

The Every Student Succeeds Act (ESSA)

The 2015 reauthorization of the Elementary and Secondary Education Act of 1965 and the No Child Left Behind Act of 2001

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ACCOUNTABILITY

The federal Every Student Succeeds Act grants more flexibility and control to the state and local levels – several of the requirements of the No Child Left Behind Act that

prompted states to apply for waivers have been written out of the new law.

As under waivers, states have continued freedom to design their own accountability systems and manage their low-performing schools. Furthermore, Every Student Succeeds specifically limits the U.S. Department of Education’s authority in several key areas. The federal government can no longer set long-term goals for student achievement, such as 100 percent proficiency; require the use of specific, federally prescribed models for school improvement, such as School Improvement Grant turnaround models; or “influence, incentivize, or coerce” states into adopting any specific standards.



TESTING

No Child Left Behind’s testing schedule remains unchanged: states still test students in reading and math yearly in grades 3-8 and once in high school, and less frequently in

science. Every Student Succeeds permits states to either continue using a year-end assessment or consolidate results from multiple tests throughout the year into a final score.

The federal government still requires schools and districts to test 95 percent of all student subgroups; however, states may now decide how a student test participation rate of less than 95 percent is factored into the accountability system. Additionally, states may set a target limit on school time spent testing, as long as all federal testing requirements are met.



INTERVENTION

States are still required to identify the lowest-performing 5 percent of schools, schools where subgroups of students perform poorly, and schools with low graduation rates. Under

Every Student Succeeds, schools and districts have up to four years to implement an improvement plan at the local level before states are required to take further action. The new law allows Tennessee to continue using the Achievement School District and Innovation Zones as school intervention strategies.



TEACHERS

The federal requirement that all teachers in core subjects be “highly qualified” has been repealed. Previously, the qualification involved meeting education and licensure

requirements, as well as demonstrating content knowledge.

Furthermore, the U.S. Department of Education is specifically prohibited from specifying or influencing the factors used in teacher or principal evaluation systems. Finally, the Every Student Succeeds Act gives states additional options for providing alternative teacher and principal



FUNDING

Overall funding levels for Every Student Succeeds remain similar to No Child Left Behind. Every Student Succeeds terminates School

Improvement Grants, used specifically for school turnaround – however, states are required to reserve more of their Title I funding for the same purpose.

Funding for multiple individual programs – including physical education, gifted and talented, and school counseling – has been consolidated into a \$1.6 billion block grant. Furthermore, states and school districts now have more flexibility in transferring funds from different titles of Every Student Succeeds.

Finally, the new law offers several new funding options. Up to 50 school districts nationwide may include federal education money in weighted funding pilot programs that direct more money to schools with higher numbers of disadvantaged students. Additionally, funding from several titles may be used in pay for success programs, where private investors contribute to public projects and are only repaid if the projects are successful.



INNOVATION

Seven states may participate in a pilot program to develop innovative tests. Participating districts may give locally developed assessments in place

of state standardized tests, so that not every student takes the same test.

Up to 50 school districts in the nation may include federal education money in weighted funding pilot programs. The pilot program “weights” the per-pupil funding districts give to schools, so that schools receive more money for disadvantaged students.

Finally, federal education funding from several titles may be used in pay for success programs, which allow private investors to contribute to public projects and recoup their initial investment if the projects are successful.

ACCOUNTABILITY

Highlights

No 100 percent proficiency requirement. No Child Left Behind mandated that all students test as proficient by the end of the 2013-14 school year. The federal government waived this provision beginning with Tennessee's first waiver in 2012. Under Every Student Succeeds, the federal government can no longer set long-term goals for states, including numeric targets like the percentage of students who are proficient.

No federally prescribed accountability system. Under No Child Left Behind, schools and districts either hit or missed their objectives – using this system, the Tennessee Department of Education estimated that 80 percent of schools would be identified as “failing” in 2015. Tennessee's waiver changed the pass/fail system into a continuum of school district designations, ranging from *In Need of Improvement* to *Exemplary*. As under the waiver, Every Student Succeeds gives states the authority to develop their own accountability systems and interventions.

No pressure to adopt Common Core State Standards. No Child Left Behind did not mention specific standards. To receive a No Child Left Behind waiver, however, states had to adopt Common Core State Standards or partner with their institutes of higher education to develop their own standards. While Every Student Succeeds requires states to adopt “challenging” standards, the new law explicitly prohibits the federal Department of Education from pressuring states to use any specific standards.

Goals

Under No Child Left Behind

No Child Left Behind (NCLB) mandated that all students test as proficient by the end of the 2013-14 school year. To reach this goal, states set annual targets for student achievement. Schools and school districts had to meet these goals to make Adequate Yearly Progress (AYP).¹

Within the AYP framework, states created Annual Measurable Objectives (AMOs). AMOs were set separately in reading and math, and gave the minimum percentage of students who had to test as proficient in that subject. AMOs were the same for all schools and districts statewide, however.² If the AMO for reading required 50 percent proficiency for English learner students, for example, *all* schools statewide had to reach that goal, regardless of their demographics.

AYP also included targets for high school graduation rates. Elementary schools had to set goals for another indicator, such as grade-to-grade retention or attendance rates.³

For a school to make AYP, all subgroups had to achieve their AMOs; the school had to test at least 95 percent of all subgroups or it automatically failed AYP.^{A, 4} Failure to make AYP for two years in a row identified a school for improvement.⁵

Under Tennessee's Waivers

Beginning in 2012, Tennessee's waivers eliminated the 100 percent proficiency requirement.⁶ In place of absolute proficiency, Tennessee's 2015 AMOs planned to decrease the number of students testing below proficient by 6.25 percent each year. This adds up to a 50 percent overall decrease in eight years.⁷ The waiver also allowed schools to factor student growth, in addition to test scores, into measurements of school progress.⁸

ESSA Indicators

How Schools Are Graded

- ☑ **Student proficiency**, based on test scores. States may also include **student growth**.
- ☑ Progress toward **English language proficiency**.
- ☑ **Graduation rates** for high schools. **Another indicator** for elementary and middle schools, such as grade-to-grade retention or attendance.
- ☑ At least **one additional indicator**, such as:
 - educator engagement;
 - advanced coursework availability and completion;
 - postsecondary readiness; or
 - school climate.

The first three academic indicators must carry “substantial weight,” so that together, they carry “much greater weight” than any additional indicators.

Source: *Elementary and Secondary Education Act of 1965*, Public Law 114-95, §§ 1111(c)(4)(B)-(C), 2015.

Tennessee's waivers set several overall goals for the 2014-2015 school year:

- increase 3rd grade **reading** proficiency to **60 percent** (up from 42 percent in 2009-10);
- increase 7th grade **math** proficiency to **51 percent** (up from 29 percent in 2009-10);
- increase **graduation rates** to **90 percent** (up from 82 percent in 2009-10); and
- increase **postsecondary enrollment** at Tennessee public and private colleges and universities to **51 percent** (up from 46 percent in 2009-10).⁹

In school year 2014-15, 48.4 percent of 3rd grade students tested as proficient or higher in reading. Math scores improved more significantly: 51.4 percent of 7th grade students tested as proficient or higher in math.¹⁰ Additionally, overall graduation rates increased to 87.8 percent.¹¹

Postsecondary enrollment statistics are not yet available for school year 2014-15. In school year 2013-14, however, the Tennessee Higher Education Commission reported a statewide college going rate of 58 percent.¹² While these numbers include *all* students enrolled in higher education – including out-of-state students, who were not counted in the waiver's goals – the overall college going rate has increased since 2009.¹³

^A Even if a subgroup did not achieve its AMOs, the school could still make AYP. To do so, the number of students in the subgroup testing “basic” must have decreased by 10 percent. That subgroup must also have made progress on at least one other academic indicator in the accountability system. *Elementary and Secondary Education Act of 1965*, USC 20 (2012), § 6311(b)(2)(l).

Under Every Student Succeeds

The Every Student Succeeds Act (ESSA) repeals the 100 percent proficiency requirement in law.¹⁴ Under ESSA, the federal government cannot set intermediate or long-term goals for states; the U.S. Department of Education cannot set specific number targets for proficiency, or dictate the length of time to make appropriate progress.¹⁵

In place of a federal mandate, states must set “ambitious” long-term goals, along with intermediate benchmarks. At minimum, these goals must include increasing proficiency for all students and subgroups based on the state’s standards, improving high school graduation rates, and increasing English language proficiency.¹⁶

Accountability System

No Child Left Behind’s accountability system was considered “pass/fail” – schools either hit or missed Adequate Yearly Progress.¹⁷ Schools that did not make AYP for two years running were automatically identified for improvement, and school districts and states had to take federally prescribed corrective actions.¹⁸ Using AYP, the Tennessee Department of Education estimated that 80 percent of Tennessee’s schools would be identified as failing in 2015.¹⁹

In 2011, Tennessee first applied to the U.S. Department of Education for a waiver from certain provisions of No Child Left Behind. The resulting waiver abolished the Adequate Yearly Progress system, and the state developed its own accountability system. To receive the waiver, Tennessee agreed to identify and address its lowest-performing schools (priority schools) and schools with the largest achievement gaps (focus schools). These schools are identified based on **relative accountability**: school performance is ranked in comparison to other schools.²⁰ The federal government required all states receiving a waiver to intervene in priority and focus schools.²¹

In replacing Adequate Yearly Progress, Tennessee designed a new system measuring **absolute**

Achievement vs. Growth

Tennessee’s standards currently have four levels. Two are below proficient: “below basic” and “basic.” The other two, “proficient” and “advanced,” are at or above proficiency.

Under a growth model, Tennessee receives credit in the district accountability system for students who make progress, even if they are still not proficient. For example, students who improve from “below basic” to “basic” factor positively in the accountability system, even though they have not achieved proficiency.

With an achievement model, the state is only recognized for students who meet or exceed proficiency. Thus, students who progress from “below basic” to “basic” do not count positively in the accountability system, even though their test scores have improved.

Source: Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, p. 43, <http://www2.ed.gov/> (accessed December 5, 2015).

accountability. All school districts are measured against the same goals.²² Rather than a pass/fail structure, Tennessee’s 2015 waiver system has a *range* of district classifications. Two designations – *In Need of Improvement* and *Progressing* – are below proficiency. *Achieving* and *Exemplary*, the other two scores, are proficient or higher.²³

Districts: Absolute Accountability

Absolute accountability measures all school districts against the same goals. The system was designed specifically by Tennessee to replace NCLB’s original Adequate Yearly Progress accountability system.

The absolute accountability system grades districts in two areas: increasing overall student proficiency and closing achievement gaps. The system includes four possible district designations:

In Need of Improvement: The district is “not showing even minimal evidence of meaningful student progress.”

Progressing: The district is improving overall, but is not meeting growth targets.

Achieving: On average, the district is meeting growth expectations.

Exemplary: In general, the district is exceeding growth targets.

Under this system, school districts plan to increase the number of students testing as proficient by 6.25 percent each year. Over eight years, this adds up to a 50 percent increase over the starting point.

Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, pp. 44, 48, 53, 63, 69-71, and 85, <http://www2.ed.gov/> (accessed December 5, 2015).

Schools: Relative Accountability

Relative accountability measures each school’s progress relative to other schools. To receive a waiver, the federal government required states to identify and intervene in priority and focus schools.

Priority Schools

Tennessee designates five percent of *all* schools (not just Title I schools) as priority schools. Priority schools have the lowest test scores of all schools in the state, and may also have low graduation rates.

Focus Schools

Tennessee identifies 10 percent of schools as focus schools. Focus schools have either large achievement gaps between subgroups of students, subgroups with particularly low proficiency rates, or graduation rates less than 60 percent.

Reward Schools

Tennessee identifies two types of reward schools. Five percent of all schools are designated as Achievement-Based Reward Schools; these schools have high overall achievement levels. Additionally, five percent of all schools are identified as Progress-Based Reward Schools for having the highest growth in Tennessee Value-Added Assessment System (TVAAS) scores.

Every Student Succeeds keeps a similar relative accountability system in place – states must still identify and intervene in the lowest-performing schools, and schools where subgroups of students perform poorly (previously known as “priority” and “focus” schools).²⁴ ESSA does not reinstate the Adequate Yearly Progress framework, however, or a similar pass/fail system. Instead, as under the waivers, states are given freedom to design their own accountability systems for schools and districts.²⁵ Under ESSA, states may create or revise accountability systems that will be implemented in school year 2017-18.²⁶

The Tennessee Department of Education is currently seeking input from educators, stakeholders, parents, and students regarding the state’s accountability system and new state plan under ESSA. In late May of 2016, the department launched a statewide “listening tour” to gather feedback on a variety of topics, including the goals the state will strive toward in upcoming years.²⁷

Standards

To receive a waiver under No Child Left Behind, states either had to adopt standards in at least reading and math that were “common to a significant number of states” (Common Core State Standards), or choose standards approved by states’ institutes of higher education (e.g., University of Tennessee or Tennessee Board of Regents).²⁸

Under Every Student Succeeds, the U.S. Department of Education may not “influence, incentivize, or coerce” states into adopting a particular set of standards, including the Common Core State Standards.²⁹ States must still adopt “challenging” content standards for at least reading, math, and science. The standards must have at least three levels of achievement, and align with credit-bearing class requirements at state colleges and universities.³⁰

Special Groups

States may adopt alternate achievement standards for students with the “most significant cognitive disabilities.” These standards must keep students on track

Tennessee’s Standards

In 2010, Tennessee adopted the Common Core State Standards and planned to fully implement them by the 2013-14 school year.

In 2014, the Governor called for a public review of the Common Core standards by educators, stakeholders, and citizens. Legislation in 2015 created standards review committees and outlined the adoption process for the new and revised standards.

The State Board of Education approved new reading and math standards in April 2016. Updated standards in these two subjects will be implemented in the 2017-18 school year.

Sources: Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, pp. 19 and 23, <http://www2.ed.gov/> (accessed December 5, 2015); State of Tennessee Newsroom, “Haslam Lays Out Next Steps From Education Summit,” October 22, 2014, <https://www.tn.gov/news> (accessed Feb. 25, 2016); Tennessee Public Chapter 423, 2015, <http://www.tn.gov/sos/> (accessed Feb. 25, 2016); State Board of Education, “State Board Approves New Tennessee Math and English Language Arts Standards,” April 15, 2016, <https://www.tn.gov/sbe/> (accessed May 27, 2016); State Board of Education, “Math and English Language Arts,” <https://www.tn.gov/sbe/> (accessed Feb. 17, 2016).

for postsecondary education.³¹ No more than 1 percent of all students in the state may take alternate tests based on alternate achievement standards.³²

Data published for school year 2014-15 reports that 139,232 of Tennessee's 995,892 children enrolled in public schools were identified as students with disabilities, or 14 percent.³³ Based on these estimates, about 7.2 percent of Tennessee's special education students could take ESSA's alternate tests. In school year 2014-15, 7,961 students took at least one alternative assessment.³⁴

States must also adopt English language proficiency standards based on speaking, listening, reading, and writing.³⁵ Accountability for English language proficiency has moved from Title III to Title I and is another factor schools and districts are evaluated on under the Title I accountability system.

TESTING

Highlights

Same testing schedule. Every Student Succeeds does not change No Child Left Behind's testing schedule. Reading and math tests are administered every year in grades 3-8, and once in high school. Science tests are given once in each grade band: grades 3-5, 6-9, and 10-12.

Flexibility with testing form. Under No Child Left Behind, states administered one yearly test. Every Student Succeeds allows states to consolidate results from multiple interim tests into a final score. Additionally, upon state approval, school districts may give a nationally recognized test in high school (such as the SAT or ACT) in lieu of state assessments.

State flexibility with testing limits and opt outs. No Child Left Behind did not address testing limits or state opt out laws. As long as states meet federal testing requirements, Every Student Succeeds allows states to limit the percentage of class time spent testing. The new law also allows states to decide how to grade schools that test fewer than 95 percent of their students.

Innovative testing pilot program. Seven states may participate in a five-year pilot program to develop innovative tests, which may be used in only a few districts at the beginning of the program. The innovative assessments may be non-standardized and managed locally, so that not all students in the state take the same tests.

Testing

Under the Every Student Succeeds Act (ESSA), states must adopt “challenging” content standards for at least reading, math, and science. The standards must have at least three levels of achievement, and align with credit-bearing class requirements at state colleges and universities.³⁶ The U.S. Department of Education may not “influence, incentivize, or coerce” states into adopting a particular set of standards, including the Common Core State Standards.³⁷

Schedule

Testing schedules have remained the same under No Child Left Behind (NCLB), Tennessee's waivers, and now ESSA. Students are tested in:

- **reading and math:** once in grades 3-8, and at least once in high school; and
- **science:** at least once in grades 3-5, 6-9, and 10-12.^{38, 39, 40}

Tennessee Tests

Elementary and Middle School

Tennessee gives four TCAP subject tests in grades 3 through 8: reading, math, science, and social studies.

High School

Until the 2015-16 school year, the state used seven end-of-course exams in high school: Algebra I and II; Biology I; English I, II, and III; and U.S. History.

In the 2015-16 school year, Tennessee will begin using TNReady, the new math and reading tests in the TCAP program. Tennessee will also begin giving five new tests in high school: Integrated Math I, II, and III; Geometry; and Chemistry.

TNReady

According to the Tennessee Department of Education, TNReady will measure a deeper level of understanding than previous language and math tests. Students will use sources to support their written responses and solve multi-step math problems.

Instead of one exam at the end of the year, TNReady will have two parts. Part I, given two-thirds of the way through the school year, counts for a smaller portion of students' scores than Part II, given 90 percent of the way through the year.

Source: Tennessee Department of Education, *2013-2014 TCAP Achievement and End of Course Results*, <https://www.tn.gov/education/> (accessed Jan. 13, 2016); Tennessee Department of Education, *TCAP Time Limits*, December 9, 2015, <http://www.tn.gov/education/> (accessed Jan. 13, 2016); Tennessee Department of Education, *Parent Guide to Being TNReady*, July 2015, p. 6, <https://www.tn.gov/education/> (accessed Feb. 26, 2016); Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, p. 65, <http://www2.ed.gov/> (accessed Dec. 5, 2015).

Form

Under NCLB, states gave one yearly test in each subject, and states may continue using a single test under Every Student Succeeds. Under ESSA, however, states now have the option to administer multiple interim tests throughout the year and consolidate results into one final score.⁴¹

Tests must measure student proficiency based on the state's standards, but may also track student growth. Additionally, the new law states that tests "may be partially delivered in the form of portfolios, projects, or extended performance tasks."⁴²

Upon state approval, school districts now have the option to give a nationally recognized test in high school – such as the ACT or SAT – instead of the state end-of-course subject tests.⁴³

Limits

Neither No Child Left Behind nor Tennessee's waivers addressed limits on test time. Every Student Succeeds allows

states to set target limits on the percentage of class time spent on testing. For example, a state could plan on spending no more than 2 percent of classroom time on state tests. States must still meet federal requirements for accountability testing and follow the same testing schedule.⁴⁴

Opt Outs

As of publication, Tennessee does not have state policies allowing parents to opt their students out of state tests. No Child Left Behind, Tennessee's waivers, and now Every Student Succeeds all require schools to test 95 percent of all students and subgroups. Under NCLB and the waivers, schools with participation rates lower than 95 percent automatically failed that year in the accountability system.^{45, 46}

While schools are still required to test 95 percent of students under ESSA, states now have the power to decide how a student test participation rate of less than 95 percent affects a school's performance in the accountability system. Schools with lower participation rates no longer fail by default in the federal law.⁴⁷

Subgroup Reporting

No Child Left Behind required schools to disaggregate test scores by gender, racial/ethnic group, English learner status, migrant status, disability status, and economically disadvantaged status.⁴⁸ Tennessee's waiver, however, allowed districts to combine scores for some racial and ethnic minorities into one "super-subgroup." Thus, districts were graded on the performance of only four subgroups:

- black, Hispanic, and Native American students;
- English learner students;
- students with disabilities; and
- economically disadvantaged students.⁴⁹

Every Student Succeeds does not allow super-subgroup reporting; under the new law, scores must be disaggregated separately for racial and ethnic minorities, in addition to English learner, disability, and low-income status.⁵⁰ While scores must also be reported by gender and migrant status, these two subgroups are not factored into the accountability system.⁵¹

Special Groups

Special Education

Students with disabilities receive "appropriate accommodations" when taking state tests.⁵² Under Every Student Succeeds, no more than 1 percent of all students in the state may take alternate tests based on alternate achievement standards.⁵³

Data published for school year 2014-15 reports that 139,232 of Tennessee's 995,892 children enrolled in public schools were identified as students with disabilities, or 14 percent.⁵⁴ Based on

Opt Out Laws: Oregon

In 2015, the state of Oregon passed HB 2655, which created the "Student Assessment Bill of Rights." At least 30 days before the state tests, school districts and public charter schools must give parents a form to opt their children out of the tests. Students not taking the tests instead have supervised study time.

Under Oregon's current No Child Left Behind waiver, schools' ratings drop one level in the accountability system for every year they test fewer than 95 percent of students. For example, if a school would have received a *Model* designation (the highest in Oregon) but does not meet participation requirements, its overall rating is lowered one level to *Strong*. If the school does not meet the 95 percent rate again the next year, its rating is dropped another level to *Satisfactory*.

The new opt out law applies to tests starting in the 2015-16 school year. Students cannot be denied a diploma solely because they did not take the state assessments.

Source: Oregon Public Chapter 519, 2015, <https://www.oregonlegislature.gov/> (accessed Feb. 26, 2016); Oregon Department of Education, *ESEA Flexibility Request*, July 2015, pp. 95-96, <http://www2.ed.gov/> (accessed Jan. 15, 2016).

these estimates, about 7.2 percent of Tennessee’s special education students could take ESSA’s alternate tests.⁵⁵ In school year 2014-15, 7,961 students took at least one alternative assessment.⁵⁶

English Learners

Under Every Student Succeeds, states have two options regarding newly arrived English learners. For such students who have gone to school in the United States for less than a year:

1. States may waive the first administration of the reading test. English learners still take state tests in other subjects, but the results are not included in the accountability system. In the following years, English learners take all tests and results are reported as normal.
2. States may give all state tests in English learners’ first year, but gradually scale up to full reporting:
 - a. in the first year, the test results do not count in the accountability system;
 - b. in the second year, only student growth factors into the accountability system; and
 - c. in the third year, both proficiency and growth are reported as normal.

After students are no longer identified as English learners, states may continue reporting them under the English learner subgroup for up to four years, increased from two years under Tennessee’s waiver.^{57, 58}

Innovative Testing Pilot Program

Seven states, or a consortium of states, may participate in a pilot program to develop innovative assessments. States may start using the new testing system in only a few school districts, but must aim toward statewide use. The new tests must align with state standards, and report the same information as current state tests, including separate reporting of results by student subgroup (e.g., special education or low-income status).⁵⁹ In New Hampshire, the only state currently operating an innovative testing pilot, the participating districts are not required to give the same standardized assessments as the rest of the state. Instead, all pilot program districts must base their

Innovative Testing: New Hampshire

Prior to ESSA, in March 2015 the state of New Hampshire received a waiver from the U.S. Department of Education to try an innovative assessment system. The Performance Assessment for Competency Education (PACE) pilot was implemented in four of New Hampshire’s school districts.

Under PACE, students take the statewide test (equivalent to Tennessee’s TCAPs) once in elementary school, once in middle school, and once in high school. In the other years, districts use their own locally-developed tests based on state-designed competencies and approved by the state.

Source: Deborah S. Delisle, Assistant U.S. Secretary of Education, “Performance Assessment of Competency Education (PACE) Pilot,” letter, addressed to New Hampshire Department of Education, March 5, 2015, <http://www.edweek.org/> (subscription required) (accessed Jan. 13, 2016); New Hampshire Department of Education, *New Hampshire Accountability 3.0 Model Overview*, July 18, 2014, pp.6-8, <http://www.education.nh.gov/> (accessed Feb. 24, 2016).

tests on the same state-approved guidelines of what students should know. As long as these baselines are met, however, districts have freedom to develop and manage the new tests at the local level.⁶⁰

Similarly, the federal pilot in Every Student Succeeds waives the requirement that all students in the state take the same tests. Additionally, the innovative assessments do not need to follow the standard testing schedule and may be administered less frequently than every year.⁶¹

The innovative assessment system may use competency-based assessments, where students progress at their own pace.⁶² Or, tests may be embedded into the curriculum and students' day-to-day work, a concept known as "instructionally embedded assessments," so that students are measured throughout the year. The new system may also use performance assessments, which encourage practical application of skills.^{63, 64} For an English class, for example, students might write a research paper and correctly analyze sources to demonstrate reading comprehension.

ESSA's initial pilot program may last up to five years, contingent on a two-year extension on the original three-year authorization. If the system meets certain criteria, states may use the innovative assessment systems for accountability purposes in lieu of the state standardized tests. Following the initial pilot program with seven states, the remaining states may apply to try innovative testing.⁶⁵

INTERVENTION

Highlights

Federally mandated intervention. No Child Left Behind waivers created the designations of priority and focus schools – schools with the lowest test scores (priority) and largest achievement gaps (focus). Every Student Succeeds continues to require states to identify and intervene in the lowest-performing 5 percent of schools, and schools where subgroups of students perform poorly.

State and district flexibility with corrective actions. Under both No Child Left Behind and Tennessee’s waivers, the federal government influenced the options for school intervention. While Every Student Succeeds still requires intervention in low-performing schools, states and school districts may pick their own corrective actions. The Achievement School District and Innovation Zones, originally created to turn around priority schools, remain options under the new law.

Flexibility with school choice. Previously, districts with schools identified for improvement had to give students the option to transfer to another school in the district, and pay for their transportation. Every Student Succeeds allows, but does not require, districts to offer school choice and transportation.

Intervention Timelines

No Child Left Behind

The accountability system under No Child Left Behind (NCLB) revolved around Adequate Yearly Progress (AYP). States set yearly goals for schools and districts, and all students were required to reach proficiency by the end of the 2013-14 school year.⁶⁶ Schools that failed to meet their annual targets went through varying stages of intervention: **school improvement, corrective action, and finally restructuring.**

Schools and districts that did not make AYP for two years in a row were identified for either school improvement or district improvement. After failing to make AYP for another two years, schools or districts were then identified for corrective action. Finally, if a school did not make AYP after a year of corrective action, it was identified for restructuring. At this point, it was subject to state takeover. In each stage of intervention, the federal government required states to choose from specific actions when dealing with schools and districts.

At any point, schools or districts that met AYP for two years in a row were removed from their intervention categories.⁶⁷

Tennessee's 2015 Waiver

Under the most recent NCLB waiver, Tennessee uses two types of accountability: schools are graded on **relative accountability**, and districts are measured based on **absolute accountability**.

Schools: Relative Accountability

Relative accountability measures a school's performance against other schools in the state. Priority and focus schools, which the federal government required states to identify to receive a waiver, are both examples of relative accountability.⁶⁸

Priority Schools

Every three years, Tennessee identifies 5 percent of all schools (not just Title I schools) as "priority." Priority schools have the lowest test scores in the state, and may also have low graduation rates.⁶⁹

Once a school is identified as "priority," Tennessee chooses from four intervention options outlined in its waiver. It may remove the school from its district and place it in the Achievement School District (ASD) or an Innovation Zone (I-Zone). The district may implement one of four possible federal School Improvement Grant (SIG) turnaround models. Or, finally, the state may leave the school under district guidance with the option to move the school to the ASD if it does not improve.⁷⁰

Schools must remain in the ASD for at least five years, at least three years in an I-Zone, and three years under a SIG turnaround model. After the minimum stay, schools then exit their priority status if they are not identified on the next priority list, or if they meet their achievement targets two years in a row.

Alternatively, schools may exit their priority status in fewer than three years if they show dramatic improvement. A priority school whose test results subsequently improve so that the school is no longer in the bottom 15 percent is taken off the priority list the next year. A priority school whose scores are no longer in the bottom 10 percent (but still within the lowest 15 percent) the next year is

Tennessee's Adequate Yearly Progress

Tennessee used the Adequate Yearly Progress (AYP) system from 2003 to 2011. The state's first waiver was approved in January 2012.

During those nine years, the state as a whole made Adequate Yearly Progress three times: elementary and middle schools made AYP in 2007 and 2008, and high schools made AYP in 2009. In all other years, the state failed AYP for both elementary/middle and high schools.

In Tennessee and across the country, more and more schools were identified for intervention as No Child Left Behind's 100 percent proficiency requirement grew closer. In 2007, 1,378 of Tennessee's 1,714 schools were in good standing, or 80 percent. In 2011, that number dropped by nearly half – 841 schools, or about 48 percent, were in good standing.

Source: Tennessee Department of Education, [State Report Cards, 2003-2011](#), <https://www.tn.gov/education/> (accessed Jan. 20, 2016).

designated as “priority improving.” If the school continues to improve, it may exit priority status the next year.⁷¹

Focus Schools

Tennessee also identifies 10 percent of schools as “focus.” Focus schools have large achievement gaps between subgroups of students, or subgroups with particularly low test scores. Schools with graduation rates lower than 60 percent may also be designated as focus schools, if they have not already received “priority” status.⁷² Districts with focus schools work with the Tennessee Department of Education to develop plans to improve subgroup performance and close achievement gaps.⁷³

Schools exit their “focus” status when they are not identified on the next focus list three years later. Schools may exit more quickly, however, if they show improvement in their struggling areas.⁷⁴

Districts: Absolute Accountability

Absolute accountability measures all school districts’ performance against the same goals. Tennessee’s accountability system evaluates districts in two areas: **student achievement** and **achievement gap closure**.

Districts are scored in each of these two areas, and the results are averaged into a final score. Districts may receive one of four possible designations:

- **In Need of Improvement:** The district is “not showing even minimal evidence of meaningful student progress.”⁷⁵ The district must analyze its results and plan for improvement in the next year. District staff must meet with Department of Education officials, and the district is subject to further monitoring and follow-up support.
- **Progressing:** The district is improving, but not meeting expectations. The district must analyze its results and create an improvement plan. If the district is designated

Tennessee’s Waiver Accountability

Tennessee released its first list of priority, focus, and reward (top performing five percent) schools in 2012. That year, there were:

- **83** priority schools;
- **167** focus schools; and
- **169** reward schools.

In 2014, there were:

- **85** priority schools;
- **150** focus schools; and
- **168** reward schools.

Tennessee’s newest waiver was approved in July 2015. As such, the state has not yet classified districts using the four new categories: *In Need of Improvement*, *Progressing*, *Achieving*, and *Exemplary*. The state planned to publish the ratings based on the new accountability system at the end of the 2015-16 school year, but partial testing data will delay full implementation of the new system.

Source: Tennessee Department of Education, *2012 School Accountability*, <https://www.tn.gov/education/> (accessed Jan. 20, 2016); Tennessee Department of Education, *2014 School Accountability*, August 26, 2014, <https://www.tn.gov/education/> (accessed Jan. 20, 2016).

as *Progressing* for two years in a row, it will automatically be identified as *In Need of Improvement* the next year.

- **Achieving:** The district is meeting expectations. The district participates in the state planning process as normal.
- **Exemplary:** The district is exceeding growth targets. The district may receive funding flexibility and create local plans without state approval.

The new accountability system was designed in 2015, with the intent to be implemented in the 2015-16 school year.⁷⁶ Due to incomplete or partial testing data, however, district classifications for 2015-16 will not proceed as planned.

Prior to this system, the Department of Education used four similar district classifications: *Exemplary*, *Intermediate*, *In Need of Improvement*, and *In Need of Subgroup Improvement*.⁷⁷

Every Student Succeeds

The Every Student Succeeds Act (ESSA) retains several features from the waivers. States are still required to have accountability systems – however, they have freedom to design their own frameworks and interventions.⁷⁸ And, unlike Adequate Yearly Progress, the U.S. Department of Education cannot specify any goals or timelines for states' progress.⁷⁹

As under the waivers, states must still identify and intervene in certain types of low-performing schools. Similar to the “priority” designation, schools identified for **comprehensive support and improvement** may score in the lowest 5 percent of Title I schools on the indicators measured by ESSA (test scores, English language proficiency, etc.), or have graduation rates under 67 percent.⁸⁰ Schools identified for **targeted support and improvement** are similar to those previously classified as focus schools, and may have low subgroup performance.⁸¹

Additionally, states identify schools with subgroups of students performing in the lowest 5 percent. If the school does not improve within a state-designated timeframe, the state identifies the school for comprehensive support and improvement.⁸²

Unlike NCLB's accountability system, where schools were given one to two years to improve before being identified for increased intervention, ESSA allows states and school districts to set the timelines for improvement.^{83, 84} The state may give schools identified for comprehensive support up to four years to improve. At that point, the state takes “more rigorous action,” including intervention at the school level.⁸⁵ In the past, “more rigorous” state action has involved removing a school from its district and placing it in the Achievement School District.

School Choice

Under No Child Left Behind, districts with schools identified for improvement had to allow students to transfer to another school in the district.⁸⁶ School districts also had to pay for those students' transportation.⁸⁷ In their second year of school improvement, schools had to provide supplemental educational services, such as tutoring, to Title I students.⁸⁸

Tennessee's waiver gave school districts discretion on allowing students to transfer and providing supplemental educational services. The state planned to track students who received supplemental services, and provide districts with information to decide whether those services were effective.⁸⁹

With the passage of ESSA, these actions remain options, but are no longer mandated in federal law. Districts with schools identified for comprehensive support and improvement (loosely analogous to priority schools under the waiver) *may* give students the option to transfer schools, and *may* pay for their transportation.⁹⁰

School Funding

Under NCLB, schools identified for improvement had to use parts of their budgets in specific ways. Schools had to spend at least 10 percent of their Title I, Part A money on teacher and principal professional development.⁹¹ School districts also had to spend an amount equal to 20 percent of their Title I, Part A funds on supplemental educational services and transporting transfer students. Such funding could come from any source – federal, state, or local – and districts were not required to spend the full 20 percent if they could meet the requirements using less.^{92,93}

ESSA specifies that schools identified for comprehensive support and improvement may not spend more than 5 percent of their Title I, Part A money to transport students to other schools.⁹⁴ Schools identified for comprehensive improvement may provide supplemental educational services at their districts' discretion; however, ESSA does not place any requirements or limitations on federal funding for these services.⁹⁵

TEACHERS

Highlights

No federal requirements for teacher evaluations. To receive a No Child Left Behind waiver, the federal government required states to factor student growth, as measured by state assessments, into teacher and principal evaluations. Every Student Succeeds explicitly prohibits the U.S. Department of Education from choosing or influencing the components of evaluations.

No “highly qualified teacher” requirement. No Child Left Behind required all core subject teachers to be “highly qualified” by the end of the 2005-06 school year. The designation involved obtaining full state certification, holding a bachelor’s degree, and demonstrating content knowledge. Every Student Succeeds eliminates the “highly qualified” requirement at the federal level, and instead only requires that students are taught by fully certified teachers. Although the “highly qualified” requirement has been repealed in federal law, Tennessee’s state licensure requirements still require a bachelor’s degree and demonstrated content knowledge.

Additional options for alternative certification. Under the new law, states may use federal Title II money to create residency programs and preparation academies for teachers and principals as routes to alternative certification.

Qualifications

No Child Left Behind (NCLB) required that all teachers of core subjects be “highly qualified” by the end of the 2005-06 school year.⁹⁶ To be highly qualified, all teachers had to:

- obtain full state certification, with no requirements waived on an emergency, temporary, or provisional basis;
- hold at least a bachelor’s degree; and
- demonstrate subject matter competency.⁹⁷

Options for showing content knowledge differed for new and existing teachers. In Tennessee, elementary school teachers hired after 2001 had to pass an NTE or Praxis test in core curriculum areas. In addition to this option, existing elementary school teachers could show competency through highly objective uniform state standards of evaluation (HOUSSE).

New middle and high school teachers demonstrated subject matter competency by either passing an NTE or Praxis test in the subject they taught, majoring in the subject, taking at least 24 semester hours in the subject, or obtaining a graduate degree in the subject. Existing middle and high school teachers also had the option of holding a National Board Certification in the subject or showing content knowledge through HOUSSE. Middle and high school teachers had to be highly qualified in *each* subject they taught.⁹⁸

Tennessee's Waivers and Every Student Succeeds

Tennessee's waivers relaxed the highly qualified teacher requirement. Under the waiver, the state no longer had to intervene in schools that were not making sufficient progress toward all teachers becoming highly qualified.⁹⁹

Every Student Succeeds (ESSA) repeals the highly qualified teacher requirement entirely. Under ESSA, teachers must meet state licensing requirements, but are no longer required to hold a bachelor's degree or demonstrate content knowledge under federal law.¹⁰⁰ Although the provision has been repealed in federal law, Tennessee's state licensure requirements still require a bachelor's degree and demonstrated content knowledge.¹⁰¹

Core Subjects

No Child Left Behind defined the core academic subjects:

- English;
- reading/language arts;
- mathematics;
- science;
- foreign languages;
- civics and government;
- economics;
- arts;
- history; and
- geography.

Federal law did not specify which arts were considered core subjects; Tennessee opted to include visual arts and music.

Sources: *Elementary and Secondary Education Act of 1965*, U.S. Code 20 (2012), § 9101(11); Tennessee Department of Education, *Tennessee Plan for Implementing the Teacher and Paraprofessional Quality Provisions of the No Child Left Behind Act of 2001*, August 18, 2005, p. 1, <https://www.tn.gov/education/> (accessed Dec. 29, 2015).

Evaluations

NCLB did not set requirements for teacher and principal evaluations. Several federal reforms soon linked teacher evaluations to students' test scores, however, starting in 2010 with Race to the Top grant applications and continuing with NCLB waivers in 2012.^{102,103}

In January 2010, Tennessee passed the First to the Top Act. The law created the Tennessee Educator Acceleration Model (TEAM), a teacher evaluation system that factors student performance into teacher evaluations.¹⁰⁴ Evaluations under TEAM have three aspects:

- **administrator observation**, based on rubric components such as motivating students, class activities, and lesson plans, counts for **50 percent**;¹⁰⁵
- **student growth**, measured by the Tennessee Value-Added Assessment System (TVAAS), counts for **35 percent**; and
- **student achievement**, based on a measure agreed on by the teacher and evaluator – such as state assessments, “off the shelf” assessments, SAT or ACT scores, or schoolwide TVAAS data – counts for **15 percent**.¹⁰⁶

Experienced teachers are observed four times a year, and new teachers are observed six times annually.¹⁰⁷

Under ESSA, the U.S. Department of Education is specifically prohibited from prescribing or influencing either the components of teacher evaluation systems *or* any measures of educator effectiveness.¹⁰⁸ Although the federal requirement has been eliminated, states may continue to require the use of student achievement and growth in evaluations.

Alternative Certifications

Every Student Succeeds provides states with additional options regarding alternative teacher certification. States may now use federal Title II funds to establish residency programs and preparation academies for teachers and principals.

Residency Programs

States may now use Title II funding to develop residency programs for teachers and principals.¹⁰⁹ As part of the residency program, prospective teachers spend at least a year in the classroom alongside an effective teacher. In addition to hands-on classroom time, future teachers take courses in the areas of their content knowledge; the classes may be taught by the school district or the teacher preparation program.¹¹⁰

Similarly, prospective principals divide their time between coursework and leadership responsibilities in a school setting. During the one-year residency program, prospective principals work with a mentor principal or other school leader.¹¹¹

Tennessee Value-Added Assessment System

Tennessee began using the Tennessee Value-Added Assessment System (TVAAS) in 1992. TVAAS does not measure student proficiency, as do state tests; instead, TVAAS predicts student improvement, or growth, based on test scores. TVAAS first assumes that students will begin the year at varying levels of proficiency. TVAAS also assumes that all students, regardless of their starting points, will grow academically at least somewhat over the school year.

TVAAS uses each student's state test scores from previous years in a statistical model. Based on past scores and growth, the TVAAS model then estimates what that student will score at the end of the current year.

At the end of the year, students' scores are compared to their TVAAS predictions. Twenty-five to thirty-five percent of a teacher's evaluation is based on TVAAS.

Source: Offices of Research and Education Accountability, *Use of Value-Added in Teacher Evaluations: Key Concepts and State Profiles*, Tennessee Comptroller of the Treasury, March 2015, <http://www.comptroller.tn.gov/> (accessed Jan. 16, 2016); Tennessee Department of Education, Tennessee Value-Added Assessment System, *How TVAAS Works*, <https://www.tn.gov/education/> (accessed Jan. 16, 2016).

Alternative Certification

In 2014, about 10 percent of students who completed a teacher training program received an alternative certification. Tennessee alternative certification providers include:

- Memphis Teacher Residency;
- Teach for America (Memphis and Nashville);
- Teach Tennessee;
- The New Teacher Project: Memphis Teaching Fellows; and
- The New Teacher Project: Nashville Teaching Fellows.

Source: Tennessee Higher Education Commission, *Tennessee Teacher Preparation Report Card 2014 State Profile*, <https://www.tn.gov/sbe> (accessed Jan. 16, 2016).

Teacher and Principal Preparation Academies

At their discretion, states may also use Title II funds to create teacher and principal “preparation academies.”¹¹² These academies may be housed in institutes of higher education, but are not required to be affiliated with colleges and universities. Similar to some alternative certification programs, prospective teachers and principals take classes in their content areas, but also partner with effective teachers and principals in the classroom for a “significant” portion of their instruction. ESSA’s academy authorization also includes a competency requirement: before receiving their full certification, prospective teachers must prove effective at raising student performance as student teachers or teachers of record.¹¹³

Unlike other alternative certification programs, however, ESSA’s teacher and principal academies may receive a small portion of states’ Title II funding. Academy students must also be eligible for state financial aid.¹¹⁴ Additionally, states cannot place “unnecessary restrictions” on the academies’ methods – for example, states may not require academy faculty to hold advanced degrees, or place restrictions on the coursework offered. At their discretion, states may recognize academy certifications as “at least” equivalent to a master’s degree with regard to hiring, promotion, and pay.¹¹⁵

Governor’s Academy for School Leadership

While the Tennessee Department of Education has not decided on establishing Title II teacher and principal preparation academies, the state announced a similar initiative in 2013.

In January 2016, 24 assistant principals made up the first year of the Governor’s Academy for School Leadership, a partnership between the Governor’s Office, the Tennessee Department of Education, Vanderbilt University, and school districts.

In addition to their regular duties as assistant principals, participants attend one weekend of training a month at Vanderbilt University, intern at least one day a week at a mentor principal’s school, receive six individual coaching sessions with a regional coach, and attend a weeklong summer program at Vanderbilt University.

After completing the one-year program, participants are expected to apply as principals in their district or region.

Sources: Tennessee Department of Education, [Governor’s Academy for School Leadership \(GASL\)](http://tn.gov/education/), <http://tn.gov/education/> (accessed May 26, 2016); Vanderbilt University, “[Governor’s Academy for School Leadership launches at Peabody College](http://news.vanderbilt.edu/),” February 23, 2016, <http://news.vanderbilt.edu/> (accessed May 26, 2016).

FUNDING

Highlights

Similar funding levels. Every Student Succeeds authorizes similar funding levels as No Child Left Behind. Funding is authorized for four years, and increases steadily from \$24.54 billion in fiscal year 2017 to \$26.08 billion in fiscal year 2020.

School Improvement Grants eliminated. Every Student Succeeds terminates the School Improvement Grant program, which provided additional money for schools identified for intervention. The new law requires states to reserve a greater part of their Title I budget (7 percent, increased from 4 percent) specifically for school turnaround and improvement, however.

Multiple programs consolidated into \$1.6 billion block grant. Every Student Succeeds combines funding for many programs – such as school counseling, smaller learning communities, gifted and talented students, physical education, and the arts – into a single block grant. While No Child Left Behind created separate programs for these initiatives, some had not been individually funded for several years. Although school districts have increased flexibility to use grant funds where needed, Every Student Succeeds imposes some minimum funding requirements.

Increased federal funding flexibility. States and school districts may now transfer any or all of their federal funding between Title II, Part A (Supporting Teacher and Principal Instruction) and Title IV, Part A (Student Support and Academic Enrichment block grants). Additionally, states and districts may also transfer funds originally intended for Title II-A or Title IV-A to several other titles.

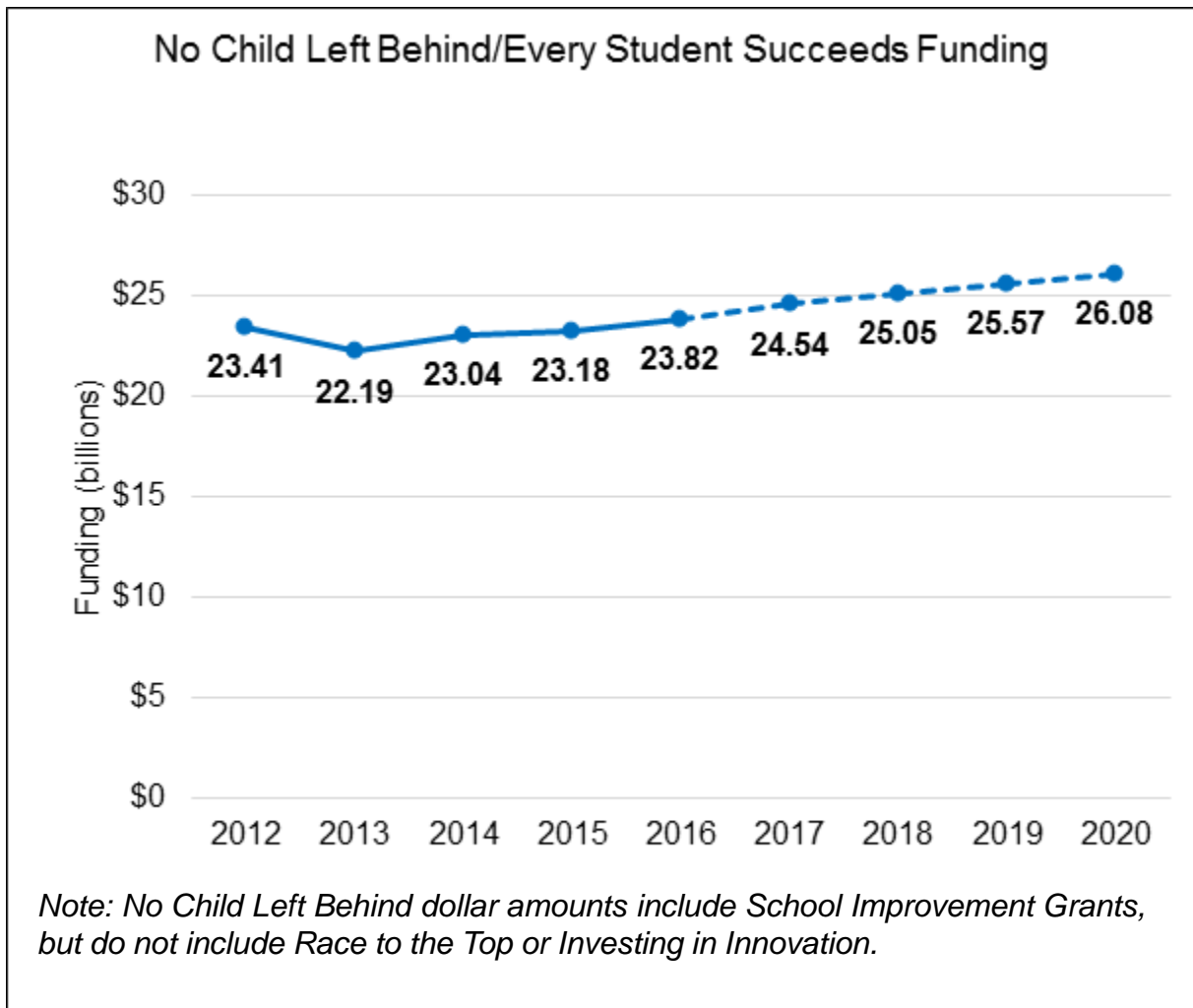
Weighted funding pilot program. Fifty school districts nationwide may include federal funds in a weighted funding system that directs more money to schools with higher numbers of disadvantaged students. Federal funds from several areas of Every Student Succeeds, including Title I, Title II, and Title III, may be allotted toward the weighted funding system.

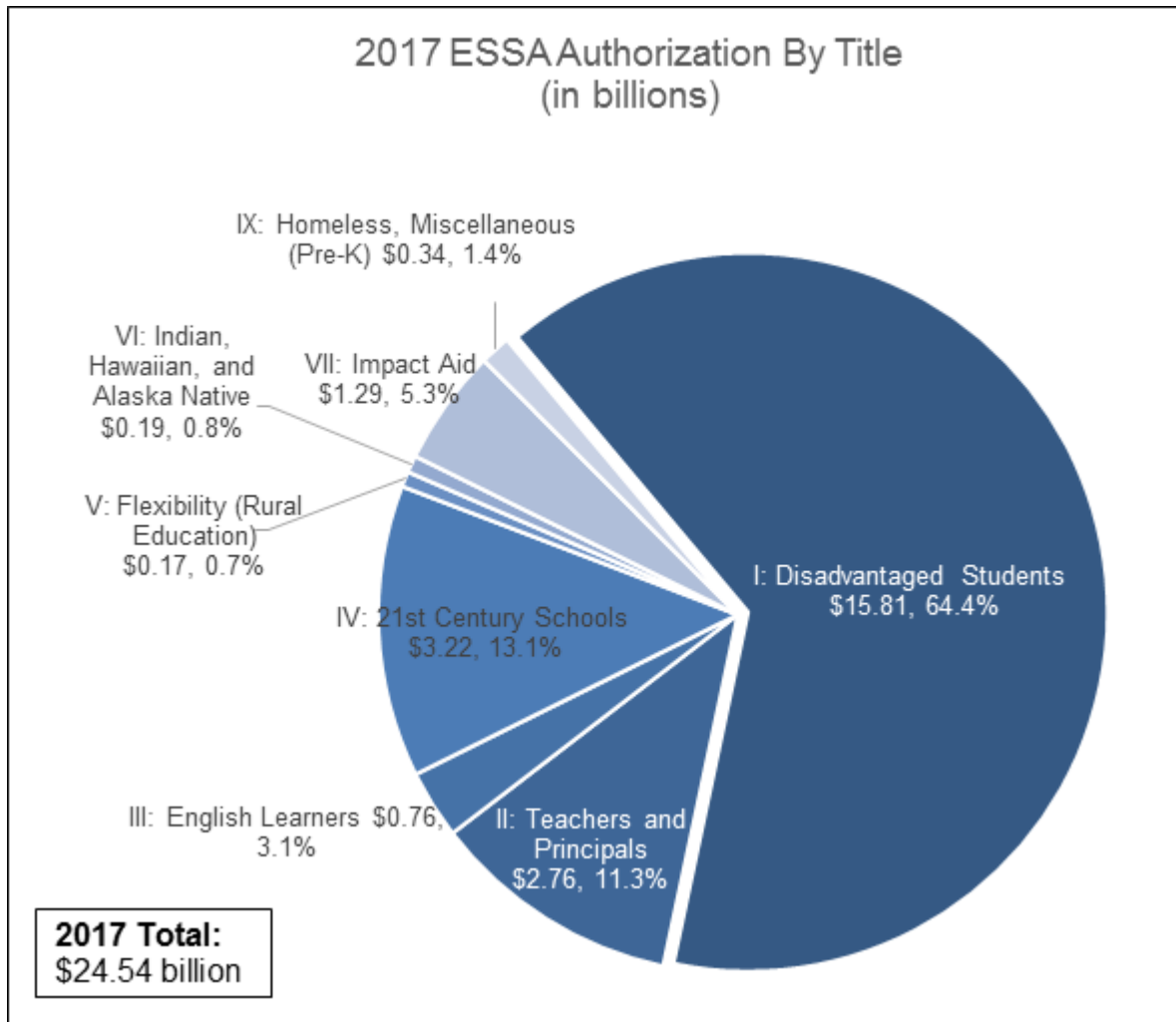
Pay for success funding. Funding from Title I, Part D and Title IV, Part A may be used in pay for success programs. Pay for success programs allow private investors to contribute money to public projects – however, the investors are only repaid if the projects are successful.

Authorizations

Overall funding levels for Every Student Succeeds (ESSA) are similar to No Child Left Behind (NCLB). For fiscal year 2016, the last year NCLB funding formulas are in effect, \$23.82 billion was allotted. In fiscal year 2017, the first year ESSA's funding formulas take effect, \$24.54 billion has been authorized, an increase of about 3 percent. ESSA funds have been authorized through 2020 and steadily increase through the years, topping out at \$26.08 billion.

The majority of ESSA funding – nearly 65 percent, or \$15.81 billion authorized in federal fiscal year 2016-17 for use in school year 2017-18 – goes toward Title I. Title II and Title IV, focusing on teachers and principals and 21st Century Schools, respectively, together account for another 25 percent of the budget.





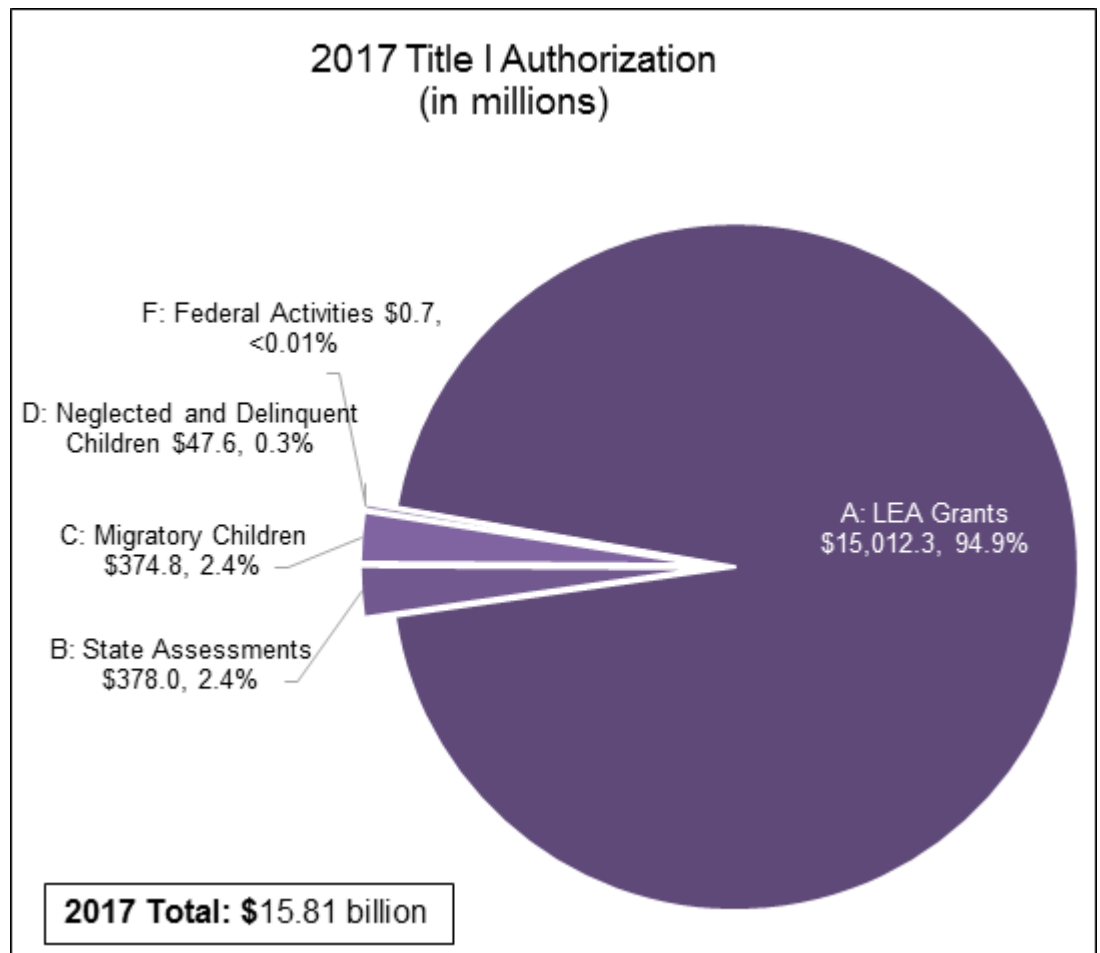
Title I – Disadvantaged Students

Title I is the largest part of the ESSA budget. About \$15 billion, or nearly 95 percent, of Title I money goes toward state and school district grants under Part A.¹¹⁶ These funds are intended to help low-income students reach proficiency; on its own, “Title I funding” typically refers to funds under Title I, Part A. Part A’s stated purpose is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.”¹¹⁷

School districts use Part A subgrants to improve their schools’ programs and instruction. A school where at least 40 percent of enrolled students are economically disadvantaged may operate a schoolwide program – that is, the school may use Title I, Part A funds to improve its entire program.¹¹⁸ A school whose low-income population is less than 40 percent of total enrollment operates a targeted assistance program. Targeted assistance programs focus Title I, Part A funding on students who are failing or at risk of failing.¹¹⁹

In school year 2015-16, 1,234 of Tennessee's approximately 1,800 schools received Title I, Part A funding. The vast majority – 1,211 schools, or 98 percent – operate schoolwide assistance programs.¹²⁰

Under ESSA, states have the power to waive the 40 percent requirement: upon receiving a waiver, schools with lower concentrations of low-income students may still operate schoolwide programs.¹²¹



In February 2016, the U.S. Department of Education released preliminary estimates of federal funding for fiscal year 2016-17. Tennessee is projected to receive just over \$308 million in Title I, Part A funds, a 2 percent increase from fiscal year 2015-16.

Tennessee is expected to receive almost \$2 million for Title I, Part C (Migratory Children) in fiscal year 2016-17, or nearly two and a half times more funding than the previous fiscal year. Finally, the state's funding for Title I, Part D (Neglected and Delinquent Children) will remain constant at roughly \$357,000.¹²²

School Improvement Grants

Every Student Succeeds eliminates School Improvement Grants (SIG).¹²³ Under No Child Left Behind, the SIG program provided additional federal grant money to states – states then made subgrants to districts specifically for schools identified for intervention.¹²⁴ To receive SIG money, however, schools had to put in place one of four SIG turnaround models: transformation, turnaround, restart, or closure.¹²⁵

In 2014, SIG grants totaled nearly \$506 million nationwide, and Tennessee received almost \$9.2 million.^{126, 127} For school year 2015-16, Tennessee allotted nearly \$2 million in SIG funds to

the Achievement School District, just over \$500,000 to Knox County Schools, over \$3 million to Metropolitan Nashville Public Schools, and almost \$5 million to Shelby County Schools.¹²⁸ Over the course of three years, SIG grants for these four districts will total nearly \$32 million.¹²⁹

In addition to SIG grants, states were required to reserve 4 percent of their Title I, Part A funds specifically for school intervention under NCLB. Those funds were given directly to districts for schools identified for improvement, corrective action, or restructuring.¹³⁰ Under the waiver, Tennessee gave this state reservation to priority and focus schools.¹³¹

ESSA increases this state reservation from 4 to 7 percent of Title I, Part A funding.¹³² In fiscal year 2015-16, Tennessee received \$283.7 million in Title I, Part A funds.¹³³ Four percent of this total is just over \$11.3 million; 7 percent is \$19.9 million. ESSA's 3 percent increase adds nearly \$8.5 million reserved at the state level for school improvement. This difference nearly equals the funds Tennessee previously received in SIG grants.

State Assessment Grants

Under Title I, Part B, states may apply for state assessment grants to develop statewide tests and standards. If states already have these standards and tests in place, they may use the grant money for other related activities – providing accommodations for English learners, improving tests for students with disabilities, or developing assessments in other subjects, for example.

States and school districts may also use grant funds to audit their assessment systems.¹³⁴

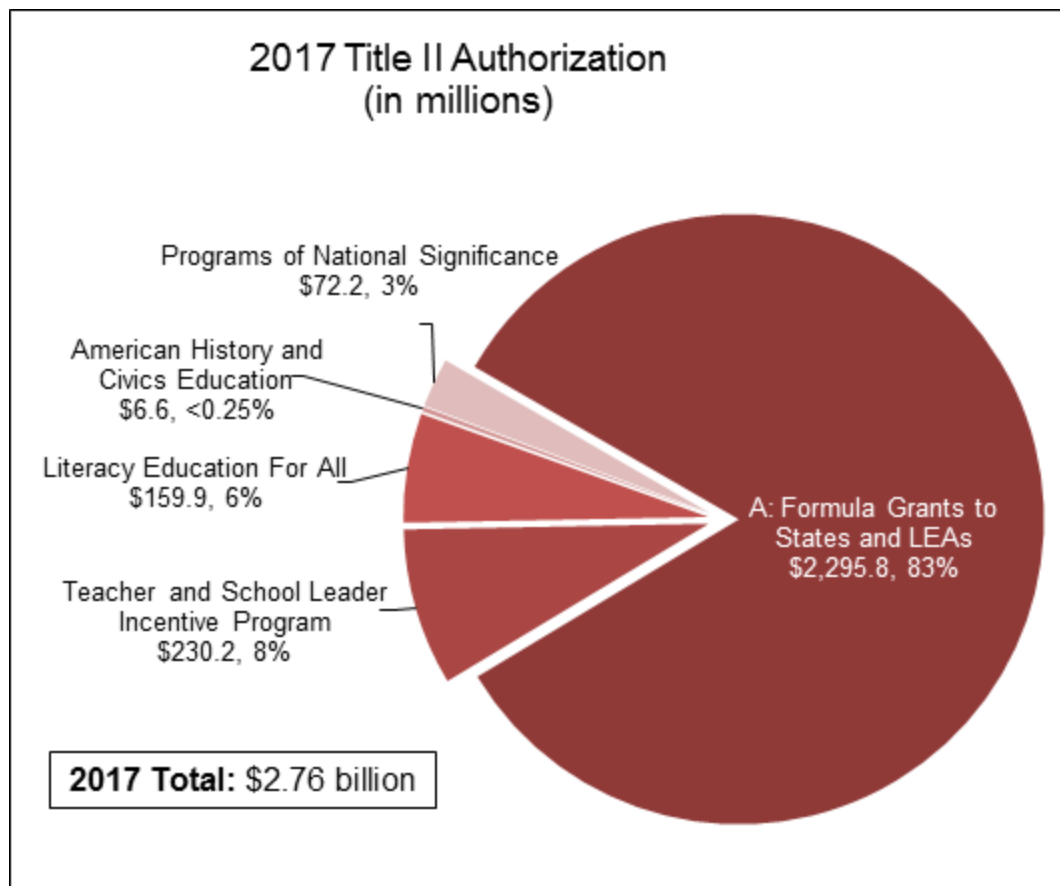
Title II – Teachers and Principals

Title II intends to improve teacher and principal quality. Nearly \$2.3 billion, or the majority of Title II funds, are given to states through formula grants under Part A.¹³⁵ States then distribute this money to school districts through subgrants.¹³⁶ Some examples of district activities under Title II, Part A include:

- improving teacher and principal evaluation systems;
- implementing programs to recruit, hire, and retain effective teachers;
- recruiting individuals from other areas – such as career professionals, veterans, and recent college graduates – to become teachers and principals;
- reducing class size;
- providing professional development for teachers, principals, and other school staff; and
- providing training to support special groups of students, such as English learners, students with disabilities, and gifted and talented children.¹³⁷

Every Student Succeeds alters the federal funding formula for these grants. Currently, all states receive a base amount, calculated from the amounts received in fiscal year 2001 before the passage of No Child Left Behind. Any additional funds are allotted by formula. Thirty-five percent of a state's excess share is based on its population of school-age children compared to other states. The other 65 percent depends on the number of low-income students in that state compared to the nation.¹³⁸

ESSA changes the funding formula on two fronts: first, it gradually reduces the base funding amount, so that by fiscal year 2023, no state will receive any of the guaranteed base funding it received in 2001. The new law also gradually assigns greater funding weight to states' low-income populations. By fiscal year 2020, 20 percent of the grant will depend on states' total student population, while 80 percent will depend on the number of low-income students.¹³⁹



With the funding shift, states with more low-income students will receive more funding. The Congressional Research Service estimates that some states, such as Illinois, Massachusetts, New York, and Pennsylvania, will receive less money under the new formula.

Tennessee, however, is projected to receive *more* funding. In fiscal year 2015-16, Tennessee's Title II, Part A funds totaled over \$38.8 million – using ESSA's formula, that share is estimated to increase to over \$48.9 million by 2023.^{140, 141} Projections from the U.S. Department of Education estimate a 3.5 percent increase in Tennessee's Title II, Part A funds in the first year of ESSA's new formulas; in fiscal year 2016-17, the state is projected to receive \$39.4 million.¹⁴²

Competitive Grants

In addition to the formula grants under Part A, Title II also contains several competitive grants for states and school districts. Grant areas include:

- **Teacher and School Leader Incentive Fund.** States and school districts may use grant funds to explore performance-based compensation systems. Such systems may provide differential or bonus pay to teachers and principals based partly on their students' performance or improvement.¹⁴³
- **Literacy Education For All.** States may make subgrants to school districts or early childhood education programs. These funds may be used for educator professional

development and increasing student literacy in grades K-12. Funding may also be directed to school libraries and early literacy programs.¹⁴⁴

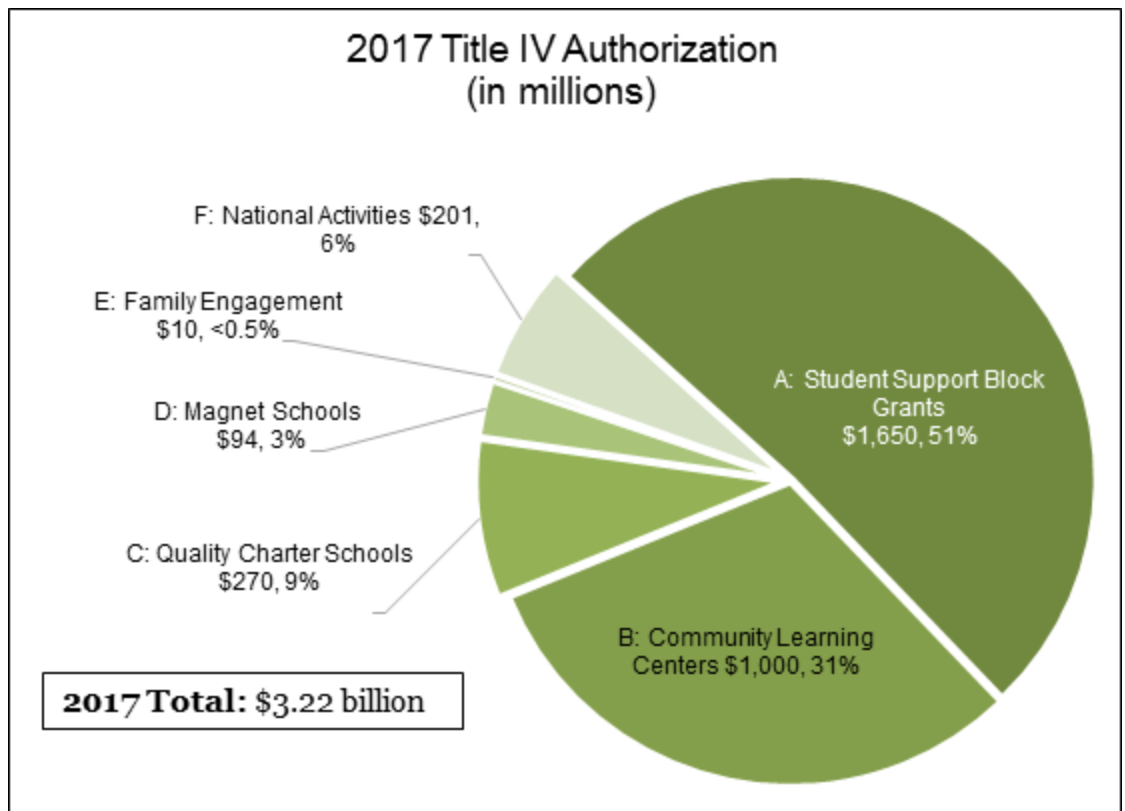
- **American History and Civics Education.** Institutes of higher education and nonprofit organizations may use these funds to develop Presidential and Congressional Academies. The academies last for two to six weeks and serve American history and civics teachers and students. Money is also provided for teachers and school staff to participate in national civics activities.¹⁴⁵
- **Programs of National Significance.** Funds are provided for teacher and staff professional development. Funding may also be used to provide leadership training to principals, and to recruit principals to high-need schools. Additionally, states may use grant money to establish a statewide STEM Master Teacher Corps. The Corps is intended to help attract and retain STEM teachers, especially in high-need and rural schools.¹⁴⁶

Title IV – Block Grant and Other Programs

No Child Left Behind created multiple programs to improve various areas of education, including school counseling, smaller learning communities, gifted and talented students, physical education, economics education, the arts, domestic violence awareness, and equal education for women.¹⁴⁷ Many of these programs had not been individually funded for several years, however.

Title IV, Part A of Every Student Succeeds consolidates many of these programs into a block grant.¹⁴⁸ These Student Support and Academic Enrichment Grants total \$1.65 billion in fiscal year 2017; in 2018 and beyond, the grants total \$1.6 billion.¹⁴⁹

Grant funds are intended to provide a well-rounded education, cultivate safe school environments for learning, and encourage the



use of technology in education.¹⁵⁰ At minimum, school districts must receive \$10,000.¹⁵¹ Districts that receive over \$30,000 must follow several funding requirements:

- at least **20 percent** of funds must go toward **well-rounded education** by providing access to music programs, the arts, and STEM subjects; offering and paying fees for advanced coursework; and promoting volunteerism and community involvement;¹⁵²
- at least **20 percent** of funding must be used to support **safe and healthy students** through drug and violence prevention, mental health services, physical education, and programs to prevent bullying and harassment, among other options;¹⁵³ and
- at least some funds must be used for **technology**.¹⁵⁴

Districts receiving less than \$30,000 must commit to only one of these requirements.¹⁵⁵

Additional Title IV Appropriations

In addition to the block grant under Part A, Title IV contains several other sections:

- **Part B – 21st Century Community Learning Centers.** School districts, community organizations, or other nonprofits may put Part B funds toward creating or expanding community learning centers. Such learning centers provide supplemental services to students when not in school, such as before or after school or during the summer. Learning centers may offer tutoring, counseling, health and wellness services, or other educational programs.¹⁵⁶ In fiscal year 2015-16, Tennessee received almost \$21.8 million for community learning centers.¹⁵⁷
- **Part C – Expanding Opportunities through Quality Charter Schools.** Part C funding may be used for starting new charter schools, or expanding or replicating systems and models that have proven effective. Funds may also help charter schools obtain and improve facilities. Part C funding is used at the national level to evaluate charter schools and their best practices.¹⁵⁸
- **Part D – Magnet Schools Assistance.** School districts may put Part D funding toward a variety of uses in magnet schools, such as planning or expanding programs and services, buying textbooks and equipment, paying salaries, and professional development.^{159,160}
- **Part E – Family Engagement in Education Programs.** Part E funds may be used to create statewide family engagement centers. These centers encourage parents to support and take part in their children’s education, and may reach out to parents of low-income students, English learners, or other disadvantaged groups.¹⁶¹

Other Titles

ESSA's remaining funding is authorized under:

- **Title III – English Language Acquisition.** Title III intends to help English learners become proficient in English and meet the same academic standards as other students and native speakers.¹⁶² School districts receive Title III money through state subgrants, and may use the funds to provide language instruction programs, educator professional development, and services to engage parents and families.¹⁶³ In fiscal year 2015-16, Tennessee received just over \$5.1 million in Title III funds.¹⁶⁴ Preliminary projections from the U.S. Department of Education place Tennessee's fiscal year 2016-17 funding for Title III at nearly \$5.7 million.¹⁶⁵
- **Title V, Part B – Rural Education Initiative.** The Rural Education Initiative provides additional subgrants to rural school districts to support school programs. A rural district serves fewer than 600 students, or contains counties with population densities of fewer than 10 people per square mile.¹⁶⁶ Districts may use funding from this part to supplement their other programs under Title I, Part A (Basic Programs for Disadvantaged Students), Title II, Part A (Teacher and Principal Instruction), Title III (English Language Acquisition), and Title IV, Parts A and B (Student Support Block Grants and 21st Century Community Learning Centers).¹⁶⁷ In fiscal year 2015-16, Tennessee received about \$4.6 million for rural education.¹⁶⁸ Early estimates of Tennessee's fiscal year 2016-17 funding show a decrease to about \$4.2 million.¹⁶⁹
- **Title VI – Indian, Native Hawaiian, and Alaska Native Education.** Title VI addresses the unique academic and cultural needs of Indian, Native Hawaiian, and Alaska Native Students. Funding is intended to help students meet state standards; encourage children to study Native languages, history, and traditions; and ensure that teachers and principals have the necessary training and resources to effectively support students.¹⁷⁰
- **Title VII – Impact Aid.** Impact Aid provides additional funds to school districts impacted by the federal acquisition of land. School districts may include land owned by the federal government that is tax exempt – for example, military bases, Indian reservations, or low-income housing. Title VII money helps districts replace local revenue that cannot be collected through property taxes, so that districts have adequate funding to provide a high-quality education.¹⁷¹
- **Title IX:**
 - **Part A – Homeless Children and Youth.** Title IX, Part A, also known as the McKinney-Vento Homeless Assistance Act, intends to provide homeless students with the same educational opportunities as other students. Funding is awarded to school districts through competitive state subgrants.^{172, 173} In fiscal year 2015-16, Tennessee received nearly \$1.3 million in McKinney-Vento funds.¹⁷⁴ Preliminary estimates for fiscal year 2016-17 put Tennessee's funding at just over \$1.7 million.¹⁷⁵

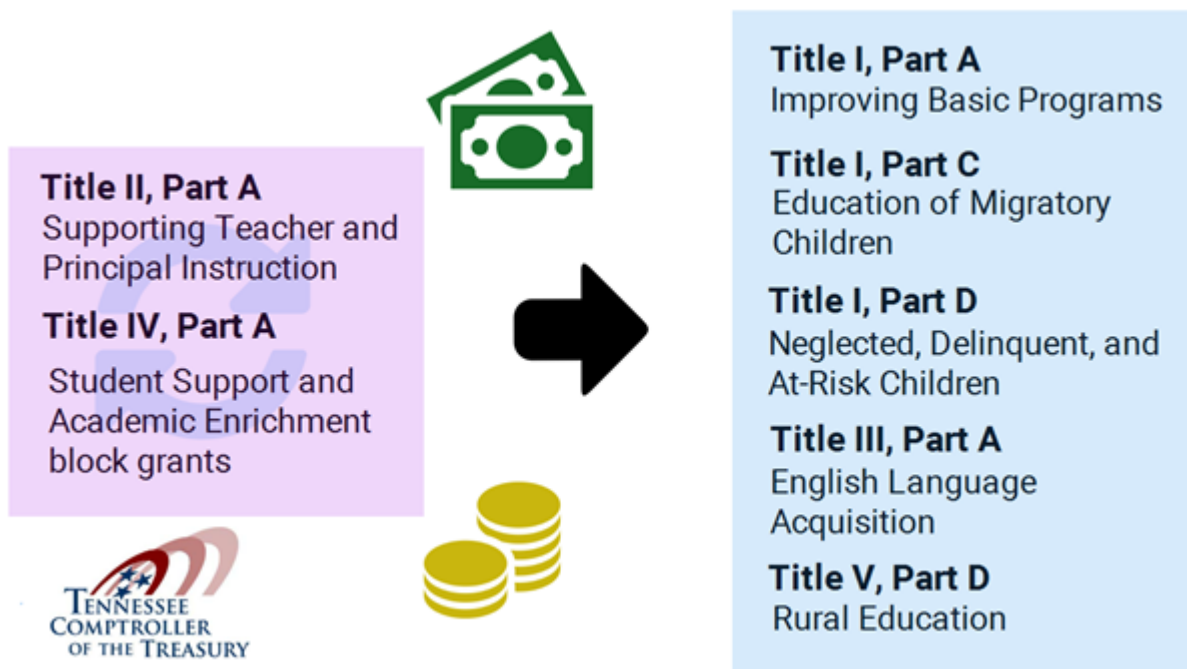
- o **Part B – Preschool Development Grants.** These grants provide funds for states to build or expand preschool programs and infrastructure. Programs are designed to help low-income or other disadvantaged students transition to kindergarten. Grants encourage partnerships between state and local governments; school districts; preschool providers, such as Head Start; and other community organizations.¹⁷⁶

Transferability

Title V of ESSA increases flexibility with federal funds. States and school districts may now transfer any or all of their federal funding between Title II, Part A (Supporting Teacher and Principal Instruction) and Title IV, Part A (Student Support and Academic Enrichment Block Grants). Additionally, states and school districts may also transfer funds originally intended for Title II-A or Title IV-A to several other ESSA sections:

- **Title I, Part A** – Improving Basic Programs;
- **Title I, Part C** – Education of Migratory Children;
- **Title I, Part D** – Neglected, Delinquent, and At-Risk Children;
- **Title III, Part A** – English Language Acquisition; and
- **Title V, Part B** – Rural Education.

States and school districts may not *decrease* funding to any of the areas listed above by transferring money to other titles, however. Money also cannot be transferred between the above titles – for example, states and districts may not move funds between Title I, Part A and Title I, Part C.¹⁷⁷



Weighted Funding

Up to 50 school districts nationwide may include federal funds in a weighted funding system that directs more money to schools with higher numbers of disadvantaged students.¹⁷⁸

Most school districts consolidate state and local funds at the district level before distributing money to schools. Federal funding, however, is allotted to schools separately from state and local funds, depending on federal guidelines for each program (i.e., Title I, Title II). For convenience, allocations to schools are often expressed in terms of per-pupil expenditures.

Depending on enrollment, demographics, and schools' needs, districts may set different funding policies – for example, large urban districts may distribute money to schools differently than rural districts.

Under Every Student Succeeds' weighted funding pilot program, participating districts may combine eligible federal funds with state and local money for the first time. Eligible ESSA funds include Title I, Title II, Title III, Part A of Title IV, and Part B of Title V.

After consolidating all eligible state, local, and federal funds, districts assign “weights” to certain groups of students. Under the pilot program requirements, for example, districts must give schools “substantially more funding” per student for low-income students and English learners. While economically disadvantaged students and English learners are the only groups explicitly mentioned in federal law, the district may choose other subgroups to weight more heavily.

Weighted Funding: Baltimore

In the 2008-09 school year, Baltimore City Schools began using “Fair Student Funding,” a weighted funding system.

Before the budget process begins, schools receive enrollment estimates. All schools receive a base amount for each student: in the 2012-13 school year, the proposed amount was \$5,155 per pupil.

In addition to the base amounts, schools receive supplementary money for certain types of students. The 2012-13 proposed amounts were \$1,000 for both gifted and struggling students, \$641 for special education children, and \$750 for students at risk of dropping out of high school.

Not all school funding is included in the weighted system, however. Some districts “lock” certain funds, such as money for custodial services or building maintenance. Schools receive adequate funding for these areas, regardless of their enrollment.

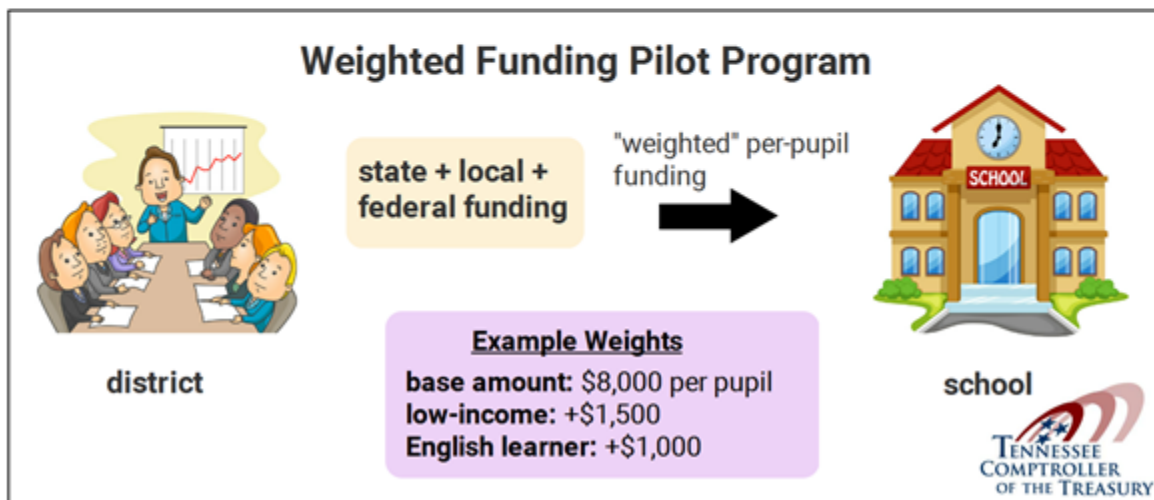
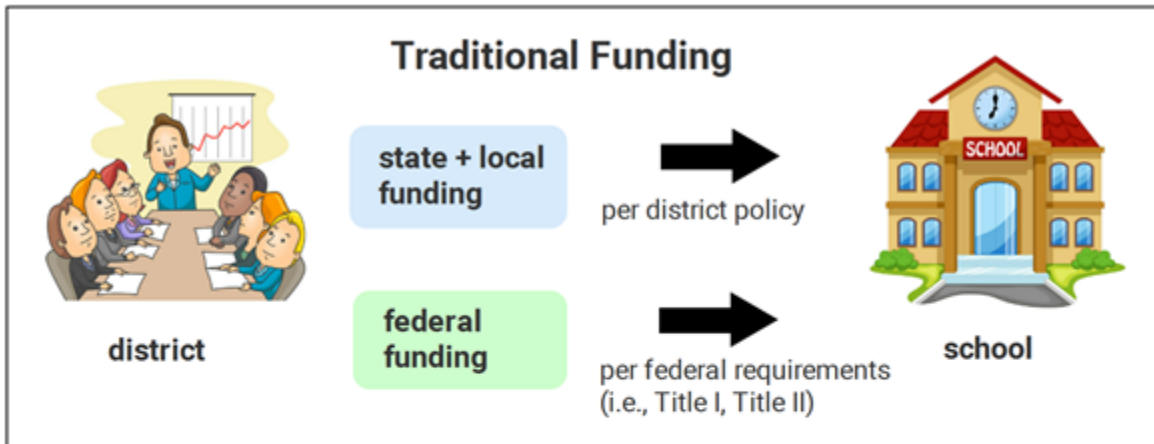
Baltimore City Schools estimates that with the implementation of Fair Student Funding, principals' control over their schools' budgets has increased from 3 percent to over 80 percent.

Source: Baltimore City Schools, [Fair Student Funding: What It Means for Your Child](http://www.baltimorecityschools.org/), <http://www.baltimorecityschools.org/> (accessed Jan. 18, 2016); Education Resource Strategies, “[Weighted Student Funding](http://www.slideshare.net/),” <http://www.slideshare.net/> (accessed Jan. 18, 2016).

Thus, under a weighted system, funds are distributed to schools based on student *demographics*, not just attendance – that is, schools with more low-income children and English learners receive more money, even if they have similar enrollment as other schools in the district.

The district must make sure that, when using federal funds, schools continue assisting target student populations. For example, if Title I and Title III funds are consolidated in the weighting funding system, the school must meet the purposes of those titles by serving low-income students, neglected and delinquent children, English learners, and any other applicable groups.

The original weighted funding agreement under ESSA lasts for up to three years. If the results from the nationwide pilot show success, any school district may apply beginning in school year 2019-20, and an unlimited number of districts may participate.¹⁷⁹



Pay For Success Funding

Several sections of ESSA allow states and school districts to use federal funds for “pay for success” programs.

Pay for success funding – also known as a social impact bond – is a way to funnel private money into the public sector.¹⁸⁰ Tennessee currently has limited options for private investment in government. Four entities issue debt:

- **The Tennessee State Funding Board** issues general obligation bonds authorized by the General Assembly for public projects;
- **The Tennessee Housing Development Agency** uses bond proceeds to finance low- and moderate-income home loan programs;
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- **The Tennessee State School Bond Authority** issues bonds to finance capital projects for public colleges and universities.¹⁸¹

In addition to purchasing bonds, citizens and organizations may donate private money to the state, with no return on investment. Gifts over \$5,000 must be accepted by the Governor, and may be used for a specific purpose.¹⁸² Currently, however, there is usually no way for bond investors to direct their funds to a specific purpose or project.¹⁸³

Pay for success programs allow private investors to contribute to a specific public project. Prior to investing money, investors and a public entity, such as a state or school district, agree on a proposed outcome – for example, reducing dropout rates in high school. Then, investors pay up front for the public project in the form of a grant, contract, or other agreement. At the project’s completion, the state

Pay For Success Funding: New York

While pay for success funding is relatively new in the education world, several states have used it in other areas. In 2013, the state of New York began a pay for success initiative to reduce recidivism and provide work for former inmates. The project planned to reduce recidivism by 8 percent and/or increase employment by 5 percent.

Private sector investors and foundations raised \$13.5 million in six weeks for the project – Bank of America investors alone contributed \$13.2 million. However, these contributions will only be refunded if the project achieves its goals. If the project exceeds its targets, investors may receive additional returns.

An independent organization, Chesapeake Research Associates, will determine if the goals have been met. The program will last four years, with services provided by the nonprofit organization Center for Employment Opportunities.

If the program meets its objectives, New York estimates it will save \$7.8 million in public money from reduced prison costs.

Source: New York State, “Governor Cuomo Announces New York the First State in the Nation to Launch Pay for Success Project in Initiative to Reduce Recidivism,” December 30, 2013, <http://www.governor.ny.gov/> (accessed Dec. 22, 2015).

or district pays the investors back only if the outcome is achieved.¹⁸⁴ In this way, private investors bear the primary risk of a public project until its completion; if the project is not successful, taxpayer money has not been lost.¹⁸⁵

If the project is successful, however, the state or district may realize long-term savings that cover the cost of repayment. For example, by reducing high school dropout rates, more students may go on to higher education and gainful employment – theoretically, these diverted dropouts will “repay” the cost of pay for success programs by earning higher wages, contributing to the tax base and the economy, and receiving fewer government services.

Throughout the project, the public entity releases yearly progress reports. Additionally, as a condition of the agreement, a third party evaluates the program to determine its success.¹⁸⁶

Under ESSA, states may put Title I, Part D funds toward pay for success programs.¹⁸⁷ Title I, Part D intends to prevent neglected, delinquent, and at-risk children from dropping out of school. States may also provide assistance to dropouts and children returning from correctional institutes to help them continue their education.¹⁸⁸

School districts may also use Title IV, Part A funding for pay for success initiatives. The programs focus on creating safe and healthy schools through drug and violence prevention, mental health services, and encouraging active lifestyles.¹⁸⁹

Currently, states are not restricted from using their own funds for pay for success programs; however, these two sections of ESSA mark the first time states may use *federal* education money in such programs.

INNOVATION

Highlights

Innovative testing pilot program. Seven states may participate in a five-year pilot program to develop innovative tests, which may be used in only a few districts at the beginning of the program. The innovative assessments may be non-standardized and managed locally, so that not all students in the state take the same tests.

Weighted funding pilot program. Fifty school districts nationwide may include federal funds in a weighted funding system that directs more money to schools with higher numbers of disadvantaged students. Federal funds from several areas of Every Student Succeeds, including Title I, Title II, and Title III, may be allotted toward the weighted funding system.

Pay for success funding. Funding from Title I, Part D and Title IV, Part A may be used in pay for success programs. Pay for success programs allow private investors to contribute money to public projects – however, the investors are only repaid if the projects are successful.

Innovative Testing Pilot Program

Seven states, or a consortium of states, may participate in a pilot program to develop innovative assessments. States may start using the new testing system in only a few school districts, but must aim toward statewide use. The new tests must align with state standards, and report the same information as current state tests, including separate reporting of results by student subgroup (e.g., special education or low-income status).¹⁹⁰ In New Hampshire, the only state currently operating an innovative testing pilot, the participating districts are not required to give the same standardized assessments as the rest of the state. Instead, all pilot program districts must base their tests on the same state-approved

Innovative Testing: New Hampshire

Prior to ESSA, in March 2015 the state of New Hampshire received a waiver from the U.S. Department of Education to try an innovative assessment system. The Performance Assessment for Competency Education (PACE) pilot was implemented in four of New Hampshire's school districts.

Under PACE, students take the statewide test (equivalent to Tennessee's TCAPs) once in elementary school, once in middle school, and once in high school. In the other years, districts use their own locally-developed tests based on state-designed competencies and approved by the state.

Source: Deborah S. Delisle, Assistant U.S. Secretary of Education, "Performance Assessment of Competency Education (PACE) Pilot," letter, addressed to New Hampshire Department of Education, March 5, 2015, <http://www.edweek.org/> (subscription required) (accessed Jan. 13, 2016); New Hampshire Department of Education, *New Hampshire Accountability 3.0 Model Overview*, July 18, 2014, pp.6-8, <http://www.education.nh.gov/> (accessed Feb. 24, 2016).

guidelines of what students should know. As long as these baselines are met, however, districts have freedom to develop and manage the new tests at the local level.¹⁹¹

Similarly, the federal pilot in Every Student Succeeds waives the requirement that all students in the state take the same tests. Additionally, the innovative assessments do not need to follow the standard testing schedule and may be administered less frequently than every year.¹⁹²

The innovative assessment system may use competency-based assessments, where students progress at their own pace.¹⁹³ Or, tests may be embedded into the curriculum and students' day-to-day work, a concept known as "instructionally embedded assessments," so that students are measured throughout the year. The new system may also use performance assessments, which encourage practical application of skills.^{194, 195} For an English class, for example, students might write a research paper and correctly analyze sources to demonstrate reading comprehension.

ESSA's initial pilot program may last up to five years, contingent on a two-year extension on the original three-year authorization. If the system meets certain criteria, states may use the innovative assessment systems for accountability purposes in lieu of the state standardized tests. Following the initial pilot program with seven states, the remaining states may apply to try innovative testing.¹⁹⁶

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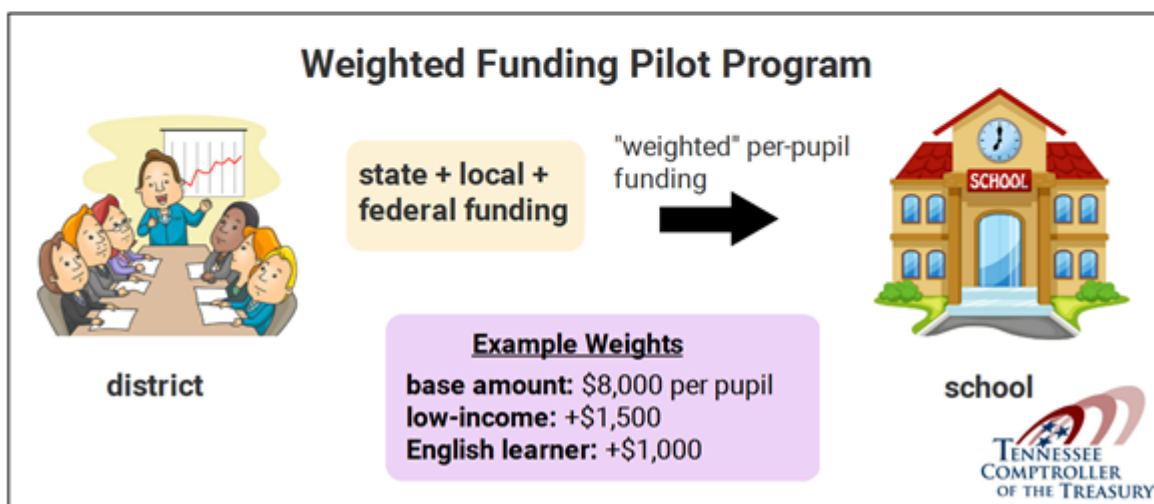
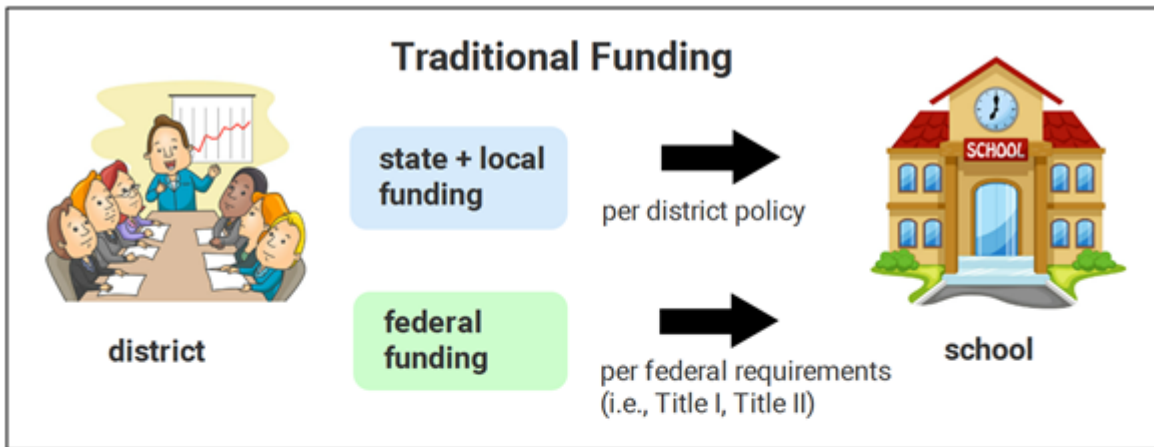
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Endnotes

- ¹ *Elementary and Secondary Education Act of 1965*, USC 20 (2012), § 6311(b)(2)(A) *et seq.*
- ² *Ibid.*, USC 20 (2012), § 6311(b)(2)(G) *et seq.*
- ³ *Ibid.*, USC 20 (2012), § 6311(b)(2)(C)(vi)-(vii).
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- ¹⁶ *Ibid.*, Public Law 114-95, § 1111(c)(4)(A), 2015.
- ¹⁷ *Ibid.*, USC 20 (2012), § 6311(b)(2)(A) *et seq.*
- ¹⁸ *Ibid.*, USC 20 (2012), § 6316.
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- ²⁰ *Ibid.*, p. 54.
- ²¹ *Ibid.*, pp. 71 and 85.
- ²² *Ibid.*, p. 54.
- ²³ *Ibid.*, pp. 44, 48, and 51.
- ²⁴ *Ibid.*, Public Law 114-95, §§ 1111(c)(4)(D), 1111(d), 2015.

- ²⁵ House Education and Workforce Committee, *ESEA Conference Report Summary: S. 1117, The Every Student Succeeds Act*, <http://edworkforce.house.gov/> (accessed Dec. 8, 2015).
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- ²⁷ Tennessee Department of Education, “Education Department Launches Statewide Tour to Get Input on ESSA Plan,” May 24, 2016, <http://www.tn.gov/education/> (accessed May 27, 2016).
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- ³⁴ Mary Batiwalla, Executive Director, Office of Accountability, Tennessee Department of Education, e-mail, March 14, 2016.
- ³⁵ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1111(b)(1)(F), 2015.
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- ³⁷ *Ibid.*, Public Law 114-95, § 1111(j)(1), 2015.
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- ⁴¹ *Ibid.*, Public Law 114-95, § 1111(b)(2)(B)(viii), 2015.
- ⁴² *Ibid.*, Public Law 114-95, § 1111(b)(2)(B)(vi), 2015.
- ⁴³ *Ibid.*, Public Law 114-95, § 1111(b)(2)(H), 2015.
- ⁴⁴ *Ibid.*, Public Law 114-95, § 1111(b)(2)(L), 2015.
- ⁴⁵ *Ibid.*, U.S. Code 20 (2012), § 6311(b)(2)(I)(ii).
- ⁴⁶ Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, p. 65, <http://www2.ed.gov/> (accessed Dec. 5, 2015).
- ⁴⁷ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1111(c)(4)(E), 2015.
- ⁴⁸ *Ibid.*, U.S. Code 20 (2012), § 6311(b)(3)(C)(xiii).
- ⁴⁹ Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, p. 45, <http://www2.ed.gov/> (accessed Dec. 5, 2015).
- ⁵⁰ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1111(b)(2)(B)(xi), 2015.
- ⁵¹ Mary Batiwalla, Executive Director, Office of Accountability, Tennessee Department of Education, e-mail, March 14, 2016.
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- ⁵³ *Ibid.*, Public Law 114-95, § 1111(b)(2)(D), 2015.
- ⁵⁴ Tennessee Department of Education, *2015 State Report Card*, <https://www.tn.gov/education/> (accessed Feb. 9, 2016).

- ⁵⁵ 1 percent of 995,892 is 9,958.92. That is 7.2 percent of 139,232.
- ⁵⁶ Mary Batiwalla, Executive Director, Office of Accountability, Tennessee Department of Education, e-mail, March 14, 2016.
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- ⁶² Offices of Research and Education Accountability, *Competency-based Education in Grades K-12*, Tennessee Comptroller of the Treasury, January 2016, <http://www.comptroller.tn.gov/> (accessed Jan. 16, 2016).
- ⁶³ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1204(a), 2015.
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- ⁶⁵ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1204, 2015.
- ⁶⁶ *Ibid.*, USC 20 (2012), § 6311(b)(2)(A) *et seq.*
- ⁶⁷ *Ibid.*, USC 20 (2012), § 6316.
- ⁶⁸ Tennessee Department of Education, *Tennessee ESEA Flexibility Request*, July 2015, pp. 54, 71, and 85, <http://www2.ed.gov/> (accessed December 5, 2015).
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- ⁷⁰ *Ibid.*, p. 72.
- ⁷¹ *Ibid.*, pp. 83-84.
- ⁷² *Ibid.*, p. 85.
- ⁷³ *Ibid.*, pp. 87-88.
- ⁷⁴ *Ibid.*, pp. 91-92.
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- ⁷⁶ *Ibid.*, pp. 41, 45-51, 53, and 63.
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- ⁷⁹ *Elementary and Secondary Education Act of 1965*, Public Law 114-95, § 1111(e)(1)(B)(iii), 2015.
- ⁸⁰ *Ibid.*, Public Law 114-95, §§ 1111(c)(4)(D), 1111(d)(1), 2015.
- ⁸¹ *Ibid.*, Public Law 114-95, § 1111(d)(1), 2015.
- ⁸² *Ibid.*, Public Law 114-95, §§ 1111(c)(4)(D)(i)(I), 1111(d)(2)(C), 1111(d)(3)(A)(i)(II), 2015.
- ⁸³ *Ibid.*, USC 20 (2012), § 6316.
- ⁸⁴ *Ibid.*, Public Law 114-95, § 1111(d)(2)(B), 2015.
- ⁸⁵ *Ibid.*, Public Law 114-95, § 1111(d)(3)(A)(i), 2015.
- ⁸⁶ *Ibid.*, USC 20 (2012), § 6316(b)(1)(E).
- ⁸⁷ *Ibid.*, USC 20 (2012), § 6316(b)(9).
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