

## Final ESSA Accountability Rules Boost State Flexibility in Key Areas

By Alyson Klein on November 28, 2016 8:45 AM

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### UPDATED

The Obama administration's **final accountability rules** for the Every Student Succeeds Act, issued Monday, give states greater flexibility on school ratings, schools with high testing opt-out rates, and in other areas than an **earlier draft version**, released in May.

But, with President-elect Donald Trump set to take office in January, the regulations face an uncertain future.

The U.S. Department of Education sought to address some of the chief complaints about its draft regulations, which state officials and some lawmakers said went overboard on federal authority and **expected states to make key decisions on compressed timelines and hold schools accountable for their performance before new ESSA systems take effect**.

To address those concerns, states will now have until the 2018-19 school year to pinpoint their lowest-performing 5 percent of schools—those identified for so-called "comprehensive improvement" under the law—as opposed to the 2017-18 school year under the draft regulations.

The department had also originally told states to get their plans in by March 2017 or by the summer. That's been moved to April 3 or Sept. 18. That gives states a longer window to craft their plans and the incoming Trump administration greater opportunity to get key players in place to review them.

"The final rules give states more time and flexibility to provide every student with a high-quality, well-rounded education while ensuring that states and districts keep the focus on improving outcomes and maintaining civil rights protections for all children, particularly those who need our support the most," U.S. Secretary of Education John B. King, Jr., said in a statement.

He said the department incorporated feedback from those in the education community—**who sent in more than 20,000 comments on the draft regulations**—to improve the final rules.



**But it's unclear what happens to the regulations from here.** The incoming Trump administration, which is expected to **favor a more hands-off approach to accountability** than the Obama administration, could decide to hit the pause button on these regulations, delaying their implementation for years. Or Trump and his team could issue guidance telling states that they won't enforce parts of the regulations, or even go through the process of re-regulating, which could delay states' planning.

And the GOP-controlled Congress could decide to use the Congressional Review Act to toss the proposal entirely—a move that would bar the department under any administration from issuing similar regulations again until new legislation is passed. David Cleary, an aide to Sen. Lamar Alexander, R-Tenn., chairman of the Senate education committee, **said the Obama administration has issued a number of proposals fine for**

Alexander, R-Tenn., chairman of the Senate education committee [said the Obama administration has issued a number of proposals ripe for such revocation.](#)

**[UPDATE (Nov. 28):** In a statement reacting to the final accountability rules, Alexander said on Monday, "I would have moved to overturn the earlier version of this regulation because it was not authorized by the new law, and included provisions specifically prohibited by the new law. I will carefully review this final version before deciding what action is appropriate."]

Meanwhile, ESSA's key Democratic architects—Sen. Patty Murray of Washington and Rep. Bobby Scott of Virginia—said in a statement that they're bummed the regs "didn't go as far as [we] hoped" but commended the department for its work.

The Council of Chief State School Officers seems pretty happy with the final regulations, which could bode well for their staying power. "It is clear the U.S. Department of Education listened to the feedback from state education chiefs across the country and made several important changes to ensure the accountability provisions in the Every Student Succeeds Act can be implemented in all states," said Chris Minnich, CCSSO's executive director in a statement. "We look forward to working with the new administration to offer states the guidance, flexibility and stability they need to create plans under this new law that will best meet the needs of each child."

King declined to comment on whether he expected the Trump team to get rid of the department's regulations, or make changes to them. But he said he's heard that state chiefs are ready to get started on ESSA implementation.

**So, what's in these final regulations? And how are they different from ESSA, and from what the department put out before? Here's a rundown, drawn from a [fact sheet on the regs sent to reporters before their official release.](#)**

#### School Ratings:

**What ESSA says:** States have to have an accountability system that takes into account both academic factors (like test scores, graduation rates, and English-language proficiency) and at least one school quality or student success indicator (like school climate, access to advanced coursework, or chronic absenteeism). They must identify schools for "comprehensive improvement" (lowest-performing schools and those where less than two-thirds of students graduate) and "targeted improvement" (schools that might be doing well overall, but where subgroups of students are struggling).

**What the draft regs said:** States would have had to come up with an overall "summative" rating for their schools. That could have been on an A through F scale, or a number, or even a category like "excellent" or "needs improvement." States also would have needed to make clear to parents how each school is doing on each of the different accountability indicators.

**What the final regs say:** The final regulations clarify that states could use the ratings in ESSA—including "comprehensive" improvement and "targeted" support—as their summative ratings. They don't have to go as far as an overall number or A through F grade, unless they want to. To be sure, [King already said as much in testifying before Congress](#), but the new regs make this crystal clear. They also say states can use a "dashboard" to explain how schools are doing on each of the different indicators that make up their accountability systems.

#### School Quality Indicators

**What ESSA says:** In addition to test scores, grad rates, and English-language proficiency, states have to hold schools accountable for another factor that gets at school quality or students' opportunity to learn, including school climate, access to advanced coursework, access to arts, and more.

**What the draft regs said:** This other factor would have had to be something that research has shown has contributed to student achievement or higher graduation rates. Some in the education community said that was way too narrow an approach and could leave things like "citizenship" by the wayside.

**What the final regs say:** States can pick any factor that research has shown has a positive impact on student learning, as defined by a whole host of things like grades, credit accumulation, postsecondary enrollment, persistence, performance in advanced classes, and more. That should broaden the list of possibilities for the new indicator, according to the department.

#### 'N' sizes

**What ESSA says:** States get to set their own minimum "n" size. That's a technical term for the number of students from a particular group that a school must have in order to be held accountable for their performance. For instance, if a state's "n" size is 20 and a school has only 17 4th graders in special education, that school wouldn't have to include their scores for accountability or report their data because the sample size is too small.

**What the draft regs said:** States could use any "n" size they wanted, but if they decided to go over 30, they would have to justify their reasoning. Civil rights groups worried that 30 was too high and urged the department to go lower, perhaps to 15.

**What the final regs say:** States can use any "n" size they want, but those that want to go over 30 have to show the impact of that decision, giving data on the percentage of schools that would be held accountable for subgroup performance under whatever number they want to use, versus the percentage that would have been held accountable for subgroup performance if the "n" size were 30.

## Identifying Schools With Consistently Underperforming Subgroups

**What ESSA says:** States have to identify schools where subgroups of students (such as English-language learners or students in special education) are "consistently underperforming" compared to their peers.

**What the draft regs said:** States have to come up with their own definition of a consistently underperforming subgroup, based on no more than two years of performance. The state-crafted definition could include things like whether the subgroup is performing at the lowest level on an academic measure (like test scores), whether the subgroup is performing way below the state's average on any indicator, or another factor the state comes up with.

**What the final regs say:** The tweak is subtle. States are still supposed to base their definition of "consistent underperformance" on no more than two years of performance, but if they really want to look over a longer time frame, they can, as long as they can explain how more time will help subgroup students get the support they need.

### Testing Participation Rate/Opt-Outs

**What ESSA says:** Schools need to test 95 percent of their students, both for the whole school and for different subgroups of students, just like they had to under the No Child Left Behind Act, which ESSA replaced. If a school doesn't hit that threshold, the state gets to decide what happens, not the feds.

**What the draft regs said:** The proposed regs gave states some pretty dramatic options for intervening in schools with low test participation rates. They could give the school the lowest possible score for academics, knock down their overall summative score, automatically identify them for "targeted" improvement, or something equally serious. A bunch of commenters, including the teachers' unions, thought this went way beyond the law and punished schools because parents choose not to test their kids.

**What the final regs say:** The final regulations keep the same menu of options listed above, but add a twist. States that decide to come up with their own system for dealing with opt-outs get the leeway to develop a bunch of different remedies to address different degrees of the low-test participation. That means states can propose to do something less dramatic for a school that barely missed the 95 percent for a single subgroup of kids, as opposed to a school where only say, 10 percent of the students took the test. Whatever the state comes up with though, has to be "sufficiently rigorous" to fix the school's low test participation problem.

### English-Language Proficiency

**What ESSA says:** States need to hold schools accountable for helping English-language learners become proficient.

**What the draft regs said:** The proposed rules set no maximum timeline in which an ELL should attain proficiency. But states were told they should think about students' initial level of proficiency in picking long-term achievement goals.

**What the final regs say:** States have to come up with a "research-based" maximum timeline for ELLs to become proficient in English. The idea is to encourage schools to make sufficient progress each year in helping ELLs master their new language.

### Timelines

**What ESSA says:** The new law, which passed in December of 2015, is supposed to go into effect in the 2017-18 school year. The 2016-17 school year is for transition and planning.

**What the draft regs said:** States were supposed to identify their lowest-performing schools and those with really low graduation rates in time for the start of the 2017-18 school year. Plans were to be due in either March or the summer of 2017.

**What the final regs say:** States essentially get a one-year extension on identifying key groups of schools for extra attention and support. They are now supposed to identify their lowest-performing schools and schools with really low graduation rates (those in "comprehensive improvement") in the 2018-19 school year. Also in 2018-19, they must identify schools with low-performing subgroups for so-called "targeted" support. But states now have until the 2019-20 school year to identify schools where subgroups of students are "consistently underperforming"

compared to their peers for "targeted support." Plans now are due April 3 or Sept. 18.

Confused on these timelines? The department has a pair of charts that can help. Check them out:

**Category: Comprehensive Support and Improvement**

<b>Types of Schools</b>	<b>Description</b>	<b>Timeline for Identification</b>	<b>Initial year of identification</b>
Lowest-Performing	Lowest-performing five percent of schools in the State participating in Title I.	At least once every three years	2018-2019
Low High School Graduation Rate	Any public high school in the State with a four-year adjusted cohort graduation rate at or below 67 percent, or below a higher percentage selected by the State, over no more than three years.	At least once every three years	2018-2019
Chronically Low-Performing Subgroup	Any school participating in Title I that was identified for targeted support and improvement because it had a subgroup of students performing at or below the performance of all students in the lowest-performing schools and did not improve after implementing a targeted support and improvement plan over a State-determined number of years.	At least once every three years	State-determined

**Category: Targeted Support and Improvement**

<b>Types of Schools</b>	<b>Description</b>	<b>Timeline for Identification</b>	<b>Initial year of identification</b>
Consistently Underperforming Subgroup	Any school with one or more consistently underperforming subgroups.	Annually	2019-2020
Low-Performing Subgroup	Any school in which one or more subgroups of students is performing at or below the performance of all students in the lowest-performing schools. These schools must receive additional targeted support under the law.  If this type of school is a Title I school that does not improve after implementing a targeted support and improvement plan over a State-determined number of years, it becomes a school that has a chronically low-performing subgroup and is identified for comprehensive support and improvement.	At least once every three years	2018-2019

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