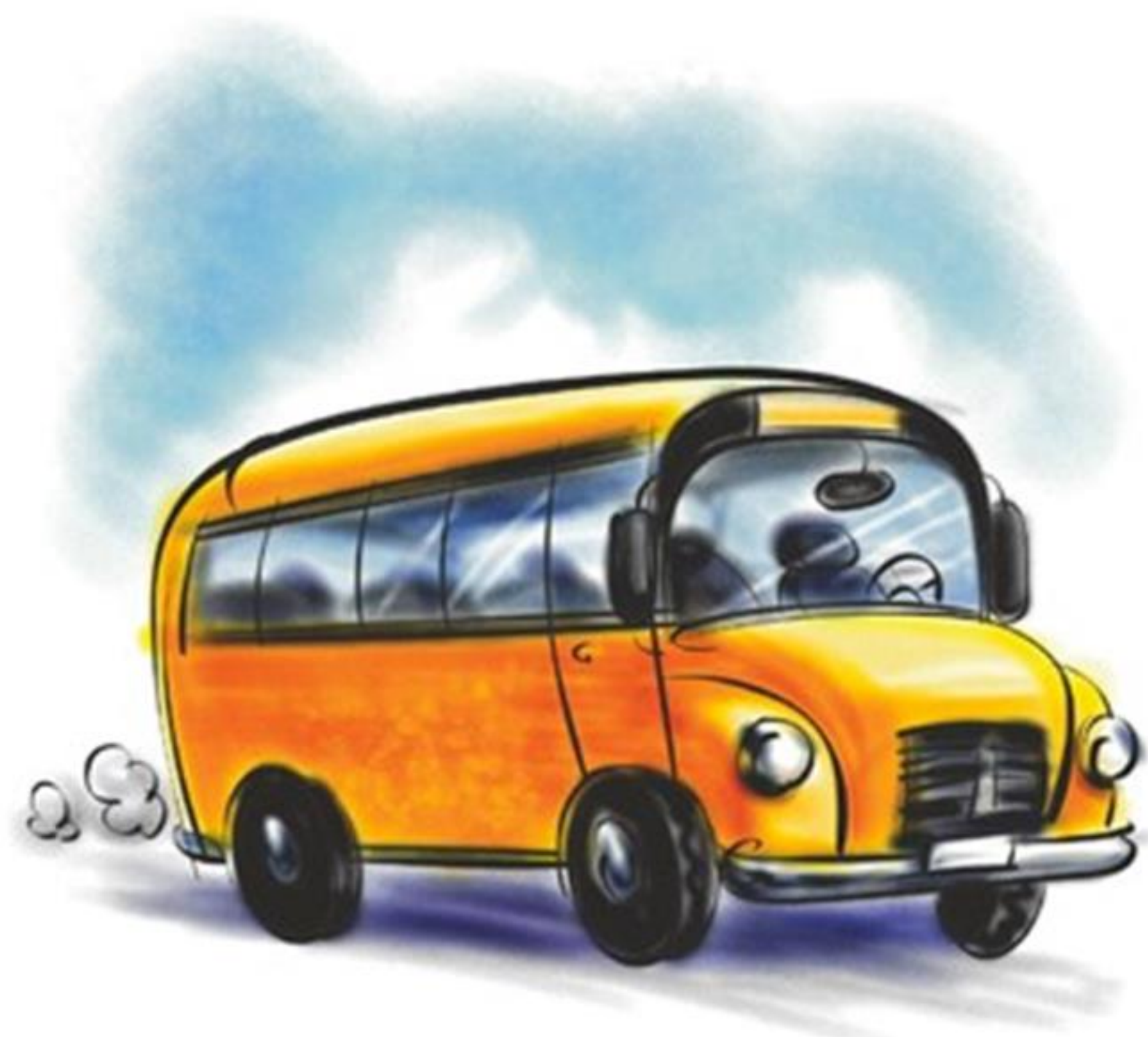
Accountability (NEW)

- Two levels of intervention: targeted and comprehensive
- Targeted (LEA-directed) interventions:
 - State must notify LEAs of schools with subgroups which, on their own, would be identified as lowest-performing 5%
 - School must develop improvement plan, LEA must approve improvement plan and monitor implementation
 - If subgroups fail to improve within State-determined number of years, State steps in

Accountability (NEW)

- Comprehensive (State-directed) Interventions:
 - State must identify for comprehensive intervention:
 - Schools in the bottom 5% according to the State's performance metric
 - High schools with graduation rates of less than 2/3
 - Schools in which any subgroup, on its own, would be in the lowest-performing 5% and has not improved in a State-determined number of years
 - LEA must develop and implement, with State supervision, an evidence-based improvement plan
 - State must step in if there is no improvement in a State-determined number of years (up to 4)

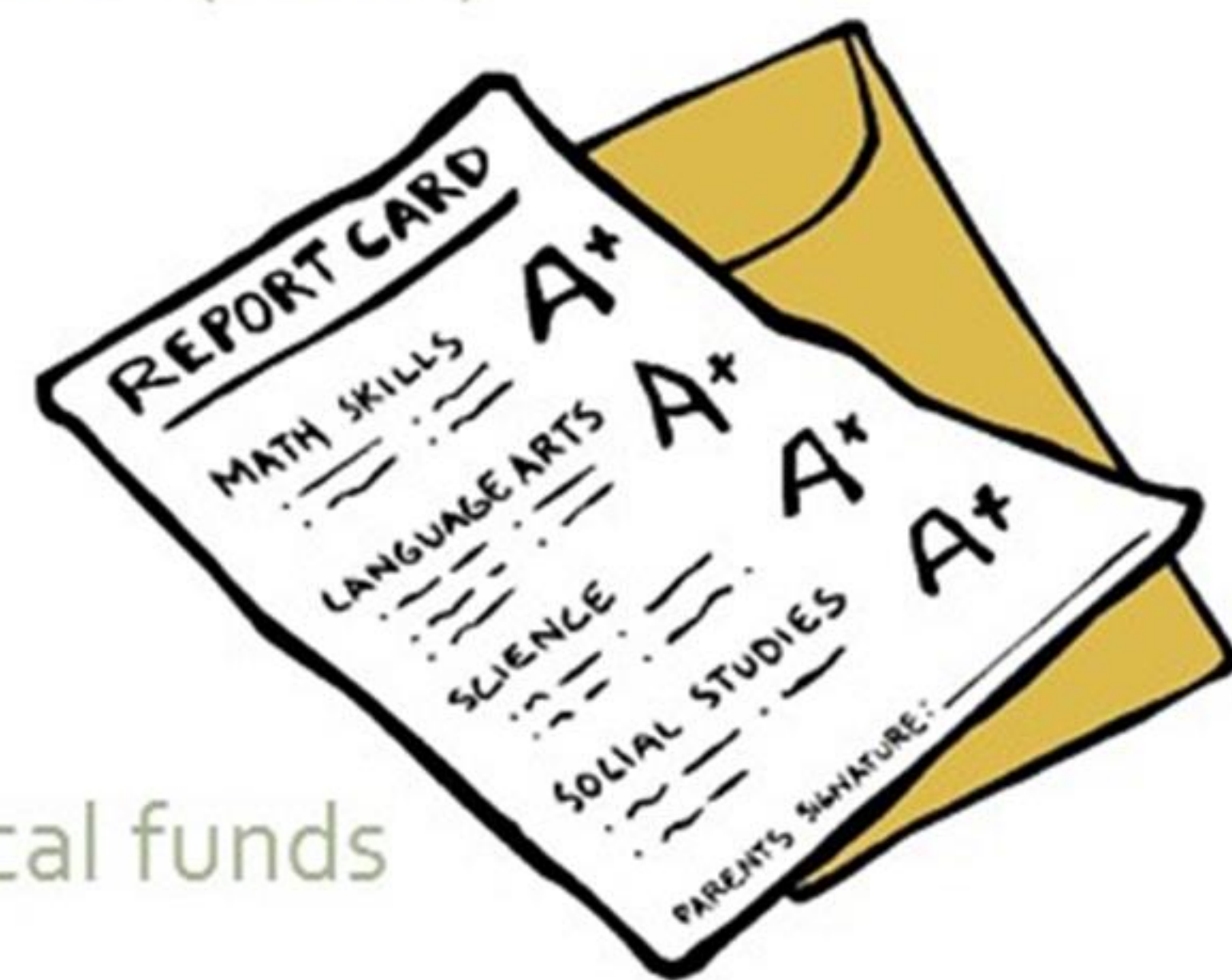
Public School Choice (Sec. 1111(d)(1)(D))



- **(NEW)** A LEA may provide all students enrolled in an identified school the option to transfer to another public school.
 - Priority given to lowest-achieving children from low income families.
 - Remain in that school until he/she has completed the highest grade
 - Provide options and “meaningful choice”
- 5% of Title I, A Allocation for Public School Choice Transportation
- **(NEW)** 1003(A) funds may be used for school choice transportation only if the LEA does not reserve 5% for 1111(d) transportation.

Report Cards

- Must be prepared and disseminated every year at State and local levels
- Must include:
 - Academic achievement by subgroup
 - Including homeless, foster, military-connected children (NEW!)
 - Percentage of students assessed/not assessed
 - Descriptions of States' accountability system
 - Graduation rates
 - Information on indicators of school quality
 - Professional qualifications of teachers
 - Per-pupil expenditures for federal, State, and local funds
 - NAEP results



Schoolwide/Targeted Assistance

- Preserves Rank and Serve
 - Maintains requirement to serve elementary schools above 75% poverty
 - LEA may lower threshold to 50% for high schools
 - LEA may designate any school with at least 35% poverty as eligible
- Preserves Schoolwide Programs
 - State may waive 40% poverty threshold
 - Funds may be used for preschool programs

Fiscal Requirements

- Maintenance of Effort preserved throughout
- Supplement, not supplant
 - LEA must demonstrate that methodology used to allocate funds is the same as it would be in the absence of Title I funds
 - Secretary cannot require an LEA to:
 - Identify an individual cost or service as supplemental
 - Provide services through a particular method of instruction
- Subject of disagreement during negotiated rulemaking

Private Schools

- SEA must designate ombudsman to monitor and enforce equitable services requirements
- LEAs must maintain documentation regarding meaningful consultation with private schools
- SEA may provide services directly to schools if they file a complaint saying consultation was not timely/meaningful, services not adequate.
- **(NEW)** Proportionate Share must be calculated BEFORE any allowable expenditures or transfer by the LEA!
- **(NEW)** Funds allocated to a local educational agency for educational services and other benefits to eligible private school children shall be obligated in the fiscal year for which the funds are received by the agency.



TITLE II

Formula

- Makes adjustments to formula to focus more heavily on poverty
 - On both State and LEA-level allocations
 - Transitions to 20% population, 80% poverty by 2020
- Phases out hold-harmless by 2023
 - No phase-out to hold harmless on LEA level



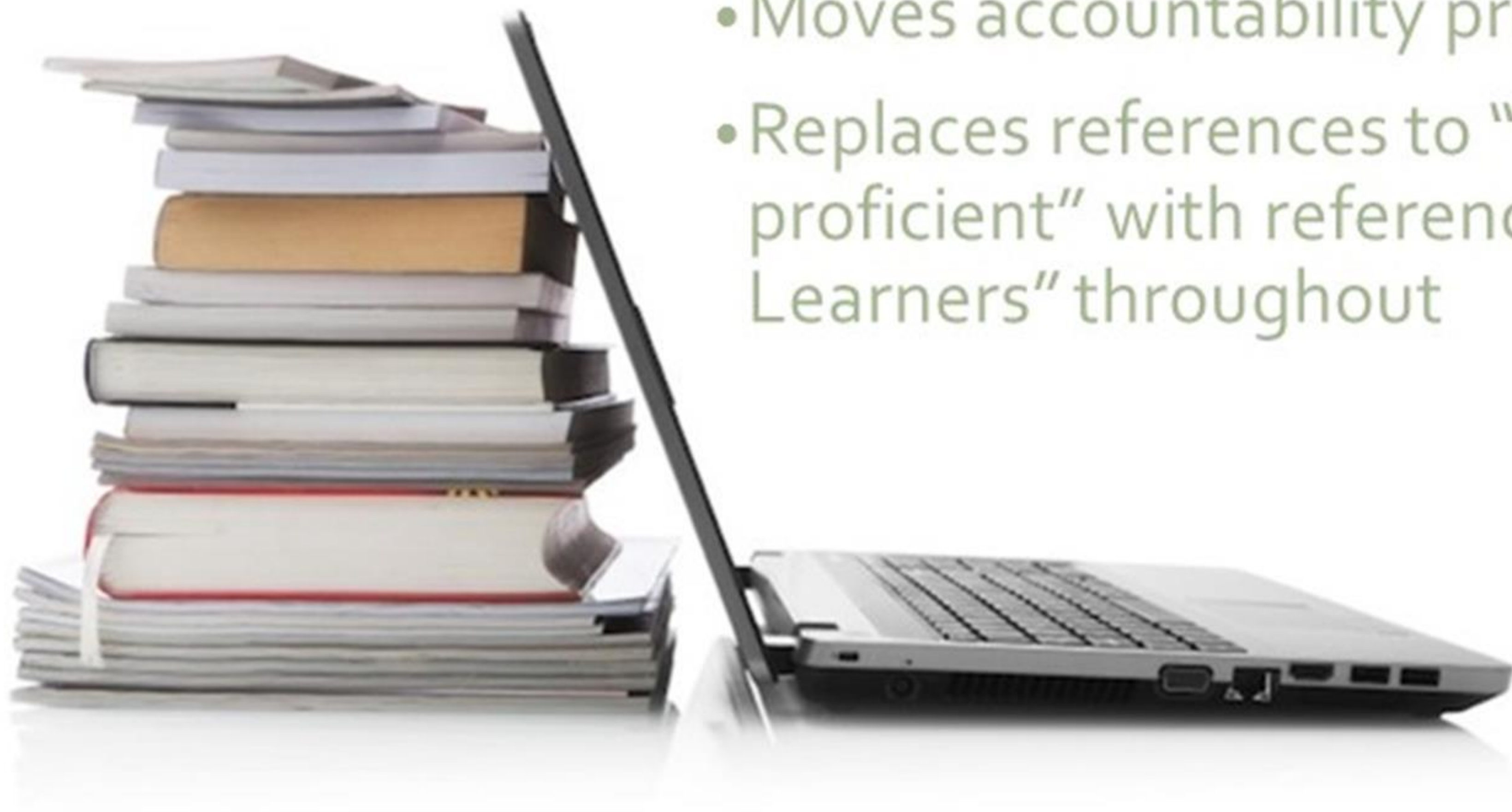
Title II Grant Programs

- Eliminates Mathematics and Science Partnership Grants
- Teacher Incentive Fund → Teacher and School Leader Incentive Program
- American History and Civics Education Program
 - Intended to improve quality of instruction
- Supporting Effective Educator Development Grants
 - To non-profits, IHEs, or consortia for preparation and professional development
- STEM Master Teacher Corps
- Literacy for All, Results for the Nation
 - Competitive grants to States to develop literacy instruction
 - Divided by age group – separate grants for grades K-5, 6-12

TITLE III

Major Changes

- Moves accountability provisions to Title I
- Replaces references to “limited English proficient” with references to “English Learners” throughout



Reporting

- Must report on number and percentage of ELs
 - Meeting State-determined long-term goals
 - Disaggregated by disability
 - Attaining English proficiency
 - Meeting challenging State academic standards for 4 years after exiting EL status
 - Disaggregated by disability

TITLE IV

Student Support and Academic Enrichment Grants

- New block grant-type program
- Formula granted to States based on share of Title IA
 - State may reserve up to 1% for administration, 4% for State activities
- Subgranted to LEAs based on share of Title IA
 - LEA may spend up to 2% on administration
 - LEAs must spend:
 - At least 20% of funds on at least one “well-rounded educational opportunities” activity
 - At least 20% on at least on “safe and healthy students” activity
 - Some portion funds to support effective use of technology (no more than 15% on technology infrastructure)

Student Support and Academic Enrichment Grants

- “Well-rounded educational opportunities” activities include:
 - Career and college counseling/guidance
 - Arts and music programs that promote problem solving and conflict resolution
 - STEM programming and activities
 - Accelerated learning
 - History, civics, economics, geography, foreign language, and environmental education
 - Community involvement

Student Support and Academic Enrichment Grants

- “Safe and Healthy Students” activities include:
 - Drug and violence prevention
 - School-based mental health services
 - Health and safety practices in school/athletics
 - Physical/nutrition education
 - Bullying and harassment prevention
 - relationship-building schools
 - Dropout prevention and re-entry
 - Training for school personnel in drug, violence, trafficking, and trauma

Student Support and Academic Enrichment Grants

- “Effective use of technology” may include:
 - Professional learning tools, technology, devices, and content for adaptive learning programs
 - Building technological capacity
 - Developing strategies for use of digital learning technologies
 - Blended learning projects
 - Professional development
 - Remote access for students in rural/remote/underserved areas

NOTABLE CHANGES IN REMAINING TITLES (V-IX)

Title V

- Now allows SEAs or LEAs to transfer all of their funds under Title IIA, Title IVA, or Sec. 4204(c)(3) between those provisions, and into (but not out of) Title I Parts A, C or D, Title IIIA, or Title VB
- Retains rural education initiative but updates references.
 - Increases minimum grant amount to \$25,000 and maximum to \$80,000.
- Choice of participation
 - LEAs eligible for both the Small, Rural School Achievement Program and Rural and Low-Income School Program may choose one of the two under which to receive funds

Title VI: Indian Education

- Requires ED, HHS, and Interior to report on student suicides
- Statement of policy: Indian children should not attend school in dilapidated or deteriorating buildings
- New grant program for Native-language immersion education
 - Available to tribes, tribal agencies, LEAs, non-profit and for-profit organizations, tribal IHEs
 - Funds can be used to:
 - Support Native American or Alaska Native language education
 - Provide professional development for teachers, staff, and administrators
 - Develop or refine curriculum
 - Create or refine assessments written in the language of instruction
 - Carry out other activities that promote language maintenance and revitalization

Title VII (Impact Aid)

- Now allows LEAs to use facsimiles of records or other appropriate records to demonstrate value of federal property if originals unintentionally destroyed
- New funding rules for property within more than one LEA, LEAs containing forest service land, and consolidated LEAs
- New hold harmless for LEAs facing 20% or greater reduction in funds due to unexpected drop in population
- Eliminates Maintenance of Effort requirement for Impact Aid (still applies to other programs)

Waivers (Title VIII)

- LEAs must request State approval for waiver (State submits to ED)
- ED **must** grant waiver requests within 120 days so long as they meet the requirements of the law
 - Keeps same requirements regarding goals, student performance; keeps same restrictions on non-waivable provisions
- Secretary may not disapprove a waiver request for reasons outside conditions of law
- Secretary may not place any conditions on approval of waiver request (including adoption of standards, assessments, accountability, evaluations, etc..)

Maintenance of Effort (Title VIII)

- LEA not subject to sanctions for failing to maintain 90% effort for one year **provided that** it has not failed to meet MOE for one or more of five immediately preceding fiscal years
 - MOE can be based either combined fiscal per student or aggregate State and agency expenditures
- Adds new exception: Secretary may waive MOE requirements in case of change in organizational structure of LEA.



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Secretarial Prohibitions

- Strictly prohibits Secretary from doing anything to:
 - Require/incentivize certain standards or assessments, instructional content, programs of instruction, curricula, etc..
 - Deny approval of State plans without good reason
 - Deny approval of waivers without good reason
 - Set new criteria through regulation or requiring adoption of certain policies in exchange for flexibility or approval of State plans
 - Specify additional pieces of accountability system
 - Endorse a specific curriculum or develop a federally sponsored assessment

WHAT'S NEXT?

Regulations

- ED holding public meetings on 1/11 (DC) and 1/19 (Los Angeles)
 - Soliciting input on where regulations are needed
- Negotiated rulemaking required on several issues
 - Consensus reached on various assessment issues
 - No consensus on supplement-not-supplant
 - ESSA requires ED to give Congress advanced review and comment period for regulations it drafts instead
- Proposed regulations issued in May 2016 for “accountability” issues
- ED stated there would be no other regulations in 2016! (April 2016)

Negotiated Rulemaking Issues

- Supplement, not Supplant
 - Are these regulations too prescriptive?
 - Are States/LEAs able to come up with per-pupil level expenditures?
 - What is a “basic educational program?”
 - Would meeting per-pupil expenditure test require States/districts to violate union contracts?
- No consensus
- Advocates, King: concerns about equity
- Congress (especially Senator Alexander), States: concerns about overreach

Alexander's Threats

- Will “use every power of Congress to make sure the law is implemented the way we wrote it, including our ability to use the appropriations process and to overturn such regulations once they are final”
- Appropriations powers
 - Can condition acceptance of federal funds by ED on non-enforcement of rule
- Legal Action
 - Congress has sued/joined suits over Congressional action (DACA, ACA, etc.)
 - Congressional record on disagreement
- Congressional Review Act (1996)
 - Can overrule regulations within 60 days of publication of final rule through passage of a joint resolution
 - Congressional resolution of disapproval must be signed by President

ESSA Resources



- ED webpage
<http://www.ed.gov/essa>
 - Will post Dear Colleague letters, links to Federal Register notices, FAQs
 - Can sign up for news on ESSA
- ED email address:
essa.questions@ed.gov

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