



ASCD

Federal Education Policy Background | 2016

ISSUES AND POLITICS

The education community is still celebrating last month's enactment of the **Every Student Succeeds Act (ESSA)**, which will finally replace the **No Child Left Behind Act (NCLB)** and provide much-needed updates to the nation's primary K-12 education law. ESSA represents a hugely supported bipartisan, bicameral compromise that gives much greater autonomy and discretion for accountability, educator evaluations, and school improvement decisions, among other issues, to state and local policymakers. Before the law can actually take effect, however, the U.S. Department of Education must provide guidance on implementing the new law by drafting regulations for it. The Department has already begun to seek input, advice, and recommendations from the education community and the public about provisions within the statute that need clarification. This part of the regulatory process is expected to take approximately eight months. And, even after that, much remains to be done as states and districts work to implement the new policies and rules.

Now that congressional activity replacing NCLB is complete, Congress can turn its attention to updating other important education laws, including the Higher Education Act (HEA), which includes funding and programs for teacher preparation, the Child Nutrition Act (CNA), the Family Educational Rights and Privacy Act (FERPA), and the Individuals with Disabilities Education Act (IDEA). Unfortunately, legislative activities could easily be overshadowed by the politics of the presidential race. And, at least in the House, the looming education committee leadership changes (Chairman John Kline is retiring) could also affect which issues get attention and the timing of congressional activity in 2016.

Despite some minor funding increases for a few federal education programs in the FY16 budget deal, most federal education spending levels will remain stagnant this year and for the foreseeable future. The budget agreement passed late last year increased the federal funding caps for now, but caps will remain in place into FY25. As school enrollment increases, and the number of students and their families living in poverty increases, schools need more funding to address equity and adequacy concerns, especially as the college and career readiness expectations of students have increased significantly. However, with federal spending caps in place, the amount of money available for education and other discretionary programs will continue to shrink.

EDUCATION COMMITTEE LEADERSHIP

HOUSE

Rep. John Kline (R-MN), who served as chairman of the House education committee for three terms, announced last year that he will not run for re-election in 2016. As chairman of the House-Senate conference committee that resulted in ESSA, Kline will depart with the legacy of a new education law at the very least. He will continue to chair the education committee through 2016, however, and could oversee actions on HEA, child nutrition, and student data privacy. Kline, an advocate for special education students and their needs, has repeatedly criticized the federal government's failure to meet its obligation for funding of IDEA and may try to focus committee attention on IDEA reauthorization, though many skeptics doubt any significant progress will be made this year. Several Republicans are already being discussed to succeed Kline, the most likely of whom is Rep. Virginia Foxx (R-NC), a very conservative member and a tough negotiator.

Ranking Democrat Rep. Bobby Scott (VA) has been a quiet champion for underserved students and played a vital role in ensuring that ESSA includes some additional requirements for states to address achievement gaps and subgroup performance. Scott's priorities will continue to be in juvenile justice and social welfare improvements to reduce the nation's incarceration rates.

SENATE

Sens. Lamar Alexander (R-TN) and Patty Murray (D-WA) won deserved praise from all quarters for their bipartisan efforts to pass ESSA. Even President Obama, during the ESSA signing ceremony, called the process a "Christmas miracle" and pointed to Alexander and Murray as examples of how Republicans and Democrats can and should work together to solve the nation's problems. The newly installed chairman of the Senate education committee, Alexander agreed early on with Murray that neither side would get every change it wanted, but it was more important to compromise and replace NCLB than require educators, schools, and districts to continue to operate under an outdated law and the waiver system put in place by the Obama administration. This leadership style and spirit of compromise is expected to continue into 2016 as the HELP Committee grapples with reauthorization of HEA and other issues.

EDUCATION ISSUES

THE EVERY STUDENT SUCCEEDS ACT

After years of starts and stops in the reauthorization process, Congress finally achieved a major legislative feat by passing the Every Student Succeeds Act (ESSA). Taking the lead in moving the process beyond the purely partisan politics that painted the last few Congresses, Alexander and Murray committed to working together early in 2015 to craft a bill that, ultimately, didn't completely please either but was acceptable to both. In a nod to conservatives, ESSA shifts much decision-making authority on standards, assessments, accountability, educator evaluations, and school improvement to states and districts and strictly prohibits the secretary of education from dallying in any of these areas. To appease Democrats and the White House, the bill requires states to set performance goals for all student subgroups and to intervene in the lowest 5 percent of schools, those with graduation rates less than 67 percent, and those with consistently underperforming subgroups (a term to be defined through the regulatory process).



TIMELINE

ESSA provides a definite end date for NCLB waivers and adequate yearly progress requirements—August 1, 2016. It also provides a transition time for states, districts, and schools to ease into the new law's requirements, with ESSA's provisions—specifically the new state accountability systems—to be fully in effect for the 2017-18 school year. The changes in state assessment requirements became effective upon enactment, so states will have some flexibility this spring in administering some new tests. Interestingly, ESSA has a very short lifespan, with only four years before it expires, leaving very little time to see how both the shift in authority and program implementation play out. Of course, NCLB was authorized for six years, but its policies were in effect for close to fourteen years, so it is possible that ESSA could be around for longer as well.

REGULATIONS

The Department has already begun the regulatory process to develop the rules that will accompany the law's provisions, having sought and received feedback from the education community and public at large during a 30-day comment period that ended on January 21, 2016. It has engaged in public meetings, is required to engage in negotiated rulemaking on a few issues (e.g., standards and assessments), and is committed to an overall open rulemaking process.

Details on the key changes from NCLB to ESSA are highlighted below.

STANDARDS

States must adopt challenging academic content standards and hold all students accountable for them, although they may set alternate academic achievement standards for students with the most significant cognitive disabilities. ESSA prohibits the secretary of education from having any authority over a state's academic standards.

ASSESSMENTS

ESSA continues the requirement for state testing in math and reading annually in grades 3-8 and once in high school and for annual grade span testing in science. It still requires 95 percent of students to be tested in a district or school, but in light of the "opt out" movement, it gives states the authority to decide consequences of missing this threshold. The new law allows for computer-adaptive assessments, and it allows alternate assessments for students with the most significant cognitive disabilities; however, these alternate tests may be used by no more than 1 percent of the total number of students being assessed. States may also establish a limit on the amount of time students spend taking tests.

ACCOUNTABILITY

States are required to create their own statewide accountability systems and use the results to identify schools in need of improvement. Accountability for high schools must include student performance on annual tests (disaggregated by subgroup), graduation rates, proficiency of English language learners, and one additional measure, such as access to advanced coursework or school climate. Accountability for elementary and secondary schools must include student performance on annual state tests, proficiency of English language learners, a measure of student growth, and one additional indicator similar to that of high schools. The additional measure selected by states must be applied statewide and must be able to differentiate schools.

In addition, states must place more weight on academic factors than other factors, but the weights are left up to each state. The Department is expected to provide guidance and rulemaking around this issue in the months to come.



EDUCATOR SUPPORTS AND EVALUATIONS

ESSA eliminates the highly qualified teacher requirements and does not require educator evaluations, unlike NCLB's waivers. However, given that 45 states received waivers, these states are all at some stage of implementing new evaluation systems. The Department is again precluded from prescribing any aspect of these systems. But, if any new Title II funds are used to update or implement the systems currently in place, they can be based only in part on student achievement and must also use multiple measures to evaluate educator effectiveness. Further implementation guidance will be subject to the Department's rulemaking.

Under ESSA, allowable use of Title II funds is expanded to include all school staff, funds must be used for ongoing, job-embedded professional development activities, and these activities must help educators become more effective in their classroom or leadership roles. In addition, ESSA changes the Title II funding formula to target a larger percentage of funding to schools and districts with higher poverty concentrations.

For more details on the changes under ESSA, see ASCD's ESSA/NCLB Comparison Chart at www.ascd.org/essa-compare.


THE HIGHER EDUCATION AND OPPORTUNITY ACT

The federal Higher Education Opportunity Act (HEA) is a sweeping piece of legislation that includes the entire student loan system, the Pell grant tuition assistance program, teacher preparation programs, and various provisions intended to increase access and opportunity in higher education for disadvantaged students. The law was due to be reauthorized in 2013. Both the House and Senate held many hearings last year on a variety of higher education issues, and Senate staff have reportedly been working to write a draft bill under the same process that guided ESSA development.

The Obama administration has been particularly active in higher education, with a focus on providing more thorough and transparent data to enable parents and students to make informed choices when it comes to college selection and financial aid. However, it retreated from its proposed college ratings system this summer and instead just released a College Scorecard that is updated on an ongoing basis. The aborted ratings system would have judged schools on affordability and return on investment and was criticized as arbitrary and unfair. The new College Scorecard provides a snapshot of what former students of each school earn, how much debt they leave college with, and what percentage can repay their loans. It is intended to make more data accessible to third parties already involved in analyzing colleges and universities for consumers. The 2016 presidential candidates are expected to maintain their focus on higher education issues to increase their appeal to families with college-aspiring children.

Numerous bills were introduced in the House last year as committee leaders began the process of addressing various aspects of HEA, including access, affordability, streamlining of regulations, and simplification of the student loan application—the Free Application for Federal Student Aid (FAFSA). Although House education leaders were expected to address HEA reauthorization through a piecemeal approach rather than moving a larger comprehensive package, the success of the ESSA process may provide a different path forward for HEA.

The Senate held eight hearings on HEA issues last year and Alexander released four white papers on the topics of institutional risk sharing, accreditation, affordability, and the role of consumer choice. His staff is working to compile comments on these four topics and has begun working with Murray's staff to generate a bipartisan draft early this year.



Teacher preparation programs have not been a focus of congressional scrutiny, but with more than 80 programs across 10 agencies, Republicans especially can be expected to attempt to streamline these programs through consolidations or eliminations. Democrats may seek to expand teacher preparation programs, particularly to recruit and train teachers and school leaders for placement in high-need and rural schools and to address high-need subjects. And the Obama administration is expected to continue its focus on tying accountability for teacher preparation programs to student achievement.

STUDENT DATA PRIVACY

The digitization of student data and growing reliance on technology for learning, assessment, evaluation, and research has put students' personal information at a greater risk of being mishandled than ever before. Legislators are interested in updating the federal education privacy laws written before the digital age—particularly the Family Education Rights and Privacy Act (FERPA). Several FERPA bills were introduced last year in both the House and Senate. But lawmakers must also consider the importance of student data for personalized instruction and planning, as well as research purposes.

Complicated decisions such as how to define “personally identifiable information,” how to “de-identify” student data, whether and how to allow third-party access to student information, and how to define an “educational purpose” have been the topics of hearings in both chambers. Several bills have been introduced, including a bipartisan House bill, the Student Privacy Protection Act (H.R.3157), which was on a fast track and then put on pause late last year.

For background information on the issue of student data privacy, see the Winter 2015 issue of *Policy Priorities*, “Locking the Cloud: Student Data Collection and Privacy Safeguards,” at www.ascd.org/policypriorities-privacy.

CHILD NUTRITION ACT

The Healthy, Hunger-Free Kids Act (HHFKA) of 2010, the most recent iteration of the Child Nutrition Act (CNA), sets policy for a group of federal nutrition programs, including school breakfast, school lunch, and summer meals. Although these programs are automatically funded each year, they are still subject to reauthorization and updating every five years. The 2010 law expanded the availability of nutritious meals and snacks to more children in schools, outside-of-school programs, and early education settings. It also required “competitive” foods (those sold outside of and in competition with federally reimbursable meal programs) to be more nutritious. The new law raised the nutrition standards for all federally funded food programs and required schools to increase the whole wheat content, reduce the sodium content, and provide a minimum number of fruits and vegetables in school meals.

School food suppliers originally opposed the higher standards on the basis of the anticipated increase in costs, a potential decline in student participation, and greater food waste. However, since the implementation of the HHFKA, 95 percent of schools have provided more nutritious meals, studies show students are not wasting food, and, although fewer students are purchasing lunch, Agriculture Secretary Tom Vilsack claims that drop is not attributable to the new standards but rather to the economic downturn in 2008. In fact, more students than ever are taking advantage of free and reduced-price breakfasts and lunches, so overall consumption is actually up.

The recently passed omnibus spending bill for FY16 included language originally adopted in 2014 to allow schools to request waivers from some of the whole grain requirements and put off the higher 2017 sodium standards until further scientific research proves they are beneficial. Republicans can be expected to seek to make those changes permanent in their CNA reauthorization bill.

EDUCATION FUNDING AND SEQUESTRATION

Much beyond the federal fiscal year deadline, Congress finally reached an agreement on how to fund the federal government and its various agencies and programs for FY16. An omnibus bill was passed last month that adheres to the previously agreed upon caps for federal spending for FY16 and FY17. The new levels allowed congressional appropriators to provide modest increases in some federal education programs, reduced funding for some, including the School Improvement Grant program (which is eliminated under ESSA), level funded most others, and eliminated funding for a few programs.

The new spending increases are effective for programs that are currently funded (e.g., Impact Aid, Head Start), but the Title I funding increases, because they are made in advance of the school year, will take effect in July. Programs that received increases include the following:

- Title I: \$500 million (\$14.9 billion total)
- IDEA: \$415 million (\$11.9 billion total)
- Head Start: \$570 million (\$9.16 billion total)
- 21st Century Community Learning Centers: \$15 million (\$1.16 billion total)
- Charter schools: \$80 million (\$333 million total)
- Arts in Education: \$2 million (\$27 million total)
- Safe and Drug-Free Schools and Communities: \$5 million (\$75 million total)
- Promise Neighborhoods: \$16.5 million (\$73 million total)

Given that the top-line spending caps have already been decided for FY17, many observers believe this will be the year that Congress returns to “regular order”—that is, the routine passage of funding bills by each chamber in a timely fashion. In other words, Congress would actually enact appropriations bills to coincide with the start of the federal fiscal year—October 1. However, the caps for FY17 barely exceed those for FY16, meaning that no increases are likely. In fact, because of the number of programs in the federal budget that receive mandatory funding (some of which are based on need and increase accordingly), even less money may be available for the discretionary programs, including education. And federal spending caps are firmly in place through FY25, with only incremental annual increases in the overall federal funding pot. With ever-increasing school enrollments and the need for schools to address the complicated and comprehensive needs of children, it will be more important than ever for education advocates to ramp up their efforts to educate policymakers about the crucial need for a robust federal investment in our nation’s schools.

Visit www.educatoradvocates.org for information about policy resources and to become an ASCD Educator Advocate. Educator Advocates are kept informed about education issues and engage with decision makers at all levels and in a variety of ways to promote the policies that best support students and schools.

ASCD is a global community dedicated to excellence in learning, teaching, and leading. Comprising 125,000 members—superintendents, principals, teachers, and advocates from more than 138 countries—the ASCD community also includes 56 affiliate organizations. ASCD’s innovative solutions promote the success of each child.

To learn more about how ASCD supports educators as they learn, teach, and lead, visit www.ascd.org. Printer-friendly copies of the 2016 Legislative Agenda are available at www.ascd.org/legislativeagenda. For additional information, contact ASCD Government Relations at gr@ascd.org.

ASCD POLICY RESOURCES

- **Capitol Connection:** ASCD's weekly e-newsletter provides the inside scoop on federal education developments, key education issues, and the latest national reports and research.



- **Core Connection:** This e-newsletter, sent every two weeks, features the latest Common Core State Standards news and resources.



- **Policy Priorities:** This quarterly publication comprehensively analyzes crucial education policy topics, from educator effectiveness to college and career readiness.



- **Leadership Institute for Legislative Advocacy:** ASCD's premier legislative conference provides educators with the opportunity to learn about federal and state education issues and advocate for policies that support successful learning and teaching.



Visit www.educatoradvocates.org for information about these resources and to become an ASCD educator advocate. ASCD's Educator Advocates program connects the classroom to the capitol, helping educators learn about the education policy and politics that affect their day-to-day work and empowering them to speak up and shape our nation's future.